

Attorney General's Biennial Report



STATE OF IDAHO



1941—1942



BERT H. MILLER
Attorney General

ATTORNEY GENERAL'S DEPARTMENT

BERT H. MILLER.....	ATTORNEY GENERAL
LEO BRESNAHAN.....	Assistant Attorney General
J. R. SMEAD.....	Assistant Attorney General
*M. CASADY TAYLOR.....	Assistant Attorney General
*ROBERT M. KERR, Jr.....	Assistant Attorney General
*HUGH REDFORD.....	Assistant Attorney General
*THOMAS M. ROBERTSON, Jr.....	Assistant Attorney General
FRANK L. BENSON.....	Assistant Attorney General
WILLIAM A. BRODHEAD.....	Assistant Attorney General
*PAUL B. ENNIS.....	Assistant Attorney General
W. B. BOWLER.....	Assistant Attorney General
ARIEL L. CROWLEY.....	Assistant Attorney General
CHARLES S. STOUT.....	Assistant Attorney General
*D. W. THOMAS.....	Assistant Attorney General
THOMAS Y. GWILLIAM.....	Assistant Attorney General
ROBERT W. BECKWITH.....	Assistant Attorney General
ALVIN DENMAN.....	Special Assistant
OLON CLARK.....	Special Assistant
WILLIAM A. GALLOWAY.....	Special Assistant
MONICA JANE OLIVER.....	Secretary to Attorney General
*AUDREY FAUST KEVER.....	Stenographer
*GRACE B. MOORE.....	Stenographer
†IRMA LEWIS.....	Stenographer
*CAROLINE SAID.....	Stenographer
*CORAL KERR.....	Stenographer
MADONNA HAWORTH.....	Stenographer
MARTHA TIGERT.....	Stenographer

Unfair Sales Act Division

*BLANCHE SWEET.....	Office Manager
*FRANK WILSON.....	Asst. Mgr. (temporary appointment)
*ARTHUR E. JOHNSON.....	Investigator
*SAMUEL ADELSTEIN.....	Investigator
*GUS GILBERT.....	Investigator
J. C. McKINLEY.....	Investigator
BEN THOMAS.....	Investigator
*MARY LYNN TALBOT.....	Stenographer

* Resigned
† Deceased

PROSECUTING ATTORNEYS FOR COUNTIES OF IDAHO
1941—1942

County	Name	Address
Ada.....	Kenneth O'Leary..... (James Blaine)	Boise
Adams.....	Carl H. Swanstrom.....	Council
Bannock.....	C. M. Jeffery.....	Pocatello
Bear Lake.....	D. E. Haddock.....	Paris
Benewah.....	Carl M. Buell.....	St. Maries
Bingham.....	H. William Furchner.....	Blackfoot
Blaine.....	Gibson Condie..... (Conroy Gillespie)	Hailey
Boise.....	Claude V. Marcus.....	Idaho City
Bonner.....	Glenn E. Bandelin.....	Sandpoint
Bonneville.....	Henry Martin.....	Idaho Falls
Boundary.....	W. J. Nixon.....	Bonnors Ferry
Butte.....	F. J. Cowen..... (W. J. Lamme)	Arco
Camas.....	Chas. Scoggin.....	Fairfield
Canyon.....	Donald Anderson..... (V. K. Jeppesen)	Caldwell
Caribou.....	R. J. Dygert.....	Soda Springs
Cassia.....	Adonis H. Nielson.....	Burley
Clark.....	Robert B. Holden.....	Dubois
Clearwater.....	M. Casady Taylor..... (Samuel Swayne)	Orofino
Custer.....	M. L. Drake.....	Challis
Elmore.....	Louis F. Racine..... (Perce Hall)	Mountain Home
Franklin.....	Ben B. Johnson.....	Preston
Fremont.....	Herbert O. Skalet.....	St. Anthony
Gem.....	Thos. Y. Gwilliam..... (C. H. Heiger)	Emmett
Gooding.....	M. F. Ryan.....	Gooding
Idaho.....	Harry J. Hanley.....	Grangeville
Jefferson.....	T. Harold Lee.....	Rigby
Jerome.....	R. H. Seeley.....	Jerome
Kootenai.....	Wm. S. Hawkins.....	Coeur d'Alene
Latah.....	Robert W. Peterson.....	Moscow
Lemhi.....	Charles Herndon..... (F. A. McCall)	Salmon
Lewis.....	Richard F. Mitchell.....	Nezperce
Lincoln.....	Charles C. Shaw.....	Shoshone
Madison.....	C. W. Poole.....	Rexburg
Minidoka.....	H. A. Baker.....	Rupert
Nez Perce.....	Ray E. Durham.....	Lewiston
Oneida.....	T. E. Ray.....	Malad
Owyhee.....	Milo Axelsen.....	Murphy
Payette.....	W. R. McClure.....	Payette
Power.....	W. C. Loofbourrow.....	American Falls
Shoshone.....	Albert J. Graf.....	Wallace
Teton.....	S. H. Atchley.....	Driggs
Twin Falls.....	Everett M. Sweeley.....	Twin Falls
Valley.....	Randall Wallis.....	Cascade
Washington.....	John J. Peacock..... (D. L. Carter)	Weiser

(Attorneys' names in parentheses now acting)

ATTORNEYS GENERAL OF THE STATE OF IDAHO

Since Statehood

*George H. Roberts.....	1891-1892
*George M. Parsons.....	1893-1896
*Robert E. McFarland.....	1897-1898
*Samuel E. Hays.....	1899-1900
Frank Martin.....	1901-1902
John A. Bagley.....	1903-1904
*J. J. Guheen.....	1905-1908
*D. C. McDougall.....	1909-1912
*Joseph H. Peterson.....	1913-1916
*T. A. Walters.....	1917-1918
Roy L. Black.....	1919-1922
A. H. Conner.....	1923-1926
Frank L. Stephan.....	1927-1928
W. D. Gillis.....	1929-1930
Fred J. Babcock.....	1931-1932
Bert H. Miller.....	1933-1936
J. W. Taylor.....	1937-1940
Bert H. Miller.....	1941-1942

* Deceased

JUSTICES OF THE SUPREME COURT

1941-1942

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

* Deceased

HONORABLE CHASE A. CLARK
Governor of the State of Idaho
Boise, Idaho

DEAR GOVERNOR CLARK:

In compliance with statutory requirements, I have the honor to report for the biennial period ending December 1, 1942.

The duties of the Attorney General, as you well know, are very numerous and enter into every branch and department of State government.

I will not detail his named statutory duties. They are readily ascertainable and easy to understand. The more vexing feature is that there are some who would have the Attorney General perform duties entirely foreign to his office and never calculated or contemplated by the framers of our Constitution.

The past biennium, because of the nature of national affairs and our relations thereto, has brought into evidence questions of extreme importance for solution. These matters have been handled with dispatch and, I am certain, very satisfactorily.

I desire to express my appreciation for the good will and cooperation that has existed between the various State departments and this office. The associations have been enjoyable and of keen interest to me.

This report will show the number of cases heard before the Public Utilities Commission, the Industrial Accident Board, the International Joint Commission, the Interstate Commerce Commission, tried in the various district courts and heard in the Supreme Court of our own state. There has been more than usual activity in respect to escheated estates and numerous investigations and hearings incident to State Inheritance Taxes.

I desire to thank those men who have worked in this office and other departmental offices as my assistants for their hearty cooperation, faithfulness, loyalty and support, and I 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, and I regret that the fortunes or misfortunes of politics have been such as to cause an interruption in our former pleasant associations.

Sincerely yours,

BERT H. MILLER,
Attorney General
for the State of Idaho.

ATTORNEY GENERAL'S REPORT

FINANCIAL SUMMARY

1941-1942

(As of November 30, 1942)

Appropriations

Salaries and Wages.....	\$44,480.00
Other Expense	3,450.00
Capital Outlay	1,000.00
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	\$48,930.00

Disbursements and Balances

	Expended	Balance
Salaries and Wages.....	\$40,647.42	\$ 3,832.58
Other Expense	2,285.73	1,164.27
Capital Outlay	735.61	264.39

96 per cent of the biennium elapsed.

Contingent Fund

Amount Expended	\$ 806.67
Balance in fund.....	1,393.33

96 per cent of the biennium elapsed.

UNFAIR SALES ACT

The 26th Session of the Idaho Legislature, by Chapter 117, Session Laws of 1941, amended Chapter 109 of the Idaho Session Laws of 1939 by making effective what is known as the Unfair Sales Act. It was urged before the legislature that the object and purpose of said act was to protect the small independent merchant from unfair competition on the part of chain stores and those merchants in good financial condition. In order to accomplish said purpose it was provided in said act that all retail establishments should make a "markup" over and above costs, and that any sale of merchandise below the markup requirement (except in specified instances) would constitute a misdemeanor and subject the offender to prosecution.

There are approximately 7,300 mercantile establishments within the State of Idaho affected by said act. The act provided an appropriation of \$20,000, or so much thereof as would be necessary for administrative purposes, and placed said funds, together with the selection of personnel and the administration and enforcement of said act, under the control and direction of the attorney general. Under the Act of 1939, as amended, no attempt whatever had been made to make the same operative. The Act of 1941 carried an emergency clause and was approved March 8, 1941. Because of various provisions of the act, not necessary to be mentioned herein, some legal doubts arose as to whether or not an act of such nature could be made an emergency act. Regardless of that fact, however, an office was opened at No. 339 in the Capitol Building and a personnel for the administration thereof was selected.

It was no small matter to secure the names of all business concerns affected by said act, to properly list and index the same and establish and arrange office files in such manner as to make it possible to provide a system which would disclose information pertaining to each and all of the various business concerns affected. Generally speaking, the office personnel consisted of two women, one of whom was an expert in connection with merchandising matters. The investigating branch consisted of one, two and sometimes three investigators. My object at the outset was to impress upon those affected by the act that it was a "merchants act" in which they could all afford to be interested, in that the object and purpose thereof was to protect them against unfair competition in all respects and particularly as against "loss leader lines," a vicious practice calculated to destroy fair competition.

After setting up the office, which was known as the "Unfair Sales Act Division, Department of Attorney General, Room 339, State House, Boise, Idaho," I immediately caused to be printed thousands of copies of the act in folder form and mailed a copy thereof to each of the affected business concerns of the state and included therewith a short statement as to what we hoped might be accomplished in connection with its administration. Investigators were instructed as to the objects and purposes of the act and I endeavored to have some one of the investigators make a personal call upon all of said business establishments. The object and purpose of the call was to discuss with the merchants the terms and conditions of the act to assist him in any way possible as to what price goods could be sold for after the application of the markup and to ascertain if said merchant had any complaint to make of

others as violators of the act. In that connection too the investigator was directed to ascertain how said merchant felt towards said act. Each investigator was required to immediately, or as soon as convenience would allow, notify the office of his visit to the merchant and the conditions as found. After receipt of such information the office in turn communicated to such merchant the gist of the report made by the investigator and was requested to make known to the office any manner in which the office might render said merchant any further or additional assistance. A report was kept of all said matters and from the time investigators commenced their work in May, 1941, up to the present time, approximately 70% of the merchants of the state were personally visited. A calculation taken from the reports of the investigators as to the attitude of the merchants of the state toward said Act leads me to the conclusion that at least 95% of the merchants of the state are favorably impressed with the act and its benefits. Naturally, of course, among an array of such nature there would be some hostile thereto.

During the time said act has been in operation it must be borne in mind that because of national defense and war activities ever changing price conditions have existed and as a result thereof have more or less affected the Unfair Sales Act. I mention these matters for the purpose merely of directing attention to the fact that the changing price, incident to preparedness and war, would have a very marked effect upon all those concerns coming within the purview of the Unfair Sales Act. Generally speaking, merchants affected recognized such fact and accommodated themselves to such conditions with but little or no complaint. Many of the common necessities of life were exempted and, therefore, did not come within the operation of the Office of Price Administration and its regulations. To those exempted articles, very numerous in number, the Unfair Sales Act has remained effective. Just what the future will produce in that respect is, of course, conjectural. Some prosecutions were instituted for violations of the terms of the Unfair Sales Act. In all such instances, however, the violators plead guilty and were given a nominal fine.

Of the \$20,000 fund appropriated for the administration of the act there was in the treasury as of December 1, 1942, an unexpended balance of \$8,365.02, or to put said matter conversely, the expenditures for the administration of the act up to December 1, 1942, has cost \$11,634.98.

The trend of late years, as you are well aware, has been to charge state elective officials with greater responsibilities. Personally, a study of the act, together with the experiences observed with its administration, convinces me that it is such an act as should be continued. It is not perfect and several amendments should be made to give the same more workability. We are hopeful that it is but a comparatively short time until the necessity for the continued operation of the O. P. A. will cease. When that time comes there will then be a great demand for the Unfair Sales Act and I recommend to the Governor-elect and to the incoming legislature that nothing be done to impair said act either by abolition thereof or the failure to make an adequate appropriation for the successful administration of the same.

BERT H. MILLER,
Attorney General.

RESUME OF SOME OUTSTANDING CASES**STATE vs. CHARLES E. GOSSETT AND TROY E. D. SMITH**
(113 Pac. (2d) 415)

These cases involved the construction of certain provisions of the Constitution of the State of Idaho as to the right of the Lieutenant Governor and the Speaker of the House of Representatives to receive additional compensation for so-called "clean up" work after the legislature had adjourned. The court held that under the Constitution it was the duty of such officers to perform all their acts for the compensation fixed by the Constitution, and that any additional compensation paid could be recovered by the State.

PECK vs. STATE
(120 Pac. (2d) 820)

The legislature which met in 1941 made an appropriation for the actual and necessary expenses of the members for lodging and subsistence actually incurred and paid by them while absent from their places of residence. The State Board of Examiners disallowed the claim of Mr. Peck, who then brought an original action in the Supreme Court for a recommendatory judgment. The Supreme Court held that there is no provision granting to the members of the legislature the right to be reimbursed for these expenses, and that any grant to the present legislators would be a special law and would conflict with the Constitution.

JUSTUS vs. DeCOURSEY
(115 Pac. (2d) 756)

In this original proceeding for a writ of prohibition the Supreme Court determined that the 1941 amendment authorizing boards of county commissioners to increase the relief levy from 2 to 3 mills was intended to be operative in 1941, and authorized such boards to make the 3 mill levy for 1941, even though the county budget had been set up on the 2 mill basis prior to the enactment of the amendment.

**STATE OF IDAHO EX REL F. B. KINYON, vs.
MYRTLE P. ENKING, STATE TREASURER**
(115 Pac. (2d) 97)

On an original application, the Supreme Court prohibited the State Treasurer from selling the 1941 Idaho State Institutions Improvement Bonds to the Department of Public Investments. The Court held that in constitutional amendments in 1928 and 1941, the omission of the word "state" from the enumeration of securities that might be accepted as security for a loan of certain permanent endowment funds could not be held to be a mistake on the part of the legislature, and that under the Constitution as amended, the permanent educational fund other than funds arising from the disposition of university land cannot be loaned on state bonds. It is obvious that this situation should be corrected by proper constitutional amendment at the earliest opportunity.

WALKER vs. WEDGWOOD
(Decided November 4, 1942)

In this action the Supreme Court determined that an employee of the federal government could recover income taxes paid the State

of Idaho for the year 1940 where the payment was made under protest, for the reason that the legislature, in passing the state income tax law, had not intended, without further legislative action, to tax the officers of a separate sovereignty. This further legislation was enacted in 1941.

CASE No. 1134—PARIS ABANDONMENT. (Pending)

This case involves abandonment of the tract from Montpelier to Paris. The state challenged the jurisdiction of the Interstate Commerce Commission on the ground that the constitution of Idaho is a special act of congress prevailing over the Interstate Commerce Act. The case may become a precedent for all future abandonments.

CASE No. 1142—FRESH FRUITS AND VEGETABLES FROM IDAHO AND ORE. (Pending)

This case involves suspended rates in an attempt by the railroad company to increase rates on Idaho fruits and vegetables in order to equalize competition between Idaho and California. The state opposed the rates on the ground that the railroad is already making a substantial profit on this operation. No final conclusion has been reached, although the state has been sustained to date.

CASE No. 1133—DREPS vs. BOARD OF REGENTS (Closed)

This case of Leona Dreds vs. Board of Regents was filed in the District Court of the 2nd Judicial District in the County of Latah and involved an interpretation of the Nepotism law, Section 57-701, I.C.A., as to whether such a law applied to the Board of Regents of the University of Idaho. The question was as to whether the Nepotism law applied at all to the Board of Regents as state officers. The case was submitted upon briefs to Judge Morgan of the 2nd Judicial District upon demurrer to complaint, and the demurrer was denied and overruled, after which the defendants refused to plead further in the action. The court, therefore, held that the statute, Section 51-201, I.C.A., did not apply as to the Board of Regents of the University of Idaho.

CASE No. 992—STATE OF IDAHO, on relation of Calvin E. Wright, State Auditor, vs. GAMBLE-SKOGMO, INC. (Closed)

In the preceding biennium the question arose, whether or not Gamble-Skogmo, Inc. was liable for the chain store tax by reason of its contract relations with numerous retail stores throughout Idaho which were designated "Gamble-Stores." It fell to this department at the beginning of the present biennium to represent the claims of the state in the Supreme Court. Previously, the District Court in Ada County had held the company liable for such tax for the years 1937, 1938 and 1939. The case was submitted to the Supreme Court on briefs and oral argument, the amount involved being approximately \$45,000. In an opinion concurred in by three of the five members, the lower court was upheld and the company required to pay the tax for those years. One of the justices dissented in toto, and a second dissented on the ground, stated in a very brief dissenting opinion, that the majority opinion as written was thought to be too far reaching if applied generally to all business within the state.

ATTORNEY GENERAL'S OPINIONS

ADVERTISING COMMISSION

6-10-41—Secretary, Advertising Commission. Re: Purchase of materials for national advertising campaign concerning Idaho potatoes and onions. It was not intended by the legislature that the Advertising Commission, in the exercise of its paramount functions, should be subservient to the advisory board of the State Purchasing Agent. (Robert M. Kerr, Jr.)

9-24-41—Secretary, Advertising Commission. Re: Matter of giving a partial release of the judgment in case of State vs. Idaho Sales Company. (Robert M. Kerr, Jr.)

3-25-42—Idaho Advertising Commission. It is the opinion of this office that advertising tax stamps must be placed on bills of lading covering potatoes purchased by the U. S. Government for the armed forces. (Robert M. Kerr, Jr.)

8-10-42—Idaho Advertising Commission. It is the opinion of this office that the tax levied by Sec. 11 of Chap. 172 of the 1939 S. L. should be collected on shipments of cull potatoes and onions going to dehydration plants or other processing plants, provided such potatoes or onions are sold or intended for human consumption and grown in the State of Idaho. (Charles S. Stout.)

9-12-42—Secretary, Advertising Commission. It is the opinion of this office that the Idaho Advertising Commission may not reimburse the Department of Agriculture to pay for services rendered by employees of the Department of Agriculture for the benefit of the Advertising Commission. (Charles S. Stout.)

DEPARTMENT OF AGRICULTURE

1-29-41—Director, Bureau of Animal Industry. Whether or not Bureau of Animal Industry may require a permit for the sale of hog cholera serum and hog cholera virus in this state. (Robert M. Kerr, Jr.)

3-21-41—Commissioner of Agriculture. It is not necessarily a violation of law to sell evaporated skimmed milk within the State of Idaho. (Leo Bresnahan)

5-6-41—Idaho State Board of Pharmacy. (1) Idaho retail drug stores may legally purchase abortion vaccine and retain the same in stock. (2) It would be unlawful to sell this vaccine to anyone except a party holding a permit from the State Department of Agriculture. (Leo Bresnahan)

5-8-41—Deputy State Brand Investigator. Fur-bearing animal farmers who purchase horses and cattle for fox and mink feed, even though they sell or exchange, or otherwise dispose of the hides thereof, do not come within the classification of "butchers" or "meat dealers" and are not required to keep records or permit inspections. (Bert H. Miller)

5-12-41—Commissioner of Agriculture. It is the opinion of this office that the Department of Agriculture is without authority to

destroy a pear or quince tree which is not infested merely because it is within such a distance as to require fumigation before shipment of any stock in that specified zone. (Leo Bresnahan)

7-26-41—Commissioner of Agriculture. The Department of Law Enforcement is without authority to collect livestock inspection fees, or to use such funds for the expenses of the Department. (Leo Bresnahan)

8-23-41—Commissioner of Agriculture. Prohibition against "mugged bags" was intended to apply to potatoes packed in accordance with federal grading regulations as well as those of the State. (J. R. Smead)

9-30-41—Commissioner of Agriculture. Whether or not the use of a "mugged bag" with "shim" inserted, in shipments of potatoes, violates the provisions of Chapter 32, Session Laws of 1941, is a matter of departmental determination. (Bert H. Miller)

10-10-41—Commissioner of Agriculture. Boards of County Commissioners are authorized to set aside areas in their counties as Bangs Disease testing areas in their discretion and in the absence of any petition whatsoever. (Leo Bresnahan)

11-8-41—Commissioner of Agriculture. The Department of Agriculture is without authority to require a foreign corporation, having headquarters out of the state and engaged exclusively in inter-state commerce, to qualify with Idaho's Secretary of State under our corporation laws. (Leo Bresnahan and Casady Taylor)

6-19-42—Commissioner of Agriculture. Interpretation of Produce Dealer's Law. (Leo Bresnahan)

7-27-42—Commissioner of Agriculture. It is the opinion of this office that a number of different formulas for commercial fertilizer cannot be sold within the State of Idaho without separate registration under the provisions of Section 22-605, I.C.A. (Leo Bresnahan)

AUDITOR

1-11-41—State Auditor. To whom resignation of tax commissioner should be submitted, in the event he desires to resign prior to the expiration of his term of appointment. (Defenbach)

1-14-41—State Auditor. It was legislative intent to extend authority of appointment to Speaker of House and not to the individual holding such position; therefore, claims of M. L. Horsley and others are not such claims as may be allowed against appropriation mentioned in Chap. 141, S. L. 1939. (Bert H. Miller and J. R. Smead)

1-22-41—State Auditor. Allowance for payment of claims for services rendered by appointive officers and employees, from Jan. 1 to Jan. 6, 1941, is permissible. (J. R. Smead)

1-24-41—State Auditor. It is the opinion of this office that legislative intent, under Chap. 16, S. L. 1939, was to create a continuing appropriation. Note: See opinion to State Auditor of 1-28-41. (J. R. Smead)

1-28-41—State Auditor. Amendment of Art. 7 of the Const. contained in H. J. R. No. 3, Page 672, S. L. 1939, in the opinion of this

office, does not nullify the law created by Chap. 16, S. L. 1939, which creates a continuing appropriation. (J. R. Smead) Note: See opinion to State Auditor of 1-24-42.

1-29-41—State Auditor. Concerning constitutionality of a special legislative appropriation to pay claims some of which were incurred after the then existing appropriation was exhausted and some of which arose before the appropriation was exhausted. (Bert H. Miller) Note: State v. Parsons, 57 Idaho 775.

1-30-41—State Auditor. Comment regarding payment of claims of H. Albrethsen and Fred M. Taylor in view of the recommendatory judgments of the Supreme Court rendered in actions brought by claimants. (J. R. Smead)

2-7-41—State Auditor. Pending decision of Supreme Court on the matter, payment of per diem compensation may not be made to a member of the legislature who is already indebted to the State in the same or a greater amount. (J. R. Smead) Note: See State v. Gossett.

2-11-41—State Auditor. Reeves Wholesale Co. claim for supplies allegedly furnished Idaho State Penitentiary should not be presented to State Board of Examiners, and said Board cannot recommend such claim for consideration of legislature. (Bert H. Miller)

2-14-41—State Auditor. It is the opinion of this office that Chap. 143, S. L. 1939, does not prevent constitutional officers from purchasing supplies for their various offices without reference to the Purchasing Agent. (J. R. Smead)

3-3-41—State Auditor. Senate Bill No. 152. Opinion of this office as to payment of claims presented by legislators under the appropriation created by S. B. No. 152 suggests that auditor refuse payment in order that test of questions involved may be submitted to Supreme Court for determination. (Bert H. Miller)

3-19-41—State Auditor. It is the opinion of this office that legal proceedings to attempt collection of warrants Nos. 2528 and 2529, \$200.00 and \$133.75 respectively, of the Village of Ririe would not be justified. (J. R. Smead)

3-24-41—State Auditor. Re: H. B. No. 354. Opinion of the office that appropriations involved immediately upon the Governor's signing the bill, despite the fact that the bill carries an emergency clause of which no mention is made in the title. (J. R. Smead)

3-27-41—State Auditor. Where employees of a state unemployment compensation division are paid out of money granted by the federal government to the state for that purpose and paid by the state to employees, they are state employees subject to a state income tax. (J. R. Smead)

3-31-41—State Auditor. There is nothing illegal in a state employee accepting remuneration from a county for his services as a trial juror, when said services were rendered on subpoena, and during which period the employee received his regular salary; however, such compensation should be turned into the general fund. (Bert H. Miller)

4-9-41—State Auditor. Twin Falls' claim for \$800.00, as share of cost of construction of the airplane repair shop located on the Twin Falls airport. (J. R. Smead)

4-12-41—State Auditor. Re: Claims 14573 and 12609. A state employee cannot carry accumulated leave of absence or vacation period of time from one biennium into another; accordingly, the aforementioned claims are legal claims only to the extent that their leaves of absence or vacation period of time is applicable to the current year. (Bert H. Miller)

4-22-41—State Auditor. Dept. of Public Assistance claims for administrative expenses should be submitted to the Board of Examiners in the usual way, but disbursements from the fund to relief claimants need not be so submitted. (J. R. Smead)

5-3-41—State Auditor. Re: Balance still due from two companies involved in Portneuf River Survey in 1923. Bannock County does not appear to be liable, but should be carried on Auditor's books, for possible future collection by reasons other than through a tax lien. (J. R. Smead)

6-6-41—State Auditor. (a) An elective officer's salary cannot be subject to garnishment proceedings, and a public official cannot assign unearned salary. (b) Both public official and public employee can assign earned salary. A public employee's salary is subject to garnishment. (Bert H. Miller)

6-18-41—State Auditor. Re: Recovery of loss by burglary at the State Liquor Stores in Coeur d'Alene and Priest River, Idaho. (J. R. Smead and Robert M. Kerr, Jr.)

6-26-41—State Auditor. It is the opinion of this office that the claim of Edmund Wilkes, Jr., for a refund of fees paid to the State Board of Engineering Examiners, is a proper charge against the professional Engineers' Fund, and that the same may be properly allowed by the State Board of Examiners. (Leo Bresnahan)

6-27-41—State Auditor. Re: Shortage in records of City of Payette. No duty is incumbent upon the State Auditor's office in connection with the apparent shortage. (J. R. Smead)

7-15-41—State Auditor. Claim No. 30567 may not be properly paid by the State Auditor for the reason that claim and the negotiations upon which the claim is founded were not participated in by the office of the State Purchasing Agent, as required by law. (M. Casady Taylor)

8-18-41—State Auditor. Auditor's report need not be published in full; statement of receipts and source thereof, itemized account of expenditures; plus brief statement of financial condition, are requirements. (Hugh Redford)

8-20-41—State Auditor. It is the opinion of this office that the State Board of Equalization does not have jurisdiction to order a County Assessor to reassess specific property wholly within the county at a certain figure. (M. Casady Taylor)

8-25-41—State Auditor. Comments relating to action of the County Board of Equalization in Bonner County, increasing the value of certain types of lumber beyond that fixed by the County Assessor. See opinion of Calvin E. Wright, Board of Equalization, Aug. 20, 1941. (J. R. Smead)

9-19-41—State Auditor. Re: Limitations imposed by law on the State Board of Examiners in relation to its duties as prescribed by

Section 65-2006, I.C.A., as amended by Chap. 19 of the 1941 Session Laws. (Bert H. Miller)

10-10-41—State Auditor. Re: Experimental Fertilizer Fund, Dept. of Agriculture. No transfer of the balances, which have accrued in such fund since the date that this law became effective, may be made. (Leo Bresnahan)

10-31-41—State Auditor. Funds appropriated to Noxious Weed Commission (Ch. 3, S. L. 1941), which commission was later, in the same session, abolished (Ch. 18, S. L. 1941), over and above the total of \$150,000.00, appropriated to be expended in Noxious Weed Control, are not legally available. (J. R. Smead)

10-31-41—State Auditor. (a) An auctioneer should procure his license in the particular county in which he wishes to carry on his business. (b) There should be no apportionment of auctioneers' license fees to the municipality in which he resides. (Bert H. Miller)

1-28-42—State Auditor. It is the opinion of this office that any sums transferred from the motor fuels refund fund to the State Highway Fund is not subject to pro-rata distribution to the counties, and that the amount to be transferred should not be fixed until all refund claimants have been reimbursed. (J. R. Smead)

4-4-42—State Auditor. Re: Letting of contracts to Northern Idaho News of which Legislator Don C. D. Moore is an employee. Interpretations of Sec. 65-1513, I.C.A., as amended by Ch. 71, S. L. 1939. (Leo Bresnahan)

4-17-42—State Auditor. Return on garnishment in the case of Haines vs. Konan and the State Insurance Fund should show the existing situation and that there is now no money available to be paid either to the sheriff who served the garnishment, or to the alleged judgment creditors. (J. R. Smead)

5-16-42—State Auditor. It is the opinion of this office that travel expenses on behalf of the escheat fund should, upon order of the Board of Examiners, be paid out of the State Treasurer's appropriation, and that she should be reimbursed from any monies in the escheat suspense fund or the sale of property belonging thereto. (Robert M. Kerr)

5-18-42—State Auditor. Re: Interpretation of Ch. 197, 1939 Session Laws concerning authorization for creation of revolving funds. (J. R. Smead)

10-10-42—State Auditor. It is the opinion of this office that employees of the Fish & Game Department are required to comply with the provisions of Section 35-116, I.C.A., as amended by the 1935 Session Laws, and are required to support their regular payroll vouchers by sworn statements. (Charles S. Stout)

Bookkeeping System

8-7-42—State Auditor. It is the opinion of this office that the Southern Branch of the University of Idaho is disconnected from the University of Idaho except in the name and is not subject to the rules of law applied by the Supreme Court of this state to the Board of Regents as a constitutional corporation; however, provisions of the purchasing agent statute apply to and control the U.I.S.B. (Ariel L. Crowley)

8-29-42—State Auditor. 1. Whether the aggregate sum of the treasurer is entire or several and idle fund investments in the treasurer's cash balances are made from a composite balance in which the equities of the several funds which make up the treasurer's balance are joint and undivided; or whether such investments are in fact, several and specific investments separate and independent of each other of the various component funds included in the treasurer's balance.

2. Whether gain on sales of such treasurer's investments are properly apportionable to the general fund.

3. Whether losses on such treasurer's investments, if any, are apportionable to the general fund, and whether in case of loss, the auditor is authorized to credit the treasurer with the amount thereof under I.C.A. 65-901, or whether he will be justified in recognizing a claim by the treasurer for reimbursement of such losses sustained without a specific appropriation therefor by the State Legislature, no appropriation having been made for this contingency.

8-29-42—State Auditor. It is the opinion of this office that the State Auditor and the Purchasing Agent may deputize when deputization is essential, subject to the statutory restrictions as to compensation, and giving due recognition to divisions of constitutional powers and retention of responsibility by the appointing officer for the act of his deputy. (Ariel L. Crowley)

8-31-42—State Auditor. In re: Fundamental rules from which no departure may be made respecting the examination of claims against the State of Idaho before the Board of Examiners and the State Auditor. (Ariel L. Crowley)

8-31-42—State Auditor. In re: Definition of "voucher" as incorporated in Sec. 65-2009, I.C.A., and proposed form of certificate specified in letter of Lincoln G. Kelly & Co., dated July 22, 1942. (Ariel L. Crowley)

9-1-42—State Auditor. In re: Dept. of Agriculture: Requirement of personal bonds for inspectors; extension of credits on unpaid inspection fees. (Ariel L. Crowley)

9-4-42—State Auditor. It is not lawful to charge the cost of writing warrants for Unemployment Compensation Division (a ministerial duty) as expense to the Unemployment Compensation Administration Fund. (Ariel L. Crowley)

9-5-42—State Auditor. 1. Are the funds referred to in Ch. 182, 1941 Session Laws, state funds within the terms of the decision of the Supreme Court, *State vs. Robinson*, 56 Ida. 405, 83 Pac. 2d 983?

2. May the State Treasurer be credited by the Auditor with sums deposited with the Secretary of the Treasury of the U.S. of America? (Ariel L. Crowley)

9-7-42—State Auditor. It is the opinion of this office that the Southern Branch of the University of Idaho is disconnected from the University of Idaho except in the name and is not subject to the rules of law applied by the Supreme Court of this state to the Board of Regents as a constitutional corporation; however, provisions of the purchasing agent statute apply to and control the U.I.S.B. (Ariel L. Crowley)

9-12-42—State Auditor. In re: Reimbursability en masse to Industrial Accident Board as claimant for Unemployment Compensation Vouchers. (Ariel L. Crowley)

9-14-42—State Auditor. In re: Local funds of educational institutions. (Ariel L. Crowley)

9-16-42—State Auditor. In re: State appropriations, endowment fund earnings, institution fees and income. It is the opinion of this office that it is within the province of the Budget Director acting with the State Board of Examiners, to take into consideration unexpended or accumulated balances in the endowment earning funds. (Ariel L. Crowley)

9-17-42—State Auditor. It is the opinion of this office that the specific appropriation act of 1941 (Chapter 165, 1941 Session Laws) is not a limitation upon the availability of income from institutional endowments during the current biennium. (Ariel L. Crowley)

9-17-42—State Auditor. Is it lawful to create in the several offices and institutions of the State petty cash funds to be held by an agent, disbursing officer or employee, for the payment of minor office expenses? (Ariel L. Crowley)

9-18-42—State Auditor. It is the opinion of this office that the use of appropriated fees, so far as relates to "salaries and wages," "other expense" and "capital outlay," is discretionary with the respective institutions to which they are severally appropriated, subject to certain limitations enumerated herein. (Ariel L. Crowley)

9-23-42—State Auditor. It is the opinion of this office that claims of the Student Union Book Store for reimbursement should be rejected by the State as unlawful where and to the extent that they include an element of profit. (Ariel L. Crowley)

9-23-42—State Auditor. Is the Assessment made by the State Board of Equalization against the Postal Telegraph Company proper? (Ariel L. Crowley)

9-23-42—State Auditor. In re: Legality of suspense funds, and procedure to refund erroneous payments where the departmental appropriations carry no provisions for such refund. (Ariel L. Crowley)

9-30-42—State Auditor. In re: Disposition of moneys covered by cancelled warrants and treasurer's checks; statute of limitations against outstanding treasurer's checks. (Ariel L. Crowley)

10-5-42—State Auditor. In re: 1. Does a commitment evidenced by a purchase order, the money amount of which is estimated, create a deficiency, or is a deficiency, as contemplated under the law, created only as and when actual disbursements of state funds begin to exceed an appropriation made in behalf of a given department?

2. What is the legal status as to the lapsability of residual balances of appropriations created under circumstances as indicated in the submitted inquiry?

3. Is it lawful for the State Auditor to place, as of the close of a biennium, purchase orders on file to be recorded and encumbered effective as of June 30, as and when supplemental residual balances become available to the department as illustrated in the inquiry? If not, what legal means are available to the department heads to avail themselves of such residues? (Ariel L. Crowley)

10-5-42—State Auditor. It is the opinion of this office that claims of individuals against University of Idaho appropriations are invalid unless incurred under the Purchasing Agent's code or within one of the exceptions contained therein. (Ariel L. Crowley)

10-6-42—State Auditor. In re: University of Idaho—Legality of Master Reimbursement Claims. (Ariel L. Crowley)

10-19-42—State Auditor. In re: Approval signatures of department heads on Rotary Expense reimbursement claims and vouchers. (Ariel L. Crowley)

10-19-42—State Auditor. In re: Practice followed by office of State Auditor in crediting fees collected from patients with private estates committed by courts to State mental hospitals. (Ariel L. Crowley)

10-26-42—State Auditor. In re: Cost of writing warrants for the Department of Public Assistance. (Ariel L. Crowley)

10-26-42—State Auditor. In re: Accountability of the State of Idaho and/or institution for private funds of patients deposited with the various department heads of charitable institutions. (Ariel L. Crowley)

10-27-42—State Auditor. Emergency Purchase Orders. In re: Use of Form DA-4 in case of purchases under Sec. 65-1515 (Ch. 143, Sec. 14, 1939 Laws). (Ariel L. Crowley)

10-28-42—State Auditor. Liquor Control—Applicability of State Purchasing Agent's statute. (Ariel L. Crowley)

10-28-42—State Auditor. In re: Disposition of proceeds from sale of State or personal property. (Ariel L. Crowley)

10-28-42—State Auditor. In re: Requirements of bids on purchases under the State Purchasing Agent's statute of 1939. (Ariel L. Crowley)

10-29-42—State Auditor. In re: Motor Fuels Tax Bureau—Signatures required of department heads. (Ariel L. Crowley)

10-30-42—State Auditor. In re: Cancellation of old outstanding sight drafts drawn against Rotary Expense Funds by disbursement officers. (Ariel L. Crowley)

11-2-42—State Auditor. In re: Approving authority of the administration units designated Vocational Education and Vocational Rehabilitation. (Ariel L. Crowley)

11-4-42—State Auditor. In re: Certification of cash receipts to State Treasurer where monies are received in trust. (Ariel L. Crowley)

11-4-42—State Auditor. In Re: State Purchasing Agent—Power over purchases of fresh fruits and vegetables for institutions. (Ariel L. Crowley)

11-5-42—State Auditor. In re: Status of inventories of merchandise held for resale or of supplies under encumbrance system of accounting. (Liquor & Highways Inventories.) (Ariel L. Crowley)

11-5-42—State Auditor. In re: Direct drafts against federal aid funds, Vocational Education & Rehabilitation funds; legal status of federal aid funds on deposit with State Treasurer. (Ariel L. Crowley)

11-5-42—State Auditor. In re: Applicability of State Purchasing Agent's statute to current expense items paid by disbursement of officers from Rotary Expense Funds and/or Petty Cash Funds. (Ariel L. Crowley)

11-7-42—State Auditor. State Income Tax Collections—allocations to bienniums. (Ariel L. Crowley)

11-9-42—State Auditor. In re: Duties and authority of State Purchasing Agent in leasing or rental of equipment and realty. (Ariel L. Crowley)

11-9-42—State Auditor. In re: Status of uncollected budget anticipations—continuation of biennial accounts after expiration thereof. (Ariel L. Crowley)

11-12-42—State Auditor. In re: signing authority of departmental and institutional heads for claims and related expenditure documents with respect to educational institutions. (Ariel L. Crowley)

11-14-42—State Auditor. Is it permissible under the laws of the State of Idaho for the various federal agencies to pay expenditures incurred under the joint programs of operation and to file master reimbursement vouchers against the state for that portion of the total expenditures which under the joint operating agreement may be assigned for ultimate payment out of monies appropriated for the purpose by the State of Idaho? (Ariel L. Crowley)

9-18-42—State Auditor. It is the opinion of this office that the use of appropriated fees, so far as relates to "salaries and wages," "other expense" and "capital outlay," is discretionary with the respective institutions to which they are severally appropriated, subject to certain limitations enumerated herein. (Ariel L. Crowley)

9-29-42—State Auditor. In re: Legality of suspense funds, and procedure to refund erroneous payments where the departmental appropriations carry no provisions for such refund. (Ariel L. Crowley)

12-14-42—State Auditor. It is the opinion of this office that, within the limit of the appropriation and the time for presentation of claims against the State the execution of a contract authorized by law, appropriated for and actually commenced upon fixed monetary terms within the biennium, should be construed to be an expense of that biennium, even though the work is not entirely completed during that biennium. (Ariel L. Crowley)

CANDIDATES—ELECTIONS

1-13-41—To Senators Sims and Melcher: Re: Chapter 90, 1935 Session Laws: (1) How to determine the majority of qualified electors? (2) Must the boundaries of proposed herd districts coincide with the boundaries of the voting precincts, or may the boundaries of the proposed herd districts embrace only a part of the voting precinct? (3) In case part of the voting precinct is inside an in-

corporated town or village, which has ordinances imposing closed areas, is it necessary to have their signatures on the petition in order to have a majority?

5-2-41—Fred H. Snook. A councilman elected from a ward which he had moved prior to the election, if he intends to continue to live in the ward to which he moved, may not qualify as a councilman from the ward in which he was elected. (M. Casady Taylor)

6-10-41—E. V. Boughton. It is the opinion of this office that the Board of Trustees can call a special bond election and can designate such polling place as will be convenient, without regard to the boundaries of the numerous public school districts in the territory embraced by the junior college district. (Robert M. Kerr, Jr.)

11-17-41—Wilson K. Doyle. In re: Registration and voting as applied to selectees and regular members of the armed forces of the U. S. both as non-residents of Idaho in the service of Idaho, and residents of Idaho in the service elsewhere. (M. Casady Taylor)

7-27-42—Harry Harn, Dubois, Idaho. It is the opinion of this office that in notice of primary election, title of each office should be published even though no candidates have filed; see Sec. 33-610, I.D.A. (Leo Bresnahan)

8-15-42—Ross E. Haddock, Attorney at Law, Shoshone, Idaho. It is the opinion of this office that where the election returns show that one has been nominated to an office in the Primary Election by writing in his name, and he pays the filing fee required by law, his name should be printed upon the official ballots, and that proof of residence is not required as a condition to entering his name on the official ballot. (Leo Bresnahan)

9-16-42—Idaho Record Book Co. (1) It is not necessary for an absent voter to make sworn statement, upon the "Application for Absent Voter Ballot" as to name and present address and the precinct at which he voted in the last general election. (2) A write-in candidate must pay filing fee and file statement for expense on or before August 31, in order to qualify as a candidate for office in the general election. See Sec. 33-641, I.C.A. (Leo Bresnahan) (See also opinions of 9-16-42 to A. A. Stevens and 9-17-42 to V. K. Jeppesen)

9-16-42—A. A. Stevens. It is the opinion of this office that no statement of personal expense need be made or filed where the person receives his nomination as a write-in candidate. (Bert H. Miller) (See also opinion of 9-16-42 to Idaho Record Book Co., and 9-17-42 to V. K. Jeppesen)

10-7-42—Mrs. Frank Shelley, Horseshoe Bend, Idaho. (1) Unless otherwise provided by statute, a candidate or any member of his family may serve on an election board or as clerk. (2) A County Central Committeeman or precinct committeeman may act as judge of an election. (3) It is the opinion of this office that judges of an election can appoint a clerk who is a relative of one of the judges. (Charles S. Stout)

11-9-42—J. C. Himler, Esq., Nampa, Idaho. The Senior Citizen's Initiative Grant Act, an initiative measure, in order to become a law, must receive a number of votes equal to a majority of all of the votes cast for the office of governor at the general election at which said initiative is voted upon. (William A. Brodhead)

COUNTY AND COUNTY OFFICERS**County Agent**

8-27-42—County Agent Leader, Cooperative Extension Work. It is the opinion of this office that if a county fair is not held in any year, it would not be necessary to secure petitions and reorganize a county in order to hold the fair in some future year. (Charles S. Stout)

County Assessor

9-11-41—J. E. Smith, Butte County Assessor. It is the opinion of this office that the general property tax upon each colony of bees is to be assessed only upon the location of the bees at the time the assessor exercises the mandate imposed upon him by the provisions of Sec. 61-1103, I.C.A., and that there is no authority to allocate the general property tax placed upon bees as between counties. (M. Casady Taylor)

9-22-42—H. L. Hansen, Bonneville County Assessor. Whether or not rural electrification associations are subject to taxation in Idaho. (M. Casady Taylor)

County Attorney

4-2-41—T. Harold Lee, Jefferson County Attorney. It is the opinion of this office that the Board of District Advisors of Grazing District No. 3 may not properly expend \$850.00 of Jefferson County range improvement funds to purchase culverts for installation on a road connecting ranges. (M. Casady Taylor)

4-7-41—M. F. Ryan, Gooding County Attorney. Election polls in common school districts shall open not later than one o'clock and remain open until at least six o'clock, unless the notice of election shall provide a different time for opening or closing the polls. (Robert M. Kerr, Jr.)

4-23-41—Donald Anderson, Canyon County Attorney. Irrespective of the fact that the attempted veto of Chapter 268k S. L. 1939, was ineffectual, the same did not become a law but was void ab initio; accordingly, Sec. 24, 1201, I.C.A., is in full force and effect. (Bert H. Miller)

6-27-41—Robert W. Peterson, Latah County Attorney. The only disposition which can be made of a number of slot machines in the possession of the probate court is through such action as is provided by statutory law. (Bert H. Miller)

7-12-41—Kenneth O'Leary, Ada County Attorney. It is the opinion of this office that a constable may not receive mileage for travel outside of his county. (Hugh Redford)

7-25-41—W. C. Loofbourrow, Power County Attorney. Relative to securing resident fish and game license without securing license plates and driver's license in Idaho in lieu of those taken out in California. (Robert M. Kerr, Jr.)

8-9-41—Louis F. Racine, Elmore County Attorney. It is the opinion of this office: (1) That the intention of the legislature was to provide for the erection of one way memorial in each county by the use of state and county funds; (2) That other groups or associations

could erect memorials; (3) That the Board of County Commissioners, within their discretion and under Sec. 630103, I.C.A., are authorize and empowered to levy the tax therein mentioned for the repair and maintenance of service men's memorials whether constructed by state and county money or where no state and county money was employed. (Hugh Redford)

9-12-41—Samuel Swayne, Clearwater County Attorney. The prosecuting attorney of Clearwater county may not collect a fee for his appearance in insanity commitment cases, when the case is held in Clearwater County by mutual agreement of the parties concerned under Article III, Sec. 18, I.C.A., it becomes a part of the legal duties of his office. (M. Casady Taylor)

9-13-41—Kenneth O'Leary, Ada County Attorney. If the board of county commissioners of the various counties neglect to take into account "available surplus" in fixing levies, an aggrieved taxpayer could resort to an appeal or other legal action. (Robert M. Kerr, Jr. and M. Casady Taylor)

9-17-41—Robert W. Peterson, Latah County Attorney. It is the opinion of this office that the board of trustees may issue orders for warrants up to 59% of the income and revenue for a current year regardless of the amount of unpaid orders for warrants for previous years, provided that the expenditures are limited to the amount authorized by the school budget and are the ordinary and necessary expenditures authorized by the general laws of the state. (Robert M. Kerr, Jr.)

9-18-41—A. H. Nielson, Cassia County Attorney. Re: Interpretation of Sec. 3, Chapter 19, S. L. 1939. (Solon Clark)

10-17-41—V. K. Jeppesen, Canyon County Attorney. It is the opinion of this office that the property of a federal housing authority is exempt from taxes and special assessments of an irrigation district. (Leo Bresnahan)

11-14-41—M. F. Ryan, Gooding County Attorney. Re: Fees to be paid a justice of the peace upon change of venue in a civil action. (Leo Bresnahan)

12-18-41—V. K. Jeppesen, Canyon County Attorney. In the absence of statutory authority, the owner of land may not demand a segregation and pay before delinquency taxes on only a part of the property assessed as a whole. (Robert M. Kerr, Jr.)

12-22-41—W. J. Nixon, Boundary County Attorney. A county treasurer may prepare and execute tax deeds without recording or delivering them to the county, pending a redemption by the taxpayer or until the county commissioners call for the deeds, without interfering with refinancing of the taxpayers by the R.F.C. as bondholder. (J. R. Smead)

12-24-41—V. K. Jeppesen, Canyon County Attorney. Comments on whether or not Idaho has a state statute permitting counties to appropriate monies for the purpose of hiring full time employees for defense councils. (Bert H. Miller)

1-23-42—John J. Peacock, Washington County Attorney. It is the opinion of this office: (1) That the board of county commissioners is without authority to employ guards for the sole purpose of pro-

tection of private property. (2) That a county sheriff is without authority to incur expense against the county in the employment of guards for the protection of private property, except where such employment may be incidental to the performance of his statutory duties expressly granted by statute or necessarily implied. (Leo Bresnahan)

2-5-42—William S. Hawkins, Kootenai County Attorney. Refusal on the part of pupils or students to participate in flag exercises is of such gravity as to subject such pupils or students to expulsion, with suggestions pertaining thereto. (Bert H. Miller)

2-9-42—C. W. Poole, Madison County Attorney. (1) Where securities have been deposited with the county auditor to secure a deposit of public funds under the State Depository Law, may such securities be shifted to another depository unit where the county funds have been reduced to those of the other depository unit increased? (2) Is it the intention of this amendment that the securities originally deposited to secure county funds may be held without charge to secure the funds of a city school district, or other taxing unit? (Leo Bresnahan)

2-17-42—C. M. Jeffery, Bannock County Attorney. Comments concerning condemnation proceedings to be commenced by Bannock County to condemn land for State highway purposes. (Wm. A. Brodhead)

2-25-42—M. F. Ryan, Gooding County Attorney. Suggestions for enforcement of "blackout" regulations. (Leo Bresnahan)

3-27-42—W. R. McClure, Payette County Attorney. County Commissioners must make an order each year creating noxious weed extermination area or areas, and publish notice, as provided in Secs. 5 and 6, 1939 S. L., Chapter 235. (J. R. Smead)

4-1-42—Everett M. Sweeley, Twin Falls County Attorney. In re: State vs. Standlee (perjury case). Question of appeal considered and authorities cited. (J. R. Smead)

8-1-42—Albert J. Graf, Shoshone County Attorney. It is the opinion of this office that a $\frac{3}{4}$ vote is essential when a school election involves not only the designation of a site for a new school-house within the district, but also the removal of the site of the school. (See Sec. 46, Subdiv. 9a, and Sec. 32-615, I.C.A.) (Ariel L. Crowley)

9-17-42—V. K. Jeppesen, Canyon County Attorney. In re: failure to file a statement of personal expenses, citing case of Hiram G. Fuller vs. Ira N. Corey, 18 Idaho 558. See also opinions of 9-16-42 to A. A. Stevens and 9-16-42 to Idaho Record Book Company. (Bert H. Miller)

10-27-42—Ray E. Durham, Nez Perce County Attorney. It is the opinion of this office that the provisions of Sec. 33-1005, as amended by Chapter 45 of the 1937 Session Laws, relative to the manner of returning an absentee ballot to the issuing officer, are directory and not mandatory; failure to comply with them would not justify rejection of the ballot. See also opinion to Ray E. Durham of 10-27-42. (Leo Bresnahan and Charles S. Stout)

12-11-42—D. D. Carter, Washington County Attorney. It is the opinion of this office that any pretended action of a defendant in a fish and game violation in appearing before the probate court and attempting to plead guilty in the absence of a formal complaint, and in the absence of any record made by the probate judge, is a nullity. (Leo Bresnahan)

County Commissioners

2-6-41—Fred M. Christensen. A member of a Board of County Commissioners may not sell gasoline to his county. (Bert H. Miller)

2-19-41—L. H. Robinson. In Re: revocation of county printing award when once made by county commissioners. (Frank L. Benson)

2-25-41—Sam V. Tunks, Secretary, Association of County Commissioners and Clerks. (1) It is mandatory that counties who do not have highway districts apportion 59% of money collected within the cities and villages from the road and bridge levy back to the cities and villages. (2) It is not necessary for the cities and villages to make demands for these funds. (3) No order should be made by the board directing the auditor to apportion such money. (Wm. A. Brodhead)

10-9-41—Board of County Commissioners, Bingham County. Re: Legal status of a certain bridge built over Blackfoot River. (William A. Brodhead)

10-18-41—Board of County Commissioners. An Idaho county has no legal right, under Idaho constitutional and statutory provisions, to insure any mutual company wherein the exact amount of liability of the county is not definitely ascertained. (Bert H. Miller)

10-23-42—Forest E. Robb, Clerk of Valley County Commissioners. Board of County Commissioners may grant a leave of absence not to exceed ninety days to a county officer (Sec. 90-745, I.C.A., as amended by Chapter 9, 1935 S. L.) to enter military service. However, Paragraph 9, Section 57-901, I.C.A., would create a vacancy in the office upon an officer being absent from the State for more than sixty days in the exercise of his military duties. (Charles S. Stout)

County Superintendents

8-29-42—Clarence W. Kimpton. In re: Proposed proceedings to be brought by a school district upon refusal of child to salute the American Flag. (See also opinion to Wm. A. Hawkins, Feb. 5, 1942). (Bert H. Miller)

12-8-42—Scott D. Lowe. (1) It is the opinion of this office that rent may not be paid by a home district to a district in a neighboring county where its pupils are attending school, in lieu of transportation. (2) It is the opinion of this office that county superintendents of two counties, upon request of parents of a child living in one county, may, if they wish, approve a transfer of an elementary pupil from the home county to a district in a neighboring county, and tuition may be paid accordingly. (Leo Bresnahan)

EDUCATION

1-9-41—Superintendent of Public Instruction. Whether or not the State Board of Education may use of the appropriation

of the 1939 legislature for the cost of extensions, remodelings and improvements to the buildings at the State Deaf and Blind School in Gooding, Idaho.

1-20-41—Superintendent of Public Instruction. Re: Abstract of Title and Warranty Deed conveying certain property to the Board of Regents, University of Idaho. (Robert M. Kerr, Jr.)

1-20-41—Homer W. Moats. The school board of trustees is empowered to expel a disobedient pupil from school by Section 32-615, Subsection 21, I.C.A.

1-29-41—Superintendent of Public Instruction. Monies collected for cost of distributing study materials must be placed in general fund, rather than revolving expense fund. (Robert M. Kerr, Jr.)

1-30-41—Superintendent of Public Instruction. Re: Organization of King Hill School Board, 1941, Amendment to Section 32-608. (Robert M. Kerr, Jr.)

2-1-41—Superintendent of Public Instruction. Recommendations regarding proposed teacher's contract of Industrial School District No. 1, Twin Falls County, i. e. forfeiture of payments in case a teacher is removed for cause, and revocation of certificate of teacher for refusal to fulfill agreement. (Robert M. Kerr, Jr.)

2-4-41—State Board of Education. 1. Chapter 55, Session Laws 1935, identifies State Board of Education as the Board of Trustees of the Lewiston Normal School, the Albion State Normal School, and the Southern Branch of the University of Idaho, respectively. 2. Comment on proposed legislation regarding power of State Board of Education to refund bonds issued under Chapter 55, Session Laws of 1935. (Robert M. Kerr, Jr.)

2-6-41—State Board of Education. Comments on proposed legislation for the issuance of 1941 Idaho State Institutions Improvement Bonds. (Robert M. Kerr, Jr.)

2-18-41—Superintendent of Public Instruction. In absence of court decision, it is impossible to say whether or not the proposal to consolidate or join two school districts, one of which is a joint common district, must have the approval of the majority of the Board of County Commissioners in each county, or only in the county selected as the home county for the joint common district under Chapter 10 of the 1937 Session Laws. (Robert M. Kerr, Jr.)

2-21-41—Superintendent of Public Instruction. It is the opinion of this office that the employment of a son-in-law of one of the members of the Board of Regents of the University of Idaho as Athletic Director would be in violation of the Nepotism Law of the State of Idaho. (Bert H. Miller)

3-6-41—Superintendent of Public Instruction. Suggestions relative to teachers' contract, Preston Independent School District. (Robert M. Kerr, Jr.)

4-9-41—Asst. Superintendent of Public Instruction. A school trustee appointed by the County Superintendent in the case of a tie holds office only until the next annual election or until the appointment or qualification of the successor. (Robert M. Kerr, Jr.)

4-9-41—Asst. Superintendent of Public Instruction. Qualifications of voters in school elections. (Robert M. Kerr, Jr.)

4-11-41—Chairman, Independent School District No. 11-J, King Hill, Idaho. The Board of County Commissioners has no jurisdiction to revoke the appointment of school trustees after the appointed members have qualified and entered upon their duties, in the absence of a vacancy occurring as provided by law. (Robert M. Kerr, Jr.)

4-11-41—Superintendent of Public Instruction. School districts may lease busses with options for renewal and purchase, provided the liability does not at any particular time exceed the statutory and constitutional limitation. (Robert M. Kerr, Jr.)

4-14-41—Superintendent of Public Instruction. Re: House Bill No. 356. Under the building program provided for in the House Bill No. 356, the Commissioner of Public Works is authorized to superintend the construction, alteration or repair of buildings for the various institutions therein mentioned. (Bert H. Miller)

4-19-41—Mr. Conover Wright, Montpelier, Idaho. It does not appear that the legislature, in enacting our laws, has provided for the payment of the traveling expense of trustees from the public funds of the school district. (Robert M. Kerr, Jr.)

4-22-41—Mrs. Nellie M. Rhodes, Coeur d'Alene, Idaho. A qualified property owner may vote at junior college bond election, even though claiming tax exemption. (Robert M. Kerr, Jr.)

4-23-41—Clark, Independent School District No. 4, Sugar City, Idaho. Re: (1) Voting power of Chairman of Board in any School District of Idaho. (2) Members of board cannot defeat measure by inaction, for their silence is acquiescence rather than opposition. (Robert M. Kerr, Jr.)

4-24-41—Asst. Superintendent of Public Instruction. It is not legal for retiring school board to enter into a contract with a teacher after the annual school meeting and election of a new trustee, but before the new trustee is sworn in and qualified within the 10 days allowed by statute. (Robert M. Kerr, Jr.)

5-5-41—Viola W. Jones, Robert, Idaho. Children may be excused from school, upon written request of their parents, to receive religious instruction.

5-8-41—Superintendent of Public Instruction. (1) A school district may legally use a special teacher's contract form of its own if approved by the State Board of Education. (2) Recommendation of this office regarding proposed teacher's contract of Independent District No. 4, Sugar City, Madison County, Idaho. (Robert M. Kerr, Jr.)

5-9-41—Superintendent of Public Instruction. Letter confirming opinion of this office to Miss Viola W. Jones, May 5, 1941. (Bert H. Miller)

5-14-41—Superintendent of Public Instruction. A Spanish American War veteran, who is not the parent or guardian of a child, but does own real property, may vote at a general school election where the thousand dollar exemption covers the assessed value of all of his property. (Robert M. Kerr, Jr.)

6-6-41—Superintendent of Public Instruction. Re: Employment of relatives of trustees of school districts. (Robert M. Kerr, Jr.)

6-7-41—Mr. B. E. Ahalt, King Hill, Idaho. (1) In a proper case, a school board may legally pay a reasonable sum for an attorney's services. (2) It is the opinion of the office that a school board may, by proper resolution, direct that expenses and costs of an action brought by three members of a school board for a declaratory judgment may be paid out of the funds of said school district. (Robert M. Kerr, Jr.)

6-10-41—E. V. Boughton. It is the opinion of this office that the Board of Trustees can call a special bond election and can designate such polling place as will be convenient, without regard to the boundaries of the numerous public school districts in the territory embraced by the junior college district. (Robert M. Kerr, Jr.)

6-16-41—Superintendent of Public Instruction. As a general proposition, amounts budgeted by a common school district for teacher's salaries may not be transferred from one classification to another, even though surpluses may exist. (Robert M. Kerr, Jr.)

6-18-41—President, University of Idaho. Re: Benedict abstract. Title vested in Mertie Benedict, subject to certain defects and objects therein outlined. (Robert M. Kerr, Jr.)

6-23-41—Superintendent of Public Instruction. The constitution does not require the furnishing at public expense of such personal items as individual text books and supplies. (Robert M. Kerr, Jr.)

6-25-41—Superintendent of Public Instruction. If a student, actually enrolled attends school in another district from his district of residence, even though without a transfer from the county superintendent, such attendance shall be included in computing the average daily attendance and classroom units of the district of attendance. (Robert M. Kerr, Jr.)

7-9-41—S. R. Bjorkman, Sugar City, Idaho. A widow whose property is exempt from payment of taxes may vote in general school district elections, but this right does not extend to voting at bond elections in school districts. (Robert M. Kerr, Jr.)

7-15-41—Superintendent of Public Instruction. Re: Fee which may be charged by State Superintendent of Public Instruction for pamphlet of school laws which he is required to furnish under the provisions of Section 65-1405, I.C.A. (Robert M. Kerr, Jr.)

8-2-41—Rev. Father M. J. Keyes, Emmett, Idaho. It is the opinion of this office that the attendance of pupils at a private sectarian school should not be included in determining the apportionment to a common school district. (Robert M. Kerr, Jr.)

8-16-41—D. L. Jeffers, Dean of School of Forestry, University of Idaho. It is the opinion of this office that Chapter 259 of the 1939 Session Laws is in full force and effect. (M. Casady Taylor)

9-12-41—Superintendent, School for Deaf and Blind. Re: Abstract No. 7057, affecting certain lands to be purchased by the State School for the Deaf and Blind. (M. Casady Taylor)

9-15-41—Superintendent of Public Instruction. Re: To what extent Section 32-406, as amended by Chapter 249 of the 1939 Session

Laws, page 612, is still in force and effect, in view of the recent decision of the Supreme Court in the case of Northern Pacific Railway Co. vs. Shoshone County filed July 26, 1941. (Robert M. Kerr, Jr.)

9-17-41—Robert W. Peterson. It is the opinion of this office that the board of trustees may issue orders for warrants up to 95% of the income and revenue for a current year, regardless of the amount of unpaid orders for warrants for previous years, provided that the expenditures are limited to the amount authorized by the school budget and are for the ordinary and necessary expenditures authorized by the general laws of the state. (Robert M. Kerr, Jr.)

9-25-41—Burton W. Driggs, Superintendent. No part of the \$5,572.00 provided for fire escapes on dormitory buildings under Chapter 186 of the Session Laws of 1941, may be used for any other purpose in the same building or project, as any remaining balance of the appropriation automatically lapses. (Robert M. Kerr, Jr.)

11-1-41—R. D. Leonardson. It is the opinion of this office that property owned by a fraternal or benevolent organization, but which is being leased for school purposes and no revenue is derived by such organization from such property, the same is not subject to taxation. (Leo Bresnahan)

11-17-41—Accountant, Department of Education. Re: Abstract No. 12149 of Bannock Title and Abstract Co., City of Pocatello. Title to described premises vested in City of Pocatello, subject to defects, encumbrances and objections enumerated in this opinion. (Robert M. Kerr, Jr.)

12-3-41—Asst. Superintendent of Public Instruction. It is not necessary for the annual financial report of a school district to show in detail each warrant issued, with the name of the payee and the purpose of the expenditure. (Robert M. Kerr, Jr.)

12-17-41—Superintendent of Public Instruction. (1) In order for the Lewiston Normal School to sell junk it would be necessary to have the approval of the State Board of Education and the consent of the State Board of Examiners. (2) Funds from such sale must be turned into the State Treasury and be credited to the fund from which the original purchase was made. (Robert M. Kerr, Jr.)

12-19-41—Stanley Crowley. Upon reorganization of a common school district as an independent district, records and funds of bond issues then outstanding must be transferred to the treasurer and trustee of the new district. (Robert M. Kerr, Jr.)

12-20-41—President, University of Idaho. Chapter 50 of the Session Laws of 1937, as amended, (Section 45-223, I.C.A.) providing leave of absence without loss of pay for National Guard, does not apply to state employees who may join the organized state militia. (Robert M. Kerr, Jr.)

1-1-42—Department of Education. It is necessary, under Section 32-605, I.C.A., for the Board of Trustees to provide for school census. (Robert M. Kerr, Jr.)

1-3-42—President, University of Idaho. A restricted allowance to employees of \$4.00 per day for traveling expenses, when increased

by the Board of Regents to \$5.00 per day, cannot be made retroactive so as to apply for the preceding month prior to the order fixing such allowance. (Leo Bresnahan)

1-7-42—Department of Education. It is necessary, under Section 32-605, I.C.A., for the Board of Trustees to provide for a school census. (Robert M. Kerr, Jr.)

1-23-42—Superintendent of Public Instruction. It is the opinion of this office, in the absence of a contrary determination of the courts, that less than four calendar weeks will not constitute a school month. (Robert M. Kerr, Jr.)

3-28-42—Superintendent of Public Instruction. It is the opinion of this office that lengthening the school day, thereby increasing the hours per day of school, does not increase the apportionment days or apportionment weeks. (Robert M. Kerr, Jr.)

3-30-42—State Superintendent of Public Instruction. In the absence of court interpretation, there need be no departure from long standing Department of Education interpretation that there is not provision for revising or renewing elapsed or annulled teacher's certificates. (Robert M. Kerr, Jr.)

3-31-42—Board of Regents, University of Idaho. It is within the power and authority of the State Board of Regents of the University of Idaho to incur necessary indebtedness for board, lodging and instruction, of navy enlisted radio operators, and may repay and discharge such indebtedness out of any funds coming to the University therefrom. (Bert H. Miller)

4-9-42—Superintendent of Public Instruction. It is the opinion of this office that the State Superintendent of Public Instruction may dismiss an officer or assistant employed by the State Board for Vocational Education, and, with the consent and advice of the State Board designate someone to take the place of the person dismissed. (Robert M. Kerr, Jr.)

4-30-42—Superintendent of Public Instruction. It is the opinion of this office that it would be illegal for a school district to expend money for the transportation of pupils enrolled and attending a parochial school, as distinguished from the public schools of the state. (Robert M. Kerr, Jr.)

5-25-42—Superintendent of Public Instruction. It is the opinion of this office that school districts may not provide transportation, at the expense of the school district, to pupils enrolled at and attending sectarian or denominational schools. Supplementing opinion of 4-30-42.

6-1-42—Superintendent of Public Instruction. Even though the property produces income, if it belongs to the school district it is exempt from taxation under the provisions of Section 61-105. (Robert M. Kerr, Jr.)

8-10-42—Superintendent of Public Instruction. It is the opinion of this office that a teacher must have a teacher's certificate at the time a contract is entered into with the teacher unless the conditions exist which are set forth in Section 32-1126, supra, in which case the teacher could enter into a valid contract to teach, but would have to qualify at the next regular examination after the contract is entered into. (Charles S. Stout)

8-28-42—Superintendent of Public Instruction. It is the opinion of this office that the Board of Trustees of a district which does not operate a high school within its boundaries but has a temporary combination with a district which does operate a high school, has authority to require attendance of high school pupils at the high school maintained in the district with which a combination agreement is in force. (Ariel L. Crowley)

8-28-42—Superintendent of Public Instruction. If handled upon election and contract, cases of school district "border line" restrictions do not appear to be within any prohibition against the payment of tuition to an out-of-state school district. (Ariel L. Crowley)

9-1-42—Department of Education. In re: The provisions of Chapter 11, Title 32, Idaho Code Annotated. (Ariel L. Crowley)

11-27-42—Superintendent of Public Instruction. It is the opinion of this office that school districts are without authority to turn over 20% of their typewriters to the War Production Board or the United States. Chapter 6, Title 32, I.C.A. (Ariel L. Crowley)

11-28-42—Department of Education. In re: Reimbursement to Department of Education by Federal Government (from Lanham Funds), and to what appropriation they are to be credited when refunded. (Ariel L. Crowley)

STATE BOARD OF EQUALIZATION

8-20-41—State Board of Equalization. It is the opinion of this office that the State Board of Equalization does not have jurisdiction to order a County Assessor to reassess specific property wholly within the county, at a certain figure. (M. Casady Taylor)

8-25-41—Secretary, State Board of Equalization. Comments relating to action of the County Board of Equalization in Bonner County, increasing the value of certain types of lumber beyond that fixed by the County Assessor. See opinion to Calvin E. Wright, Bd. of Equalization, Aug. 20, 1941. (J. R. Smead)

9-23-42—State Board of Equalization. Is the Assessment made by the State Board of Equalization against the Postal Telegraph Company proper? (Ariel L. Crowley)

6-26-42—State Board of Equalization. In re: Whether an electric power transmission company may be allowed to deduct from its plant value its "intangible accounts," or whether such intangible accounts are assessable for taxation by the State Board of Equalization. (J. R. Smead)

STATE BOARD OF EXAMINERS

7-18-41—State Board of Examiners. United Airlines proposed contract for air travel cards for state departmental employees. It is the opinion of this office that the plan, as proposed, is inapplicable insofar as the State is concerned. (Leo Bresnahan and Robert M. Kerr, Jr.)

7-18-41—State Board of Examiners. Method of assessing public

and private utilities is governed by public policy, and is arrived at through legislative intent. (Leo Bresnahan)

8-18-41—State Board of Examiners. Auditor's report need not be published in full; statement of receipts and source thereof, itemized account of expenditures, plus brief statement of financial condition, are requirements. (Hugh Redford)

2-24-42—State Board of Examiners. Re: Powers of the State Board of Examiners to lawfully transfer moneys from subsections (k), (l), and (m), to subsection (j) of Section 6, Chap. 186, Session Laws of 1941. (Hugh Redford)

DEPARTMENT OF FINANCE

4-14-41—Department of Finance. Re: Requirement of state banks in the retention of bank records of account, and how statute of limitations may apply. (Bert H. Miller)

5-21-41—Department of Finance. In re: Articles of Incorporation of banks. (Leo Bresnahan)

8-6-41—Department of Finance. The 1941 Amendment of Sec. 61-2412, I.C.A., as amended by Chap. 159, Laws of 1933, which excludes from taxation certain classes of gross income, when such income is derived from sources outside the State of Idaho, does not have a retroactive effect as regards any such income derived during the year 1940. (J. R. Smead)

11-12-41—Commissioner of Finance. It is the opinion of this office that State banks are not exempt from taxation upon furniture and fixtures; and other of their personal property, under the constitution and laws of Idaho. (M. Casady Taylor)

1-26-42—Commissioner of Finance. In re: Mortgages to Idaho Compensation Co., whether or not such securities conform to statutory requirements for deposit. (Hugh Redford)

4-28-42—Commissioner of Finance. Re: Deed from the State to J. H. Allen, which reserves from the title otherwise granted, rights of way for ditches, tunnels and telephone and transmission lines. (J. R. Smead)

5-6-42—Commissioner of Finance. Re: Proposed new bond issue for refunding purposes by an Idaho municipality. (J. R. Smead)

Bureau of Insurance

1-29-41—Director of Insurance. It is the opinion of this office that under Sections 40-901, 40-902, 40-903, and other insurance statutes, any company doing business in this state which should wilfully fail to secure the counter signature of a resident agent of the State of Idaho and pay to the Dept. of Insurance the tax on the part of the gross premium received by the company for the period the risk was situated in the State of Idaho, would be subject to the penalties provided by Sec. 40-903 and 40-807. (Robert M. Kerr, Jr.)

2-20-41—Director of Insurance. (1) Types of insurance fire insurance companies may write in Idaho. (2) Sec. 3 of the amendment to the Articles of Incorporation of the Phoenix Insurance Co.,

merely vests the company with the right to insure "fire and marine insurance" risks authorized by the state in which it is operating. (Frank L. Benson)

3-12-41—Director of Insurance. A member of the legislature cannot write state insurance or bonds on state officials during the term for which he was elected and is serving, under the provisions of Section 65-1513, as amended by Chapter 71, S. L. 1939. (M. Casady Taylor)

3-31-41—Director of Insurance. Interpretation of Section 49-808, I.C.A., in regard to the meaning of the term "assets" as used in said Section 1. (M. Casady Taylor)

5-22-41—Director of Insurance. Definition of words "joint stock company," as used under Idaho law. (M. Casady Taylor)

5-24-41—Director of Insurance. Whether or not an employee of the Union Pacific R. R. may qualify as an agent so as to write surety bonds only for and on behalf of the U. P. R. R. Co., and its affiliated companies and subsidiaries, is a matter for the discretion of the Director of Bureau of Insurance. (M. Casady Taylor)

6-14-41—Director of Insurance. Requisition No. 81 of the Department of Law Enforcement, bearing date of June 9, 1941, in regard to a blanket bond in the amount of \$2,500.00 is a statutory bond, the premium of which is properly chargeable to the State of Idaho. (M. Casady Taylor)

6-27-41—Director of Insurance. The Mutual Benefit Health and Accident Association of Omaha, Nebraska, may be excused from stamping on its policies issued in Idaho, the words "issued on the assessment plan," as required by Section 40-1316, I.C.A. (M. Casady Taylor)

7-29-41—Director of Insurance. Re: Application for non-resident life insurance agent's license. (M. Casady Taylor)

11-14-41—Director of Insurance. Re: Oregon Mutual Life Insurance Co. (1) Dividends left by the insured with the company at interest, or to be applied for the payment of future premiums, are properly deductible under the provisions of Sec. 40-804, I.C.A., as amended by Chapter 33 of the 1937 Session Laws. (2) Said insurance company may not take advantage by set-off of accumulated dividends, which said dividends, have not been deducted, and deduct the total of said amount from its gross premium tax for the subsequent year's operation. (M. Casady Taylor)

3-25-42—Director of Insurance. In re: Whether or not a dealer-agent, selling an automobile on time, in view of Sec. 2, Chap. 195, Session Laws 1937, may be granted a renewal of his license to write automobile insurance upon application and the payment of the required fee. (Hugh Redford)

4-29-42—Director of Insurance. The "Amended Agreement" and the "Supplemental Agreement," effective May 1, 1941, between the Stock Company Association and the Home Owners' Loan Corporation, do not, on their fact, violate the provisions of our insurance law relating to rebates. (Hugh Redford)

9-8-42—Director of Insurance. Procedure for qualification of

foreign insurance companies to do business in this state is that contained in Chapter 4 of Title 40, I.C.A., which prevails over Chapter 5 of Title 29, I.C.A. (Bert H. Miller)

9-22-42—Director of Insurance. Under provisions of Chapter 61, Session Laws of 1939, payment of full commission to resident agent is required in contrast of Mr. Eugene Ware and Traveler's Insurance Co. with Walter Butler Company. (J. R. Smead)

9-30-42—Director of Insurance. An attorney licensed to practice law, in rendering legal services to an insurance company, would not be required to take out an additional license as an insurance adjuster. (Bert H. Miller)

10-19-42—Oscar A. Johannessen, Idaho Falls, Idaho. Whether or not Agreement, Bond and Guarantee of Bingham County Farmers' Mutual Insurance Company, a corporation, dated October, 1942, is lawful. (Ariel L. Crowley)

12-1-42—Director of Insurance. It is the opinion of this office: (1) that a salaried representative of an insurance company, qualified as an insurance agent under Chapter 195, Session Laws of 1937, should receive full commission on insurance business written; (2) that the licensed agent, or countersigned agent, should receive a commission of not less than 5% of the premium paid. (Charles S. Stout)

Inheritance Tax Division

2-28-41—Department of Finance. Transfer tax due state for a piece of real estate, among the assets of a decedent, should be computed on the basis of the price for which the property was sold and without reference to the original appraisement. (J. R. Smead)

Store License Tax

4-8-41—Director, Store Licenses. It is the opinion of this office that a person selling "Rawleigh" or "Watkins'" products within the State is not a "Store" within the meaning of Sec. 8 of Chapter 113, S. L. 1933; but is rather within the classification of "peddler" set forth in Sec. 53-1901, I.C.A. (M. Casady Taylor)

FISH AND GAME DEPARTMENT

1-20-41—Fish and Game Commission. A Commissioner of the Fish and Game Commission is entitled to reimbursement for all actual and necessary expenses incurred in the performance of official duties even though the amount of his yearly salary has been fully paid. (Bert H. Miller)

1-29-41—Mr. Wilbur L. Campbell. Fish and Game Department is not empowered to take beaver for the purpose of selling the pelts in the open market. (Bert H. Miller) (See also letter to Owen W. Morris, Jan. 31, 1941.)

1-31-41—Director of Fish and Game Department. Fish and Game Commission is empowered to remove beaver from sources of damage. (Bert H. Miller) (See also opinion to Wilbur L. Campbell, Jan. 29, 1941.)

2-11-41—Fish and Game Department. Can the Fish and Game Department pay a claim of a third party arising from an accident involving a trailer pulled by a Department truck and driven by a Department employee? (Robert M. Kerr, Jr.)

3-20-41—Stanley Gregory, Princeton, Idaho. Powers and Duties of Fish and Game Commission relative to the trapping of beaver in Idaho. (Robert M. Kerr, Jr.)

4-10-41—R. J. Wood, Weiser, Idaho. Only method by which lots deeded to the State of Idaho for the use of the Fish and Game Department may be turned back to the City of Weiser for the use of the Girl Scouts is the regular sale or leasing of these lots to the city or some other person for the benefit of the Girl Scouts. (Robert M. Kerr, Jr.)

5-9-41—Louis F. Racine, Jr., Prosecuting Attorney, Mountain Home, Idaho. A sturgeon is a non-game fish, and the law, as it now exists, does not prevent the use of more than one set line by sturgeon fishermen. (Robert M. Kerr, Jr.)

5-14-41—Earl J. Michael, Challis, Idaho. A vendor of fish and game licenses is responsible for the payment of the premium on his bond. (Robert M. Kerr, Jr.)

5-19-41—Fish and Game Department. Aliens not entitled to resident licenses, except resident aliens who have an unrevoked declaration of intention to become citizens. (Robert M. Kerr, Jr.)

6-3-41—Fish and Game Department. In re: abstracting of premises being purchased under St. Maries Deer Refuge Project. (Robert M. Kerr, Jr.)

7-25-41—W. C. Loofbourrow, Prosecuting Attorney, American Falls, Idaho. Relative to securing resident fish and game license without securing license plates and driver's license in Idaho in lieu of those taken out in California. (Robert M. Kerr, Jr.)

9-19-41—Fish and Game Commission. It is the opinion of this office that a minor error in description of township does not defeat legislative intent, in creation of game preserve. (Robert M. Kerr, Jr.)

9-19-41—Fish and Game Department. Intention of Legislature must govern in the construction of penal as well as other statutes; error in description of area does not defeat creation of game preserve. (Robert M. Kerr, Jr.)

12-1-41—Fish and Game Commission. The Fish and Game Commission may, subject to budget limitations, provide for the publication of a volume entitled "Wildlife Idaho," to be distributed to school children. (Robert M. Kerr, Jr.)

12-16-41—David Brazil. It is the opinion and duty of the Fish and Game Commission, under Sec. 35-1301, I.C.A. to direct the taking of such beaver as will stop damage to irrigation canals, crops, etc. (Robert M. Kerr, Jr.)

12-26-41—Fish and Game Department. Re: Rights of fishermen, hunters and trappers in Idaho on navigable streams and navigable lakes and the adjoining banks. (Robert M. Kerr, Jr.)

4-9-42—Fish and Game Department. The Fish and Game Department is required to reimburse the county for the expense of keeping prisoners committed for violation of the Fish and Game Laws at the regular rate of keep charged for like prisoners, and not to exceed \$1.00 a day. (Robert M. Kerr, Jr.)

GOVERNOR

1-11-41—Governor. Procedure followed in appointments of Board of Trustees and of librarian and assistant librarian for the State Historical Society.

1-31-41—Governor. Under provision of Sec. 57-102, I.C.A., a member of the 26th Legislature is disqualified to act and cannot be appointed by the Governor as superintendent of the Liquor Dispensary under the provisions of H. B. No. 26. (Leo Bresnahan)

2-8-41—Governor. Information relative to a "bond issue" for the purpose of paying or partially paying now existing registered warrant indebtedness. (Bert H. Miller)

2-15-41—Hon. James H. Young. It is the opinion of this office that Chapter 270, Session Laws 1939, is in full force and effect. (Bert H. Miller)

3-5-41—Governor. It is the opinion of this office that H. B. No. 115, (by Dairy and Livestock Committee) is void for uncertainty and discrimination. (J. R. Smead)

3-6-41—Governor. House Bill 183, requiring shippers of vegetables and fruits to place a tax stamp on bills of lading, in the opinion of this office is unconstitutional and void. (Bert H. Miller)

5-14-41—Governor. The Nepotism Law, Sec. 57-701, I.C.A., applies to appointees in the Dept. of Public Assistance who are within the prohibitive degree of relationship either to the Governor or the Commissioner of Public Assistance. (Leo Bresnahan)

5-22-41—Governor. In re: Comments on complaint of U. S. of America versus American Petroleum Institute and 22 major companies; and possible price fixing legislation. (Bert H. Miller)

6-24-41—Governor. It is the opinion of this office that the Governor may not summarily or voluntarily discharge a member of the P.U.C. but must give effect to Sec. 59-202, I.C.A., in making such removal. (Hugh Redford)

10-29-41—Governor. Workmen's compensation or accident insurance may not be provided for convicts who may be employed on public highways, for reasons herein given. (Leo Bresnahan)

11-12-41—Governor. Funds donated from private sources to Dept. of Public Health may be received by the Governor or director of public health and may be used in dairy products inspection work in the state. (M. Casady Taylor)

12-9-41—Governor. (1) Constitutional officers must keep their respective offices open for transaction of business each Saturday until five o'clock. (2) Departmental heads have broad discretion as to declaring Saturday afternoon a half holiday. (M. Casady Taylor)

1-9-42—Governor. Whether or not Adjutant General's appropriation for 1941-1942 biennium is available for payment of administration expenses of the department for duties performed in relation to the organized state militia. (Leo Bresnahan and J. R. Smead)

1-23-42—Governor. Governor has sole legal right to fill vacancy in office of Clerk of District Court, and such appointee holds office for the full period of the unexpired term. (Bert H. Miller)

1-27-42—Governor. Except in purely local matters, the action of the Federal Congress is controlling in establishing time zones.

1-28-42—Governor. It is the duty of the Governor to select a qualified judge to hold court in place of a judge who voluntarily disqualifies himself. (Bert H. Miller)

9-5-42—Governor. It is the opinion of this office that any attempt to set the clocks back one hour in western Idaho would be entirely unauthorized and in conflict with the federal law for the reason that it would divide the State into two different zones. (Leo Bresnahan)

10-19-42—Governor. In case of vacancy on the Supreme Court, such vacancy must be filled by the Governor, and the appointment runs for the unexpired term under the constitutional provisions, rather than until the next general election. (Leo Bresnahan)

12-4-42—Governor. In re: Setting up and operation of recently enacted Senior Citizen's Initiative Grant Act. (Ariel L. Crowley)

Bureau of Aeronautics

6-30-41—A. A. Bennett, Director. Re: Requirements as to registration of aircraft and airplane mechanics. (Leo Bresnahan)

Bureau of the Budget

1-27-41—Director of the Budget. Sec. 7, subdiv. (c), of the Initiative Fish and Game Commission Act, means that the Commission shall be governed by the provisions of the Budget Law, I.C.A., Title 65, Chapter 34, as amended. (J. R. Smead)

6-26-41—Director of the Budget. It is the opinion of this office that Sec. 65-3809, I.C.A., appropriating to the State Historical Society certain sums for expenses and for capital outlay, is not amended by the provisions of Chapters 187 and 195, S. L. of 1941. (J. R. Smead)

8-10-42—Director of the Budget. In re: provisions of Chapter 231, S. L. of 1939. (Leo Bresnahan)

9-28-42—Director of the Budget. The appropriation from the Weights and Measures Inspection Fund, 1941, Chapter 157, Page 315, limits the department of agriculture, in the matter of salaries and wages, to the amount there stated during the present biennium. (J. R. Smead)

10-19-42—Director of the Budget. It is the opinion of this office, relating to preparation of the budget, that only the five classifications contained in Chapter 4, 1941 Session Laws, may be used in making budget estimates, unless the "consent and approval of the director of the budget" is obtained. (Ariel L. Crowley)

Idaho State Guard—Armory Commission

3-22-41—The Adjutant General. Re: Rental of Armory Buildings. It is the opinion of this office that the Armory Commission is fully authorized to lease such buildings as they think necessary, with wide discretion in choice of buildings, terms of lease, and amount of rentals to be paid, limited only by the total amount budgeted for that purpose. (J. R. Smead)

12-10-41—Brigadier General M. G. McConnel. In re: Provisions which may be made for the organization and operation of Idaho State Guard Units such as Home Guards, or men called out in the emergency for special guard duty. (Leo Bresnahan and Robert M. Kerr, Jr.)

HIGHWAY DISTRICTS

1-25-41—Hon. Glee Melcher. Is it legal to spend auto license and tax refund monies for road maintenance in a county or highway district when there exists outstanding, uncalled, bonded indebtedness? (M. Casady Taylor)

1-25-41—H. E. Gundelfinger? A highway district may, after meeting current bond requirements, use whatever balance there may be of the allotment made under provisions of Section 5, Chapter 16, 1939 Session Laws, for general highway purposes. (William A. Brodhead)

2-10-41—A. J. James, Attorney. A highway district should retain a sufficient amount of funds allotted to it under Section 5, Chapter 16, 1939 Session Laws, to meet bond and interest requirements falling due on January 1st of the ensuing year. (William A. Brodhead)

10-4-41—Filer Highway District. Filer Highway District would be liable for injury to workers being transported to and from work in truck leased by Highway District and for public liability and property damage, in W.P.A. project. (William A. Brodhead)

1-14-42—C. W. Van Orsdel. It is the opinion of this office that it is legal to spend gasoline tax money apportioned to highway districts on other than farm-to-market roads. (William A. Brodhead)

4-14-42—Mr. Pierce Trunnell, Highway District Commissioner. It is the opinion of this office (Section 48-107, I.C.A.) that if the Assessor of Owyhee County has knowingly collected license fees from residents of Canyon County he must immediately remit such fees to the Assessor of Canyon County; failing to do so, either he or Owyhee County will be liable for the amount of automobile license fees so collected. (W. A. Brodhead)

8-5-42—Glen C. Bell, Secretary, Hagerman Highway District. In view of the national emergency which exists at this time and the need of our government for funds with which to prosecute the war, it is the opinion of this office that the Board of Highway District Commissioners may lawfully invest their idle funds in U. S. War Bonds. (William A. Brodhead)

INDUSTRIAL ACCIDENT BOARD

6-4-41—Industrial Accident Board. (a) The board may not legally

approve the deposit of county, municipality or corporation bonds of Idaho, or any other State, when such bonds are not at or above par. (b) It is the opinion of this office that bonds which sell for less than their face value should not be approved for depositing at more than their market value. (J. R. Smead)

3-24-42—Industrial Accident Board. Industrial Special Indemnity Fund monies which are shown to be surplus funds may be invested by the Treasurer in United States Defense Bonds. (J. R. Smead)

10-29-42—Industrial Accident Board. Adoption of the amendment of Article 4, Section 18, of the Constitution, as proposed by Senate Joint Resolution No. 6, and to be voted upon at the November, 1942, election, would imperil the established procedure, since the provision of the Federal Statute requiring public assistance grants will be instantly violated. (Ariel L. Crowley)

Unemployment Compensation Division

11-27-42—Assistant Attorney General assigned to Unemployment Compensation Division. Supplementing and upholding Opinion No. 244 of Paul B. Ennis to Executive Director of Unemployment Compensation Division, in re: payment by the State of rent, lights, heat, water, etc., while the U. S. Employment Service is using the building and facilities. (Ariel L. Crowley)

LAND DEPARTMENT

2-6-41—Commissioner State Land Department. It is the opinion of this office, that except insofar as specific lands may have been set aside for special purposes or otherwise reserved from sale, the State Board of Land Commissioners may, in its discretion, sell the Public Lands of the State to any individual, company or corporation without regard to the previous purchases or such individual company or corporation. (Robert M. Kerr, Jr.)

4-8-41—Perce Hall, Attorney at Law. (a) A purchaser under land sale certificate is entitled to credit for improvements only for the value of the improvement over and above any indebtedness due the state for delinquent rentals or installment payments on the land.

5-3-41—State Land Department. There appears to be no reason why land sale certificates may not be reinstated in the name of the Wood Livestock Company, a defunct corporation, upon application of the last Board of Directors as statutory trustees. (Robert M. Kerr, Jr.)

5-9-41—State Land Commissioner. The State Land Board is prevented from making credit sales where five acres is sold. (Sec. 56-317 I.C.A.) (Robert M. Kerr, Jr.)

5-27-41—E. F. Carpentier. Re: Whether or not, under Sec. 61-1123 as amended by the 1941 Session Laws, Chap. 85, P. 158, equities in state lands should be assessed on a percentage of the amount paid on the principal, or whether the amount actually paid on the principal be assessed. (Hugh Redford)

8-8-41—Perce Hall, Attorney at Law. (1) A purchaser under land sale certificate is entitled to credit for improvements only for the

value of the improvement over and above indebtedness due the state for delinquent rentals or installment payments on the land. (2) State Land Commissioner may, in a proper case, consider as an asset water rights acquired by or through efforts or expenditures of the purchaser of the state land. (Robert M. Kerr, Jr.)

9-5-41—State Land Commissioner. The State of Idaho may not reduce the consideration under a land contract where four acres of land has been taken by the Federal Government for a right of way. (56-504, I.C.A., and 26 Stat. 391.) (Robert M. Kerr, Jr.)

11-17-41—State Land Commissioner and Superintendent of Public Instruction. It is the opinion of this office that in the absence of enabling legislation, the State Land Board has no authority to enter into proposed leasing arrangement with the U. S. of America, Dept. of Interior Grazing Service, under the provisions of the Taylor Grazing Act. (Robert M. Kerr, Jr.)

12-23-41—State Land Commissioner. Under provisions of Sec. 44-901, I.C.A., a purchaser's equity in a land sale certificate can be mortgaged as real estate. (Robert M. Kerr, Jr.)

4-29-42—State Land Board. Memorandum and authorities re: question as to the power to exchange lands between the State of Idaho and the U. S. Forest Service. (Robert M. Kerr, Jr.)

LAW ENFORCEMENT

Bureau of Beer Revenue

3-7-41—Commissioner of Law Enforcement. Re: Application for beer licenses by Japanese Nationals. (J. R. Smead)

4-8-41—Commissioner of Law Enforcement. Re: Legality of advertising beer on book matches. (J. R. Smead)

4-11-41—Orville Crisp. The Commissioner of Law Enforcement, not municipal authorities, may revoke a retail beer license under certain conditions; refusal of village authorities to issue a new license when existing license expires cannot be arbitrary. (J. R. Smead)

5-15-41—Commissioner of Law Enforcement. Supplementing opinion of April 15, 1941, re: sale of beer in Idaho by one dealer to another. (J. R. Smead)

8-12-41—Commissioner of Law Enforcement. The Interstate Brewery Company is engaged in the sale of beer in the State of Idaho at wholesale, and is therefore required to procure a wholesaler's license. (J. R. Smead)

8-20-41—Commissioner of Law Enforcement. Re: Provisions of Subdivision (9) of Sec. 6 of our license act. (J. R. Smead)

6-19-42—Commissioner of Law Enforcement. It is the opinion of this office that the Dept. of Law Enforcement is required to procure necessary Malt Stamps and meet the expense of so doing out of the general appropriation made in the 1941 Session Laws, Ch. 195, Page 476. (J. R. Smead)

Bureaus of Mine and Kilowatt Tax

6-13-41—Commissioner of Law Enforcement. Tailings and ore from dumps on any property being mined in the State of Idaho, or purchased from individuals, are subject to the 3% Mine License Tax. (Leo Bresnahan)

Bureau of Motor Fuels

2-8-41—Hon. Charles Howe. It is the opinion of this office that Diesel fuel oil may be separately classed for taxation and a higher rate of tax placed thereon than the rate for gasoline. (Bert H. Miller)

3-8-41—Commissioner of Law Enforcement. It is the opinion of this office that the amendment contained in H. B. No. 46 does not make the bill retroactive. (Bert H. Miller)

3-8-41—Commissioner of Law Enforcement. It is the opinion of this office that an application for a refund containing one or more falsely claimed items and others legitimately due should be allowed by the Dept. of Law Enforcement as to the legitimate items, and payment refused to the others. (Bert H. Miller)

7-17-41—Commissioner of Law Enforcement. Inquiry of Shell Oil Co. as to the legality of the gasoline tax in connection with the sale of gasoline to a Federal Land Bank and other federal credit agencies. (J. R. Smead)

7-31-41—Commissioner of Law Enforcement. The gallonage tax imposed by Chapter 46, laws of 1933, as amended, on dealers engaged in the sale of gasoline is valid and collectable, and a contractor operating under a "cost-plus-a-fixed-fee" type of contract is not entitled to a refund of the tax money. (J. R. Smead)

Bureau of Motor Vehicles

1-21-41—Commissioner of Law Enforcement. Trucks or similar vehicles used by farmers, stockmen, or others similarly employed, are not implements of husbandry as that phrase is used in Section 48-535, I.C.A. (J. R. Smead)

3-5-41—Commissioner of Law Enforcement. An automobile dealer is obliged to observe the law in transfers of title, under the provisions of Sec. 48-135, I.C.A. (J. R. Smead)

3-26-41—Winston Roberts. Classification of motor vehicles used by Star Route mail carriers and license or registration fee to be paid. (J. R. Smead)

4-18-41—Commissioner of Law Enforcement. It is the opinion of this office that revenue derived from the carrying of the U. S. mail or property, when the same is earned in conjunction with the service rendered as an auto transportation company, is subject to the 1% tax. (Leo Bresnahan)

5-1-41—Thomas A. Madden. It is the opinion of this office that highway districts may use funds derived from motor vehicle licenses and from motor fuels tax apportionment for general highway purposes, after bond requirements for any one year have been met. (William A. Brodhead)

5-3-41—Commissioner of Law Enforcement. Re: Certificate of Title for motor vehicle. (J. R. Smead)

5-19-41—Commissioner of Law Enforcement. (1) A person holding a first lien upon a motor vehicle repossesses the vehicle and applies for the certificate of title to himself, provided for by Sec. 48-402-N of Chapter 144, Laws of 1941, there being a second lien against the same car held by another person, should be required to notify such second party and present evidence to show such notification had been given. (2) Release of chattel mortgage on a motor vehicle after the mortgage has been satisfied. (J. R. Smead)

5-20-41—Commissioner of Law Enforcement. Definition of "Commercial Truck," "farm truck" and of the phrase "for hire." (J. R. Smead)

7-14-41—Commissioner of Law Enforcement. A mortgage given upon a dealers' stock of cars to secure repayment should be filed by the holder with the Department of Law Enforcement; under Chapter 144 of S. L. 1941. (Bert H. Miller) See letter to Dept. of Law Enforcement, July 18, 1941.

8-7-41—Commissioner of Law Enforcement. Re: Collection of gross operating revenue tax from auto transportation companies. (J. R. Smead)

8-9-41—Commissioner of Law Enforcement. (1) What earnings are included in "gross operating revenue" as phrase is used in the Auto Transportation Act, Chapter 6, I.C.A. (2) Is a refund of part of such tax possible when same is claimed to have been erroneously paid by U. P. Stages, Inc. (J. R. Smead)

8-28-41—Commissioner of Law Enforcement. When free transportation service is offered by a club to guests only, ordinary registration for personal use is required of the car and its driver. (J. R. Smead)

9-18-41—Commissioner of Law Enforcement. (1) Reciprocity Act extends to a non-resident owner of a motor vehicle the right to operate the vehicle in this state without payment of any registration fee here, provided that the vehicle is properly registered in the place of his residence. (2) Reciprocity is limited solely to registration of foreign cars; such reciprocity is not compulsory, but is left to the discretion of the public utilities commission. (J. R. Smead)

9-20-41—Commissioner of Law Enforcement. Re: Practice to be followed by department when one who has acquired ownership of a motor vehicle at execution sale applies for new certificate of title. (J. R. Smead)

10-21-41—Commissioner of Law Enforcement. A conditional sales contract or its equivalent should be filed in some form with Department of Law Enforcement upon an application for certificate of title. (J. R. Smead)

Bureau of Occupational Licenses

3-11-41—Commissioner of Law Enforcement. Re: Application for an embalmer's license to be issued under the former reciprocity agreement with the State of Minnesota. (Bert H. Miller)

3-21-41—Commissioner of Law Enforcement. No one, under provisions of Chapter 1313, S. L. 1937, is entitled to a license for sale and exclusive purpose of planting, cultivating, growing and harvesting poppies for seed merely; Dept. of Law Enforcement has no authority to license applicants other than wholesalers. (Bert H. Miller)

3-31-41—Bureau of Occupational Licenses. A person other than a citizen of the United States is not eligible to take the Idaho State Medicine Examining Board examination. (Bert H. Miller)

4-16-41—Commissioner of Law Enforcement. It is the opinion of this office that a school of cosmetology may not be operated in the State of Idaho without the approval of the Department of Law Enforcement. (Bert H. Miller)

5-5-41—Commissioner of Law Enforcement. Re: Reciprocity in the licensing of barbers. (J. R. Smead)

6-4-41—Thomas Tabor, Esq. If a place of business is not a "dance hall" in the accepted sense, and a license for operation thereof is not required, the operation of such a place on Sundays would not be unlawful. (Bert H. Miller)

6-14-41—Margaret Wells. A person cannot, under the terms of section 53-1202, I.C.A., do fingerwaving and receive pay for his work without special training and under no special license. (M. Casady Taylor)

8-15-41—Commissioner of Law Enforcement. A public accountant of California, upon a satisfactory showing of his status in California as certified in that state, may advertise and practice in Idaho without first obtaining an Idaho certificate. (J. R. Smead)

8-15-41—Commissioner of Law Enforcement. Re: Idaho Naturopathic Association and the issuing of a certificate to carry on the practice of a naturopath. (J. R. Smead)

8-20-41—Commissioner of Law Enforcement. Re: Provisions of subdivision (9) of Section 6 of our license act. (J. R. Smead)

Miscellaneous

3-17-41—Commissioner of Law Enforcement. It is the opinion of this office that conviction for drunken driving, occurring in a city or village court, does not furnish a proper basis for either a suspension or revocation. (Bert H. Miller)

3-18-41—Commissioner of Law Enforcement. The payment or collection of a note taken in payment of gasoline is a personal matter between vendor and purchaser. If the tax due the state is included in the promissory note, the purchaser is entitled to a refund in the amount of the tax. (Bert H. Miller)

4-18-41—Commissioner of Law Enforcement. It is the opinion of this office that revenue derived from the carrying of the U. S. mail or property, when the same is earned in conjunction with the service rendered as an auto transportation company, is subject to the 1% tax. (Leo Bresnahan)

8-12-41—Commissioner of Law Enforcement. The practice of an

interne is to be limited to services rendered to patients in the hospital where such interne is stationed. (J. R. Smead)

11-15-41—Commissioner of Law Enforcement. (A) Any tractor intended to be operated on any highway must be registered. (b) Provision of Sec. 43-107 require that every trailer or semi-trailer intended to be operated on any highway must be registered. (J. R. Smead)

12-8-41—Commissioner of Law Enforcement. Employment of special deputies for duty as Home Guard, to act under the extraordinary emergency declared by Governor Clark. (Leo Bresnahan)

3-23-42—Commissioner of Law Enforcement. Re: Reports of convictions for violation of traffic laws by automobile drivers, and reports of accident investigations. (J. R. Smead)

6-19-42—Commissioner of Law Enforcement. It is the opinion of this office that the Department of Law Enforcement is required to procure necessary Malt Stamps and meet the expense of so doing out of the general appropriation made in the 1941 Session Laws, Chapter 195, Page 476. (J. R. Smead)

DEPARTMENT OF PUBLIC ASSISTANCE

2-15-41—Grant L. Ambrose, Dept. of Public Assistance. Under the present law, there is no way in which the State may claim reimbursement from a legacy left to a patient in a state hospital. (Frank L. Benson)

4-7-41—Commissioner of Public Assistance. The County Commissioners acting in good faith, may, after having set a county budget, raise the amount to cover increased relief demands, by adding an emergency resolution. (M. Casady Taylor)

5-5-41—Charles A. McLean, Dept. of Public Assistance. Re: Definition of "delivery." (M. Casady Taylor)

6-3-41—Commissioner of Public Assistance. It is the opinion of this office; (a) That the State Department of Public Assistance, under its powers to establish rules and regulations, may require citizenship and five-year residence as a basis for eligibility for old-age assistance; (b) that in the absence of such requirement by the department, a person otherwise eligible need not be a citizen of the U. S. in order to be eligible for old-age assistance. (Hugh Redford)

10-31-41—Commissioner of Public Assistance. Under present laws, there is no power or money by which the Department of Public Assistance may assist any county for the year 1941 after it has exhausted its direct relief moneys. (M. Casady Taylor)

11-13-41—Charles A. McLean, Department of Public Assistance. It is the opinion of this office that Warrant No. 122101, in the amount of \$15.00, payable to Emma Seabrook, deceased, should be delivered to the duly appointed administrator of the estate of said deceased. (Bert H. Miller)

11-14-41—Commissioner of Public Assistance. Re: Administrative

policy with reference to leaves of absence of employees. (M. Casady Taylor)

12-2-41—Commissioner of Public Assistance. Which claims filed by the Department of Public Assistance with the State Auditor, under the provisions of Chapter 180 of the 1941 Session Laws, Sec. 5 (a) and (b), should be passed on by the State Board of Examiners. (M. Casady Taylor)

12-5-41—Commissioner of Public Assistance. Re: Claims of Department of Public Assistance to be passed on by Board of Examiners. (See Chapter 180 of the 1941 Session Laws, Sec. 5 (a) and (b). (M. Casady Taylor)

1-23-42—Dr. Lynn A. Fullerton. Under the provisions of Sec. 38-316, in case of contagious or infectious diseases, and local authorities neglect or refuse to isolate and quarantine such diseased persons, the department of Public Welfare may quarantine any city or county, or part thereof, in which any of these diseases may show a tendency to become epidemic, and the expense of such quarantine shall be charged against and paid by the county or city so quarantined. (Leo Bresnahan)

2-28-42—Charles A. McLean, Department of Public Assistance. (1) Funds in the hands of an administrator of public assistance (Sec. 20, Chap. 181, 1941 S. L.) may be disbursed only (a) for the purposes of administering public assistance and social services, and (b) rendering financial assistance to qualified recipients. (2) The State Department of Public Assistance may set up rules and regulations to direct the administrators of public assistance how funds may be disbursed. (3) Department of Public Assistance could require that current bills for assistance be paid first, and that any balance remaining be used in the payment of funeral expenses or "supplementary assistance." (Hugh Redford)

Division of Charitable Institutions

3-25-41—Director of Charitable Institutions. It is the opinion of this office that the State Hospital South and the State Hospital North must admit inebriates and alcoholics for observation, diagnosis and treatment without court order.—Chapter 151, S. L. 1939. (Robert M. Kerr, Jr.)

5-29-41—Director of Charitable Institutions. Sec. 64-114, I.C.A., set forth duties of Probate Court and Sheriff having jurisdiction of a county where a non-resident or an alien becomes insane in the State of Idaho. (Hugh Redford)

6-11-41—Director of Charitable Institutions. Re: Admission fees and maintenance of voluntary inmate in State Hospital, and waiver thereof. (M. Casady Taylor)

6-16-41—Director of Charitable Institutions. Chapter 79 of the 1941 Session Laws places complete provision for operation and control of the Tuberculosis Hospital in the Department of Public Assistance, Division of Public Health. Director of Charitable Institutions has no jurisdiction in this instance. (M. Casady Taylor)

7-14-41—Director of Charitable Institutions. Any or all persons, whether confined in any state institution or not, who are reported to the State Board of Eugenics as falling within classes herein outlined

would have to undergo vasectomy. Chapter 6, Title 64, I.C.A. (M. Casady Taylor)

9-10-41—Director of Charitable Institutions. A non-resident of Idaho, interned in an Idaho asylum, may not become a citizen because of the period of such commitment. (In Idaho "legal residence" has become identical with "voting residence.") (M. Casady Taylor)

9-12-41—Director of Charitable Institutions. In re: Procedure for the superintendent of a state institution to follow in the release of voluntarily committed inebriates, and in the release of committed dipsomaniacs. (M. Casady Taylor)

9-18-41—Director of Charitable Institutions. (Sec. 2, Chap. 151, S. L. 1939.) A non-resident of the State of Idaho may not avail himself of voluntary commitment to a State institution without paying the institution at the rate of forty dollars a month. (M. Casady Taylor)

7-14-42—Director of Charitable Institutions. Re: Procedure for commitment of the State of Idaho when patient received back into this state from another state's hospital for the insane. (Leo Bresnahan)

8-28-42—Director of Charitable Institutions. The provisions of Section 65-2408, I.C.A., prohibits the payment of a bonus in the amount of his vacation pay to an employee working throughout the year and thereby foregoing his annual leave. (Bert H. Miller)

10-19-42—Director of Charitable Institutions. There being no statute authorizing the giving away of personal belongings to the State, the Division of Charitable Institutions cannot give to the Federal government, in connection with the scrap iron drive, approximately 17 tons of wire fence, but may sell the same in accordance with the provisions of Sec. 65-2202, as amended by Chapter 21 of the 1939 Session Laws. (Charles S. Stout)

Division of Public Health

5-24-41—Director of Public Health. Sec. 5 of Chapter 77 of the Laws of 1939 creates a continuing appropriation, and the funds available in the "Sausage Manufacturers' Account" are subject to expenditures by the Department of Public Health. (Leo Bresnahan)

6-6-41—State Chemist. It is the opinion of this office that the manufacturers of ground meat products cannot escape compliance with the "Sausage Law" (Chap. 77, S. L. 1939), nor avoid payment of \$10.00 license fee, by not adding salt to meat. (Robert M. Kerr, Jr.)

6-7-41—Director of Public Health. (a) Use of a warning form to violators of Food and Drug Laws and sanitation laws is within the plenary power of the Division of Public Health. (b) No law enforcement agency can refuse to act because warning notice had previously been sent and disregarded by the offender. (M. Casady Taylor)

1-23-42—Dr. Lynne A. Fullerton. Under the provisions of Sec. 38-316, in case of contagious or infectious diseases and local authorities neglect or refuse to isolate and quarantine such diseased persons, the department of public welfare may quarantine any city or county, or part thereof, in which any of these diseases may show a tendency to become epidemic, and the expense of such quarantine

shall be charged against and paid by the county or city so quarantined. (Leo Bresnahan)

1-28-42—State Chemist. It is the opinion of this office that it is unlawful in this state to sell, offer for sale or have in possession with intent to sell, sausage, canned or otherwise, which contains lungs. (Robert M. Kerr, Jr.)

2-16-42—Director of Public Health. It is the opinion of this office that the State Tuberculosis Hospital Fund, S. L. 1941, Chapter 179, cannot be used for the payment of insurance on the State Tuberculosis Hospital and that such insurance should be paid from appropriation, provided by the legislature for the division of Public Health. (Leo Bresnahan)

6-12-42—W. T. Leonard, State Chemist. The O. P. Skaggs Store in Pocatello must secure a license to operate as a sausage manufacturing establishment, although a sausage license has been issued to a man as manager and owner of another store. (Robert M. Kerr, Jr.)

Bureau of Vital Statistics

3-24-41—Director of Vital Statistics. Bureau of Vital Statistics may furnish consuls of foreign countries with copies of death certificates of their nationals without payment of statutory fee, at discretion of director. (J. R. Smead)

4-16-41—Director of Vital Statistics. Only minor clerical errors can be corrected in records by Bureau without resort to affidavit method of correction. (M. Casady Taylor)

9-15-41—Director of Vital Statistics. In re: Changes proposed in present form of certificate of delayed birth registration. (M. Casady Taylor)

9-20-41—Director of Vital Statistics. In re: Procedure to be followed in the case of a cremation in Idaho. (M. Casady Taylor)

12-30-41—Director of Vital Statistics. In re: Issuance of certificate of birth and death for the period 1907 to 1911. (Robert M. Kerr, Jr.)

10-19-42—Director of Vital Statistics. The Bureau of Vital Statistics may issue free of charge a certified copy of a death certificate only to those parties specified in Section 630302, I.C.A. (Charles S. Stout)

DEPARTMENT OF PUBLIC INVESTMENTS

1-31-41—Commissioner of Public Investment. Proposed legislation of 26th Session, relating to the payment of school district bonds owned by State of Idaho before maturity and before redemption date designated therein, as worded, would be constitutional. (Frank L. Benson)

2-10-41—Department of Public Investments. The term "all state lands" is all inclusive and all transfers of the Department of Public Investments must be advertised and sold as set out in Section 56-313 I.C.A. (Frank L. Benson)

PUBLIC UTILITIES COMMISSION

3-26-41—Public Utilities Commission. Commission does not have authority to employ and compensate a rate statistician who is also employed as secretary of an organization elsewhere, and whose salary will be paid in part by and service rendered in part to said organization. (Bert H. Miller)

4-3-41—Commissioner, Public Utilities Commission. (1) Funds appropriated to the Public Utilities Commission for salaries and wages, under the provisions of H. B. 348, cannot be expended except for salaries and wages of employees appointed by the P.U.C.

11-17-41—Auditor, Public Utilities Commission. The exemption provided by Sec. 61-105, I.C.A., and Sec. 61-106, I.C.A., applies to the individual customer of a public utility when that customer uses electric energy only for developing water for domestic purposes or home gardens. (M. Casady Taylor)

DEPARTMENT OF PUBLIC WORKS

1-25-41—Hon. Glee Melcher. Is it legal to spend auto license and tax refund monies for road maintenance in a county or highway district when there exists outstanding, uncalled, bonded indebtedness? (M. Casady Taylor)

3-26-41—J. T. R. McCorkle. Any money now in the contractor's license fund should be transferred to the Public Works Contractor's License Fund for disbursement therefrom for administrative and enforcement purposes. (Chap. 188, S. L. 1933) (Bert H. Miller)

7-14-41—Albert A. Stellman. It is the opinion of this office that the highway department has not legal authority, either by itself or in cooperation with some other government agencies, to build a Vista House at the top of Lewiston Spiral Hill. (W. A. Brodhead)

8-13-41—C. A. Sundberg. Re: Construction under way on campus grounds of the State University, Southern Branch, Pocatello. It is the opinion of this office that the Pocatello building ordinances have no validity in this instance, and the public works contractor is not required to comply therewith so far as the performance of his contract with the State is concerned. (J. R. Smead)

8-15-41—Commissioner of Public Works. Re: Proposed W. P. A. project in which state would be obligated to the extent of 52.2% of project and the W. P. A. 47.8%. (Leo Bresnahan)

6-29-42—Commissioner of Public Works. Neither the Department of Public Works nor the State of Idaho should be charged recording fees for filing a right-of-way deed with a county recorder, as the statutes carry both express and implied exemptions as to charges of fees by county officers against the State of Idaho or State officers, acting in their official capacities. (Leo Bresnahan)

8-5-42—Secretary, Hagerman Highway District. In view of the national emergency which exists at this time and the need of our government for funds with which to prosecute the war, it is the opinion of this office that the Board of Highway District Commissioners may lawfully invest their idle funds in U. S. War Bonds. (William A. Brodhead)

PURCHASING AGENT

2-15-41—Purchasing Agent. Contract between City of Nampa and Superintendent of State School and Colony at Nampa, in which the City of Nampa agrees to provide protection against fire to the State School, is void. (Frank L. Benson)

3-12-41—Purchasing Agent. A member of the legislature might contract with the state after competitive bids had been submitted. (M. Casady Taylor)

4-12-41—Purchasing Agent. There is no law in Idaho forbidding the purchase of State and legal printing, or of lithograph or multi-lith processes. (William A. Brodhead)

7-15-41—State Purchasing Agent. It is the opinion of this office: (a) That the State Purchasing Agent must retain the proposed guarantee check given by the successful bidder until the termination and fulfillment of the contract; (b) That the State Purchasing Agent may, in his discretion, require from any successful bidder an additional bond to guarantee the faithful performance of such contract. (M. Casady Taylor)

DEPARTMENT OF RECLAMATION

3-22-41—Commissioner of Reclamation. In re: (1) Has the District Court, in and for Bear Lake County, jurisdiction to adjudicate and determine the water rights diverted in Wyoming at the Cook Dam, as against the rights of prior appropriations in Idaho? (2) Has the State of Idaho, by and through its Dept. of Reclamation, or otherwise, the right to initiate a suit in any court in an attempt to adjudicate and determine such rights? (Bert H. Miller)

4-2-41—Commissioner of Reclamation. There is no reciprocal legislation authorizing the appropriation of water in the State of Idaho for use in the State of Washington; one desiring to appropriate water in the State of Washington for use within the State of Idaho would be subject to the laws in that respect of the State of Washington. (Leo Bresnahan)

4-2-41—Commissioner of Reclamation. Water districts and water masters in Idaho do not come within the provisions of the Nepotism Law. (Sec. 57-701 and 57-702, I.C.A.) (Leo Bresnahan)

4-15-41—Commissioner of Reclamation. It is the opinion of this office that the charges for the distribution of storage water from Snake River, discharged through Big Wood River, should be assessed against the canal company on a pro-rata basis. (Sec. 41-510, I.C.A.) (Leo Bresnahan)

6-13-41—Commissioner of Reclamation. (1) An application to appropriate water for irrigation should be granted unless the application suggests that it may involve water over which the Dept. of Reclamation has no control. (2) The Dept. should investigate any application to a reasonable extent, where the appropriation applied for may be out of its jurisdiction. (Leo Bresnahan)

8-14-41—Commissioner of Reclamation. Re: Water right of Seth A. Ball, as same appear in two certain water decrees. (Leo Bresnahan)

9-18-41—Commissioner of Reclamation. It is the opinion of this office that Chapter 111 of the 1941 Session Laws is unconstitutional. (M. Casady Taylor)

10-31-41—Commissioner of Reclamation. Notice of proof of application of water to a beneficial use for power purposes, and also for irrigation, should be published in the county in which the power plant is situated, or in which a major portion of the lands to be irrigated are located. (Leo Bresnahan)

11-26-41—Commissioner of Reclamation. Information relative to (1) 60-day limit after commissioner's decision, (2) appointment of deputy commissioner to cooperate with elected watermasters; (3) payment for special services; (4) assessments against water districts, and (5) no legal obstacle to water-users paying additional expense of special appointee. (J. R. Smead)

4-24-42—Commissioner of Reclamation. Re: Submission of proof or beneficial use upon permits mentioned and described in decision of the court in the case of Owsley Canal Co. re Ernest Bauerle.

4-25-42—Commissioner of Reclamation. Salary of Carey Act Clerk may be paid from Carey Act Trust Fund for time employed in Carey Act work. Sec. 56-125, I.C.A. (Leo Bresnahan)

SECRETARY OF STATE

2-20-41—Secretary of State. (1) It is the duty of the Secretary of State to prepare the copy for publication of the legislative journals in book form and the work of the respective houses, with reference to their journals and other legislative records, ends with delivery to the Secretary of the daily printed journals. (2) Statutory law gives power to enter into contracts on the part of the State for the printing of the legislative journals and session laws to the legislature. (J. R. Smead)

5-17-41—Secretary of State. Re: Disposition of Robert H. Robinson, inmate of the Idaho State Penitentiary. (Bert H. Miller)

5-23-41—Secretary of State. Whether or not Secretary of State may record instruments under Idaho law by the process of "Micro-filming" is a proper subject for legislative action. (M. Casady Taylor)

6-13-41—Secretary of State. Secretary of State should insist on strict compliance with thirty days notice requirement to stockholders of a corporation of a meeting at which it is proposed to increase the capital stock. (M. Casady Taylor)

6-13-41—Secretary of State. Statement of facts concerning Washington Mutual Savings Bank, incorporated under the laws of Idaho as a non-profit mutual corporation. (M. Casady Taylor)

11-24-41—Secretary of State. The Secretary of State must be served with a copy of process as the statutory attorney for each individual non-resident defendant, and should charge a fee of \$2.00 for each such individual service. (M. Casady Taylor)

12-19-41—Secretary of State. Re: Extent of the discretion vested in the office of the Secretary of State under the Idaho Constitution and statutes with reference to his duties in accepting filings of corporations. (M. Casady Taylor)

12-23-41—Secretary of State. In re: Time for issuance of absentee ballots, under Chapter 146 of the 1941 S. L. (Hugh Redford)

9-30-42—Secretary of State. It is the opinion of this office that new corporations not within the exceptions of Section 9, Chapter 110, 1933 Session Laws, as amended, cannot be created, and that the Secretary of State has no function to perform with respect to such corporations, his previous power to receive articles of incorporation for filing having been abrogated by the transfer of that duty to the Director of Insurance by Section 3, Chapter 110, 1933 Session Laws. (Ariel L. Crowley)

STATE BOARD OF ENGINEERING EXAMINERS

9-28-42—Secretary of Idaho State Board of Engineering Examiners. (1) Under provisions of Section 65-3403, I.C.A., as amended, the State Board of Engineering Examiners is required to file a budget request. (2) A formal order of the State Board of Engineering Examiners is not necessary in order that the Secretary may file a budget request. (Charles S. Stout)

STATE LIQUOR DISPENSARY

2-25-41—Superintendent, State Liquor Dispensary. It is the opinion of this office that any person otherwise qualified may legally be selected as a vendor or special distributor if he or she shall have resided in the municipality or unincorporated village for two years at any time prior to selection. (Robert M. Kerr, Jr.)

6-6-41—Superintendent, State Liquor Dispensary. It is the opinion of this office that insofar as payment of expense of administration and operation of the Dispensary is concerned, Chap. 191 is a limitation upon Sec. 702, and that the Dispensary must keep within the bounds of the appropriation granted by Chap. 191 of the 1941 Session Laws. (Hugh Redford)

3-26-42—Superintendent, State Liquor Dispensary. Consent of State Board of Examiners should be secured for sale, at public or private sale, of empty boxes or other containers which are property of Dispensary; the revenue received should be deposited with State Treasurer to the credit of the Liquor fund. (Robert M. Kerr, Jr.)

STATE PENITENTIARY

7-11-41—Warden. Under the provisions of Chap. 120 of the 1941 Session Laws, hides taken from cattle purchased from various sources by the penitentiary and maintained a very short period until slaughtered, may not be legally sold if handled by convict labor. (M. Casady Taylor)

12-3-41—Warden. Re: Comments on permissible amount per day per capita as related to inmates of the penitentiary, with reference to Sec. 20-111, I.C.A. (J. R. Smead)

2-2-42—Warden. It is the opinion of this office that a returned parolee, having received gate money and clothing order upon a first

release, is not entitled thereto at a subsequent release. (Bert H. Miller)

STATE PLANNING BOARD

8-11-41—Director, State Planning Board. It is the opinion of this office that the funds appropriated for law enforcement emergency may not be used in gathering information in relation to the utilization of the natural and economic resources of the State. (Leo Bresnahan)

TAX COMMISSION

4-15-41—J. F. Nickens. A person who pays Idaho income tax and gasoline tax and represents the Northern Pacific R. R. in a community, is not necessarily a taxpayer within the school district, within the meaning of Sec. 32-322, defining the qualifications of voters in school elections. (Robert M. Kerr, Jr.)

4-26-41—S. A. Mendenhall. Re: Adam Fries: When an applicant for tax exemption, in accordance with statutory provisions, in the absence of a Veterans' Administration service connected disability certificate, holds the "Purple Heart," officials should accept same on full and complete proof of the disability and grant without further proof the tax exemptions provided for. (Bert H. Miller).

5-12-41—Edgar Capps, City Clerk. (1) A mayor, in appointing as city attorney, the uncle of a city councilman, would violate the nepotism law. (See 57-701) (2) The councilmen would violate the nepotism law by confirming the appointment. (3) There is no relationship between such appointment and the voting of tax money by these councilmen to pay a city attorney. (Leo Bresnahan)

6-26-41—D. E. Haddock. Furniture and fixtures of national banks, consisting of personal property, are exempt from state taxation under the provision of the federal statute. (Leo Bresnahan)

7-10-41—J. T. R. McCorkle. It is the opinion of this office that Chap. 115 of S. L. 1941, and especially Sec. 4 of that Art., does not repeal Chap. 221, S. L. 1937, as it relates to license or privilege tax provided by the 1937 Act, and the same is still in effect. (J. R. Smead)

11-1-41—R. D. Leonardson. It is the opinion of this office that property owned by a fraternal or benevolent organization, but which is being leased for school purposes and no revenue is derived by such organization from such property, the same is not subject to taxation. (Leo Bresnahan)

11-26-41—Hon. Ira H. Masters. Under statutory tax exemption of benevolent or charitable organizations, the British War Relief society and the Red Cross are exempt. (J. R. Smead)

1-14-42—C. W. Van Orsdel. It is the opinion of this office that it is legal to spend gasoline tax money apportioned to highway districts on other than farm-to-market roads. (William A. Brodhead)

11-13-42—Veterans' Welfare Commission. It is the opinion of this office that a permanent break of residence within the State of Idaho would deprive a disabled World War Veteran of his tax exemption

under said statute, but that a temporary absence from the State of such veteran while retaining his residence in Idaho would not deprive him of the tax exemption. (Charles S. Stout)

Income Tax Division

3-11-41—T. H. Van Meter. It is the opinion of this office that compensation earned by federal employees within the State of Idaho during 1940 is subject to the State Income Tax Law. (J. R. Smead)

9-22-42—Commissioner of Income Tax Division. The \$7,540.00 salary paid to Raymond Enloe, Secretary-Treasurer of Idaho Portland Cement Company, which, in the opinion of this office, is subject to income tax for reasons therein stated. (Ariel L. Crowley)

10-6-42—Commissioner of Income Tax Division. In re: the following within the meaning of Article 12.27 Income Tax Regulations of May 31, 1941: (1) Are losses attributable to sources described in the Article deductible? (2) Are rentals from a single city or farm property outside the state within the terms "trade, business or profession?" (3) May out-of-state taxes relative to property described above (2) be deducted if the income and losses are excluded from consideration in computing net income under the regulations? (Ariel L. Crowley)

State Insurance Fund

9-12-41—John O'Meara, Director, State Insurance Fund. It is the opinion of this office that reinsurance for the benefit of the State Insurance Fund cannot be legally procured except by the use of money appropriated by the legislature. (M. Casady Taylor)

2-10-42—O. L. Swansen, Preston, Idaho. The matter of whether a number of deputy sheriffs who have been appointed in Franklin County because of the present war emergency, and who receive no pay for their services, are insured under the policy issued by the State Insurance Fund to Franklin County, in the opinion of the office should be placed before the Supreme Court for the determination of the issues. (Frank L. Benson)

3-26-42—Weiser Irrigation District. Under the Idaho Workmen's Compensation Law, municipal irrigation districts are required to carry their compensation insurance with the State Insurance Fund. (J. R. Smead)

VETERANS' WELFARE COMMISSION AND VETERANS

3-7-41—Secretary, Veterans' Welfare Commission. It is the opinion of this office that applicant for assistance from the V. W. C., because of her re-marriage, even though it be dissolved by divorce, cannot later establish the necessary relationship or status of dependency upon a deceased veteran so as to entitle said applicant to assistance under Sec. 63-202, I.C.A. (M. Casady Taylor)

6-4-41—Hugh H. Marshall, Esq. The term "family" as used in paragraph 4, Sec. 61-105, I.C.A., includes the wife in the absence of a judicial termination of the marital status. (Bert H. Miller)

6-10-41—Secretary, Veterans' Welfare Commission. Statutory limitation of authority would not permit the allowance of assistance to

the widow of a world war veteran residing in Idaho, but whose husband, a veteran, never resided in Idaho and died before her entry into Idaho. (M. Casady Taylor)

9-8-41—Secretary, Veterans' Welfare Commission. In re: Claim of Emmett O. Smith in the amount of \$68.48. (M. Casady Taylor)

11-13-42—Veterans' Welfare Commission. It is the opinion of this office that a permanent break of residence within the State of Idaho would deprive a disabled World War Veteran of his tax exemption under said statute, but that a temporary absence from the State of such veteran while retaining his residence in Idaho would not deprive him of the tax exemption. (Charles S. Stout)

MISCELLANEOUS

1-14-41—Clark & Baldwin, Counselors at Law, New York. "Legal Effects of Military Service"—concerning laws enacted for protection of citizens actively engaged in military service.

1-25-41—Hon. James Straight, Mayor. A resident of California coming into Idaho with California license plates on his car does not have to procure Idaho plates for the balance of the year, and the status of the car owner as a military man does not affect the situation. (Frank L. Benson)

1-31-41—Hon. D. I. Foreman, Senate Chambers, Boise, Idaho. Comment on new legislation calculated to permit trapping or hunting predatory or pestiferous animals without hunting or fishing license. Considers Sections 35-301, 35-305, 35-306, 35-307, 35-401, 35-402, I.C.A. (J. R. Smead)

2-4-41—Hon. John Rasmussen. It is the opinion of this office that Article III, Sec. 23, of the Constitution of the State of Idaho, may not be construed in order that legislators may receive their actual necessary expenses in addition to their per diem. (M. Casady Taylor)

2-5-41—Idaho Wool Growers Association. Re: Appropriation of funds to be expended under State Sheep Commission and the Predatory Animal Law for the 1941-42 biennium. (Bert H. Miller)

2-15-41—William Kerr, Director of Vocational Education. Purchases of equipment for vocational education in furthering the training of defense workers need not be made by the State Purchasing Agent where the funds are furnished by Federal appropriations. (Robert M. Kerr, Jr.)

2-26-41—A. M. Bangs, District Supervisor. In re: Idaho laws relative to affidavits and administration of oath; whether or not impression seal is required. (M. Casady Taylor)

3-22-41—J. R. Grayson, General Chairman. The Idaho Act regulating the hours of labor of women apply except as to women employed by railroads engaged in interstate commerce. (J. R. Smead)

3-24-41—Dan V. Cavanagh, Twin Falls. It is the opinion of this office that a Grazing District Board may not issue a warrant payable to the Secretary of the Interior to be expended on Government salaries for range survey work in the district, when the district has no method of ascertaining the exact place the work which the expenditure represents will be performed. (M. Casady Taylor)

5-6-41—Mr. Walter A. Duffy, U. S. Dept. of Agriculture. (1) It is not necessary for an individual farmer to make application to the U. S. Dept. of Agriculture for the appropriation of underground water for farmstead purposes. (2) The enactment of any legislation affecting the use of underground or subterranean waters could not impair the rights of any water used existing before the enactment of any such statute. (3) Cost of permit would be nominal office fees, depending upon waters appropriated. (4) Procedure to be followed when permit is necessary. (Leo Bresnahan)

5-27-41—E. F. Carpentier. Re: Whether or not, under Section 61-1123, as amended by the 1941 Session Laws, Chapter 85, P. 158, equities in state lands should be assessed on a percentage of the amount paid on the principal or whether the amount actually paid on the principal be assessed. (Hugh Redford)

8-11-41—Mr. E. V. Berg, Director, State Planning Board. It is the opinion of this office that the funds appropriated for law enforcement emergency may not be used in gathering information in relation to the utilization of the natural and economic resources of the State. (Leo Bresnahan)

8-16-41—A. G. Sathre. In re: Cemetery maintenance district. Proposed transfer of moneys from the cemetery fund is forbidden by the constitution. (J. R. Smead)

8-16-41—D. L. Jeffers. It is the opinion of this office that Chapter 259 of the 1939 Session Laws is in full force and effect. (M. Casady Taylor)

10-20-41—J. T. R. McCorkle, Registrar. It is the opinion of this office that a corporation, a co-partnership or an individual who contracts with the U. S. or who sub-contracts with such a contractor for construction work on military reservations or projects owned or controlled by the U. S. is exempt from the provisions of Chapter 115, Laws of 1941. (J. R. Smead)

11-6-41—F. A. Miller, Attorney. Re: Coverage of canal companies under the unemployment compensation law. (T. M. Robertson, Jr.)

11-12-41—J. W. Galloway. It is the opinion of this office that it is not necessary for a foreign corporation to file its certified articles of incorporation and amendments thereto in each county in which it owns real estate. (M. Casady Taylor)

11-22-41—Mrs. Clark B. Moon. The Clerk of the District Court (or his deputy) is required to remit fees derived from naturalization proceedings in the district court of the county to the county treasurer, as earnings of his office. (M. Casady Taylor)

11-26-41—Hon. Ira H. Masters. Under statutory tax exemption of benevolent or charitable organizations, the British War Relief Society and the Red Cross are exempt. (J. R. Smead)

12-2-41—Edgar D. Hale. In re: The law of "treasure trove." (Leo Bresnahan)

12-2-41—Harold E. Thomas. There is no restriction on shooting jack rabbits at night and from cars in fields and open country.

12-2-41—C. A. Blanchard. A hunter going through a farm to

hunt ducks and geese without the owner's permission is trespassing. (Robert M. Kerr, Jr.)

1-17-42—Collins Motor Company. It is the opinion of this office that where a demonstrator car has been used to the extent of one thousand miles by a dealer prior to January 1, 1942, it is then in the class of a used car and may be sold by a dealer without violation of the order of the Price Administration office. (Leo Bresnahan)

2-10-42—Mr. C. L. Swansen, Preston, Idaho. The matter of whether a number of deputy sheriffs who have been appointed in Franklin County because of the recent war emergency, and who receive no pay for their services, are insured under the policy issued by the State Insurance Fund to Franklin County, in the opinion of the office should be placed before the Supreme Court for the determination of the issues. (Frank L. Benson)

2-19-42—William H. Butler, Re: Repossession of an automobile as against one who has been drafted or enlisted in the Military service. (Leo Bresnahan)

6-12-42—Hon. Joseph L. Smith, Essex Circuit Court Judge, Newark, New Jersey. A judge of any of our State courts can accept a commission in the armed forces while retaining his judgeship, unless it requires his serving outside the State of Idaho for a period not less than sixty days. (Bert H. Miller)

6-24-42—Mr. W. T. Lockwood, State Director, Office of Government Reports. Notarization of an absentee ballot by an Army, Navy or Marine Corps officer, authorized to administer oaths and having an official seal, would satisfy the requirements of the law. Chapter 7, I.C.A., Section 33-715; Chapter 10, I.C.A., Section 33-1004. (Leo Bresnahan)

7-9-42—Hon. Raymond L. Givens, Chief Justice of the Idaho Supreme Court. It is the opinion of this office that names of candidates for Justices of the Supreme Court and District Judges should be printed on a separate ballot from political party candidates. (Leo Bresnahan)

8-22-42—K. W. Hay, Ada County Democratic Chairman. It is the opinion of this office that a candidate for the State Legislature is disqualified to act or vote as a State Committeeman at the State Convention of the political parties. (Leo Bresnahan)

8-28-42—Malcolm J. Martin, Pocatello. It is the opinion of this office that proxies cannot be used to vote in meetings of county central committees, unless the right to vote by proxy may be extended by the Committee by-laws. Note: Overruling opinion of this office written on January 5, 1937. (William F. Galloway)

DOCKET**SUPREME COURT OF UNITED STATES****(Closed)**

1024—The Board of Trade of Kansas City, Mo., et al, vs. United States of America and Interstate Commerce Commission, Defendants, and Public Utilities Commission of Idaho, et al, Interveners. Re: Grain rates.

1098—State of Georgia vs. Hiram W. Evans, et al. Re: Construction of statute.

INTERNATIONAL JOINT COMMISSION**(Closed)**

300—Application of West Kootenai Power & Light Co., Ltd. Hearing at Nelson, B. C.

—Creston Reclamation Company, Ltd. Hearing at Creston, B. C.

UNITED STATES DISTRICT COURT**(Closed)**

1088—United States of America vs. Eugene McCoy, et al, and State of Idaho. Re: Condemnation of land.

1102—United States of America vs. 400 Acres of Land, et al. Re: Condemnation of land.

1105—United States of America vs. 230 Acres of Land, et al. Re: Condemnation of land.

1128—United States of America vs. A certain parcel of land vs. the Village of Athol, et al. Re: Condemnation of land.

1129—United States of America vs. Flora H. Johnston, et al. Re: Condemnation of land.

1145—United States of America vs. Herman Austen, et al, and State of Idaho. Re: Condemnation of land.

(Pending)

1122—United States of America vs. 68,666.89 Acres of Land, et al. Re: Condemnation of land.

INTERSTATE COMMERCE COMMISSION**(Pending)**

1132—In the Matter of Increases of Intrastate Freight Rates in Idaho.

1134—Application of O.S.L.R.R. Co. for Abandonment of Paris Branch.

1142—Suspension of Rates on Fresh Fruits and Vegetables.

SUPREME COURT OF IDAHO
Original Proceedings (Closed)

1027—Fred M. Taylor vs. State of Idaho. Recommendatory judgment on claim.

1064—State of Idaho, ex rel. F. B. Kenyon vs. Myrtle P. Enking, State Treasurer. Re: Purchase of state bonds with permanent educational funds.

1065—Arthur B. Peck vs. State of Idaho. Re: Legislative pay.

1071—J. C. Justus vs. T. M. DeCoursey, et al. Re: Relief levy.

Civil Appeals (Closed)

I-173—State of Idaho vs. Walter L. Brown, et al. Re: Compensation for death.

939—State of Idaho vs. Ira J. Taylor, et al. Re: Bond suit.

992—State of Idaho vs. Gamble-Skogmo, Inc. Re: Chain Store tax.

997—Pacific Telephone and Telegraph Company vs. Public Utilities Commission of Idaho. Re: Telephone rates.

1006—State of Idaho, on relation Calvin E. Wright, State Auditor, vs. Harry C. Parsons and United Pacific Casualty Insurance Company, a corporation, and the Fidelity & Deposit Company of Maryland, a corporation, and Augusta Smith, Administratrix of the estate of Troy D. Smith, deceased. Re: Collection of overpayment of salary.

1007—State of Idaho, on relation Calvin E. Wright, State Auditor, vs. Charles C. Gossett, Harry C. Parsons, and United Pacific Casualty Insurance Company, a corporation, and the Fidelity and Deposit Company of Maryland, a corporation. Re: Collection of overpayment of salary.

1026—Lee A. Wheeler vs. J. L. Balderston, Commissioner of Law Enforcement. Re: Declaratory judgment on liability of mail carrier for commercial license on motor vehicle.

1092—John P. Walker vs. George Wedgwood. Re: Recovery of income tax paid by federal employee.

Civil Appeals (Pending)

1059—William Roddy, et al. vs. Calvin E. Wright, State Auditor, et al. Re: Title to land.

1104—Union Pacific Railroad Company vs. Public Utilities Commission et al. Re: Abandonment of certain train service to Malad and Preston.

1127—Consolidated Freightways, Inc. et al. vs. Public Utilities Commission of Idaho, et al. Re: Application for carrier permit.

Criminal Appeals (Closed)

949—State of Idaho vs. Duncan McD. Johnson. Re: Murder.

1000—State of Idaho vs. Ora W. Sprouse. Re: Murder.

- 1017—State of Idaho vs. Wilford H. Wilson. Re: First degree burglary.
- 1019—State of Idaho vs. J. W. Jones. Re: Statutory rape.
- 1053—State of Idaho vs. J. H. Phillips and Don Rogers. Re: Extortion.
- 1054—State of Idaho vs. Kenneth Duncan. Re: Failure to support.
- 1061—State of Idaho vs. Charles Nadlman. Re: Assault with a deadly weapon.
- 1066—State of Idaho vs. Walter Barr. Re: Obtaining money under false pretenses.
- 1067—State of Idaho vs. Albert Bates and Wilbur Bates. Re: Grand Larceny.
- 1068—State of Idaho vs. James E. McNichols. Re: Gambling.
- 1069—State of Idaho vs. Sam Dalls. Re: Embezzlement.
- 1073—State of Idaho vs. Murl Calkins. Re: Manslaughter.
- 1074—State of Idaho vs. Percy Beckstead. Re: Obtaining money under false pretenses.
- 1081—State of Idaho vs. Felix Hirsch. Re: Rape.
- 1082—State of Idaho vs. E. E. Lindley. Re: Grand larceny.
- 1103—State of Idaho vs. John Bohrn. Re: Robbery.
- 1107—In the matter of the application of Albert Bates for a Writ of Habeas Corpus.

Criminal Appeals (Pending)

- 1106—State of Idaho vs. Frank Prince and Anthony Baudoin. Re: Persistent Violators Statute.
- 1125—State of Idaho vs. Richard Haynes. Re: Burglary.

DISTRICT COURTS

Civil Cases (Closed)

- 947—State of Idaho vs. Milo Axelsen. Re: Income tax.
- 958—State of Idaho vs. F. H. Hogue. Re: Fruit & Vegetable Tax.
- 985—State of Idaho vs. The Amalgamated Sugar Company, a corporation. Re: Income Tax Collection.
- 986—David Somerville vs. State of Idaho, et al. Re: Title to land.
- 989—State of Idaho vs. Idaho Sales Co. Re: Fruit and Vegetable Tax.
- 995—Ray J. Lyman vs. Conrad G. Monroe, et al. Re: Recovery of filing deposit.
- 1014—State of Idaho vs. Marvin Maddock, et al. Re: Workmen's Compensation.

- 1016—Vestal P. Coffin vs. J. W. Taylor. Re: Declaratory Judgment.
- 1018—State of Idaho vs. C. A. Dye, doing business under the firm name and style of Tendoy Copper Queen Syndicate. Re: Failure to carry Workmen's Compensation Insurance.
- 1021—State of Idaho vs. Arthur Polson and E. A. Cox. Re: Fruit and Vegetable Tax.
- 1022—State of Idaho vs. Vance P. Brown. Re: Fruit and Vegetable Tax.
- 1025—State of Idaho vs. Warren Lane and Oscar Aldine, et al. Re: Foreclosure of lien.
- 1029—State of Idaho vs. N. M. Knudson, et al. Re: Transfer of water.
- 1030—Edward E. McLaren and Samuel J. McLaren, Jr. vs. State of Idaho. Re: Inheritance Tax.
- 1031—State of Idaho vs. Dora M. Conn, administratrix of the estate of Elmer U. Philbrick, deceased. Re: Public Assistance Claim.
- 1033—Coeur d'Alene Country Club vs. Geo. Wedgwood. Re: Income Tax.
- 1036—State of Idaho vs. H. R. Campbell. Re: Fruit and Vegetable Tax.
- 1045—State of Idaho vs. Paul Spradlin. Re: Advertising Tax.
- 1046—State of Idaho vs. Wendel Hahn. Re: Fruit and Vegetable Tax.
- 1051—Bertha Meyers, et al. vs. R. J. Reynolds Tobacco Co. et al. Re: Recovery of damages.
- 1052—Federal Farm Mortgage Corporation vs. John Parke, et al. (State of Idaho). Re: Title to land.
- 1060—Alfred J. Bush and Ellis Keele vs. Chase A. Clark, Governor, et al. Re: Appraisement of lessee's improvements on state land.
- 1062—Clarence O. Mercer vs. Loren E. Messenger, et al. Re: Title to land.
- 1077—M. P. Mitchell vs. Fred Kupers, et al. Re: Land rental.
- 1078—State of Idaho vs. Pierce Hardman, et al. Re: Foreclosure.
- 1084—Federal Farm Mortgage Corporation vs. Lynn Crandall, et al. Re: Title to water.
- 1092—John P. Walker vs. George Wedgwood. Re: Recovery of Income Tax paid by federal employee.
- 1093—State of Idaho vs. B. F. Hurst. Re: Fruit and Vegetable Tax.
- 1097—State of Idaho, ex rel. B. Child or Calvin E. Wright, State Auditor. Re: Payment of salary claim.

1111—State of Idaho vs. Frank Martin and Ella L. Martin. Re: Foreclosure Loan No. 2761.

1112—State of Idaho vs. Frank Martin and Ella L. Martin. Re: Foreclosure Loan No. 3115.

1118—State of Idaho vs. Walter V. Day, et al. Re: Foreclosure Loan No. 5795.

1120—Mary Thuett vs. Grace Beus, et al. Re: Title to water.

1126—State of Idaho vs. Painter Bros. Re: Foreclosure Loan No. 5012.

1133—Leona Dreps vs. Board of Regents of the University of Idaho. Re: Salary claim.

Civil Cases (Pending)

955—State of Idaho vs. Marion Christensen. Re: Fruit and Vegetable Tax.

961—State of Idaho vs. W. W. Newcomb and W. T. Newcomb. Re: Fruit and Vegetable Tax.

993—State of Idaho vs. Robert R. Ricks, et al. Re: Collection of land rental.

1005—Utah-Idaho Sugar Company, a corporation vs. County of Jefferson, State of Idaho.

1037—State of Idaho vs. M. C. Hinshaw. Re: Fruit and Vegetable Tax.

1038—State of Idaho vs. A. F. Talcott. Re: Fruit and Vegetable Tax.

1039—State of Idaho vs. J. F. Carnefix. Re: Fruit and Vegetable Tax.

1040—State of Idaho vs. O. W. Bunten. Re: Fruit and Vegetable Tax.

1041—State of Idaho vs. C. H. Stewart. Re: Fruit and Vegetable Tax.

1042—State of Idaho vs. McBirney Fruit Co. Re: Fruit and Vegetable Tax.

1047—State of Idaho vs. Alvin Jones. Re: Fruit and Vegetable Tax.

1072—C. S. Gambel, et al. vs. E. V. Berg, Commissioner. Re: Water right.

1075—State of Idaho vs. Waldemar Weddle, et al. Re: Foreclosure. Loan No. 5338.

1079—State of Idaho vs. Ernest U. Talen, et al. Re: Foreclosure.

1080—State of Idaho vs. Serge C. Ballif, et al. Re: Foreclosure. Loan No. 4936.

1083—State of Idaho vs. Everett Heseman. Re: Foreclosure, Loan No. 4646.

1089—State of Idaho vs. Henry Iverson, et al. Re: Lien of taxes.

1090—State of Idaho vs. Drainage District No. 4. Re: Lien of taxes.

1094—State of Idaho vs. J. H. Seaver. Re: Advertising Tax.

1095—State of Idaho vs. William E. Hall and W. Howard Hall. Re: Advertising Tax.

1096—Ben Lyon and Ida Lyon vs. Bannock County, et al. Re: Title to land.

1099—State of Idaho vs. Elizabeth Field Likins, et al. Re: Foreclosure Loans No. 3353 and No. 5390.

1101—State of Idaho vs. Roy Hawley, et al. Re: Foreclosure Loan No. 5369.

1109—State of Idaho vs. William C. Davis, et al. Re: Foreclosure of mortgage.

1110—State of Idaho vs. John W. Condie, et al. Re: Foreclosure, Loan No. 4686.

1113—State of Idaho vs. Mary Morgan, et al. Re: Foreclosure No. 1867.

1114—State of Idaho vs. Clara Hunter, et al. Re: Foreclosure of mortgage No. 3897.

1115—State of Idaho vs. D. L. Carter and Ella Wilson Carter. Re: Foreclosure of mortgage No. 3816.

1123—State of Idaho vs. U. P. R. R. Co. and O. S. L. R. R. Co. Re: Collection of damages.

1137—Howard Haines vs. U. P. Konen and State Insurance Fund. Re: Payment of Compensation.

PUBLIC UTILITIES COMMISSION OF IDAHO
(Pending)

1104—In the Matter of the Application of U. P. R. R. Co to abandon certain train service to Preston and Malad. (Appealed to Supreme Court.)

1108—In the Matter of the Application of U. P. R. R. Co. to Discontinue Trains 557-558 between Weiser and New Meadows.

(Closed)

997—In the Matter of the Application of Pacific Telephone and Telegraph Co. to Increase Rates.

DISTRICT COURT
Criminal Cases (Closed)

1063—State of Idaho vs. Joe Sanders, et al. Re: Murder.

- 1070—State of Idaho vs. James Jefferson Robertson. Re: Murder.
- 1081—In the Matter of the Application of Felix Hirsch for a Writ of Habeas Corpus.
- 1086—State of Idaho vs. Grace Coppard. Re: Murder.
- 1091—State of Idaho vs. Charles Cox. Re: Murder.
- 1107—In the Matter of the Application of Albert Bates for a Writ of Habeas Corpus.

PROBATE COURTS

(Closed)

- 705—In the Matter of C. S. Flint, Mental Incompetent, Everett E. Hunt, Guardian. Re: Proceeding to recover for maintenance.
- 893—State of Idaho, on the relation of J. L. Balderston, Commissioner of Law Enforcement vs. Henry H. Estill. Re: Collection of overpayment of refund gas tax.
- 930—In the Matter of the Estate of Henry Meyer, deceased. Closed by Attorney General J. W. Taylor after his report.
- 1057—In the Matter of the Estate of William Schachner. Re: Devise to State of Idaho.

(Pending)

- 1028—In the Matter of the Estate of Clara B. Austin, an incompetent. Re: Collection of claim.
- 1043—In the Matter of the Estate of E. F. Palmer, deceased. Re: Liquor Funds.

JUSTICE COURTS

(Pending)

- 1131—Inland Motor Company vs. The Associated Students of the University of Idaho, et al. Re: Collection of claim.

BEFORE THE INDUSTRIAL ACCIDENT BOARD

(Pending)

- I-176—Adolph L. Sletten, et al. vs. Diamond Match Company, et al. Re: Death of Earl Kenneth Slatten.
- I-175—State of Idaho, et al. vs. Diamond Match Co. et al. Re: Death of Richard H. Sachs.

(Closed)

- I-173—State of Idaho vs. Walter L. Brown, et al. Re: Axel Tesdor Vedlund, deceased.
- I-174—State of Idaho vs. Horace Fereday. Re: William H. Mickesell, Jr., deceased.

Unemployment Compensation Division

List of Cases Pending and Closed, 1941-1942:

Probate Court Pending Cases

State of Idaho vs.:

Warren H. Adams	N. W. Gray, H. W.	W. Lyle Murphy
L. W. Arave	Gray and Roy Lillia	George Myott
E. C. Atkins	Vernon J. Hafer	Wesley L. Orr
James N. Auxier	A. L. Hakanson	Howarth Ostler
Janis G. C. Baker	Robert Hanness	W. E. Patterson
Katherine B. Baker	A. L. Heine Mines, Inc.	James Paullus
Lorene C. Bales	William Seward Heizer	John Peterson
E. M. Bennett and	T. A. Helms	Roy Potter
Ramon H. Bennett	Bert Henry	Frank N. Powers
John Bigley	Grant C. Hicks	Frank T. Prendergast
Lowell F. Brannon	Clifford Higby	Ralph Prescott
Robert Bremner	Stanley Huff and	J. H. Price
Browning Motor Co.,	John R. Black	P. M. Ramsing
Inc.	William H. Huff	Rapid Express, Inc.
Kenneth L. Campbell	The Idaho Commoner	(Statutory Trustees for)
A. B. Christensen	Fred C. Janzen	Dewey Raymond
W. B. Christenson	C. E. Jepson	John Rees
Consolidated Gold	Alma Johnson	Owen W. Ricks
Mines, Inc.	Ada A. Jones	A. L. Rinearson
John Q. Cook	P. E. Johnson	Reynold L. Robertson
Robert B. Cox	W. R. Keating	Mrs. G. F. Russell
Dale O. Crawford	F. E. Kempf	Arthur T. Sahlberg
Clare Crockett	B. W. Kennedy	William R. Sears
J. W. Crow	Kimberly Gold	Frank Senter
Crown Consolidated	Mines, Inc.	John A. Sheldrew
Mines, Inc.	Richard Kleesattel and	Louis W. Shipley
William E. Curtis	Stephan Spengler	Owen Simpson
R. R. Dade	Leon R. Kloht	Clark Sizemore
Arnold Daniels	W. M. Knauff	Harry J. Slane
Howard Douglas	L. G. Knight	J. H. Spencer
James Douglas	Florence Krall and	Gordon Squires
James Dunn and	Lou V. Krall	Jack T. Stanger
Robert Dunn	Hans Lauesen	L. C. Stenstrom
Vernon C. Eller	R. W. Leonard	William R. Sterzick
Rose Gardner Ellsworth	Charles S. Lord	C. A. Sundberg
Cliff E. Emerick	Fred P. Ludwig	D. A. Thomas
Glen Joseph Enders	Leslie J. McCain	Monte Thornton
L. E. Eytchison	Gerald F. McGovern	Lee Thorson
Falk Mercantile Co.	Madison Lumber &	Mike Thurlow
H. A. Farris, Zella	Mill Co.	W. R. Tilson
Cannon and Roberta	Brigham Madsen	E. W. Tuttle
Clark	Otis C. Maloy	Hadyn H. Walker
H. B. Farwell	Walter P. March	Harvey S. Walters
Fitsum Mining Co.	George Martin	Homer J. Weaver
Fry Brothers, Inc.	W. L. Martz	William H. Weber
Gilmore Mines, Inc.	Paul P. Masar	Western Gold Explor-
L. W. Girard	Ray Messinger	ation Co., Inc.
Philip Glover	Lorene Sweaney	J. Milton Whitworth
Gold Producers, Inc.	Molyneux	Helen M. Zucker
Lloyd Goodrich	A. H. Northland and	A. E. Ashley
	E. W. Newton	

F. A. Bailey	F. A. Dickson	Elmer May
Archie L. Bale	Robert Dinwiddie	Stanley J. Park
Walter Barr	Harry W. Fong	R. Lynn Parsons
George W. Bateham	R. H. Gardner and	Clarence E. Phillips
Blue Goose Group	S. B. Gardner	W. F. Rankin
Mining Co.	Arthur Croan Hahn	Mrs. Charles Richard
E. L. Bost, Jr.	Tom Harris	Clarence Ross
E. B. Buckwalter	William Hoffman	Harry B. Stanton
M. A. Burson	H. G. Houston	Stoner Packing Co.
A. B. Carscallen	A. H. Johnson	Donald A. Storey
M. H. Christie	Ben Johnson	D. V. Thompson
Delbert L. Davis	G. L. Sallee and	
Joseph W. Davis	C. O. Standish	

Probate Court Closed Cases

State of Idaho vs.:

D. C. Adams	Vaughn Hammer and	Mrs. M. G. Price
Gust K. Anderson	Mayme Hammer	Ada E. Quinton
Appling's Dinette—	E. M. Hanford	Archie Reed
R. E. Appling	Hazel Hardman	John Reirmuth
Roy Arthurs	A. R. Harris	P. J. Riley
Baldrige Implement	V. L. Hartvigsen	Mose A. Rivett
Company	Paul Heisteman	William Grandwill
W. S. Bennett	George Hesser and	Robison
M. E. Bruffey	Owen Simpson	O. G. Roche
Charles Busco	Dell Hill	R. B. Rogers
Clarence LeRoy	Allen E. Hosack	Verne Rowell
Caldwell	L. G. Jensen	Rosedale Memorial
T. J. Calligan	E. W. Johnson	Park
Jack Carson	J. D. Keifer	Carl Schmitt
Harry M. Carver	Howard G. Kelly	John N. Shearer
Cecil Morris Chaney	Albert W. Kinder	George Shurtliff
L. F. Cloninger	Kunter Company	L. G. Sidle
E. W. Connerley	E. R. Libey and	William A. Sigglin
Alma S. Cook	Herschel Libey	Mitchell Smith
M. S. Cook	Wesley M. Light	James E. Solomon
E. L. Davis	Harlan D. McChesney	Dave Stokesberry
Joe T. Elliott	W. C. McKee	Joe Taylor
Louis J. Ellsworth	F. D. McKenzie	Harold Thomas
George R. Emery	J. L. Mercer	Fred Thursie
Roy Fields and	James Daniel Murnan	Ralph E. Turner
Helen Fields	D. K. Nielson	E. T. Waters
Katherine Finch	Free A. Nielson	Alfred Wedil
Al Gaines	Julius Oberg	Clarence Wilson
Thomas W. Gentry	Horace N. Parker	Elbert Worrell
W. T. Grayson	Joe C. Pharris	Fred Zielke

DISTRICT COURT

<p>The American Home Benefit Association, Inc. Beneficial Protective Association, Inc. Gem State Mutual Life Association, Inc. Idaho Mutual Benefit Association, Inc.</p>	}	<p>W. L. Robison, G. W. Suppiger and Frank Langley, con- stituting and being the Industrial Ac- cident Board of the State of Idaho (Pending)</p>
vs.		

Perry C. Rudd, A. C. Conrad, Norman A. Rudd, Ernest A. Engstrom, George Wheat, Jack N. Taylor, Blaz Javornik, H. L. Knedler and Zella Knedler, Plaintiffs, vs. Idaho Newsome Mining & Milling Co., Inc., Defendant, and State of Idaho, Intervenor. (Closed)

SUPREME COURT

State of Idaho vs. Walter Barr. (Closed)

Frances H. Talley vs. Industrial Accident Board. (Closed)

Walter Richard Smythe vs. W. G. Phoenix (Appearance) (Closed)

Big Wood Canal Company, a corporation, vs. Unemployment Compensation Division of the Industrial Accident Board. (Closed)

Idaho Times Publishing Company and Twin Falls News Publishing Co. vs. Industrial Accident Board of State of Idaho. (Closed)

Carstens Packing Company, a corporation, vs. Industrial Accident Board of State of Idaho. (Closed)

P. G. Batt vs. Unemployment Compensation Division of the Industrial Accident Board of State of Idaho. (Closed)

W. S. Meader vs. Unemployment Compensation Division of the Industrial Accident Board of the State of Idaho. (Pending)

DEPARTMENT OF PUBLIC WORKS**District Court (Closed)**

J. H. Collins vs. T. Matt Hally, et al. Re: Petition for writ of mandate.

State of Idaho, ex rel. A. C. Merritt, Commissioner of Public Works vs. Walter G. Merryweather, et ex. Re: Condemnation.

State of Idaho, ex rel. A. C. Merritt, Commissioner of Public Works, vs. Emma Virginia Smith. Re: Condemnation.

State of Idaho, ex rel. A. C. Merritt, Commissioner of Public Works, vs. Anna Hiler. Re: Condemnation.

State of Idaho, ex rel. A. C. Merritt, Commissioner of Public Works, vs. John McGinnies. Re: Condemnation.

State of Idaho, ex rel. A. C. Merritt, Commissioner of Public Works, vs. Flay J. Lawrence, et ex. Re: Condemnation.

State of Idaho, ex rel. A. C. Merritt, Commissioner of Public Works, vs. M. E. Jennison et al. Re: Condemnation.

District Court (Pending)

State of Idaho, ex rel. A. C. Merritt, Commissioner of Public Works, vs. Laura E. Prafke, et al. Re: Condemnation.

Shoshone County vs. Mike Alesko, et ux. Re: Condemnation.

State of Idaho, ex rel. A. C. Merritt, Commissioner of Public Works, vs. W. A. McCutcheon, et al. Re: Quiet Title.

STATE INSURANCE FUND

At the beginning of the 1941-1942 biennium the State Insurance Fund was operating under the Compensation Insurance Commission which the 1939 Legislature had created by enacting Chap. 251 of the 1939 S. L. This law provided also that the Commission "may employ such assistants, medical advisors, legal assistants, experts, statisticians, actuaries, accountants, inspectors, clerks and other employees as the Commission may deem necessary."

From 1921 until Chap. 251 of the 1939 S. L. became effective the business of the "Fund" was administered by the Department of Finance and Sec. 43-1706 was in effect, such section providing:

"43-1706.—Employment of Assistants.—The department of finance may employ such assistants, experts, statisticians, actuaries, accountants, inspectors, clerks and other employees as the department may deem necessary to carry out the provisions of this act to perform the duties imposed upon it by this act."

It will be noted that no mention is made in this section of the Finance Department's right to engage legal counsel for the "Fund." However, a new Commissioner of Finance was appointed on January 2, 1939, by the incoming administrator and he, nevertheless on the same day appointed an attorney for the "Fund."

The act creating the Insurance Commission did not take effect until May 3, 1939, but the Commission upon taking over the administration confirmed all appointments that had been previously made.

The right of either the Commissioner of Finance or the Compensation Insurance Commission to appoint legal counsel was questioned by the Attorney General as being unconstitutional. Such opinion is based largely on the decision of the Supreme Court, in the case of Wright vs. Callahan, 61 Ida. 167, wherein it was held:

"The legislature cannot take from a constitutional officer a portion of the characteristic duties belonging to that office and devolve them upon an officer of its own creation."

When the Attorney General took office on January 6, 1941, it was imminent that the Compensation Insurance Commission would be abolished, and he deemed it advisable not to interfere with the legal administration while the Commission continued in existence. Then, too, the "Fund" had considerable litigation pending before both the Industrial Accident Board and the Supreme Court (there

were twenty-one petitions before the Board and fourteen appeals in the Supreme Court), and he thought it advisable to have the attorney who had been appointed by the Commissioner of Finance and confirmed by the Insurance Commission to follow these cases through to completion.

The Legislature during the 1941 Session enacted Chap. 20 of the 1941 S. L. abolishing the Compensation Insurance Commission and vested administration of the Fund in the State Insurance Manager as had been provided by the State Insurance Act as originally enacted in 1917. By this law Sec. 81 of the 1917 S. L., which was later amended and designated as Sec. 43-1706, was re-enacted as Sec. 43-1706. This section as it became effective provided that the State Insurance Manager may employ such individuals as the Department of Finance had been authorized to appoint prior to the repeal of said Sec. 43-1706, thus deleting from the enumerated group which the Commission had by statute been authorized to employ to conduct the "Fund's" business the term "legal assistants."

This action on the part of the Legislature removed from the act the unconstitutional feature.

From the beginning of the biennium to date (December 15, 1942) there have been 135 petitions filed with the Board. This figure added to the 21 cases which were pending makes a total of 156. Fifty-one of the 135 petitions were upon claims filed prior to the beginning of the biennium.

Following is a tabulation of the disposition made of compensation cases:

- 1—There are now pending before the Board 13 cases.
- 2—The claimant withdrew his petition in 7 cases.
- 3—The claimant failed to appear at the hearing and the petition was dismissed in 10 cases.
- 4—Liability on behalf of the "Fund" was admitted before the hearing in 42 cases.
- 5—Liability on behalf of the "Fund" was admitted at or following the hearing in 19 cases.
- 6—No question was involved as to liability but the amount of disability was questionable and so left to the Board for determination in 8 cases.
- 7—Following a hearing the Board made an award in favor of the claimant in 21 cases.
- 8—Following a hearing the Board made an order disallowing compensation in 27 cases.
- 9—A controversy arose as to the amount of compensation due, and though there was an award in favor of the claimant the amount was substantially less than that claimed and the decision was, in effect, in favor of the Fund in 6 cases.
- 10—The claimant did not appear at the hearing and the Board made a decision in favor of the "Fund" on the basis of the information contained in the claim signed by the claimant in 1 case.
- 11—A question of law arose on a claim and both the claimant and the attorney thought it advisable to have a determination of the question by the Supreme Court; the facts were stipulated and the matter left to the Board to make a decision from which to appeal in 1 case.

In three different instances the "Fund" has joined with a claimant in an action in the District Court against a third party for negligence. In two of these a compromise settlement was reached and the third case is still pending. Six other cases where a probable cause of action against a third party exists, or existed, have been investigated. In one the claimant herself commenced action without joining the "Fund" and the verdict was in favor of the party who was alleged to have been negligent. In each of two others the claimant appeared to have been contributively negligent. In two others after investigation it was thought inadvisable to proceed because the third party had no property with which to satisfy a judgment.

During the biennium between 400 and 500 accounts for delinquent premiums which had accumulated since 1934 were turned over to the attorney for collection. Most of these accounts were small and the majority of the larger accounts were uncollectable, the debtor having become insolvent. Apparently the previous managers had concluded the amount involved did not justify the effort to collect and a practice had grown up in the accounting department of charging accounts off the books if they were not collected within a year or so, in many instances with little or no effort having been made to ascertain why such accounts could not be collected. Ten actions have been filed in the Probate Court and two in the District Court, these being on the more recent accounts.

This is but a fraction of the suits that should be filed but before commencing suit the attorney was of the opinion that a personal effort to collect the indebtedness should be made by the field men and if collection could not be so made, that an investigation of the debtor's financial status should be made. During the past two months the Manager has engaged an individual to do this work with excellent results. Thirty-one accounts, varying from \$1.11 to \$198.94 and averaging about \$37.00 each have been collected in full and one partial payment has been obtained with arrangements to pay the balance in installments and the necessary information preparatory to filing suit has been obtained in many others.

In view of the large number of cases arising on claims it may be well in tabulating the figures on the cases which were referred to the attorney to also include the number of claims for compensation which were filed and also the number of details of claims. This cannot be done in terms of percentages because there will be a number of denials during the next biennium, or even thereafter, of claims which have been filed during this biennium, and likewise a number of petitions will be filed on claims which have been denied during this biennium. Also part of the denials were on claims filed during the preceding biennium or even before and likewise some petitions have been filed on claims that were denied previously. Then, too, there are instances where a claimant consults an attorney and he files a petition before the claim has been denied. Consequently, we will merely set down the figures of each for comparison:

1—Number of claims filed between January 6, 1941 and December 15, 1942.....	12,210
2—Number of claims denied between January 6, 1941, and December 15, 1942.....	250
3—Number of petitions filed by claimant between Jan- uary 6, 1941 and December 15, 1942.....	132

4—Number of cases pending before the Board on January 6, 1941	21
5—Number of cases pending before the Board on December 15, 1942	12
6—Number of cases pending before the Supreme Court on January 6, 1941	14
7—Number of cases appealed to the Supreme Court between January 6, 1941 and December 15, 1942	21
8—Number of cases pending before the Supreme Court on December 15, 1942	7
9—Number of petitions filed by the "Fund"	2
10—Number of cross-petitions filed by "Fund"	2
11—Number of ex parte proceedings resisted	2
12—Number of cases filed in District Court against a third party alleged to have been negligent	3
13—Number of cases filed in District Court to recover delinquent premiums	2
14—Number of cases filed in Probate Court to recover delinquent premiums	8

Before The Industrial Accident Board (Pending)

Claim No.

52180—Howard Haines, Claimant, vs. J. F. Koneh, Employer, and State Insurance Fund, Surety, Defendants.

73693—E. N. Rotering, Employee, Claimant, vs. Idaho Canning Co., Employer, and State Insurance Fund, Surety, Defendants.

75907—Glenn Reed, Employee, Claimant, vs. Co.op. Oil Association, Employer, and State Insurance Fund, Surety, Defendants.

76470—Amos Snyder, Employee, Claimant, vs. L. Cardiff, Employer, and State Insurance Fund, Surety, Defendants.

95389—George E. LaValley, Dec., Claimant, vs. N. D. Wernette, Employer, and State Insurance Fund, Surety, Defendants.

101062—Oscar Jinks, Dec., Claimant, vs. Dan J. Cavanagh, Employer, and State Insurance Fund, Surety, Defendants.

101065—Glenn Williford, Employee, Claimant, vs. Bureau of Highways, State of Idaho, Employer, and State Insurance Fund, Surety, Defendants.

101316—John H. Harper, Employee, Claimant, vs. Summer's Funeral Home, Employer, and State Insurance Fund, Surety, Defendants.

104552—Urban C. Huff, Dec., Mrs. Ruth C. Huff, Claimant, vs. Polaris Mining Co., Employer, and State Insurance Fund, Surety, Defendants.

106216—Henry Litz, Employee, Claimant, vs. D. B. Jeffries, Employer, and State Insurance Fund, Surety, Defendants.

106416—Joseph Cornell, Employee, Claimant, vs. Farmer's Co-op. Creamery, Employer, and State Insurance Fund, Surety, Defendants.

106617—Ethel M. Howard, Employee, Claimant, vs. McCall's, Employer, and State Insurance Fund, Surety, Defendants.

107555—Emma Koehler, Special Administratrix of the Estate of Arthur Koehler, Deceased, Plaintiff, vs. Jesse M. Chase, doing business as Pocatello Auto Company, Employer, and State Insurance Fund, Surety, Defendants.

Appealed, Pending In The Supreme Court

Claim No.

33854—A. N. Lay, Appellant, vs. Idaho State School and Colony, Employer, and State Insurance Fund, Surety, Respondents.

44669—James Zapantis, Appellant, vs. Central Idaho Mining and Milling Company, a corporation, Employer, and State Insurance Fund, Surety, Respondents.

97558—In the Matter of the Death of Lloyd F. Linder, Pat Mahoney as Administrator of the Estate of Lloyd F. Linder, Deceased, Claimant, vs. City of Payette, Payette County, Employer, and State Insurance Fund, Surety, Defendants.

In the Matter of the Death of Lloyd F. Linder, Edith M. Linder, Surviving widow, on her own behalf and on behalf of all other dependents of Lloyd F. Linder, Deceased, Claimant, vs. City of Payette County, Idaho, Employer, and State Insurance Fund, Surety, Defendants.

99418—In the Matter of the Death of Joseph R. Madariaga, Linda B. Madariaga, surviving widow of Joseph R. Madariaga, Deceased, on her own behalf and on behalf of Verna Lee Hewitt Madariaga, and Mary Jo Madariaga minor children, all dependents of Joseph R. Madariaga, Deceased, Appellant, vs. DeLamar Milling Corporation, Employer, and State Insurance Fund, Surety, Respondents.

100584—George Cole, Appellant, vs. Fruitland Canning Association, Inc., Employer, and State Insurance Fund, Surety, Respondents.

103567—S. Ray Moon, Claimant, vs. Tim Ervin, Employer, and Home Lumber & Coal Company, a corporation (Caldwell Plant) and State Insurance Fund, Surety, and May Ervin, and Dr. Eugene Schreiber, Defendants.

In The District Court (Pending)

Claim No.

52180—Howard Haines, Employee, Claimant, vs. J. F. Konen, Employer, and State Insurance Fund, Surety, Defendants. Ex parte proceeding by claimant. Seventh Judicial District.

Policy No.

22092—John J. O'Meara, State Insurance Manager, Plaintiff, vs. J. O. White, Defendant. Action to recover delinquent premiums in the Ninth Judicial District of the State of Idaho.

23987—John J. O'Meara, State Insurance Manager, Plaintiff, vs. American Idaho Gold Corporation, Defendant. Action to recover delinquent premiums in the Sixth Judicial District of the State of Idaho.

In The Probate Court (Pending)**Policy No.**

14727—John J. O'Meara, State Insurance Manager, Plaintiff, vs. Florence Robertson, Administratrix of the Estate of J. W. Robertson, Deceased, Defendant. Action to collect delinquent premiums. Caribou County.

16044—John J. O'Meara, State Insurance Manager, Plaintiff, vs. L. W. Girard, Defendant. Action to collect delinquent premiums. Bannock County.

19202—John J. O'Meara, State Insurance Manager, Plaintiff, vs. R. K. Gusseck and M. E. Gusseck, Defendants. Action to collect delinquent premiums. Nez Perce County.

22731—John J. O'Meara, State Insurance Manager, Plaintiff, vs. Alvin Jensen, Defendant. Action to collect delinquent premiums. Bannock County.



BERT H. MILLER
Attorney General
State of Idaho
1941-1942



CHASE A. CLARK
Governor
State of Idaho
1941-1942