

Attorney General's Biennial Report

STATE OF IDAHO

1935-1936



BERT H. MILLER, Attorney General

ATTORNEY GENERAL'S DEPARTMENT

Bert H. Miller	Attorney General
Leo M. Bresnahan	Assistant Attorney General
Ariel L. Crowley	Assistant Attorney General
Lawrence B. Quinn	Assistant Attorney General
J. W. Taylor	Assistant Attorney General
*M. A. Thometz	Assistant Attorney General
*Ruth Davis	Secretary to Attorney General
Marjory Landsborough	Secretary to Attorney General
Lucile Ahern	Law Stenographer
Martha Jensen	Law Stenographer
Margaret Mann	Law Stenographer
*Edna Matthiensen	Law Stenographer
Ruth Smith	Law Stenographer
*Hildred Woodruff	Law Stenographer

* Resigned

PROSECUTING ATTORNEYS FOR COUNTIES OF IDAHO

1935-1936

Ada	Willis C. Moffatt	Boise
Adams	Carl H. Swanstrom	Council
Bannock	Milton E. Zener	Pocatello
Bear Lake	D. E. Haddock	Paris
Benewah	Wm. D. Keeton	St. Maries
Bingham	Earl W. Corey	Blackfoot
Blaine	Roy Van Winkle	Hailey
Boise	Claude Marcus	Idaho City
Bonner	Robt. E. McFarland	Sandpoint
Bonneville	Henry S. Martin	Idaho Falls
Boundary	W. J. Nixon	Bonnerr Ferry
Butte	W. J. Lamme	Arco
Camas	R. M. Angel	Fairfield
Canyon	Donald Anderson	Caldwell
Caribou	R. J. Dygert	Soda Springs
Cassia	A. H. Nielson	Burley
Clark	Grant W. Soule	Dubois
Clearwater	*Wm. J. Hannah-S. J. Swayne	Orofino
Custer	Merle Drake	Challis
Elmore	E. H. 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	Frank M. Rettig	Jerome
Kootenai	Miles F. Egbers	Coeur d'Alene
Latah	Murray Estes	Moscow
Lemhi	E. W. Whitcomb	Salmon
Lewis	Thomas A. Madden	Nezperce
Lincoln	Harlan D. Heist	Shoshone
Madison	C. W. Poole	Rexburg
Minidoka	Hugh Redford	Rupert
Nez Perce	Ray E. Durham	Lewiston
Oneida	D. W. Thomas	Malad
Owyhee	Laurence N. Smith	Silver City
Payette	W. R. McClure	Payette
Power	P. A. Anderson	American Falls
Shoshone	John L. Fitzgerald	Wallace
Teton	S. H. Atchley	Driggs
Twin Falls	Edward Babcock	Twin Falls
Valley	Fred M. Taylor	Cascade
Washington	John J. Peacock	Weiser

* Deceased

ATTORNEY GENERALS 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.....	1933-1936

* Deceased

JUSTICES OF THE SUPREME COURT

1935-1936

Alfred Budge, Chief Justice.....	Pocatello
Raymond L. Givens, Justice.....	Boise
William M. Morgan, Justice.....	Boise
Edwin M. Holden, Justice.....	Idaho Falls
James F. Allshie, Justice.....	Coeur d'Alene

Clerk of Supreme Court, Clay Koelsch

REPORT OF THE ATTORNEY GENERAL

December, 1936.

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 1, 1936.

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, I. C. A.) 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 entrusted 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 hereinbefore 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, I. C. A.) "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, I. C. A.) "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, I. C. A.) "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, I. C. A.) "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, I. C. A.) "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, I. C. A.) "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, I. C. A.) "Reports to be printed and delivered to secretary.—All annual and bi-ennial 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. A.) "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, and equalization of assessments between counties adjusted.

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 Extraordinary Session of the Twenty-second Session 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 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 educational 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 being performed by the Civilian Conservation Corps is calculated to materially aid in forest fire prevention and the curtailment of the spread of blister-rust and other devastating diseases. The work is done under the supervision of trained and experienced supervisors and unquestionably will be of permanent and lasting benefit to the state and other agencies with which it is associated.

In our former biennial report, under the heading "State Cooperative Board of Forestry," we observed:

"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 entrusted to some committee or board of long service duration whose whole time and undivided attention could be devoted to the formulation and 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."

The reasons that might be advanced for the selection of a committee, or board, to work in conjunction with the State Forester, is made apparent from the fact that the majority of the personnel of the present State Land Board will cease to function with the incoming administration, and that any of the implied policies heretofore existing will be terminated by the change of the personnel of said Board. Likewise, the members of said Board being elective officials, the heads of various departments, and members of other constitutional boards, are charged with such duties and administrative activities that they are wholly unable to devote their time and attention to the administration of the State's timber holdings to such extent and in such manner as will produce the best results. In other words, it appears to me that the legislature could well afford to make provision for the selection of a committee or board that could devote its entire time in looking after the interests of the State as applied to its timber holdings; to ascertain what bodies of timber carry a particular fire hazard, or are, or likely will be, infested with blister rust, or other conditions that will ultimately result in the destruction, in whole or in part, of the timber on various tracts.

The legislators of the southern or sage brush section of the State are too little informed as to just what the State's timber holdings amount to. Probably the greater amount of the funds going into the permanent educational fund now comes from the sale of the State's timber. However, because of the absence of any well-defined policy, tim-

ber sales are not made until such time as the purchaser is required, by reason of personal needs, to make the purchase, and in many, many instances sales are negotiated to the advantage of the purchaser and a corresponding loss to the State. When it is taken into account that the State has made sales for as much as \$50,000 or \$60,000 for the white pine timber on as little as 640 acres of land, and that it is reported that the State has holdings in which the white pine timber on some 160 acre-tracts if sold at the customary stumpage price would bring from \$100,000 to \$125,000, it furnishes some information as to just how valuable such holdings are, and at the same time furnishes evidence of the fact that every effort should be made to protect said timber from devastating conditions, and to dispose of it under such circumstances as will bring the greatest returns to the State.

Such conditions can only come about by and through the adoption of policies and the carrying of the same into effect through some system more widely than exists at the present time.

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, 1935-1936, 258 pardons were granted. During the same period of time the board considered more than 600 applications and granted interviews to approximately 700 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, is now about as satisfactory as can be expected, all of which is due to improved conditions and the efforts of Dr. Wahle in the treatment of specific cases. Too much praise cannot be accorded him for his persistence and success.

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 amaz-

ing 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 determine what persons have been, by the greatest number of votes, duly elected to the various state and district offices. The secretary of state thereupon notifies the various elected officials of their election and issues a certificate therefor.

LITIGATION

The past two years have produced an enormous amount of litigation, both civil and criminal. Especially is this true as to real estate mortgage foreclosures and condemnation proceedings in securing rights-of-way for highway construction. The following constitutes a short statement of a few of the important cases.

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 11, 1909. It was ratified by the President April 1, 1910, and ratified by Great Britain, March 31, 1910. Ratifications were exchanged at Washington, May 5, 1910, and the treaty was proclaimed and became effective May 13, 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, provided for under the terms of the treaty.

On October 30, 1935, Peter Charles Bruner, a citizen of Canada, made application to the International Joint Commission, which application was filed December 4, 1935, for the approval, by said Commission, of the right to reclaim 3440 acres of flooded land on the west bank of the Kootenay river, between the international boundary line and Kootenay lake in the province of British Columbia, and setting out in said application the boundary of the lands sought to be reclaimed, and the system of works proposed for the reclamation thereof, as well as the course of the flow of the Kootenay river, and the volume of the flow thereof during the high-water season, and various other data, for the purpose of fully advising the International Joint Commission in the premises.

The Attorney General, as the representative of the State of Idaho, was served with a copy of said application, supporting exhibits, and orders incident thereto. On the southern side of the international boundary line, in Boundary County, Idaho, and on both sides of the Kootenay river, are thirteen drainage districts in which said districts are included approximately 35,000 acres of highly productive agricultural lands. Some of the afore-mentioned drainage districts have gravity sluices for drainage purposes during the low-water season. The gage at Bonners Ferry, Idaho, shows a variation between low and high water levels of approximately 32 feet. Effort is, therefore, made to see to it that no artificial obstructions are permitted in violation of treaty regulations that will increase the water level. Any increase of the water level in the Kootenay river for an increased period of time would have the effect of raising the water tables throughout said drainage districts, and the rais-

ing of the water tables throughout said drainage districts would have a harmful effect in that it would waterlog the ground and by and through such saturation make the lands less productive, and otherwise greatly damage the same.

The application of said Peter Charles Bruner contemplated the inclusion of what is known as French's Slough, which said slough carried a vast amount of the flow of the Kootenay river during high water season. It was the contention of those, including the State of Idaho, opposed to the granting of the application, that the closing of said slough would materially raise the water level of the Kootenay river on the opposite side of the international boundary line and along the drainage districts in Boundary county, heretofore mentioned.

The hearing on said application commenced on May 16, 1936, at Nelson, B. C., at which time appearances on behalf of the governments, provinces, and states and districts were entered and maps, exhibits, and objections filed. After some proof was introduced on the part of the applicant, he, on his own motion, applied to amend his application eliminating therefrom between 1100 and 1200 acres of the lands sought to be included within his proposed works. The land sought to be eliminated was on the west side of French's Slough, which obviated the necessity for extending his dyking across said slough, thereby leaving said slough in its natural state, and as a consequence thereof producing no condition that would materially interfere with the flow of the waters of Kootenay river.

After some more or less informal discussion, and it being apparent that the modified application on the part of the applicant and the works to be installed in connection therewith would in no wise interfere with the flow of the waters of the Kootenay river across the international boundary line or bring about any harmful effects to the drainage districts heretofore mentioned, all interested parties theretofore objecting to the granting of the application as originally made, withdrew their said objections and the application as modified by the said Peter Charles Bruner was ultimately approved.

FORECLOSURES

Section 11 of Article 9 of the state constitution provides:

"The permanent educational funds other than funds arising from the disposition of university lands belonging to the state, shall be loaned on first mortgage on improved farm lands within the state, United States, county, city, village or school district bonds, or state warrants, under such regulations as the legislature may provide: provided, that no loan shall be made on any amount of money exceeding one-third of the market value of the lands at the time of the loan, exclusive of buildings."

The original constitutional provision limited the classes of securities in which permanent educational funds could be invested to "first mortgage on improved farm lands within the state," to "United States" and "State bonds." By amendment of the constitution the classes of securities in which said funds may be invested have been considerably increased.

It would be difficult, indeed, to provide information as to the exact amount of permanent educational funds that have been invested in first mortgages on improved farm lands within the state, nor is such information of any particular consequence now. However, I find that on the first day of October, 1934, there was invested in first mortgage farm lands permanent educational funds to the amount of \$2,-210,249.23.

With the creation of the "Commission Form of Government" in 1919, there was created the Department of Public Investments administered by a commissioner of public investments, which commissioner approved the securities in which permanent educational funds were invested, and whose determination in that respect was conclusive.

Despite the fact that no loan should be made in an amount of money exceeding one-third of the market value of the land at the time of making the loan, I find that from the earliest date of the investment of permanent educational

funds in first farm mortgages up to the 5th day of May, 1931, there had been mortgage foreclosures aggregating \$1,246,320.67. No information, insofar as I am able to learn, is available as to just what amount of the aforesaid amount has been returned to the permanent educational fund as the result of re-sales of said foreclosed lands. Nor will such information be available until such time as a thorough accounting is made.

I invite attention to the foregoing for the reason that for years and years there has been a laxity by departmental and administrative heads and legislative activity that justifies and warrants severe criticism, perhaps condemnation, of the manner in which the school children of the state of Idaho have been deprived of the benefits of the earnings of a fund that expressly belongs to them by constitutional provision.

Section 3 of Article 9 of the state constitution, among other things, provides:

"The public school fund of the state shall forever remain inviolate and intact; the interest thereon only shall be expended in the maintenance of the schools of the state. * * * No part of this fund, principal or interest, shall ever be transferred to any other fund, or used or appropriated except as herein provided. The state treasure shall be the custodian of this fund, and the same shall be securely and profitably invested as may be by law directed. The state shall supply all losses thereof that may in manner occur."

From the beginning of the time of foreclosures of farm lands in which permanent educational funds were invested, departmental heads should have urged upon the legislature and the legislature in response thereto should have appropriated to the permanent educational fund, at least, every biennium, an amount sufficient to reimburse said fund for any and all losses occurring to said fund by reason of the investment of such funds in mortgages on farm loans and subsequent foreclosure. Delinquencies and laxity in this respect, and for which there is little or no excuse, has depleted the permanent educational fund to the extent of hun-

dreds of thousands of dollars, the interest from which would have gone a long way in the betterment of the upkeep and maintenance of the common schools of the state. If this requirement had been attended to from time to time, it would have inflicted but slight tax burden. Through procrastination and neglect it has now become a matter of huge proportions and such as will necessitate courage on the part of legislators and attending burdens on the part of tax-payers. Independent of all other considerations, however, it is a solemn command and further temporizing is yielding to circumstances to an unjustifiable degree.

From May 5, 1921, to September 30, 1932, mortgage foreclosures amounted to \$112,103.69.

By Chapter 13 of the Extraordinary Session of the 22nd Session, 1933, the powers and duties of the Department of Public Investments were curtailed to the extent that no funds of the permanent educational fund may be invested in any class of securities except upon application to and approval by the State Board of Land Commissioners. The foregoing amendment has had a wholesome effect. It has been the policy, as you are aware, of the present Land Board to diminish as rapidly as possible endowment fund investments in mortgage farm loans. As a result, to a greater or lesser extent, of that policy, there has been invested in mortgage farm loans, of such funds, since October 1st, 1934, to the present time, only \$4,900.00.

On October 1st, 1934, there was invested in mortgage farm loans of the permanent educational fund the sum of \$2,210,249.23.

From October 1st, 1932, to September 30th, 1934, mortgage foreclosures amounted to \$43,598.27.

From October 1st, 1934, to October 1st, 1936, mortgage foreclosures have been very, very heavy, entailing an unusual amount of work and amounting to the sum of \$149,748.06. The necessity for foreclosures has come about largely from tax delinquencies. The Tax Moratorium law of the 1935 session had some beneficial effects. But the fail-

ure in many instances of the property owner and mortgagors to pay the taxes placed the state in the position where it had to foreclose to maintain its lien as against a possible superior lien if the property were sold for taxes, and particularly if re-sold at a "third party" sale. This department had hoped that this important legal question might have been judicially determined, but as yet it remains unsolved.

It has been shown that on October 1st, 1934, permanent educational funds invested in farm loans amounted to \$2,210,249.23, that the same have been augmented by new loans amounting to \$4,900.00, and that mortgage foreclosures within that period amounted to \$149,748.06.

On October 1st, 1936, the amount of permanent educational funds invested in first mortgage farm loans amounted to \$1,557,898.38, which, after deducting the amount of foreclosures within the period from October 1st, 1934, to October 1st, 1936, shows that the investment in that class of security has been diminished to the extent of \$502,602.79, and which has come about by the paying of said amount by mortgagors and which said amount has been reinvested in that class of securities of less hazard to the permanent educational fund. A continuance of the present policy will ultimately result in the permanent educational fund being freed of investments in this class of securities, and it is to be earnestly hoped that that time is not far distant.

FIRST SECURITY BANK VS. FREMONT COUNTY

Prior to the 1933 Legislative Session, Section 61-1401, Idaho Code Annotated, provided in substance that the shares of capital stock of any bank existing by authority of this United States or this State and located within this State, or of any building and loan association, trust company, or surety and fidelity company organized under the laws of this State and doing business within the State, shall be assessed for taxation where such banking company, association or other corporation is located and not elsewhere, in the same manner and upon the same basis of actual value, and uniformity with all other property assessed in the county in which such shares of capital stock are assessed, the

value thereof would be determined as of the second Monday of January in each year. By Section 61-1403, Idaho Code Annotated, the shares of capital stock of any such bank, company, association or corporation was to be assessed in the name of the owner of such shares and entered upon the personal property assessment roll under the name of the bank, company or association or other corporation, showing the full cash value of such capital stock.

The 1933 Session of the Legislature, by chapter 159, amended the Income Tax Law and caused Section 61-2402 of said Income Tax Law to provide that the term "corporation" includes state and national banks and that a tax shall be levied, assessed, collected and paid for each taxable year by all corporations as defined therein for the privilege of carrying on and doing business within the State of Idaho in addition to any license taxes levied under any law of this State or any taxes levied upon the real and personal property of any such corporations therein defined.

On the second Monday of January, 1933, the First Security Bank of Ashton was engaged in a general banking business at Ashton in Fremont county and had a capital stock at the par value of \$25,000 divided into shares of \$100 each. It continued to conduct its said business at Ashton until November 27, 1933, when it sold its property and assets to the First Security Bank of Idaho which assumed and agreed to pay its liabilities. On July 8, 1933, Willis Humphries, Assessor and Tax Collector of Fremont County, and one of the appellants, assessed the capital stock of the First Security Bank of Ashton and entered it for taxation for the year 1933 on the personal property roll. The case is reported in 55 Ida. 76, 37 Pac. (2d) 1101, and was commenced by respondents to prevent the collection of the tax. Appellants answered the complaint and filed a cross complaint which was answered by respondents. The pleadings were so framed that only issues of law were presented and motions were made by both parties for judgment on the pleadings. The question involved was whether the 1933 amendment of the Income Tax Law exempted State Banking Corporations from the payment of a capital stock tax.

It was the contention of the respondents that because of the aforesaid amendment the Legislature clearly intended by expressly including said banks within the meaning of the term "corporation" as used in the Income Tax Law and by providing that the income tax required to be paid by corporations shall be in lieu of any tax on the shares of stock of such corporations, that it exempted the capital stock of State Banking Corporations from ad valorem taxation. The appellants contended that the said amendment embraced more than one subject and that the purpose to exempt shares of stock from taxation was not expressed in the title, and for that reason the amendment was invalid in that it violated Section 16 of Article 3 of the State Constitution, and that it embraced more than one subject and matters properly connected therewith.

The case was thoroughly briefed and argued in the District Court of the Ninth Judicial District before Honorable C. J. Taylor, Judge. The motion of plaintiffs and cross-defendants, respondents in Supreme Court, was granted and that of the defendants and cross-complainants, appellants in Supreme Court, was denied. A decree was entered dismissing the cross-complaint and enjoining the collection of the tax.

The case was appealed to the Supreme Court where the decree of the trial court was affirmed and as a result thereof taxation on the shares of the capital stock of State Banking Corporations was abated.

WATER CONSERVATION ACT

By Chapter 60 of the First Extraordinary Session of the 23rd Session, 1935, there was enacted what is commonly known as the Water Conservation Act, and which act, among other things, created a State Water Conservation Board to be composed of seven members, six of whom were selected by the Governor over a graduated period of time, the Governor being the seventh member and chairman of the board.

Unlimited powers were sought to be conferred upon

said board such as the right to sue and be sued, plead and implead, contract and be contracted with, adopt rules and regulations, appoint technical and other assistants and employees and fix their compensation, adopt a seal, acquire property in its own name, institute condemnation proceedings for the acquisition of land and water rights deemed necessary for the construction, operation and maintenance of its contemplated works.

The board engaged the services of an attorney, clerks, etc., who in due time filed claims for services rendered. Upon receipt of said claims the state auditor asked for the opinion of this office as to the legality thereof and this office rendered its opinion that the act was illegal in that it violated various constitutional provisions, and, accordingly that the claims filed should be disallowed as improper claims against the state. The release of said opinion provoked a flood of criticism from board members and those generally, engaged by the board. After a lapse of time the auditor certified the claims, the Board of Examiners, by a majority vote, approved the same and warrants issued. The state treasurer then asked for an opinion (same is published elsewhere in full in this report) as to her liability for paying the warrants in the event the act were subsequently held invalid. An opinion of this office advised there would be a liability and the treasurer refused to honor the warrants. Mandamus proceedings were instituted by the Water Conservation Board in Supreme Court to compel the treasurer (State Water Conservation Board vs. Enking, 58 Pac. 2d, 779) to pay said warrants. The action was argued twice before the Supreme Court, the act held invalid, and the writ denied.

SALES TAX LAW

By Chapter 12 of the Extraordinary Session of the 23rd Session, 1935, there was enacted the Cooperative Emergency Revenue Act of 1935, commonly known as the Sales Tax Law. Perhaps no Act in the history of legislative affairs created more favorable or adverse criticism than did the Cooperative Emergency Revenue Act. It was before

the legislature in various forms until ultimately approved on March 20, 1935.

The State Chamber of Commerce, through its officials, evinced a decided activity in connection with the passage of said Act. Immediately upon its passage, and apparently without consulting state officials, various merchants' bureaus throughout the state circulated schedules as to the amounts to which the tax should be applied. Shortly thereafter this office was requested, from various sources, for its opinion as to whether or not the schedules theretofore circulated showed the correct amount to which the tax was applicable. After a thorough study of said Act this office reached the conclusion that the tax was not applicable to purchases of less than 50 cents and rendered an opinion to that effect.

This opinion did not meet with the approval of the Administrator of said Act and he publicly announced that he would not be governed by said opinion and that he expected merchants to collect the tax on their gross sales irrespective of the amount involved in the purchase. By the terms of the Act the law provided a 2% tax and it was the theory of this office that the application of the tax to a purchase of less than 50 cents violated the provisions of the law in that it would be the application of a tax in excess of 2%. Accordingly, in an action entitled "The State of Idaho, ex rel, Bert H. Miller, Attorney General, vs. Woolworth," proceedings were commenced in the District Court of Canyon County, before Judge John C. Rice, to obtain a judicial determination as to the least amount of purchase to which the tax was applicable. The case was briefed and argued at great length and after due consideration of the Court it was held that the application of the tax to any purchase of less than 50 cents was violative of the terms and provisions of the law and was not permissible. Since said decision the application of the tax to purchases of less than 50 cents has not been made.

STATE v. VAN VLACK

In November, 1935, the people of the state and coun-

try were shocked by the killing in Twin Falls County of Fontaine Cooper, a traffic officer, and the fatal wounding of Henry Givens (Givens died about ten days later), a deputy sheriff, by Douglas Van Vlack. At the time of said killing, Van Vlack had with him, through abduction, his former wife, Mildred Hook. The morning after the killing, Van Vlack was found by searching parties lying beside a road quite distant from the place of the killing. His car was found hidden in a canal not far from where he was apprehended. When questioned as to the whereabouts of Mildred Hook, he stoutly insisted they had separated, by mutual agreement, during the night. Various peace officers doubted his statements and search for Mildred Hook continued for several days and until her body was found in a metal culvert under a railroad track. Examination disclosed she had been shot through the eye, the bullet coming out at the back of the head. The bullet was found in the culvert. At the time of finding the body, Van Vlack had been charged with the killing of Fontaine Cooper. Subsequently he was charged with murdering Mildred Hook.

On request, J. W. Taylor, one of the assistants of this office, was detailed to assist the prosecutor, Edward Babcock, in the trial of Van Vlack for the murder of Mildred Hook. The trial was set for January 19th, 1936. Shortly before the trial, I was requested to join in the prosecution.

The trial came on regularly and after some four and one-half days a jury was selected and sworn. The presentation of evidence and testimony, some of which was from expert witnesses, continued for two weeks. After argument by respective counsel and the instructions of the court, on the late afternoon of Saturday, February 8th, 1936, the jury returned its verdict finding the defendant, Douglas Van Vlack, guilty of murder in the first degree and recommending the infliction of the death penalty. Judge Barclay discharged the jury and fixed Tuesday, the 11th of February, 1936, as the date for the imposition of sentence, at which time the defendant was adjudged guilty of murder and sentenced to be hanged on Friday, April 3rd, 1936. An appeal from the judgment was taken by defendant, which stayed

the execution thereof. The transcript is the most voluminous of any criminal case to come before a court in years. The appellant has heretofore filed and served his brief with assignments of error; the state, as respondent, by Assistant Ariel L. Crowley, has prepared, served and filed an exhaustive brief and the appeal will be heard in the Supreme Court within a comparatively short time.

It has been a number of years since capital punishment was inflicted in Idaho.

No criminal case in the history of the state, with the exception of the Haywood, Moyer, Pettibone case, growing out of the assassination of Governor Steunenberg, has provoked the attention and interest as has that of State v. Van Vlack. I cannot refrain from the observation that probably there is no attorney in the state today who has participated in the prosecution and defense of more first degree murder cases than the writer, and it is singular, indeed, that not until the trial of the Van Vlack case was I ever present in a court-room when a jury returned a verdict recommending the "death penalty," nor had I ever before been present and heard a judgment of death pronounced.

If the Supreme Court affirms the judgment of the trial court, the only escape is through the Board of Pardons, which has power to commute the sentence.

Accordingly, the ever-recurring inquiry, in the event the judgment of the trial court is affirmed, is: What will the Pardon Board do?

MINES TAX CASE

The First Extraordinary Session of 1935, imposed a 3% excise tax upon the value of ores, mined or extracted within the state. The purpose of the Act was to augment the Public School Fund. An assault was made on this Act by a large number of mining companies and the Act was held unconstitutional by the Third Judicial District Court. By reason of the exceedingly large amount of taxes involved and the public need for additional funds in the school fund, it appeared imperative that this Act be reviewed by the Su-

preme Court itself. An appeal was therefore taken to the Supreme Court and is pending at the date of this report. The importance of this case lies in the fact that this excise is unprecedented in Idaho history and if held valid will serve to convert a substantial portion of the natural resources of the State to public interest, a thing heretofore unaccomplished as regards mining properties.

CARAVAN TAX

By reason of the new industry of transportation of automobiles by highway for sale, the 1935 Legislature imposed a \$5.00 per car tax on all cars imported or transported through the state for the purpose of sale as a compensatory exaction for use. The tax was tested in California and held unconstitutional and in New Mexico where it was held valid, and in the Supreme Court of the United States where the same result was reached as in the New Mexico case. The California case is at present in the Supreme Court of the United States. The same interests involved in the southern cases attacked the Idaho law. It was held unconstitutional by the Third Judicial District Court. No law comparable to this act has ever before been adopted in Idaho, and upon its decision two important considerations hinge, first, the extent of the taxing powers of this state over Interstate Commerce, and second, the right of the state to impose a tax-exclusively on Interstate Commerce where an economic burden, comparable in extent, is sustained by domestic commerce untaxed in this act. A decision is momentarily expected from the Supreme Court in this case.

NAMPA SUBWAY

To eliminate a dangerous road hazard the Public Works Department and the United States decided to build an under-pass in the main business district of the City of Nampa across the Oregon Short Line Railway. Certain persons interested in adjoining property brought an action to prevent construction of the needed subway and the District Court of the Third Judicial District, where the case was tried, held the state powerless to engage in this undertaking.

A Special Session of the Legislature was convened to eliminate this obstruction to the powers of the state in its general highway program by reason of the fact that construction of numerous subways and over-passes was contemplated by the State and the United States. After the Special Session the Third Judicial District again ruled against the State and an appeal was necessitated. Upon review of the law the Supreme Court held in effect that the law originally was amply broad to permit construction of the subway and reversed the Third Judicial Court. By this case the powers of the State in highway construction have been clarified and settled. (Powell vs. McKelvey, 53 Pac. (2nd) 656)

MOSCOW INFIRMARY

No hospital facilities in any degree sufficient to care for the students at the University of Idaho had been provided prior to 1936. The enrollment at the University has steadily increased and by reason of these facts a decided hazard of public concern existed at the University. The United States offered to the University Corporation an advantageous proposition for construction of this Infirmary, including large grants from the United States of an outright character. The United States premised its grants upon an adjudication of the powers of the University to make the necessary contracts. In 1933 this state adopted the Uniform Declaratory Judgments Act and in order to comply with the demands of the United States, the office of Attorney General commenced and prosecuted through the Supreme Court an action for declaratory judgment, defining the powers of the University Corporation. The resulting decision in which the position taken by this office was completely vindicated, has established the law not only for the University but for the subject of declaratory judgments, a new field in this state. (State vs. State Board of Ed. 52 Pac. (2nd) 141)

STATE VS. UNITED STATES

This case is of first importance to the State of Idaho. The Union Pacific Railway is owner of the Talbot Spur, a nine mile extension from its branch line near Tetonia. Desiring to abandon this trackage, which served the coal fields

in Teton County, the Railway Company made application to the Interstate Commerce Commission and was granted authority to abandon the trackage. Before that Commission on its various hearings, the state, through this office, interposed objections to the jurisdiction of the United States in the premises and insisted upon jurisdiction in the Public Utilities Commission of Idaho. The case became a contest over the single item of jurisdiction and this office instituted proceedings in the United States District Court at Salt Lake City against the United States, the Interstate Commerce Commission and the Union Pacific Railway, in defence of our local jurisdiction. The case was tried before a special three judge court and the decision of the Interstate Commerce Commission was overthrown. An appeal was taken to the Supreme Court of the United States and the decision now unreported in the official volumes but appearing in the current advance sheets (80 L. Ed. 677) of the reports of the United States Supreme Court, affirms the position taken by this office and establishes a new precedent for testing state jurisdiction.

INTERSTATE TELEPHONE COMPANY VS. MOUNTAINVIEW TELEPHONE COMPANY

This case went to the Supreme Court on various points relative to telephone rates on the many privately owned short lines in North Idaho. It is of interest principally from the viewpoint of statutory construction in that this office was able in that decision to procure the Supreme Court to exactly reverse the meaning of a statute as it appears in the Code by insertion of the word "not," thus eliminating a procedural problem which has troubled the Public Utilities Commission for many years. (55 Ida. 86, 514)

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.

There are slightly in excess of 1,300 school districts

within the State of Idaho. 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, and numerous other matters did not escape legislative attention and activities and finally emerged with but slight semblance of former existence, all of which has called for legal interpretation from this office.

A multitude of other laws by the regular and extraordinary session of the 1935 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-

izes those legal entitles 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.

CONCLUSION

In conclusion I desire to express my appreciation for the 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.

APPROPRIATIONS

Salaries and extra help.....	\$43,880.00
S. O. T. P.....	3,462.64
Supplies	800.00
Equipment	1,450.00
Fixed charges.....	200.00
	<hr/>
	\$49,792.64
Contingent fund	\$ 1,000.00

REPORT OF DISBURSEMENTS AND BALANCES

	% Expended	Balance
Salaries	\$37,230.72	\$6,649.28
S. O. T. P.....	2,714.18	748.46
Supplies	611.31	188.69
Equipment	771.24	678.76
Fixed charges.....	\$93.38	106.62

(87½% of Biennium Elapsed)

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.

May 31, 1935.

Hon. G. E. McKelvey,
Commissioners of Public Works,
State House.

Dear Mr. McKelvey:

Answering your inquiry of recent date as to what remedy is available to the state and the United States where it is desired to construct a federal highway across the public domain right of way to be furnished by the state when the right of way will necessitate removal of buildings erected for commercial purposes on the public lands, you are advised:

The question here presented arises upon the unusual circumstances attending the existence of certain commercial buildings, to-wit, a hotel and a dance floor lying within the bounds of the right of way chosen by the United States for the location of a new federal highway through what is commonly referred to as Clayton, an unorganized village on the Salmon River in Custer County. Title to the land being vested in the United States and no entry having ever been made by the owners of the buildings in question, and the land being now situate within a power reserve and not subject to entry, and the county being unable to purchase the buildings involved from the owners of the buildings at any figure commensurate with their value as determined by the county commissioners, it is now necessary to determine what legal recourse may be sought by the United States, the county and the state. The interest of the state arises upon its duty under the Hayden-Carright Act to supply the right of way in usable condition.

The principle of law which seems primarily applicable here is found at 50 C. J. 958, where it is said:

"Where the President, as authorized by law, issues a proclamation reserving certain lands and warning all persons to depart therefrom, this terminates any rights or privileges acquired in such lands by a settler."

Examining into the cases where this question has arisen, it is found that the case of *United States v. Hanson*, which was decided in the Circuit Court of Appeals for this circuit, prescribes what is now the law in this jurisdiction as follows:

"There is nothing in the essential nature of the acts of entering upon unsurveyed public land, residing thereon and improving the same with the intention to enter the same as a homestead, to confer upon the settler any vested right, or any kind of claim to the land, and such acts create no impediment to the power of the government to devote the land to any public pur-

pose. *Frishie v. Whitney* 9 Wall. 187, 19 L. Ed. 668; *Kansas Pacific Ry. Co. v. Dunmeyer*, 113 U. S. 629, 5 Sup. Ct. 565, 28 L. Ed. 1122; *Buxton v. Traver*, 130 U. S. 232, 9 Sup. Ct. 509, 32 L. Ed. 920; *Campbell v. Wade*, 132 U. S. 38, 10 Sup. Ct. 9, 33 L. Ed. 1042; *Northern Pacific Railroad v. Colburn*, 164 U. S. 570, 26 Sup. Ct. 157, 50 L. Ed. 314; *United States v. Hanson*, 167 Fed. 881 (886).

An excellent example of the application of these doctrines is found in the case of *Russian American Packing Company v. United States*, 50 L. Ed. 314, decided by the Supreme Court of the United States in affirming a judgment of the Court of Claims (39 Ct. of Claims 460). In opening the decision, Mr. Justice Brown announced the following principle:

"It is well understood that the more settlement upon public lands without taking some steps required by law to initiate the settler's right thereto, is wholly inoperative as against the United states. *Landsale v. Daniels*, 25 L. Ed. 527; *Maddox v. Burnman*, 39 L. Ed. 527; *Northern Pacific Railway Co. v. Colburn*, 41 L. Ed. 479."

In that case the Russian American Packing Company had constructed certain buildings for the purpose of operating a salmon packing plant on public lands and had expended in that relation approximately \$5,000 and had proceeded to carry on a packing business producing a revenue approximating \$100,000.00. The land was not at the time of construction of the buildings aforesaid, in reserved public domain. Thereafter and during occupancy by the packing company the land was withdrawn by proclamation as a reservation for the United States in the propagation of fish. In adjudicating the matter, the Supreme Court of the United States held that the packing company was a mere trespasser occupying the land without a shadow of title and announced it was the province of the United States to destroy the buildings without liability or compensation to the packing company.

Under the circumstances and the authority of the decisions cited, it is apparent that the United States for the purpose of establishing its public highway may proceed in the United States court to eject the hotel owners and dance hall owners from the premises occupied by them upon the public domain and destroy the buildings involved without liability for such acts.

This position has been tentatively confirmed by the United States attorney's office subject to approval of the authorities in Washington.

As a collateral matter we are asked to determine whether in the interest of equity the county commissioners may cooperate to the extent of purchasing buildings lying within the right of way which is required to be cleared by the state. This question seems to be settled by reference to Sections 39-403 and 39-425, I. C. A. In pertinent part, Section 39-403 provides:

"Said board shall also have the right to acquire either by purchase or other legal means all lands and other property necessary for the construction, use, maintenance, repair and improvement of such highways; to contract for and pay out such special rewards and bounties as may seem to them expedient or useful in securing proper highway construction and maintenance; * * * *"

Section 39-425, so far as pertinent, is as follows:

"Boards of county commissioners * * * are hereby authorized and empowered to cooperate with the State of Idaho in the construction of roads, highways or bridges with aid from the United States or the State of Idaho."

It is, therefore, my opinion that there exists no legal objection to a purchase of buildings within a proposed right of way by the county commissioners in the interest of highway construction where such purchase appears expedient and is equitable in view of the burden to be borne by the state and the United States.

Yours very truly,

BERT H. MILLER,

Attorney General.

December 16, 1936.

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

Dear Mr. Parsons:

This acknowledges receipt of your letter of December 9, 1935, and enclosing a claim against the State of Idaho in the sum of \$112.50 as premium on a Fire Insurance Policy covering certain property of the State Highway Department, and wherein a member of the legislature is the claimant, and in which said letter you ask the opinion of this office as to whether or not a member of the legislature may write fire insurance covering property of the State of Idaho and as claimant receive the premium therefore.

Inasmuch as this question is of considerable importance and may involve a number of contracts coming before your office, we deem it advisable to review many authorities as supplemental to our opinion directed to your department under date of November 8, 1935. Accordingly what we here present is in addition to the authorities cited in our former opinion. We believe, however, that the former opinion is conclusive of the question here presented. We deem it advisable to review the following cases involving the construction of similar statutes. The application of the rules and the reason for the rules and the policy adopted in the various states are very persuasive in a construction of the particular statutes involved.

Section 57-201, Idaho Code Annotated is as follows:

"Members of the legislature, state, county, city, and district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members."

Section 65-1513 Idaho Code Annotated, among other things, provides:

"No member of the legislature or any head or employee of the executive departments of the state shall directly, himself, or by any other person in trust for him, or for his use or benefit or on his account, undertake, execute, hold or enjoy, in whole or in part, any contract or agreement made or entered into by or on behalf of the state of Idaho, and every person who violates the provisions of this section shall be deemed guilty of a misdemeanor and shall be fined not to exceed the sum of \$1000."

It will be observed that Section 65-1513, is a highly penal statute and because of that fact must be strictly construed.

Section 57-201, supra, might be said to be an expression of the common law, and independent of all other consideration, penal or other-

wise, public policy has frowned upon officials being interested or participating in agreements or contracts of a public nature.

The law is well stated, and numerous cases collected in 6 Ruling Case Law, page 739, Section 155, as follows:

"The rule prohibiting public officers from being interested in public contracts is embodied in the statutes of some states. The rule is, however, not dependent on statute. * * * The reason is that in such case the member's public duty and his private interests are directly antagonistic. It matters not if he did in fact make his private interests subservient to his public duties. It is the relation that the law condemns, not the results. It might be that in a particular case public duty triumphed in the struggle with private interests; but such might not be the case against or with another officer, and the law will not increase the temptation or multiply opportunities for malfeasance. Neither will it take the trouble to determine whether in any case the result show a wrong or crime, but it absolutely and unequivocally refuses its sanction to any contract of any kind whatever where such relation exists * * *"

In the case of *McRoberts vs. Hoar*, 28 Idaho 163, 153 Pac. 1046, the Idaho Supreme Court, in condemning the practice of a public officer accepting private employment which conflicted, or might conflict with his public duties, has this to say:

"An official's duty is to give to the public service the full benefit of a disinterested judgment and the utmost fidelity. Any agreement or understanding by which his judgment or duty conflicts with his private interest is corrupt in its tendency. When an individual accepts an office it is with the implied understanding that his entire time and attention, if necessary, shall be given to the duties of that office and when he finds it inconvenient to devote his time, attention and best efforts to the duties of his office there is one means available to him—to resign. There is no more pernicious influence than that brought about by public officials entering into contracts between themselves by virtue of which contracts the emoluments of their offices are increased and the time and attention which the law demands that they shall give to the performance of the duties of their offices are given to the performance of the duties required of them under such contracts. Justice, morality and public policy unite in condemning such contracts, and no court will tolerate any suit for their enforcement. The fact that the acceptance of such employment was without fraud and prejudice to the interest of the taxpayers is immaterial. Even in the absence of statutory provisions, such a contract is void; as a public official cannot make a contract to regulate his official conduct by considerations of private benefit to himself."

In the case of *Burke vs. Woodward*, 57 Pac. 777, the law is clearly stated. The language in this case might well be adopted as a text. In holding that the members of the council could have no recovery or action whatever and that the prohibited contract was void, the court says:

"This then is the undoubted rule that when a contract is expressly prohibited by law no court of justice will entertain an action upon it or upon any asserted rights growing out of it, and the reason is apparent, for to permit this would be for the law to aid in its own undoing. Says the Supreme Court of the United States, . . . 'No court of justice can in its nature be made the

handmaid of iniquity. Courts are instituted to carry into effect the laws of the country. How can they become auxiliary to the consummation of violations of the law. There can be no civil right where there can be no legal remedy, and there can be no legal remedy for that which is itself illegal."

There are innumerable authorities holding to the same general doctrine as that herein before quoted. It would seem to us unnecessary to further cite authorities or prolong quotations therefrom.

The provisions contained in Section 65-1513, supra, insofar as we are aware, are not to be found in any other state. To us it seems plain and unequivocal. That its terms are harsh is admitted. That they may, in some instances, work hardships is apparent. The claimant in the instant case is a man of unquestioned integrity. That, however, is beside the question, and is immaterial. It is the relation that the law condemns. When he qualified as a legislator the law closed the door to him against private business transactions with the state, such as is here under consideration.

The claimant being a legislator, in my opinion, comes within the prohibited class, and, accordingly, that said claim is void.

Respectfully submitted,

BERT H. MILLER,
Attorney General.

August 28, 1935.

Hon. C. Ben Ross,
State House.

Dear Governor:

I am in receipt today of your communication of August 22, 1935, addressed to Honorable Ben Diefendorf, Commissioner of Finance, and in which said communication Mr. Diefendorf is requested to permit Frank Gaffney, Assessor of Clearwater County to examine the income tax return of the Madison Lumber Company, for the purpose of ascertaining the actual and true inventory of the stock of goods carried by said lumber company, in order that he may determine valuations for taxation purposes. The object, I assume, of transmitting said request to me is for securing my signature as Attorney General as is provided in Section 61-2443, Idaho Code Annotated.

I am returning said communication without my signature as Attorney General, and for the following reasons:

January 11, 1934, a committee of assessors submitted to you a request that you authorize the Commissioner of Finance to furnish data in regard to merchandise inventories, which said communication was transmitted to this office for consideration. Under date of February 10, 1934, this office, through one of its assistants, Leo M. Bresnahan, replied to said communication by addressing Mr. J. D. Barnhart, the chairman of the assessors' committee, and in which he gave as his opinion that income tax reports could not be made available to assessors by the tax commissioner.

On March 12, 1934, Roy D. Leonardson, Assessor of Ada County, addressed a communication to this office inviting my attention to the opinion of Mr. Bresnahan, and calling attention to the provisions of Section 61-2443, Idaho Code Annotated, and in which he stated that it seemed to him that authority for assessors to have access to income tax was vested in the Governor and Attorney General under the provisions of

said section, and asking for further opinion relative to said matter. Under date of March 15, 1934, I made response to the communication of Mr. Leonardson, and I am transmitting herewith a copy of the opinion that was rendered at that time. Inasmuch as the opinion of March 15, 1934, is our office file and we have no copies thereof, I am requesting that the same be returned after you have perused it, so that the same may be returned to our files for future reference.

You will observe therefrom that we expressed the opinion that income tax returns could not be furnished assessors for the purpose of aiding or assisting an assessor in the discharge of his office duties.

Furthermore, under date of December 19, 1934, in a communication addressed to Herbert H. Love, Assessor of Gooding County, Idaho, and in response to an inquiry from him, we stated that the selfsame inquiry had been submitted by Mr. Leonardson and enclosed him a copy of the opinion rendered Mr. Leonardson.

In view of the fact then that we have heretofore expressed our opinion that the Commissioner may not disclose information sought by Mr. Gaffney, I am impelled to return your communication of August 22 unsigned.

Respectfully yours,

BERT H. MILLER,

Attorney General.

December 5, 1935.

Mr. Fitch Phinney,
Culdesac, Idaho.

Dear Mr. Phinney:

Your letter of November 27, 1935, states that you are a resident of Nez Perce County, that you are one-eighth Indian on the maternal side, your father being a white man; that you are an allottee of the United States government, having received one hundred eighty acres of land in the Nez Perce Indian Reservation. You ask, as an allottee of the United States government, if you are subject to the criminal jurisdiction thereof, and to what extent, if a citizen, you are subject to the state's jurisdiction in both civil and criminal actions.

Section 241, Title 25, U. S. C. A., is the general criminal statute covering Indian wards of the United States government, and reads in part:

"Any person who shall sell, give away, dispose of, exchange, or barter any malt, spiritous, or vinous liquor including beer, ale, and wine, or any kind whatsoever, or any essence, extract, bitters, preparation, compound, composition, or any article whatsoever, under any name, label, or brand, which produces intoxication, to any Indian a ward of the Government under charge of any Indian superintendent or agent, or any Indian, including mixed bloods, over whom the Government, through its departments, exercises guardianship; and any person who shall introduce or attempt to introduce any malt, spiritous, or vinous liquor, including beer, ale, and wine, or any ardent or intoxicating liquor of any kind whatsoever into the Indian country, shall be punished by imprisonment for not less than sixty days, and by a fine of not less than \$100 for the first offense and not less than \$200 for each offense thereafter."

This section has been interpreted numerous times and the general statement of law, I think, is well set forth in *United States vs. Pelican*, 58 L. Ed. 676, wherein the court has made the following statement:

"Thus in the act of January 30, 1897, Chapter 109, 29 Statute at Large 506, leading to the introduction of intoxicating liquor into the Indian Country, it is expressly provided this term shall include any Indian allotment while the title to the same shall be held in trust to the government, or where the same shall be held without the consent of the United States."

This statute was upheld in *United States vs. Sutton*, 215 U. S. 291, 54 L. Ed. 2200, as a valid exercise of the federal power with respect to allotments. The federal jurisdiction under the same statute was sustained with respect to an Omaha Indian in Nebraska, the title being held in trust by the government under the act, and further:

"That until the issuance of fee patents all the allottees to whom patents shall be hereafter issued shall be subject to the jurisdiction of the United States. We deem it to be clear that the Congress had the power thus to continue the guardianship of the Government," and citing a long list of cases.

It is, therefore, apparent from the citation from the above case that if the allottee is still a ward of the Government, that the laws of the United States, both civil and criminal, would be in force and effect as to such Indian while on his allotment or under the care of the government.

The question as to the jurisdiction of the federal government over you, Mr. Phinney, therefore, resolves itself into a question of fact as to whether or not you are at the present time a ward of the government. If so, you would be unable to purchase intoxicating liquors, whether you are residing on your allotment or not. Your civil rights other than those connected with the land upon which you are farming would perhaps be controlled by the general laws of the state.

The state of Idaho has enacted a statute, being Section 17-2724, I. C. A., reading as follows:

"Selling liquor to Indians.—Every person who sells or furnishes, or causes to be sold or furnished, intoxicating liquors to any Indian is guilty of a misdemeanor."

The question involved in the construction of this statute is what constitutes an Indian. The following cases enunciate the rule on this subject, to-wit:

State v. Nicholis
112 Pac. 269.

U. S. v. Wood
42 Fed. 321.

Ex parte Reynolds
20 Fed. Cas. 582.

U. S. v. Hurshman (D. C.)
53 Fed. 544.

Keith v. U. S.
58 Pac. 50.

Said rules being as follows:

"That the civil status of one born of an Indian mother and a white father as a citizen of the United States follows that of the father."

This rule has been further clarified in Moser vs. U. S., 198 Fed. 54.

"The word 'Indian' describes a person of Indian blood, while the word 'citizen' describes his political status. Consequently the fact that an Indian is a citizen will not remove him from the provisions of law prohibiting the giving of liquor to them."

The Supreme Court of the State of Idaho has stated in State vs. Lott, 21 Idaho 646:

"Under the provisions of Sec. 6 of the act of Congress of February 8, 1887, known as the Dawes Act, upon the completion of allotments made under that act, and the patenting of the lands to the allottees by trust patents, each and every member of the respective bands or tribes of Indians to whom allotments are made 'shall have the benefit of and be subject to the laws, both civil and criminal, of the state or territory in which they may reside,' and the state courts accordingly have jurisdiction to try an Indian for any public offense, except the introduction of liquor into the Indian country, where such Indian has taken an allotment under the provisions of the Dawes Act."

This same rule has been followed in State vs. Tilden, 227 Idaho 262.

The statement of the law may also be found in State vs. Henney, 145 Pac. 450.

In conclusion it would be my opinion that you, if still a ward of the government, are subject to the rules and regulations prescribed by the United States, and especially to the federal statute above cited which prohibits the sale to you of intoxicating liquors. If you have received a patent in fee to your land and are no longer a ward of the government, but a citizen thereof, you are entitled to vote, and under the cases cited your status would be that of a white man inasmuch as your father was white, and your status would follow that of your father. The same would apply to your son. I doubt very much whether you could take up land, meaning, I presume, homestead the same, as the government has restricted the use of the homestead right to one allotment or homestead. You have already exercised your rights in this regard by accepting an allotment from the government. Your son perhaps could either homestead or receive an allotment, depending upon his status.

Respectfully submitted,

BERT H. MILLER,
Attorney General.

January 18th, 1935.

Hon. Gainford P. Mix,
President of the Senate,
Twenty-Third Session of the Legislature,
State House.

Dear Mr. Mix:

Upon the request of Senator Rigby we submit the following with reference to the power of the senate to originate a liquor control bill, and which is primarily a police regulation but incidentally raises revenue:

Article III, Section 14 of the Idaho Constitution provides:

"Bills may originate in either house, but may be amended or

rejected in the other, except that bills for raising revenue shall originate in the house of representatives."

The Constitution of the United States and of many of the states makes the same provision as that quoted above and the authorities of the several jurisdictions hold generally that bills for other than tax purposes, but which may incidentally create revenue, are not revenue bills which under this constitutional provision must originate in the house of representatives.

In the Idaho case of *Dumas vs. Bryan*, 35 Idaho 357, our supreme court in discussing this provision of our Constitution there cites authorities generally holding to the above ruling—particularly the following cases: *Chicago, B. & Q. R. Co. vs. School District No. 1* (Colo.), 165 Pac. 260; *Evers vs. Hudson* (Mont.), 92 Pac. 462; *Harper vs. Commissioners*, 24 Ga. 566; *Millard vs. Roberts*, 202 U. S. 4229, 50 L. Ed. 1090.

In addition to the foregoing authorities we would also call attention to the case of *State vs. Bernheim* (Mont.), 49 Pac. 441, in which it was held that a bill in the nature of a police regulation which incidentally raised revenue was not a bill for raising revenue within the meaning of the Constitution.

In *Anderson vs. Ritterbusch* (Okla.), 98 Pac. 1002, the court held that revenue bills are those that levy taxes in the strict sense and are not bills for other purposes which incidentally create revenue. In the case of *State vs. Wright* (Ore.), 12 Pac. 708, it was held that a bill providing for an increase of the amount required for a license for the sale of liquors is not a bill for raising revenue so that it must originate in the house but is an exercise of the police power of the state.

In the supreme court of Colorado in an opinion of the justices decided January 29th, 1934, found in 29 Pac. (2nd), page 705, in answering questions propounded to them by resolution of the senate concerning the constitutionality of House Bill No. 45, entitled "An Act to Provide Revenue for the Relief of the Unemployed, Destitute and Suffering" but which bill itself provided an elaborate code regulating the manufacture, sale and use of malt, vinous and spirituous liquors, and while disposing of the interrogations on other grounds, the court said:

"A bill whose chief purpose is other than the raising of revenue does not become a revenue measure merely because of some of its provisions produced revenue."

and cited the Colorado case of *Colorado National Life Assurance Co. vs. Clayton*, 130 Pac. 330.

I am of the opinion that such an act as suggested by Senator Rigby could be originated in the senate and would not come within the provisions of Article III, Section 14, of the Constitution requiring that revenue bills must originate in the house. Such a bill would be primarily a police regulation and not a revenue bill. The authorities generally are to the effect that unless a tax is levied for the purpose of "defraying expenses of government" or "for the service of the government" it does not amount to levying of taxes within the meaning of the Constitution requiring all revenue bills to originate in the house.

Respectfully submitted,

BERT H. MILLER,

Attorney General.

June 1, 1935.

Hon. Arthur Campbell,
State Mine Inspector,
State House.

Dear Mr. Campbell:

Answering your inquiry of May 31, 1935, as to whether or not the owner of a dominant mining claim is liable to the owner of a servient estate for deposit of silt resulting from percolation of water bearing silt in suspension from placer tailings dumped on the dominant estate, you are advised:

The situation here presented arises under substantially the following facts:

A is engaged in operation of a placer mine upon a mining claim slightly higher in elevation than the mining claim of B. A dumps the tailings and residue from his placer operations within the boundaries of his own claim and by reason of the nature of the operations there is considerable water seepage bearing silt in suspension. By the slope of the land this silt bearing water drains without special channel across the surface of the mining claim of B and much of the silt is deposited on B's claim. We are now asked to determine if there is a liability on the part of A for damage caused by the deposit of silt upon the lands of B.

At a very early date in Idaho history (1 Ida. 595) the Supreme Court had under consideration the question of the right to deposit tailings in any degree upon the land of a lower mining claim and emphatically denied the existence of such right in the case of *Ralston v. Plowman*. This accords with the rule usually announced that whereas there is a right to have surface waters in their natural condition drained across the servient estate without obstruction (see *Johnson v. Gustafson*, 49 Ida. 377; *Beasley v. Engstrom*, 31 Ida. 14) nevertheless, when waters are used for mechanical purposes on the higher lands there is no such right. (*Drew v. Hicks*, 35 Pac. 563; *Wood v. Moulton*, 80 Pac. 92; *Galbraith v. Hopkins*, 113 Pac. 174; *Brun v. Richards*, 291 Pac. 825; *Humphreys v. Moulton*, 81 Pac. 1085; *Board v. Rodley*, 177 Pac. 175; *Olney v. Auckland*, 267 Pac. 605; *Boynton v. Longley*, 6 Pac. 437).

The cases on the subject of drainage involving movement of soil by hydraulic methods used in placer mining are compiled at 48 A. L. R. 127, and upon those cases the rule is stated to be:

"It is well settled that a miner, regardless of whether he is a prior owner or not, has no right to allow the water containing debris and tailings which he has used in his mining operations, to run . . . upon another's property to the injury of such rights."

In the case of *Hobbs v. Amador*, 4 Pac. 1147, the Supreme Court of California said:

"No person natural or artificial has a right directly or indirectly to cover his neighbor's land with mining debris, sand, gravel or other material."

And again in the case of *Logan v. Driscoll*, 19 Cal. 623, it is said:

"And it is immaterial that one is guilty of no negligence in the operation of his mine or that the mining operation could not be carried out without inflicting the injury."

I am not able to find any cases in which this doctrine has been

overruled and for that reason I am of opinion that where an appreciable injury has been inflicted by drainage of water containing debris in suspension as a result of placer operations the drainage may be enjoined or damages recovered.

In this connection I direct attention to the fact that this opinion is not intended to apply to the facts of any individual case. It is observed in nearly all the cases that they must be determined upon their individual circumstances and the general rules herein stated may be found totally inapplicable to a particular case. This fact is mentioned for the reason that it is not the province of this office to engage in determination of controversies private in character. The general rules herein compiled are stated for the information of the State Mine Inspector.

Yours very truly,

BERT H. MILLER,
Attorney General

March 20, 1935.

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

Dear Sir:

You have requested an opinion of this office as to the constitutionality of House Bill No. 127 by Sharp, passed by the 23rd Session of the Idaho Legislature, and you are advised as follows:

The primary principle governing enactment of laws in this state is provided by Constitution, Article 3, Sections 15 and 16. Article 3, Section 16, which is especially pertinent here provides that every act shall embrace but one subject and matters properly connected therewith, which subject shall be expressed in the title.

The title to the present act provides in pertinent part that House Bill No. 127 is "An act * * * providing that execution after final judgment may be levied upon moneys due the judgment debtor from the State of Idaho * * * ." The body of the act contains no provision whatever for a levy of execution upon moneys due the judgment debtor from the State of Idaho, but rather provides: "The State of Idaho * * * shall after final judgment in any action be subject to the levy upon of any moneys due the judgment debtor in said action." It is readily apparent that the reference has been changed in the body of the bill to refer to a levy upon the state and not to a levy upon funds, and the word "execution" is not mentioned. The inference from the reference to "levy upon of any moneys due the judgment debtor in said action" appears to have reference to garnishments and not to executions. Where the title to an act sets forth a subject matter different from or less comprehensive in its scope than the body of the act itself, the title is misleading and the act is void. *Jackson v. Gallet*, 39 Ida. 382; *Katz v. Herrick*, 12 Ida. 1.

Constitution, Article 7, Section 13, provides: "No money shall be drawn from the treasury but in pursuance of appropriations made by law." Appropriations in this state are made for specific purposes, i. e., payment of salaries and other designated expenses, and there is not in this state and can not be made any appropriations from the funds in the state treasury for the purpose of paying the debts of private individuals for the Constitution, Article 8, Section 2, expressly provides:

"The credit of the state shall not in any manner be given or loaned to or in aid of any individual."

To require the state to stand as garnishee in the matter of debts due from the state to persons employed by it, is to put the state in the position of judgment debtor surety by force of judicial process for the payment of debts of private individuals. In the case of *White v. Pioneer Bank*, 198 Pac. 933, this matter of lending the state's credit was construed by the Supreme Court to be so rigid and wide in its scope as to prohibit even deposits in banks where a special benefit would accrue, to a private corporation.

The present system of laws in our state governing executions for collection of money and debts is a composite of Chapter 1, Title 8, I. C. A. Construing these garnishment and execution statutes together it is observed that Section 6-508 provides for creation of a summary liability against the garnishee defendant, which in the case of the present statute would be the state. By Section 6-509 the state might be summarily cited into court and required to deliver up the funds due from it to the judgment debtor, and by Section 6-516 a judgment may be taken against the state for the amount of the debt due from it to a defendant. The provision in the present bill allowing such proceedings, though it is restricted in terms to "courts of record" violates the express provision of Constitution, Article 5, Section 10 vesting the exclusive original jurisdiction to try claims against the state in the Supreme Court and providing that even in such case "no process in the nature of execution shall issue thereon."

Construing Article 5, Section 10, above referred to, in the case of *Pyke v. Steunenberg*, 5 Ida. 614, and repeatedly thereafter, the Supreme Court has said that it will not hear any claims against the state until the same have been passed upon by the Board of Examiners. Article 4, Section 18 of the Constitution vests in the Board of Examiners the proper authority to review all claims against the state and the Supreme Court has held this provision to be peremptory in terms, declaring that all claims of every character must be submitted to the Board of Examiners (*State v. National Surety Co.*, 29 Ida. 679).

The attempt by the present bill to confer upon the district courts jurisdiction to render a garnishee judgment against the state and to compel payment of claims without determination by the Board of Examiners and in derogation of the exclusive jurisdiction of the Supreme Court, is a manifest violation of the Constitution.

Lest it might be urged that the application of the garnishment statute is restricted to attachments, it is only necessary to quote the provisions of Section 8-201, I. C. A., expressly providing for levy upon execution in the same manner as upon attachment.

For the foregoing reasons it is my opinion that House Bill No. 127 by Sharp, is so violative of the Constitution and public policy as to be entirely void.

Yours respectfully,

BERT H. MILLER,
Attorney General.

November 16, 1936.

Mr. Verner Stoddard,
Spencer, Idaho.

Dear Mr. Stoddard:

You submitted to this office under date of November 5, 1936, a copy of an official ballot marked as follows:

In the circle under the caption "Democratic Party" appears a cross (X).

The said copy is further marked by crosses (X's) appearing in the small circle opposite and to the right of the names of the candidates on the Democratic ticket with the exception of presidential electors and the following named officers:

United States Senator.
State Treasurer.
State Senator.
Probate Judge.

The same ballot is marked under the Republican ticket by a cross (X) opposite and to the right of the following named candidates:

United States Senator.
State Treasurer.
State Senator.
Probate Judge.
County Commissioner, Second District.

It will be noted that where a cross (X) is placed in the small circle to the right of and opposite the name of a candidate on the Republican ticket, the circle opposite and to the right of the candidate for the same office on the Democratic ticket is unmarked with the exception of the candidate for County Commissioner, Second District.

With this summary of facts, the query is asked:

"Is the enclosed ballot properly marked? If it is, how should it be recorded?"

In reply to which you are advised as follows:

Section 33-804, Idaho Code Annotated, prescribes the form of ballot and the method of voting, and prescribes that a cross at the top votes for all candidates except as to names through which a line is drawn, or the name scratched. Said statute further provides, in paragraph 5 thereof, that a person may vote for a candidate on the other ticket by placing a cross after his name, which vote must be counted for the candidate for whose name is thus marked.

Section 33-1102, Idaho Code Annotated, provides in part:

"* * * provided, that when a ballot is sufficiently plain to gather therefrom a part of the voter's intention, it shall be the duty of the judges to count such part."

Harper v. Dodson, 32 Idaho 616, at page 622, interpreting Section 624, Compiled Statutes, now Section 33-1102, Idaho Code Annotated, recited the statute, and held:

"Any ballot or part of a ballot from which it is impossible to determine the elector's choice, shall be void and shall not be counted: provided, that when a ballot is sufficiently plain to gather therefrom a part of the voter's intention, it shall be the duty of the judges to count such part."

It would be my opinion that the ballot submitted to this office for consideration should be counted for all of the candidates in the Democratic column, with the exception of those which the voter has marked for the candidate opposite therefrom in the Republican column. Under the statute, and with reference to the cross after the two candidates for the same office, it being impossible to determine the intention of the voter, these votes should not be counted for either party.

Respectfully submitted,

BERT H. MILLER,
Attorney General.

November 23, 1935.

Hon. Myrtle P. Enking,
State Treasurer,
State House.

Dear Mrs. Enking:

Replying to your request for the opinion of this office, we have this to submit to the question following:

A claim having been presented to the State Auditor for certification to the State Board of Examiners for allowance against the administration fund created by Chapter 60, First Extraordinary Session Laws of 1935, and said claim having been allowed by the State Board of Examiners and Auditor directed to issue a warrant having been presented to the State Treasurer for payment, is the State Treasurer under such circumstances authorized to pay such warrant without liability, if it is not a proper charge against the state or, should the State Treasurer first satisfy herself that such a claim is a valid obligation of the State?

Constitution, Article 7, Section 13, states as follows: "No money shall be drawn from the treasury but in pursuance of appropriations made by law."

The Courts have commented as follows upon what constitutes an appropriation:

"An appropriation is authority of Legislature given at proper time and in legal form to proper officers to apply specific sum from designated fund out of treasury for specified object or demand against the State."

In re Huston

27 Idaho 281

147 Pac. 1064.

Jackson vs. Gallet

39 Idaho 382

228 Pac. 1068.

Herrick vs. Gallet

35 Idaho 13

204 Pac. 477.

It has been held in a former opinion from this office to Harry Parsons, State Auditor, that there were grave objections to the constitutionality of Chapter 60, Extraordinary Session Laws of 1935, and one of the particular points drawn to the attention of the auditor was Section 17 of said act, being the appropriation for putting of said act into effect and against which a warrant above mentioned was drawn and out of which the same would necessarily have to be paid.

In re Huston, 27 Idaho 281, 147 Pac. 1064, in construing the duties of the State Treasurer the Supreme Court used the following language:

"The state treasurer is not only authorized under the law, but it is made his duty, as such officer, to refuse the payment of a state warrant drawn by the state auditor unless he is satisfied that it is a proper and legal charge against the state. (Gibson v. Ky. 68 Oregon 589, 137 Pac. 864; State v. Brown, 10 Oregon 215; Crutcher v. Cram, 1 Idaho 372). A warrant drawn by the state auditor is but prima facie, and not conclusive evidence of the authority of the law for the payment of such claim and unless there is authority of law for the payment of such claim, the treasurer may refuse, and indeed it is his duty to refuse, to pay the warrant, even if funds are appropriated."

The same position is taken in *Gibson v. Kay* (68 Ore. 589, 137 Pac. 964) and in *State v. Brown*, 10 Oregon 215, wherein it is held as follows:

"Since a warrant is not conclusive evidence it is the duty of the state treasurer to refuse payment unless it represents a claim authorized by law."

Section 65-910, I. C. A., provides as follows:

"In all cases of specific appropriations, salaries, pay and expenses, ascertained and allowed by law, found due to individuals from the state, when audited, the auditor must draw warrants upon the treasury for the amount; but in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrants must be drawn by the auditor, or paid by the treasurer, until appropriation is made by law for that purpose, nor must the whole amount drawn for and paid for any purpose or under any one appropriation ever exceed the amount appropriated."

The above statute which was then C. S. 151, was construed by our supreme court as follows:

"* * * in cases of unliquidated accounts and claims, the adjustment and payment of which are not provided for by law, no warrants must be drawn by the auditor or paid by the treasurer, until appropriation is made by law for that purpose, nor must the whole amount drawn for and paid for any purpose or under any one appropriation ever exceed the amount appropriated." *McConnell v. Gallet*, 6 Pac. (2nd) 143.

The same rule of law has been stated in 23 Cal. Jud., paragraph 908 as follows:

"Although the treasurer must pay out state money in accordance with law, nevertheless he may refuse to pay a demand based upon a statute, good in form, but invalid because unconstitutional."

Which statement was set forth in *Camron v. Weil*, 57 Cal. 547. See also 22 R. C. L. 506, section 191:

"Drawing money from the public treasury on a warrant based upon an illegal and unauthorized allowance by a board of officials is a breach of the officer's bond and renders his sureties liable for the amount so drawn."

I wish to call your attention also to Section 57-812, I. C. A. being the liability imposed by statute upon the official bond of public officials. In this connection also I wish to call your attention to Section 17-3201, I. C. A., subdivision 3, being criminal liability for the failure on the part of a public officer to keep public money in his possession until disbursed or paid out by authority of law; also Section 17-3203, I. C. A., being an additional criminal penalty for the disbursement or failure to keep and pay over public moneys in the manner prescribed by law. It is our opinion in this respect that the State Treasurer might incur both a civil liability and a criminal penalty in the event of a payment out of the fund created by Chapter 60, Extraordinary Session Laws of 1935, in the event that the Supreme Court should at some time in the future declare said act to be unconstitutional which would in effect make all payments or claims paid out of the same wholly illegal and void.

There are numerous other authorities holding to the same general doctrine, but not included for the sake of brevity.

In one of those decisions of recent date, from the highest court of one of our western states, featuring a question of similar import, especially as to the principle involved, we find substance for the following observations:

Gray is the product of the admixture of black and white. The resultant shade of gray must, of necessity be influenced by and depend upon the proportions of the admixtures used. To me the appropriation contained in Chapter 50 has the appearance of a sickly, yellowish gray. Legislatures may be and, perhaps, often are swayed by the times or the temper of the times. The service of a good purpose can not excuse the making of a bad law, nor, in the last analysis, is the result desirable, for when the good purpose has been served, the bad precedent remains to serve bad purposes, and the fundamentals of our government are perverted and destroyed. As officials we have taken oath to uphold, support and maintain the Constitution, not trample upon it. We are the servants of the Constitution, not its masters. If the Constitution be so "stale" that it is a stifler of progress, there are methods by which that feature may be overcome. If we are in revolt against the instrument which created our power and to which we must look for guidance in our official activities, it were far more in keeping with our obligations that we resign our positions than to breach its provisions. It may be that the best form of government is one where the powers of the legislature are without limit. If it is let us as officials and individuals, be the first to demand that form of government, rather than give pretended reverence to that which we do not revere. Let us, then, have a Constitution, or no Constitution, and if there be a Constitution, let us honor and respect it. By so doing, we can not go astray nor prostitute the positions we have been selected to fill.

I am conscious of the fact that the Attorney General is made the servant of all other departments of state; that he must give his opinion, in writing, when requested so to do; that officials are not found to follow his advice, and at times have refused to do so. Such refusal, admittedly, discredits the Attorney General, but certainly does not reflect credit on the one following such precedent. Likewise, I know that all opinions of the Attorney General are not always correct. He is not infallible. If he were, there would never be occasion for test cases in affairs of state.

In conclusion, I submit that the appropriation contained in the law in question may be valid. Tested, however, by the authority of well considered cases, it appears that there are such uncertainties as to warrant one having to do with its direct application to justify such person in submitting it to the proper authority to clarify any uncertainties.

Respectfully submitted,

BERT H. MILLER,
Attorney General.

August 29, 1936.

Hon. C. Ben Ross,
Boise, Idaho.

Dear Governor:

In response to your inquiry as to whether or not the powers and duties of the governor may be performed by the lieutenant governor during inability of the governor to act, we submit as follows:

Section 12 of Article 4 of the State Constitution, provides:

"Lieutenant governor to act as governor.—In case of the failure to qualify, the impeachment, or conviction of treason, felony, or other infamous crime of the governor, or his death, removal from office, resignation, absence from the state, or inability to discharge the powers and duties of his office, the powers, duties and emoluments of the office for the residue of the term, or until the disability shall cease, shall devolve upon the lieutenant governor."

Section 65-705, Idaho Code Annotated is as follows:

"Every provision in the laws of this state in relation to the powers and duties of the governor and in relation to acts and duties to be performed by others toward him, extends to the person performing for the time being the duties of the governor."

Section 65-706, Idaho Code Annotated, is as follows:

"The lieutenant governor while performing the duties of governor of Idaho, shall be entitled to receive compensation at the same rate as that allowed the governor, and in addition thereto expenses of all actual and necessary travel within the state incurred in the performance of such duties."

From the foregoing, it is apparent that in the event of the inability of the governor to discharge the powers and duties of his office, the lieutenant governor may perform such duties and powers and receive the emoluments thereof until such time as the disability shall cease.

Respectfully submitted,

BERT H. MILLER,

Attorney General.

August 27, 1935.

Hon. Geo. R. Bailey,
Probate Judge,
Blackfoot, Idaho.

Dear Judge:

Replying to your letter of August 19, 1935, you are advised as follows:

I am of opinion that Justices of the Peace are without power to remit, suspend, commute, cancel or alleviate fines or jail sentences either at the time of entry or thereafter. The following reasons appear to me to be conclusive of this matter:

1. Section 19-2501 and the six sections which follow it, while they appear in the Idaho Code of 1932 to be broad enough in terms to cover all offenses, hence by inference all courts, have a historical record which precludes such application. These sections were originally enacted as parts of Chapter 104, 1915, Session Laws. It is established rule that where there is doubt of the correct application of code provisions as they appear in the code, the original enactment must be taken as controlling (State v. Purcell, 39 Ida. 642, 228 Pac. 796; Libby v. Pelham, 30 Ida. 614, 166 Pac. 757; Duncan v. Idaho County, 42 Ida. 164, 245 Pac. 90; Section 70-103, I. C. A.).

Reference to Chapter 104, 1915 Session Laws discloses that this enactment was entitled as follows:

"An act to amend Section 7991 of the Revised Codes of the State of Idaho and to grant to the District Court the power to

suspend or withhold judgment in criminal cases and to put a per convicted of a criminal offense on probation in the charge of a probation or other proper person."

The intent to make the grant to the district court only, in view of the above title, is made evident by the provision of the act itself (Section 1, 1915 Session Laws, Chapter 104, now Section 19-2507, I. C. A.) that "The powers hereby conferred upon the district court may be exercised by the judge thereof at chambers." So also it is important to note the provision that "if it shall appear to the District Judge that the order suspending the sentence was obtained by fraud" etc., "the District Judge" shall issue a warrant for his apprehension. (Section 3, Chapter 104, 1915 Session Laws, now Section 19-2502, I. C. A.).

This statute has been amended, since its original enactment by 1919 Session Laws, Chapter 134, and 1929 Session Laws, Chapter 97. The 1919 amendment struck out the names of the crimes of bigamy, incest, perjury and embezzlement of public funds, and provided by amendment of what is now Section 19-2506, for termination of the pending action upon expiration of certain periods. The 1929 amendment struck out the names of all the excepted crimes except treason and murder, and added a provision for commutation to county jails and the Industrial School. None of these amendments, either of 1919 or 1929 changed any of the provisions so as to make reference to or include any court other than those covered by the original enactment. Indeed, the provisions for commutation to county jails could only apply to district courts, for no other court has power to commit to the penitentiary.

2. The provisions of Chapter 25, Title 19, I. C. A., above referred to did not come into being as a separate enactment with a general application. On the contrary, the enactment was made as an amendment to Section 7991 of the Revised Code covering district courts, which reads:

"If no sufficient cause is alleged or appears to the court why judgment should not be pronounced, it must thereupon be rendered."

The 1915 amendments were added by proviso. Neither in Section 7991 (now Section 19-2412, I. C. A.) nor in Chapter 25, of Title 19, I. C. A., does the fact appear that Section 19-2501 and its related sections were intended as a limitation by proviso upon the requirements that the District Court enter judgment when a fixed state of the proceeding has been reached. The compiler of the 1932 code has, however, made note of the fact in a footnote to Section 19-2501, and reference to the original enactment discloses that Section 19-2501 and the six sections following it are part of Section 19-2412, it is readily apparent that the original enactment was intended to apply only to the district court. The enactment of these sections by way of amendment of a particular section of the district court criminal practice act of 1864 (see historical annotation to Section 19-2412), in the presence of a more rigid special statute on the same subject relating to justice courts (Sections 19-4025 and 19-4029, I. C. A.) of equal antiquity (see justice court criminal practice act of 1864, Sections 617 and 621) precludes a contrary intentment.

3. In the case of *In Re Jennings*, 46 Ida. 142, 267 Pac. 227, the Supreme Court of this state had before it this question, but counsel for appellant, and Attorney General Stephan for the state agreed that a probate judge (having concurrent criminal jurisdiction with justices of the peace under Constitution, Article 5, Section 21) is without power to suspend execution of a sentence at all. The Supreme Court did not examine into the precise question here, but adopted the position of both counsel, and proceeded to review the question of subsequent enforce-

ment of a sentence suspended by void order, held that the order of suspension being void it could not affect the execution of the portion of the judgment imposing the statutory penalty. In my view the case referred to is decisive of the matter. This position having been taken by Attorney General Stephan in 1928, and adopted by the Supreme Court tacitly, if not by express approval in the Jennings case, the fact that the legislature has since that time convened in 1929, 1931, 1933, and 1935 regular sessions, and has caused to be prepared and adopted a complete codification of the law without amendment of this statute in any manner so as to contravene the position taken by the Attorney General and the Supreme Court, is entitled to great weight as supporting the construction so adopted. Indeed the rule of law is usually stated to be that such circumstances constitute a legislative adoption of the construction so had. In 59 C. J. the rule is stated to be as follows:

"A construction of a statute by the courts, supported by long acquiescence on the part of the legislature, or by continued use of the same language, or failure to amend the statute, is evidence that such construction is in accordance with the legislative intent. So the reenactment of a statute after it has been construed by the courts amounts to a legislative adoption of such construction."

4. Turning now to a consideration of the statutes which relate to the justice courts in particular, it is observed that very rigid limitations are imposed upon these inferior courts which do not appear in the code of the district court. Particular note is made of Section 19-4025, where it is provided:

"After a plea or verdict of guilty, or after a verdict against the defendant, on a plea of a former conviction or acquittal, the court must appoint a time for rendering judgment, which must not be more than two days nor less than six hours after the verdict is rendered, and must hold the defendant to bail to appear for judgment, and in default of bail he must be committed."

There follow provisions naming grounds for new trial and arrest of judgment, and it is then provided by Section 19-4029:

"If the judgment is not arrested, or a new trial granted judgment must be pronounced at the time appointed and entered in the minutes of the court."

I am not able to deduce from these sections any inference that entry of judgment may be deferred under any circumstances, nor am I able to find that either of these sections has been amended since 1884.

5. Section 19-4032 contains the express provision:

"When a judgment is entered imposing fine, or costs, or both fine and costs, or ordering the defendant to be imprisoned until the fine or costs be paid, he must be held in custody during the time specified in the judgment unless sooner paid."

By this section, the legislature has named the sole instance in which a release is authorized from imprisonment for payment of a fine, to-wit: Payment of the fine. *Expressio unius est exclusio alterius*.

6. Examination of the suspension law above referred to, as relates to the district court, with a view to determining what procedure is established for arrest of a prisoner who has failed to establish a fixed place of abode or a regular occupation, or who obtained a suspension of sentence by fraud, discloses that the provision is: "The district judge shall issue a warrant for his apprehension, and shall remand him for sentence."

Constitution Article V, Section 20, limits the jurisdiction of the district courts to original jurisdiction and appellate jurisdiction. In view of the established law of this state that the jurisdiction inherent in the district courts over misdemeanors cognizable by the justice and probate courts is coordinate and concurrent (*Risse v. Collins*, 12 Ida. 689, 87 Pac. 1006; *State v. Raaf*, 16 Ida. 411, 101 Pac. 747; *Fox v. Flynn*, 27 Ida. 580, 150 Pac. 747), it appears to me that the power of district courts is limited to appellate review of the decisions of probate and justice courts in the usual order, or interference by one or another of the extraordinary writs, and does not extend to vicarious warrants for rendition of prisoners for sentence in actions pending in a court of concurrent and coordinate jurisdiction. The contrary assumption, to-wit, that this statute was intended only to relate to actions pending in the district court itself, has therefore to support it the weight of the principle of law that an unconstitutional legislative intention will not be presumed.

7. Criminal jurisdiction of justices of the peace has been from early times in the United States consistently held to be solely a creature of the statute, to be strictly construed, or, as put in 16 C. J. 154:

"The jurisdiction assumed must be conferred clearly by the statute, and will not be extended by inference or implication."

Examination of the cases discloses that this principle has been applied as precluding suspension of sentences in several jurisdictions. (See cases in notes, 16 C. J. 1286 et seq.). In the Supreme Court of Kansas, upon this theory, in the cases of *State vs. Piper*, 176 Pac. 626, and under a justice code very like our own, it was held that "a justice of the peace is without jurisdiction to grant a parole, and has no jurisdiction to remit a jail sentence, and such parole or remittance of jail sentence is a nullity."

It had been so held in Kansas in an earlier case, *Sims v. Kennedy*, 67 KANS. 383, 73 Pac. 51. In Washington, upon the basis of a statute very nearly like the one in Idaho, the court reached the conclusion that the statute did apply to justice courts, in the cases of *State v. Willey*, 12 Pac. (2d) 393, and *State v. Koch*, 23 Pac. (2d) 884. In that state, however, the original act, like ours of the present, was restricted to the superior court, and was so applied, until the 1909 legislature repealed the restrictive act and enacted a general statute applicable to all courts (Chapter 249, 1909 Washington Laws). No such modification has occurred here.

From these and other considerations of like import, I am unable to reach any conclusion except that justices of the peace lack jurisdiction to impose suspended sentences or to remit fines under any circumstances.

Respectfully yours,

BERT H. MILLER,

Attorney General.

November 27, 1936.

Mr. M. F. Ryan,
Attorney at Law,
Gooding, Idaho.

Dear Mr. Ryan:

We are in receipt of your letter of November 18, 1936, in which you present the following facts:

"Taxes on some farm property being delinquent the necessary delinquency entry was made as provided by Section 61-1009. The property was not redeemed within the statutory time and the tax collector made a deed to the county for the property as provided by Section 61-1025. Crops were raised on this place during the 1936 season and the rental value of the land was collected from the tenant in possession. (Presumably by the county). In other words the county collected the rent and placed same in the county treasury. (Presumably in the general or current fund). Thereafter, and under the provisions of Sec. 61-1023, the former owner of the land, before deeded to (by) the county, redeemed the land and demanded credit for the rent collected which the county refused to allow.

"We also have a store building which was occupied by a tenant sold for taxes and deeded to the county last January. Since that date the county has been collecting \$25.00 per month rent. Now the former owner desires to redeem and insists he is entitled to credit for all rent collected by the county."

Upon the foregoing facts you have propounded the following queries:

1. Is the county authorized to lease land on which it holds only a tax title?
2. Having so leased the property, what are the rights of the owner to the money collected, and may the same be set off as an offset against delinquent taxes owing?
3. May the county be compelled to refund the amount of rentals collected?

In reply to your inquiries you are advised as follows:

The lease of county property is provided for by Section 30-714, Idaho Code Annotated, as amended by Chapter 200, 1933 Session Laws, reading as follows:

"The Board of County Commissioners may lease any property belonging to the county for a term not exceeding two years at such rental as may be determined upon by the unanimous vote of such board, or said board may in its discretion lease any property belonging to the county at public auction to the highest bidder, and may enter into such leasing contracts as may be provided for by an order of the board, and as herein limited; such rents shall be paid annually in advance; providing, however, that any hospital or hospital equipment belonging to the county may be leased for a term not exceeding six years."

The redemption of property deeded to the county for tax lien is provided for under Section 61-1023, Idaho Code Annotated, as amended Chapter 101, page 213, 1935 Session Laws, Regular Session, reading as follows:

"The property described in any delinquency entry may be redeemed from tax sale by the owner thereof, or any party in interest on or after the fourth Monday of January after, and within three years from the date thereof, or until tax deed is issued to the county, and thereafter and up to the time * * * a contract of sale thereof is entered into by the board of county commissioners, * * * or the property has been transferred by county deed, by paying to the county treasurer the amount of the original tax or taxes for which the property was sold, together with the penalty and interest thereon, and also the ori-

ginal amount of all unpaid taxes levied or assessed against the said property at the time the right of redemption expired, together with penalty and interest thereon, and also by paying the taxes for the year or years since the date of issuance of tax deed to the county, together with penalty and accrued interest thereon. All taxes accruing against such property subsequent to the issuance of deed to the county shall be extended upon a valuation to be given by the assessor, upon application of the treasurer, and the taxes shall be computed according to the authorized levies for the year or years to be extended. Upon payment to the county treasurer of the amounts required to be paid as herein provided, the county treasurer must issue a redemption deed to the redemptioner."

It will be noted that under the leasing statute above set forth the board of county commissioners may lease any property belonging to the county. It is my understanding of Section 61-1023, Idaho Code Annotated, as amended, and above quoted, that the property of a taxpayer may be redeemed by him and parties in interest until the contract of sale thereof is entered into by the board of county commissioners, or the property has been transferred by county deed, and in construing contract of sale, reference is made to Section 30-708, Idaho Code Annotated, as amended at page 41, 1933 Session Laws, in which is contained the following language:

"If such property is sold on terms the Board of County Commissioners may contract for the sale of the same for a period of years not exceeding five years, with an annual rate of interest on all deferred payments not to exceed six per cent per annum."

This provision does not contemplate, in my estimation, a lease as coming under the head of a sale thereof, as defined in the redemption statute above quoted. It will be noted further that under Section 61-1023, Idaho Code Annotated, that a redemption deed divests the county of whatever interest that it had in the property, the following language being used:

"* * * and upon the giving of such deed, such tax deed so issued to the county and the delinquency entry and tax sale upon which the same is based and all delinquency entries and sales for delinquent taxes of prior years shall become null and void, and all right, title, and interest acquired by the county, under and by virtue of such tax deed, or tax sales, or delinquency entries, shall cease and terminate."

It is apparent, therefore, that upon the issuance of a redemption deed the county does not retain any interest in the property whatsoever. The general rule is that the title of the original owner is cleared of the lien of taxes by the redemption deed.

In the case of *Washington County v. Paradis*, 38 Idaho 364, 222 Pac. 775, the court used the following language:

"The authorities are to the effect that a county does not acquire vested right in the property by virtue of a tax sale to it for delinquent taxes, and that such a purchase of property by a county goes no further than to perpetuate the lien of the tax and is in aid of its collection." And citing a number of cases.

This rule, so far as I have been able to ascertain, is still the law of this state, and hence in not acquiring a vested right, the county will acquire no right to possession of the premises. 61 Corpus Juris, page 1295, paragraph 1802, uses the following language:

"In the absence of a statute authorizing a purchaser of land sold for taxes to enter into possession prior to the expiration of the period of redemption, until he obtains his tax deed, or at any rate until the expiration of the period of redemption, and under a statute vesting in the purchaser a lien which may be foreclosed, until the foreclosure of such lien, the owner of the land and not the tax purchaser, is ordinarily entitled to the possession and enjoyment of the estate, and, if the latter enters without the consent of the former, it is a trespass."

This general rule of law has been affirmed in the case of *Teich v. Arms*, 90 Pac. 962, a California case, construing a statute very similar to ours. The court said:

"The general rule is that until the expiration of the time for redemption and the execution and delivery of a deed the title to the land sold for the taxes remains with the original owner, and the purchaser acquired only a lien for the amount of his bid with interest, etc. The purchaser is not entitled to possession or to rents and profits; but after the execution of the deed the grantee is vested under the statutes in most jurisdictions with an interest in fee to the exclusion of all prior interests and incumbrances."

This general rule of law which has been recognized by California, and other jurisdictions, has to my mind been passed on in Idaho in the case of *Steltz v. Morgan*, 16 Idaho 368, 101 Pac. 1057, 28 L. R. A., new series 298, wherein the following language is used in Syllabus 4:

"The holder of a tax title to real estate who finds the property unoccupied, may enter upon and take actual possession of the premises, and in doing so he is not liable to the original owner of the property whose title has been divested by tax deed." Syllabus 5:

"A tax deed has no more force or effect as a writ of assistance for procuring the possession of real estate than any other deed."

In discussing this matter, the court said:

"If one who was the original owner of real estate lost his title through taxation and a tax deed, and still could maintain an action of trespass against the holder of the tax deed for entering into possession, he must maintain actual possession of the premises."

This bears out our former statement that the county is not entitled to possession, and in fact under the doctrine of the *Paradis* case, *supra*, the county has no vested right. But, Section 30-708, Idaho Code Annotated, as amended, operates in effect as a statute of limitations on the right to redeem from the tax lien given by Section 61-102, Idaho Code Annotated.

It will be noted that all reference to taxes in the State of Idaho refers, insofar as title of the county is concerned, as a lien and not as title in itself, and, therefore, can not so far as I have been able to ascertain vest in the county the right to possession of the premises at any time; but only the right under specific statutory authority to divest the owner of the premises of his title, and possession by a summary process through sale or contract of sale of the premises sought to be sold. Until that time the original owner would be entitled to the possession of the premises.

There is no statutory law in Idaho authorizing the county to take possession of property for which it has taken a tax deed, nor, under the authorities above quoted, has the county any right to possession of the premises during the period of time that it holds merely the tax title, nor is it entitled by statutory authority to the rents, issues and profits of the property, with the exception that it may, under Section 61-103, Idaho Code Annotated, as amended Chapter 69, 1935 Session Laws, Regular Session, restrain the removal of improvements or timber on land upon which delinquent taxes are owing. Which statute, in itself, recognizes the right of possession of the individual in the premises.

Carrying this thought still further, it will be found that our Supreme Court in the case of *Fargo v. Bennett*, 35 Idaho 359, has held that a lease is a conveyance of property, and in *Howard v. Manning*, 12 A. L. R. 819, 192 Pac. 358, in citing from the case decided by the Supreme Court in *United States v. Gratiot*, 14 Pet. 526, 538, 10 L. ed. 573, 579:

"The legal understanding of a lease for years is a contract for the possession . . . of land, for a determinate period with the recompense of rent."

Further citing from *Tiedeman on Real Property*, Section 538;

"A lease is a contract between lessor and lessee, vesting in the latter a right to the possession of the land for a term of years. It becomes an estate when it takes effect in possession."

In the case of *Heaton v. Nelson*, 194 Pac. 614, a Colorado case, the court said:

"An unqualified agreement to convey imports that a title of which the vendee cannot lawfully complain will be furnished."

In checking over the general authorities on real property, including *Corpus Juris*, *Words and Phrases*, and other text books and references, it is apparent that in order to grant a valid lease to property, the party leasing must be entitled to possession, or the lease is invalid as attempting to convey something that it not within the power of the party conveying to alienate.

The county not being entitled, as a matter of law, to possession of the premises acquired by tax deed, and the right to possession being a requisite part and parcel of the power to lease, the lease contract entered into between the county and the individual would be void. The general rule of law relative to county commissioners is applicable here as to the county commissioners having only the power granted by statute or implied therefrom, and it is my opinion, therefore, that the lease entered into between the county and the individual is wholly void, and confers no right on the individual leasing the property to either constructive or actual possession.

The question as to whether or not the county, having acquired the money derived from the rental of the land, could apply the same on the tax bill of the owner is, in my opinion, answered in the negative, for the reason that the taxes are a governmental lien upon real estate, which can only be released by payment, cancellation, or sale of the premises, and as the statute provides, when paid into the county treasury must be pro-rated to the different funds of the county in proportion to the levies that have theretofore been made. The money collected by the county through the illegal contract no doubt was paid into the current expense fund thereof, and as such becomes an integral part of said current expense fund, and the county commissioners, acting under statutory authority, would only have the right perhaps to refund to the party pay-

ing. They certainly would not have the right to transfer said moneys out of the current expense fund into the other funds of the county, as this matter is controlled by statute, and no authority is given, except as specifically enumerated in the transfer statutes for the taking of money out of one fund and placing it in another. To my mind such a transfer in a case of this nature would be an unlawful exercise of the powers of the commissioners. It will be noted further that the tax money is in effect a payment of an obligation laid in rem by the governmental authority, and is a charge upon the land itself, which by statutory enactment must be handled in certain specific and designated ways. As to the setting off of a claim against the county, 57 Corpus Juris 443, paragraph 94 uses the following language:

"A claim for taxes is not such a debt, demand, contract, or judgment as is allowed to be set off under the statutes of set-off, which are construed uniformly, in the light of public policy, to exclude the remedy in an action on any indebtedness of the state or municipality to one who is liable to the state or municipality for taxes."

This general law has been construed by the Supreme Court of California in the case of *Himmelmann v. Spanagel*, 39 Cal. 389, wherein the court at page 393, used the following language:

"The origin, obligatory force and whole nature of a tax, is such that it is impossible to conceive of a demand that might be set off against it, unless expressly so authorized by statute. No case has been cited, and probably none can be found, which authorizes a defendant, when sued for a municipal assessment or tax, to set up a counter claim."

Coming now to our question of whether the county may be compelled to refund the amount of rentals collected, I find a great deal of difficulty in determining this matter. We have the general rule of law as expressed in *Strickfaden v. Greencreek Highway Dist.*, 42 Idaho 738, that counties being involuntary subdivisions of state and being its agents are generally relieved from liability for damages for non-performance of powers or improper exercise thereof, in absence of express statute.

There is no doubt that the contract entered into between the county and the lessee is void upon the grounds hereinbefore set out. Being void, the same could not be enforced. But, the moneys paid into the county would in effect be an acceptance upon the part of the county of a sum to which it is not entitled and might, under the general rule of rescission of contracts, be collectable by the tenant.

In 15 Corpus Juris 555, paragraph 251, note 97, the following language is used:

"* * * and where the county rescinds a voidable and unenforceable contract, it should return whatever property it has received thereunder, or the sum for which it was sold under an agreement of the parties that it might be sold and the proceeds treated as representing the property itself."

In discussing this particular phase of the law applicable to the powers and duties of the county boards, being purely statutory, the courts do not seem to be in accord. I have found a decision from the Supreme Court of the United States citing the general rule of law from other jurisdictions, the same being *Chapman v. Douglas Co. Comrs.* 107 U. S. 378, which amounts to a treaties of the equitable situation existing in the absence of a statute. The matter of their observations is contained in the following short quotation:

"The obligation to do justice rests upon all persons, natural and artificial, and if a county obtains the money or property of others without authority, the law, independent of any statute, will compel restitution or compensation."

They cite in this matter two old California cases, being *Pimental v. San Francisco*, 21 Cal. 362, and *Argenti v. San Francisco*, 16 Cal. 282, as bearing out this particular doctrine.

In applying this doctrine to our present county set-up, we ran into our statutory provisions relative to the presentation of claims against the county, whereupon it becomes the duty of the party claiming an obligation owing him by the county to furnish satisfactory proof of the claim, and also of the authority of the county to pay it. I doubt whether the county is answerable to the owner of the premises for the money received, there being no contractual relationship existing between these parties and the liability, if any liability exists against the county, would be occasioned by the unlawful acts of its agents and officials. The action in effect would be sounding in tort, and if the county was acting in a governmental capacity, it would not be liable. The recent Twin Falls county case to a certain extent holds the county responsible for the tortuous acts of its agents, but I do not think that it would be carried to this extreme. I do think, however, that the party with whom the county contracted, that is, the lessee, would have a right to demand and receive from the county as much money had and received under a rescission of a void contract the amount of rentals paid, in the event that the owner sued the lessee for trespass and damage, although the doctrine of estoppel might apply and the further rule that a party dealing with governmental agents is presumed to know the extent of their statutory authority.

In other words, as to the question of refund, it is my belief that it is of such a controversial nature as to preclude this office from rendering a fixed opinion on the same, and for this reason, I have merely discussed this phase of the question, without attempting to lay down any hard and fast rule. So far as I have been able to ascertain, the matter has never been squarely presented to the courts of this state, and to my mind it is a question of judicial interpretation of the application of conflicting theories.

Respectfully submitted,

BERT H. MILLER,

Attorney General.

EXCERPTS FROM OPINIONS

"The hereinafter selected excerpts of opinions constitute about fifteen per cent of the opinions written, exclusive of any opinions relative to examination of abstracts of title, official bonds, investments of permanent educational funds in securities, and purchase of property by various state institutions:

BUREAU OF PUBLIC ACCOUNTS

Bureau of Public Accounts. The sale of large quantities of liquor to individual consumers should be reported and this subject matter forms an important part of the duty of the Bureau of Public Accounts in examining the transactions of the liquor Commission.—8/4/36.

APPROPRIATIONS

Mr. F. Lee Johnson. In view of the fact that the Dept. of Agriculture is charged with the administration of the Farm Marketing law, any expense in connection with the administration of the law as now set up must be paid from the appropriations made to the Dept. of Agriculture Administration Fund, or to the bureaus expressly appropriated for.—5/24/35.

BEER

Mr. P. J. Evans. 1. A village may not prohibit the sale of beer as "A municipal corporation cannot, without special authority, prohibit what the policy of a general statute permits." Under the present law there is no definition of intoxicating liquor. Whether or not 4% beer is intoxicating is now a question of fact, and it is a matter of policy, until the courts make a determination of the question, whether or not it may be sold on Sunday 3. A municipal corporation may not prohibit women from frequenting places where beer is sold. 4. It is within the power of a municipality to prescribe by ordinance reasonable regulations with respect to closing hours of beer parlors. 5. Municipalities have no power under our present law to limit the number of beer licenses to be issued, nor to prescribe qualifications for licenses in addition to those prescribed in the general laws.—4/9/35.

BONDS

Hon. P. W. Dent. In view of the history of the statute involved, as hereinbefore noted, I am of the opinion that the denominations of bonds issued under the municipal bond law must conform strictly to the provisions of Section 55-207, I. C. A.—9/16/35.

J. W. Condie. It is questionable if the State Board of Education could prevent entirely the issuance of building bonds by a school district. The matter should be ruled upon by the courts, and until then the Board should act only upon those cases appealed from a decision of the county commissioners, and exercise its discretion as to the amount it should approve.—6/11/35.

Mr. Geo. J. McFadden. The Village Board cannot legally transfer \$1000 from the bond sinking fund and apply the same under its contract with the W. P. A. The balance of money in the bond sinking fund provided for the payment of bonds issued in order to acquire an electric

light system, cannot legally be transferred to a different bond fund created in connection with acquiring a water works system.

Money appropriated for the maintenance of a water system cannot be applied upon a contract for construction of such water system unless it appears that there are surplus funds available to the village over and above the expenditures provided for in the annual appropriation bill. The constitutional provision must be complied with, and the excessive indebtedness of \$2000 in excess of the amount of bond issue cannot legally be incurred or paid without the vote of two-thirds of the qualified electors voting at the election to be held for that purpose in compliance with the constitution, and the only alternative might be to defer the completion of such contract until such additional expense may be provided for in the regular way through the annual appropriation bill for the succeeding year.—9/25/35.

Hon. Murray Estes. Section 60-705, I. C. A., confers a right in absolute terms carefully limited and defined. The requirement by the legislature of a bond to indemnify the county for any loss it may sustain is a matter with which highway districts have no concern.—1/18/36.

BANKS

Hon. Dana E. Brinck. 1. The provisions of Chap. 14, Title 25, I. C. A., has no application to banks engaged in commercial credit 2. Savings banks organized under the statutes of the State of Idaho may lawfully invest their savings in Federal Farm Loan bonds and consolidated bonds issued for the Federal Land Bank.—12/9/35.

COUNTY NOTICES

James H. Blane. The combined subscription lists of a firm which publishes two independent and distinct newspapers should not be considered in an award of the official proceedings.—2/16/35.

Mr. Milton E. Zener. It is elementary that statutory proceedings must be strictly followed, but the mere fact that the statute itself has been misquoted in the printing of a notice cannot injure the substantial rights of a taxpayer, and would not invalidate a deed subsequently given.—10/2/36.

Mr. J. W. Condie. The county superintendent has the authority to notify the county treasurer of the violation of any law imposing upon trustees certain duties, among which are the employment of properly certified teachers, and I believe that it is the duty of the treasurer upon such certification to hold up the apportionment to such district until further notified that said trustees are performing their functions properly.—3/3/36.

Mr. John O'Daniel. It is unlawful under the terms of Section 57-701, I. C. A., for the Board of County Commissioners to appoint to the position of road overseer a man who is a brother-in-law of one of the commissioners.—1/18/35.

Grace F. Hess. Mandatory expenditures required by law may be paid by the addition to the budget of a county superintendent, through resolution and provision as allowed by Section 30-1208, I. C. A.—10/9/35.

Mr. D. W. Thomas. The Board of County Commissioners is a statutory board and may only act in accordance with the authority granted, therefore it has no statutory authority for cancellation of a tax unless there is a showing that the same should not have been legally levied or collected after levy in the first instance.—8/5/36.

Hon. Gibson Condie. There is no authority for the county commis-

sioners to fix salaries of elective county officials at any time other than at the April meeting.—8/19/35.

Mr. Hugh Redford. A prosecuting attorney may not charge a fee for services rendered in probating an estate for the public administrator, even though he intends to turn it over to the county.—10/28/35.

COUNTY RELIEF

Mr. Robt. E. McFarland. Before a county may allow a bill of expense for hospitalization of an indigent person who because of emergency could not first have his indigency determined as provided in Chap. 29, Title 30, I. C. A., investigation should be had and certificate issued as provided in the chapter, in order to establish the fact that the person is indigent and entitled to county aid, but in the case of such emergency the application, investigation and certification need not be had before hospitalization is given.—1/16/35.

ELECTIONS

Mr. Dave Basey. Enrollees in the CCC organization are only entitled to vote at their legal place of residence, that is, the particular state, county and precinct of which they were resident prior to their induction into service. The rights of enrollees residing out of the state at the time of their enrollment would be based upon the laws in force in that particular jurisdiction.—7/23/36.

Mr. Wm. C. Carpenter. A blind person may vote by having his ballot marked by his statutory agent in his presence at the polls, if he is physically capable of being there.—6/23/36.

Mr. Don P. Donahue. Use of stickers to fill out ticket of Socialist party on ballot not permitted by law. Stickers may only be used in the case of substitution, as to fill a vacancy created on a ticket by the death of a candidate.—9/22/36.

Mr. M. F. Ryan. A person receiving the highest number of votes is the nominee of a party, regardless of the fact that he is one and the same individual nominated by both parties. After receiving the nomination on both tickets, said individual is not entitled to become a candidate for the office on both tickets, but a vacancy is not caused until after there has been a declination of the nomination as provided by the statutes.—10/2/36.

HIGHWAYS

Mr. J. D. Sinema. It is within the powers of the board of highway commissioners to construct or repair, with the consent of the corporate authorities of any municipality any highway within such municipality, upon such division of the cost as may be agreed upon. Section 39-1580, I. C. A., is a limitation upon the powers of the board of highway commissioners.—3/13/35.

INSANE ASYLUM

Ira J. Taylor, Warden State Penitentiary. To remove an insane convict from the penitentiary to the insane asylum, the same procedure is followed as with a person at large: i. e., complaint must be filed before probate judge of the county and a warrant obtained for the arrest of the insane person, a hearing held and commitment made.—4/11/35.

Mr. P. E. Dean. It is impossible for the State to assist in compensating an individual who is maintaining his wife in an out-of-state sanatorium, even though lack of such assistance may necessitate the placing of the wife in the state asylum at Blackfoot.—6/4/35.

Hon. Lewis Williams. The law with reference to the return of insane persons to the state of their residence would apply to the return of an insane person to his residence in a foreign country. The expense of such transportation would have to be paid by the state from the fund appropriated for that purpose.—7/10/35.

INSURANCE

Mr. Gilbert Sussman. Public funds of the state or local authorities may be used for the payment of claims on Workmen's Compensation Insurance covering signatories of voluntary work agreement. 2. The state or local authorities must give a preference to insure under the Workmen's Compensation Law of the state rather than provide other securities unless such risk is refused by the State Insurance Fund. 3. There is no other applicable state statute under which signatories will be otherwise protected by insurance as protection must be secured through the Workmen's Compensation Act.—9/2/36.

JUSTICES OF THE PEACE

Mr. A. Flournoy Galloway. The 1933 act governing fees of justices of the peace is amended; the 1935 act is in full force and effect, and should be the fees collected by the justices for services therein set forth.—10/7/36.

Hon. Stephen J. Toner. Justices' courts have no jurisdiction, other than as a committing magistrate to hear or try offenses wherein one is accused of operating a motor vehicle on any public street or highway in the absence of having secured a driver's license.—3/12/36.

Thomas B. Kelly. Wherever the possible fine made against bootleggers is more than \$300 or the possible imprisonment exceeds six months, probate judges and justices of the peace have authority only as committing magistrates. County Commissioners have no jurisdiction in the matter of opening and closing hours of Beer Parlors.—4/10/36.

E. M. Rayborn. Under Section 57-814, I. C. A., a justice of the peace who collected a fine of \$1.00 when a minimum fine of \$25.00 was required by statute, would be liable for failure to collect \$25.00, but under other given authorities he would still have jurisdiction to impose the proper fine. Failure to take this course, he would have to make up the difference personally.—12/13/35.

LEGISLATURE

Harry C. Parsons. A sale by a member of the legislature of material and equipment to the State of Idaho is barred by the provisions of Section 65-1513, I. C. A., and any such contract would be void.—11/8/35.

Hon. Clarence King. A member of the present legislature of the state is not disqualified from accepting employment under the State Liquor Control Commission, and such employment is not barred by the provisions of the act in question.—Section 57-102.—3/25/35.

LICENSES

Fish and Game Dept. If employees of the United States have a regular existing occupational jurisdiction or duties to be performed as a usual and continuous matter within the boundaries of this state, resident game licenses should be granted. In my opinion the Game Dept. is not warranted in extending this privilege to those who are only casually within the state by reason of some special duty.—11/6/35.

F. Lee Johnson. In the case of an establishment in which the principal business is the manufacture of ice cream and sale of the same for

resale, undoubtedly such an establishment would come within the provisions of the law, and require the issuance of a license and the payment of a license fee. The term "factory" in a larger sense means a building where machinery and equipment has been installed for the primary purpose of manufacturing some article of trade or commerce. However, we do not believe that an ice cream parlor, even though it may manufacture its own ice cream, necessarily comes within the terms of the law so long as such ice cream is consumed on the premises, i. e., so long as the same is not sold at wholesale or for resale.—12/18/35.

LOTTERIES

Better Housing Bureau. The construction of a house from materials furnished by dealers in such materials, and the selling of tickets at \$1.00 each to the public and the subsequent drawing of a lucky number conferring ownership of said house to the holder of the ticket bearing a corresponding number would constitute a lottery and is consequently unlawful. It is unlawful for a newspaper to advertise or otherwise aid such scheme.

NATURALIZATION

Hon. R. W. Faris. Idaho law makes no requirement that original certificates of naturalization be retained when offered as evidence of citizenship to the Dept. of Reclamation. Withdrawal of original certificates and substitution of certified copies prepared by Commissioner of Reclamation or the officials of the United States may be permitted.—10/24/35.

POLITICAL PARTIES

Mrs. Frank Johnesse. Since the former Chairman of the State Democratic organization has resigned and has accepted an appointment which prohibits him from holding any position of any political party, all the authority, powers and duties formerly vested in him as such Chairman are automatically transmitted to you as first Vice-Chairman, and as such you may legally function as the head of the Democratic state organization, until an ensuing state platform convention is held, at which time your successor would be elected.—3/26/35.

Hon. Franklin Girard. 1. Requirements of political parties with reference to the filing of their platforms in the office of Secretary of State. 2. When nominations are made by conventions by any group or association which does not come within the definition of a political party, the proper officers shall file a certificate of the nomination of the respective candidates. When such conventions are held there is no requirement or authority for filing a platform.—9/15/36.

RECLAMATION

R. W. Faris. If the well-owner has not taken the initiative in the matter of capping or controlling artesian wells, and if your department has not obtained facts relative thereto, then it would seem to me that your department is vested with ample authority to satisfy itself as to the existing conditions in order that there may be no injustice and may invite the well-owners to show cause why the well should not be capped and thereby furnish him with an opportunity to be heard in advance of applying the drastic measures contained in the present existing law.—2/12/35.

Mr. R. W. Faris. The water in a sewer system is still under control of the owner of the system, therefore the Dept. of Reclamation may not exercise jurisdiction over said water, and an application for permit should be denied.—4/7/36.

SALES TAX

Hon. Ben Diefendorf. 1. Newspaper subscriptions charge at a weekly or monthly rate are not subject to sales tax. 2. The sale for consumption of tangible personal property to religious and charitable institutions is subject to sales tax. 3. The sale of tangible personal property by corporations, organized under the Idaho Cooperative Marketing Act, to their members, is subject to sales tax.—11/6/35.

Sales Tax Division. Sales Tax which a merchant is unable to collect from his customers and which he pays himself, is not a deductible item on his state income tax return.—6/1/36.

Hon. Ben Diefendorf. The sale of automobiles in cases where the sale is made by a dealer located within the State of Idaho to a customer who takes delivery of the automobile in the factory or at another point outside the state is not subject to sales tax.—11/6/35.

SCHOOLS

Hon. J. W. Condie. Unless satisfactory arrangements, as herein suggested, can be made with the State Board of Education, the use of the facilities of the Lewiston State Normal School by a parochial school at Lewiston recently destroyed by fire, temporarily for instruction purposes, either for a rental fee or gratuitously, would violate constitutional provisions.—11/15/35.

Mr. Wm. Bartlette. If the electors of a common school district have not voted on and approved a levy at their annual meeting, for the transportation of high school pupils to a school outside the district, an election could later be called for that purpose. Trustees of such district may not make such a levy, as without the approval of the electors of the district such transportation may not be furnished nor a levy made therefor.—7/5/35.

Mr. Stanley Crowley. There is statutory authority for the Board of Trustees of an independent school district to divert money from the general fund, when a surplus is available, and use the same for construction of new buildings. Such privilege may not be extended to common school districts.—1/24/35.

John W. Condie. Common School Districts may not legally purchase library books, or reference books, when same have not been approved by the State Board of Education. 2. A school which has been closed down by order of the Board of Health because of contagious disease may collect its full share of state and county apportionment on the basis of the contractual length of the term.—1/28/35.

Mr. Lawrence A. Ebert. There is no constitutional requirement that public school teachers be citizens. However, the Idaho Code Annotated at Section 32-1102, provides that no person shall be granted a teacher's certificate or be employed as a teacher in any public school who is not a citizen of the United States or who has declared his intention to become such.—7/2/35.

Vera E. Rankin. 1. There is no statutory provision authorizing a common school district to invest its general fund in Government bonds and then levy upon the property of the district sufficient taxes to pay the entire expenses of administering these schools while leaving the money so invested, intact. 2. If any money is invested in Government bonds, the bonds, being assets of the district, should be in the custody of the County Treasurer. 3. A surplus so invested should show as assets on the district budget.—2/21/36.

STATE LANDS

Robt. Coulter, State Land Commissioner. At the present time, and in the absence of express statutory authority, the State Board of Land Commissioners is not empowered to donate or convey any lands owned by the State of Idaho.—1/17/35.

STATE TREASURER

Hon. Myrtle P. Enking. There is no specific authority of statute commanding the State Treasurer to provide insurance of securities held by her in the safe and vault in the Capitol Building. It is suggested, however, that she segregate such securities into negotiable and non-negotiable divisions. Upon arriving at an estimate beyond which such negotiable securities may not go, the State Board of Examiners might issue proper order authorizing the Treasurer to insure in a given amount.—2/12/35.

Hon. Myrtle P. Enking. Until the General fund is fully repaid, the State Treasurer is liable on her official bond, though to an undeterminable extent, for payment of claims drawn on the Cooperative Emergency Revenue Fund.—6/1/35.

Myrtle P. Enking. The State Board of Examiners would not be authorized to allow a claim against the budget of the State Treasurer in payment of a bill received by her office from a bank, which bill had been raised from \$2.00 to \$20.00.—11/27/35.

TAXATION

Mr. S. H. Atchley. The state is not compelled, in order to protect its lien, to pay taxes against the property assessed, and upon foreclosure of the mortgage and vesting of the title in the state thereafter by sheriff's deed, takes the property free and clear of the tax lien, even though such tax lien is prior in time.—2/19/36.

Mr. B. P. Thamm. All taxes against real property must be paid by the owner in order to redeem from the tax deed as provided by Chap. 101, 1935 Session Laws, i. e., all taxes up to and including the year 1935.—10/9/36.

Mr. Harold L. Henderson. 1. There is no limitation upon the number of years the state may go back to assess property which has escaped taxation. 2. Sections 61-2452 and 61-2453, I. C. A., fix a three-year period for the assessment and collection of income tax for action upon a false return or failure to file return.—9/12/35.

Mr. Edward D. Talbot, Sr. Subdivision 4 of Section 61-105 as amended by Chap. 97, 1935 Session Laws is an exemption from taxation of enumerated classes of individuals, but the exemption is a limitation to the amount of \$1000 to any one family. That is, a Spanish American War Veteran and a disabled World War Veteran, if the same individual would only be entitled to an exemption of \$1000.

Hon. Henry S. Martin. The lien of a mortgage on land is superior to a later lien of taxes of personal property fixed on the land.—7/2/35.

Hon. Ray Sims. The proper method of handling the tax liens held by Boundary county against the Spokane International Railway Company would be by submission of their claim in proper form and under proper procedure to the trustee in bankruptcy for the payment thereof in due course of administering the estate, leaving the question of priority of payment of their tax claims over other claims filed in the estate to be passed upon by the judge.—9/28/36.

MISCELLANEOUS

Public Utilities Commission. The word "damage" as used in a given policy endorsement for motor-propelled vehicles was inserted therein with knowledge of Section 59-806, I. C. A., and with knowledge of the interpretation given to said word by the courts. Thus the company would be liable for the loss of goods in transit, construing the word "damage" as including any diminution, or loss, occasioned by the act of transporting—11/4/35.

L. R. Miller. The right of Eminent Domain cannot be exercised by Cemetery Maintenance Districts for the reason that such statutory authority has never been delegated by the legislature and such action could not be maintained.—2/29/36.

Harry C. Parsons. The claim against the State Hospital South appropriation for payment of certain equipment for which bids had not been asked by the State Purchasing Dept. is not invalid by reason of the fact that the State Purchasing Agent did not advertise for bids.—9/30/36.

Dept. of Finance. Section 25-604, I. C. A., which prohibits the Commissioner, deputies or clerks of the Dept. of Finance from borrowing money, either directly or indirectly from any bank, prohibits any and all deputies and clerks in all branches of said department from borrowing money from any bank, even though some such branches may have been created subsequent to the passage of said Section of law—11/12/35.

Mr. E. J. Iddings. Until the legislature expressly assents to the Johnson O'Malley Act, this state or any of its agencies is without the necessary legal authority referred to in said act to contract with the Federal government as therein provided.—4/20/35.

Hon. Alfred Budge. By Section 65-1602 and Section 7 of Article 5 of the Idaho Constitution a Justice of the Supreme Court could not hold the office of Commissioner of Uniform Laws.—5/31/35.

Bureau of Public Accounts. There are certain statutory requirements regarding the obtainment and possession by the Secretary of State of sets of Idaho Code Annotated. Whenever there has been a loss by reason of destruction, mutilation, embezzlement, conversion or removal from the possession or control of the Secretary of State, there is a corresponding liability on the part of the Secretary of State to account. It is his duty to hold the sets of books committed to him in such manner as well preserve them and keep them available for such use as may be by law directed. Beyond these elements I am not able to say that the Secretary of State is without discretion as to his manner of "keeping" them.—10/4/35.

DOCKET 1935 - 1936

CIVIL

(Closed)

UNITED STATES DISTRICT COURT EASTERN DIVISION

- 644—American Falls Reservoir District No. 2, a corporation, vs. Lynn Crandall, as Watermaster of Water District No. 36 of the State of Idaho; R. W. Farls, as Commissioner of Reclamation of the State of Idaho; American Falls Reservoir Dist., a corporation; and Harold L. Ickes, as Secretary of the Interior of U. S. A. Re: Water Rights in Equity.

UNITED STATES DISTRICT COURT SOUTHERN DIVISION

- 760—Guadalupe R. Gallegos, et al., vs. Intermountain Building and Loan Ass'n., et al. Re: Creditors' action in equity.

(Civil)

(Pending)

UNITED STATES DISTRICT COURT NEW YORK, SOUTHERN DISTRICT

- 595—In the Matter of Kountze Brothers, Bankrupts. Re: Claim of State of Idaho.

(Civil)

(Pending)

PROBATE COURT

- 705—In the Matter of C. S. Flint, Mental Incompetent, Everett E. Hunt, Guardian. Re: Proceeding to recover for maintenance.
- 768—State of Idaho vs. Roy Gingrich, Arthur Gingrich, J. L. Curtis and G. W. Curtis. Re: Operation off-route.

(Civil)

(Pending)

DISTRICT COURT

- 318—Twin Falls North Side Invest. Co. vs. Henry O. Kissinger, (Alias H. O. Kissinger) and Mrs. Henry O. Kissinger, his wife, et al. Re: Foreclosure of mortgage.
- 476—State of Idaho, on the Relation of Ben E. Bush, State Forester, vs. Ambrose Codd. Re: Expenditures made by Coeur d'Alene Timber Protective Ass'n. in fighting fire caused by Codd's sawmill at Desmet, Idaho, on August 20, 1929.
- 535—Standard Oil Company of California, a corporation, vs. Idaho Community Oil Company, a corporation, and others. Re: Collection of motor fuels tax due State.

- 544—E. J. McKinley and E. H. Hillman, vs. R. W. Farls, Commissioner of the Department of Reclamation of the State of Idaho. Commissioner's refusal to correct Permit No. R-482, and application for writ of mandate.
- 571—Boise Trust Company, a corporation, vs. Ada County, R. D. Leonardson, as Assessor and Tax Collector of personal property taxes of Ada County, Idaho, and Janet A. Ketchen, as County Treasurer of Ada County, Idaho. Re: Bank tax case.
- 607—Sam Gagon vs. Walter J. Scott, sometimes known as W. J. Scott, Mattie Scott, his wife, The State of Idaho, and Advance-Rumley Thresher Co., Inc., a corp. Re: Foreclosure of Lien.
- 637—Nampa & Meridian Irrigation District, vs. William E. Welsh, Watermaster of Water District 12-A of the State of Idaho, and Drainage Dist. No. 4 of Ada County, Idaho, and its Board of Commissioners. Re: Summary Adjudication.
- 657—State of Idaho, on the relation of G. E. McKelvey, Commissioner of Public Works of the State of Idaho, vs. R. O. Robinson and Jane Doe Robinson, his wife, and Beneficial Life Insurance Company, a corporation. Re Damages.
- 659—Department of Public Works of the State of Idaho, Department of Finance of the State of Idaho and Frank Hall, vs. Tom Watson. Re: Condemnation.
- 662—The Washington, Idaho and Montana Railway Company, a corporation, vs. Latah Co., a municipal corporation, Leola H. King, Treasurer and Ex-Officio Tax Collector of Latah Co., Harry Thatcher, Clerk of the Dist. Court and Ex-Officio Auditor and Recorder of Latah Co., Leola R. King and Harry Thatcher. Re: Action to vacate taxes.
- 666—State of Idaho, ex rel Bert H. Miller, vs. The Family Mutual Benefit Ass'n., Inc., a de facto corporation. Re: Quo Warranto Proceedings.
- 675—State of Idaho, ex rel Bert H. Miller, Attorney General, vs. Intermountain Building & Loan Ass'n. Re: Liquidation by Department of Finance.
- 686—State of Idaho on the relation of the Industrial Accident Board, vs. Ralph Hensley and Jane Doe Hensley, husband and wife, doing business under the firm name and style of Roy's Cafe. Re: Default in not procuring compensation.
- 696—First Trust Company of St. Paul, Minnesota, a corporation vs. M. H. Woods, and Belle J. Woods, his wife, et al. Re: Bonds.
- 731—Ed M. Clark vs. Franklin Investment Co., a corporation, et al. Re: Action to quiet title.
- 732—Florence R. Cowley vs. Nicholas Lamberson, et al. Re: Action to quiet title.
- 736—F. A. Randall vs. The Butte and Market Lake Canal Co., a corporation, J. D. Kennedy, Lawrence Poltevin, H. B. Sheppard, individual and as director and trustee of the Farm Credit Corp., a defunct corp., State of Idaho and R. W. Farls, Comm. of Reclamation.
- 739—Teton Valley Power & Milling Co., a corporation, vs. Lynn Crandall, Watermaster of Dist. No. 36, R. W. Farls, Commissioner of Reclamation of the State of Idaho, Grand Teton Reservoir Co., a corporation. Re: Water Adjudication.

- 740—Red Fir Mining Corporation, a corporation, vs. S. M. McKee and Mary McKee, husband and wife; and Stewart McKee and R. W. Faris, as Commissioner of Reclamation of the State. Re: Water Adjudication.
- 755—Peterson Motor Company, a corporation, vs. Emmitt Pfost, as Commissioner of Law Enforcement of the State of Idaho. Re: Injunction against Caravan Tax.
- 766—State of Idaho ex rel Ben Diefendorf, Tax Commissioner, vs. Idaho Egg Producers, a cooperative marketing corporation. Re: Action to collect sales tax.
- 769—State of Idaho on relation of W. E. Talbot, State Land Commissioner, vs. Ben Lauer and Anna Lauer, husband and wife. Re: Adjudication of ditch right.
- 771—J. B. Ploeger and J. E. Durant, vs. H. N. Woodard, Mary A. Woodard and the State of Idaho. Re: Action to quiet title.
- 772—State of Idaho ex rel Harry C. Parsons, State Auditor, and Ben Diefendorf, Commissioner of Finance. Re: Failure to pay Excise Tax to State.
- 773—State of Idaho, on the relation of Ben Diefendorf, Commissioner of Finance, and Harry C. Parsons, State Auditor, vs. Jack McQuade, Assignee for the Benefit of Creditors of W. L. Michelson of Moscow, Idaho. Re: Failure to remit sales tax.
- 777—State of Idaho ex rel M. Reese Hattabaugh, Harry Holden and J. W. Cornell, constituting and as the Public Utilities Commission of the State of Idaho, vs. J. D. Carr and J. D. Car, doing business as Mackay Water Company and Idaho Improvement Company, a corporation. Re: Action for penalty.
- 778—Hugh E. Howard vs. Iwin C. Cook and Ina R. Cook, husband and wife, and State of Idaho. Re: Action to quiet title.

(Civil)

(Closed)

DISTRICT COURT

- 377—Columbia Trust Company, a corporation, and Frank B. Cook, vs. Blaine County Investment Company, a corporation, and Blaine County Canal Company, a corporation. Re: Restraining collection of gasoline tax.
- 458—The First Security Bank of Halley, a corporation, vs. Blaine County, a duly organized county of the State of Idaho, Emma L. Reed, Treasurer of said Blaine County, and M. E. Mallory, Assessor and Ex-Officio tax collector, of said Blaine County. Re: Bank tax case. Refund of taxes.
- 462—J. J. Walling, Com'r. of Dep't. of Public Investments ex rel State of Idaho, vs. The Village of Ashton, a municipal corp. and Geo. Q. Brower. Re: Non-payment of village warrants.
- 463—J. J. Walling, Com'r. of Dep't. of Public Investments ex rel State of Idaho, vs. The Village of Ashton, a municipal corp., and Thos. B. Hargis. Re: Non-payment of village warrants.
- 537—J. J. Walling, Com'r. of the Dep't. of Public Investments on the relation of the State of Idaho, vs. The Village of Ashton, a municipal corporation, and O. W. Edwards. Re: Non-payment of Village of Ashton Warrants.

- 538—J. J. Walling, Com'r. of the Dep't. of Public Investments on the relation of the State of Idaho, vs. The Village of Ashton a municipal corporation, and George Kent, Re: Non-payment of Village of Ashton Warrants.
- 539—J. J. Walling, Commissioner of the Department of Public Investments on the relation of the State of Idaho, vs. The Village of Ashton, a municipal corporation, and W. A. Lansberry, doing business under the firm name and style of the Ashton Herald. Re: Non-payment of Village Ashton warrants.
- 540—J. J. Walling, Commissioner of the Department of Public Investments on the relation of the State of Idaho, vs. The Village of Ashton, a municipal corporation, and R. Marquardt. Re: Non-payment of Village of Ashton Warrants.
- 541—J. J. Walling, Commissioner of the Department of Public Investments on the relation of the State of Idaho, vs. The Village of Ashton, a municipal corporation, and the Utah Power and Light Company, a corporation. Re: Non-payment of Village of Ashton Warrants.
- 551—Twin Falls Bank and Trust Company, a Corporation, vs. Twin Falls County, a body politic and corporate and legal subdivision of the State of Idaho, and S. Claud Stewart, as Assessor of Twin Falls County, Idaho. Re: State Bank Tax Act.
- 564—First Security Bank of Boise, a corporation, vs. Ada County, Roy D. Leonardson, Assessor and Tax Collector of said county, and Janet A. Ketchen, Treasurer of said county. Re: Bank Tax Case.
- 635—James Laddlaw, vs. R. W. Faris, Commissioner of Reclamation for the Department of Reclamation of the State of Idaho and Guy B. Prunty, Watermaster of Water District No. 11-B, of Blaine County, Idaho. Re: Summary Adjudication.
- 660—State of Idaho, on the relation of Bert H. Miller, Attorney General, vs. Beneficial Protective Association, a de facto corporation. Re: Quo Warranto Proceedings.
- 668—Carey Lake Reservoir Company, a corporation, vs. R. W. Faris, Commissioner of Reclamation and T. L. Condie, Watermaster, Dist. 11-B. Re: Summary Adjudication.
- 683—Blaine Co. Canal Co., a corporation, and M. H. Woods, on behalf of himself and on behalf of all other water users similarly situated, such water users being all of the water users under the Blaine Co. Invest. Co. Project, vs. R. W. Faris, Commissioner of Reclamation of the State of Idaho, and N. W. Hansen, Watermaster of District No. 9, Little Lost River, State of Idaho. Re: Summary Adjudication.
- 688—Idaho Mutual Benefit Association, Inc., a corporation, vs. W. H. Bakes, Director of the Bureau of Insurance of the State of Idaho. Re: Death Benefit Associations.
- 701—B. M. Rogers vs. E. Milton Christensen, as Watermaster of Water Dist. No. 16 of the State of Idaho; R. W. Faris, as Commissioner of Reclamation of the State of Idaho. Re: Water Rights.
- 712—State of Idaho ex rel G. E. McKelvey, Com'r. of Public Works, vs. James L. Barnes, Mary C. Rice and Elizabeth W. Barnes. Re: Condemnation.

- 723—C. C. Anderson Stores Company, et al, vs. Ben Diefendorf, Commissioner of Finance of the State of Idaho. Re: Action to test Sales Tax.
- 728—State of Idaho ex rel Harry C. Parsons, State Auditor vs. Ben Chaplin, Mildred Tribble, and V. L. Boyce. Re: Action to collect on bond for money due the Fish and Game Dept. for licenses.
- 734—Ell Jukich vs. Emmitt Pfost, Commissioner of Law Enforcement of the State of Idaho. Re: Revocation of Beer License.
- 735—Melvin E. Jukich vs. Emmitt Pfost, Commissioner of Law Enforcement of the State of Idaho. Re: Revocation of Beer License.
- 747—Otto Greenwood and Henry C. Traue, Co-partners, doing business under the firm name and style of Otto Greenwood Co. vs. Emmitt Pfost, Commissioner of Law Enforcement of the State of Idaho. Re: Action to enjoin revocation of license.
- 761—The People of the State of Idaho on the relation of R. H. Thompson, vs. Kellogg Power and Water Company, a corporation. Re: Action to compel delivery of water.
- 765—State of Idaho on the relation of Ben Diefendorf, Tax Commissioner, vs. Niagara Sprayer and Chemical Co., a corporation. Re: Sales Tax Evasion.
- 767—United Pacific Insurance Company, a corporation, vs. W. H. Bakes as Commissioner of Insurance of the State of Idaho. Re: Adjudication of Tax Liability.
- 781—F. Lee Johnson, Commissioner of Agriculture of the State of Idaho, vs. Harry C. Parsons, State Auditor of the State of Idaho. Re: Action for declaratory judgment.

(Criminal)

(Pending)

DISTRICT COURT

- 764—State of Idaho vs. W. F. McMahan. Re: Manslaughter.
- 783—State of Idaho vs. Kenneth Kounl. Re: Violation of driver's license act.

(Civil)

(Closed)

SUPREME COURT OF THE UNITED STATES

- 567—In the Matter of the Application of the Oregon Short Line Railroad Company for Certificate of Public Convenience and Necessity. Re: O. S. L. application for abandonment of Talbot Spur.
- 567—File No. 2 State of Idaho and J. D. Rigner, M. Reese Hattabaugh and Harry Holden, constituting and as the Public Utilities Commission of the State of Idaho, vs. United States of America, Interstate Commerce Commission and Oregon Short Line Railroad Company, a corporation. Re: Abandonment of Talbot Spur.

(Civil)

(Closed)

SUPREME COURT OF THE STATE OF IDAHO

- 606—Lewiston Orchards Irrigation District, a municipal corporation vs. Mary W. Gilmore, Treasurer and Tax Collector of Nez Perce County, Idaho.
- 733—State of Idaho on the relation of Bert H. Miller, Attorney General of Idaho, vs. State Board of Education and Board of Regents of the U. of I., a corporation, and Jerome J. Day, Mrs. A. A. Steel, J. F. Jenny, Ashur B. Wilson, Clency St. Clair and John W. Condie, as Sup't. of Public Instruction, and Frank N. Stanton, as Bursar of U. of I. Re: Validity of Chapter 55, 1st Extraordinary Session Laws of 1935.
- 748—In the Matter of the Application of T. H. Rogers, John Randall, and F. G. Pltzen for Writ of Habeas Corpus. Re: Illegal Contracts.
- 704—Eva Smith, Claimant and Respondent and State of Idaho, ex rel Parsons, vs. McHan Hardware Co., Employer, and State Insurance Fund, surety. (Appealed from the Findings of the Industrial Accident Board.)

(Civil)

(Pending)

SUPREME COURT OF THE STATE OF IDAHO

- 724—United Mercury Mines Co. and Yellow Pine Company, vs. Emmitt Post, Com'r. of Law Enf., and Bert H. Miller, Attorney General. Re: Mine Tax Act.
- 730—Geo. B. Wallace, Inc., a corporation, Wentworth & Irwin Inc., a corporation, Raymer Motor Company, a corporation, and D. E. Wallace, doing business under the trade name and style of Wallace Brothers, for and in behalf of themselves and all others similarly situated, vs. Emmitt Post, as Commissioner of Law Enforcement of the State of Idaho.
- 741—State of Idaho on the relation of Emmitt Post, Commissioner of Law Enforcement, vs. Boise City, a municipal corporation. Re: Collection of gas tax.
- 742—In the Matter of the Application of Floyd Sandusky for a Writ of Habeas Corpus. Re: Murder.
- 757—In the Matter of the Application of William J. Humphrey, for Writ of Habeas Corpus. Re: Alleged illegal incarceration.
- 774—State of Idaho vs. Everett E. Hunt, District Judge. Re: Application for Writ of Review.

(Criminal)

(Pending)

SUPREME COURT OF THE STATE OF IDAHO

- 743—The State of Idaho vs. Douglas Van Vlack. Re: Murder of the first degree.
- 745—State of Idaho vs. Lovell Howard. Re: Murder.
- 749—State of Idaho vs. Leslie Yockey and Jack Allen. Re: First degree burglary.

753—State of Idaho vs. George D. Wilding. Re: Battery.

754—State of Idaho vs. Cliff Davis. Re: Grand larceny.

756—State of Idaho vs. Melvin Archer.

(Civil)

(Closed)

IN THE DEPARTMENT OF LAW ENFORCEMENT,
STATE OF IDAHO

738—In the Matter of Revocation of Barber License of Gust Parrls. Re:
Revocation of License.

(Civil)

(Pending)

INTERNATIONAL JOINT COMMISSION

300—Application of West Kootenay Power and Light Co., Ltd. Permission to construct and operate certain permanent works in and adjacent to the channel of the Kootenay River, for storage purposes.

(Civil)

(Closed)

INTERSTATE COMMERCE COMMISSION

598—No. 17,000. Rate Structure Investigation, Part VII. Grain and Grain products within the Western District and for export. Re: Grain rate case.

(Civil)

(Pending)

BEFORE THE PUBLIC UTILITIES COMMISSION,
STATE OF IDAHO

776—In the Matter of Application of George Standen for Permit to Operate Freight Service under the provisions of Chapter 267, Session Laws of Idaho, 1929. Re: Proceeding to grant permit.

(Civil)

(Closed)

BEFORE THE PUBLIC UTILITIES COMMISSION,
STATE OF IDAHO

762—In the Matter of the Complaint of W. L. Robinson, vs. The Intermountain Auto Freight, Inc., a corporation. Re: Action to compel insurance.

770—In the Matter of Gas Rates of Citizens Utilities Company, a corporation, successors to Public Utilities Consolidated Corporation. Re: Validity of gas rates.

MORTGAGE FORECLOSURES

(Closed)

- 3469—State v. R. D. Merrill, et al., Fremont County. Interest paid, case dismissed.
- 3950—State v. R. D. Merrill, et al., Fremont County. Judgment taken, property sold.
- 4415—State v. A. S. Hawkes, Fremont County. Taxes and interest paid, case dismissed.
- 4689—State v. Gus A. Isenburg, et ux., Fremont County. Judgment taken, property sold.
- 5275—State v. Henry Maw, et ux., Canyon County. Judgment taken, property sold.
- 2591—Frank R. Silva, et al., Gooding County. Deed taken by State, action dismissed.
- 2860—State v. Irvin E. Rockwell, et al., Ada County. Judgment taken, property sold.
- 3087—State v. W. I. Skinner, et al., Ada County. Judgment taken, property sold.
- 3150—State v. Edna Perkel, et al., Canyon County. Judgment taken, property sold.
- 3275—State v. Roy Elbert Carpenter, et ux., Ada County. Judgment taken, property sold.
- 3613—State v. J. J. Martin, et al., Idaho County. Judgment taken, property sold.
- 3758—State v. Frederic S. Lloyd, et al., Twin Falls County. Deed taken by State, action dismissed.
- 3984—State v. Levi G. Metcalf, et al., Camas County. Judgment taken, property sold.
- 4120—State v. Daniel Weeks, et al., Oneida County. Judgment taken, property sold.
- 4141—State v. L. E. Eck, et al., Ada County. Judgment taken, property sold.
- 4177—State v. Jack Deary, et al., Owyhee County. Judgment taken, property sold.
- 4323—State v. George S. Collins, et al., Boundary County. Deed taken by State, action dismissed.
- 4899—State v. J. J. McClements, et al., Washington County. Judgment taken, property sold.
- 5040—State v. Edward N. Taylor, et al., Canyon County. Judgment taken, property sold.
- 5074—State v. Sylvester Hill, et al., Canyon County. Judgment taken, property sold.
- 5315—State v. William Hanna, et ux., Butte County. Judgment taken, property sold.
- 5389—State v. Sleight, Thomas George, et ux., Bear Lake County. Judgment taken, property sold.

- 5398—State v. Ruth E. Webb, et al., Owyhee County. Judgment taken, property sold.
- 5453—State v. Daniel B. Cody, et ux., Bingham County. Judgment taken, property sold.
- 5500—State v. James R. Stevenson, et al., Canyon County. Judgment taken, property sold.
- 5402—State v. Parley S. Rammell, et al., Teton County. Deed taken by State, action dismissed.
- 4407—State v. James Garnett Port, et al., Cassia County. Judgment taken, property sold.
- 3653—State v. John A. Sjostrom, et al., Bingham County. Judgment taken, property sold.
- 5336—State v. Alfred Wilson, et al., Cassia County. Judgment taken, property sold.

MORTGAGE FORECLOSURES

(Pending

- 4882—State v. Elizabeth Holmes Allen, et al., Lincoln County.
- 4615—State v. Julius O. Blume, et al., Custer County.
- 5262—State v. Edward D. Barney, Canyon County.
- 4095—State v. Mannie J. Bayles, Ada County.
- 4528—State v. W. B. Boydston, et al., Valley County.
- 3590—State v. Brigham Bosworth, et al., Bannock County.
- 5462—State v. C. W. Calkins, et al., Camas County.
- 2494—State v. Albert W. Darling, et al., Canyon County.
- 5175—State v. Cecil V. Deary, et al., Owyhee County.
- 5339—State v. William Fallis, et al., Oneida County.
- 3180—State v. Mary Fogerty, et al., Canyon County.
- 3573—State v. Lot L. Feltham, et al., Washington County.
- 5285—State v. Merlin J. Francis, et al., Boise County.
- 5182—State v. Mary A. Frost, et al., Boise County.
- 4416—State v. A. S. Hawkes, et al., Fremont County.
- 5461—State v. Otto P. Hoebe, Executor, et al., Butte County.
- 4827—State v. George Hill, et ux., Fremont County.
- 4421—State v. Paul Hodges, et al., Custer County.
- 2831—State v. Edwin S. Little, et ux., Teton County.
- 5469—State v. J. E. Moreland, et al., Canyon County.
- 4940—State v. Matthews, T. W., et al., Cassia County.
- 3650—State v. Edna R. Mikesell, et al., Teton County.
- 5263—State v. John H. Olson, et al., Cassia County.
- 5124—State v. Anders C. Petersen, et ux., Oneida County.
- 5232—State v. Anne M. Phippen, et al., Ada County.

- 4215—State v. B. C. Phetteplace, et al., Custer County.
 4985—State v. U. F. Powell, et ux., Valley County.
 4754—State v. John L. Robinson, et al., Camas County.
 4741—State v. Henry Seeger, et al., Oneida County.
 4216—State v. Fred Swanstrum, et al., Teton County.
 3468—State v. J. Earl Whitely, et al., Cassia County.

INDUSTRIAL ACCIDENT BOARD

November 1st, 1936

(Closed)

- 1-55—State, claimant vs. Atlas Tile Company. Re: Bruno Pahlke, deceased.
 1-62—State, claimant vs. Kellogg Power & Water Company. Re: Ray Rowland, deceased.
 1-64—State, claimant vs. Sunshine Mining Company. Re: John Weigley, deceased.
 1-65—State, claimant vs. Intermountain Fire Works Company. Re: Lucille Williams, deceased.
 1-68—State, claimant vs. The Ohio Match Company. Re: Even Ellison, deceased.
 1-69—State, claimant vs. Gnome Gold Mining Co. Re: Jack A. Hyde, deceased.
 1-70—State, claimant vs. American Falls Canal Securities Company and Rockford Canal Company. Re: Paul W. Corum, deceased.
 1-71—State, claimant vs. F. H. De Atley & Co. Re: Andy Raushenbgr, deceased.
 1-72—State, claimant vs. Ralph Davis and Tony Marrazzo, Contractors. Re: William Hutton, deceased.
 1-73—State, claimant vs. A. G. Cummings. Re: Lars Brun, deceased.
 1-74—State, claimant vs. McHah Hardware Company. Re: M. F. Smith, deceased.
 1-75—State, claimant vs. F. Lee Johnson. Re: Vernon N. Crawforth, deceased.
 1-77—State, claimant vs. L. O. Larson & Richard Johnson, Co-partnership. Re: Charles Benson, deceased.
 1-78—State, claimant vs. L. O. Larson & Richard Johnson, Co-partnership. Re: Albert Erickson, deceased.
 1-79—State, claimant vs. White Pine Lumber Company. Re: Albert Berg, deceased.
 1-80—State, claimant vs. Utah Construction Company. Re: Jess M. Kipp, deceased.
 1-81—State, claimant vs. Idaho Bureau of Highways. Re: Robert R. Reynolds, deceased.
 1-82—State, claimant vs. Independent School District No. 6, Caribou County. Re: Russell Garst, deceased.
 1-83—State, claimant vs. Sunset Mercantile Company. Re: Lawrence H. Graham, deceased.

- I-84—State, claimant vs. James B. Moss, doing business under the name of The City Bakery. Re: James Robertson, deceased.
- I-85—State, claimant vs. Bannock County. Re: Alfred King, deceased.
- I-86—State, claimant vs. T. E. Robinson. Re: Elton Clark, deceased.
- I-87—State, claimant vs. Morrison-Knudson Company. Re: Roy L. Owen, deceased.
- I-88—State, claimant vs. F. E. R. A. for Idaho, Ada County, Project No. I-B3-16. Re: Emil Dodge, deceased.
- I-89—State, claimant vs. Fielden L. Poirier. Re: Louis H. Stroyan, deceased.
- I-90—State, claimant vs. Gilt Edge Mines, Inc. Re: Arthur Osterberg, deceased.
- I-91—State, claimant vs. Bunker Hill & Sullivan Mining and Concentrating Company. Re: Frank Rogina, deceased.
- I-92—State, claimant vs. A. G. Cummings Re: Sigurd Brun, deceased.
- I-93—State, claimant vs. Inland Motor Freight Co. Re: Fred Winters, deceased.
- I-94—State, claimant vs. F. E. R. A. for Idaho, Ada County, Rose Edwards, Agent. Re: Edward W. Grant, deceased.
- I-95—State, claimant vs. Elmore Company. Re: John Solosabal, deceased.
- I-97—State, claimant vs. Federal Mining & Smelting Company. Re: Lauri Aro, deceased.
- I-98—State, claimant vs. Bureau of Highways, State of Idaho. Re: Clarence Dahler.
- I-99—State, claimant vs. Idaho Power Company. Re: Fred Raber, deceased.
- I-105—State, claimant vs. Samuel V. Long. Re: Vernon Driskill, deceased.

INDUSTRIAL ACCIDENT BOARD

November 1st, 1936

(Pending)

- I-96 —State, claimant vs. Robinson Construction Company. Re: Ralph Christie, deceased.
- I-100—State, claimant vs. W. W. Brown and H. B. Way. Re: Orson Williams, deceased.
- I-101—State, claimant vs. Potlatch Forests, Inc. Re: John Anderson, deceased.
- I-102—State, claimant vs. Potlatch Forests, Inc. Re: Paul Sent, deceased.
- I-103—State, claimant, vs. Bunker Hill & Sullivan Mining and Concentrating Company. Re: Joseph Kendrick, deceased.
- I-104—State, claimant vs. Lewiston-Clarkston Lumber Co. Re: Wm. Thornton, deceased.
- I-106—State, claimant vs. Roy Norris, Jack Leonard and Gus Almqvist, co-partners doing business under the name of Hunter Lease. Re: Norman Pierce, deceased.

INDEX

Alphabetically Under Four Sections.

	Page
I. Message to Governor Ross.....	9 - 37
Appropriations	38
Board of Examiners.....	14
Board of Equalization.....	14
Board of Land Commissioners.....	15
Board of Forestry, State Co-operative.....	16
Board of Prison Commissioners.....	18
Board of Pardons.....	19
Board of Paroles.....	19
Board of Canvassers.....	20
Caravan Tax.....	33
Conclusion	37
Foreclosures	23
First Security Bank vs. Fremont County.....	26
Interstate Telephone Co. vs. Mountain View Telephone Co.....	35
Library Commission, State.....	19
Litigation	20
Moscow Infirmary.....	34
Mines Tax Case.....	32
Nampa Subway.....	33
Sales Tax Law.....	29
State vs. Van Vlack.....	30
State vs. United States.....	34
Treaty—1910—Boundary Waters.....	20
Water Conservation Act.....	28

	Page
II. Selected Opinions of Attorney General	39 - 64
Constitutionality H. B. 127.....	49
Criminal Jurisdiction on U. S. Allottee.....	44
Delinquent Farm Property Tax.....	59
Highway Across Public Domain.....	39
Hon. Myrtle P. Enking.....	52
Income Tax Report for Assessors.....	43
Liability of Dominant Mining Claim.....	48
Lieutenant Governor's Power to Act.....	54
Legislators	41
Marking Official Ballot.....	50
Origination of Bills in Senate.....	46
Power of Justice of Peace.....	55
State Insurance Premium to Legislators.....	41

	Page
III. Excerpts From Opinions.....	65 - 72
Appropriations	65
Banks	66
Beer	65
Bonds	65
Bureau of Public Accounts.....	65
County Notices.....	66
County Relief.....	67
Elections	67
Highways	67
Insane Asylum.....	67
Insurance	68
Justice of the Peace.....	68
Legislature	68
Licenses	68
Lotteries.....	69

	Page
Miscellaneous	72
Naturalization	69
Political Parties.....	69
Reclamation	69
Sales Tax.....	70
Schools	70
State Lands.....	71
State Treasurer.....	71
Taxation	71

IV. Docket, 1935-1936..... 73 - 83

District Court, Civil Cases (Pending).....	73
District Court, Civil Cases (Closed).....	75
District Court, Criminal Cases (Pending).....	77
Department of Law Enforcement, Civil, (Closed)....	79
International Joint Commission.....	79
Interstate Commerce Commission.....	79
Industrial Accident Board.....	82
Mortgage Foreclosures.....	80
Probate Court Civil Cases (Pending).....	73
Public Utilities Commission.....	79
Supreme Court Idaho, Civil.....	78
Supreme Court Idaho, Criminal.....	78
Supreme Court United States, Civil.....	77
U. S. District Court Civil Cases (Closed).....	73
U. S. District Court, Civil Cases (Pending).....	73