

# Attorney General's Biennial Report



STATE OF IDAHO  
1943—1944



66351

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
*ARIEL L. CROWLEY.....	Assistant Attorney General
CHARLES S. STOUT.....	Assistant Attorney General
FRANK LANGLEY.....	Assistant Attorney General
*FRANK L. BENSON.....	Assistant Attorney General
WILLIAM A. BRODHEAD.....	Assistant Attorney General
THOMAS Y. GWILLIAM.....	Assistant Attorney General
PAUL KEETON.....	Assistant Attorney General
*THOMAS A. FEENEY.....	Assistant Attorney General
EDWARD ROSENHEIM.....	Assistant Attorney General
MONICA JANE OLIVER.....	Secretary to Attorney General
*MARTHA TIGERT MORELAND.....	Legal Stenographer
*MADONNA HAWORTH.....	Legal Stenographer
LA VERDA RALPHS.....	Legal Stenographer
DOROTHY EYDMANN.....	Legal Stenographer

## Unfair Sales Act Division

J. C. McKINLEY.....	Manager, Unfair Sales Act Division
BEN THOMAS.....	Investigator (temporary appointment)

† Deceased

\* Resigned

**PROSECUTING ATTORNEYS FOR COUNTIES OF IDAHO  
1943-1944**

County	Name	Address
Ada	James W. Blaine	Boise
	(Oliver Koelsch)	Boise
Adams	Carl H. Swanstrom	Council
Bannock	Clarence M. Jeffery	Pocatello
Bear Lake	Glen A. Coughlan	Paris
Benewah	Carl M. Buell	St. Maries
Bingham	H. Wm. Furchner	Blackfoot
	(Donald R. Good)	Blackfoot
Blaine	J. J. McFadden	Hailey
Boise	T. E. McDonald	Idaho City
Bonner	Robert E. McFarland	Sandpoint
Bonneville	Kent Naylor	Idaho Falls
Boundary	W. J. Nixon	Bonniers Ferry
Butte	W. J. Lamme, deceased	Arco
	(George Ambrose)	Mackay
Camas	Charles Scoggin	Fairfield
Canyon	V. K. Jeppesen	Caldwell
Caribou	Walter L. Budge	Soda Springs
Cassia	Clarence W. Thomas	Burley
Clark	Robert B. Holden	Dubois
Clearwater	Frank F. Kimble	Orofino
Custer	M. L. Drake	Challis
Elmore	Perce Hall	Mountain Home
Franklin	Ben B. Johnson	Preston
Fremont	Herbert O. Skalet	St. Anthony
Gem	C. H. Higer	Emmett
Gooding	M. F. Ryan	Gooding
Idaho	Wilbur L. Campbell	Grangeville
Jefferson	T. Harold Lee	Rigby
Jerome	R. H. Seeley	Jerome
Kootenai	William S. Hawkins	Coeur d'Alene
	(J. Ward Arney)	Coeur d'Alene
Latah	J. Morey O'Donnell	Moscow
Lemhi	Fred H. Snook	Salmon
Lewis	Richard M. Mitchell	Nezperce
Lincoln	Ross B. Haddock	Shoshone
Madison	C. W. Poole	Rexburg
Minidoka	H. A. Baker	Rupert
Nez Perce	Marcus J. Ware	Lewiston
Oneida	John W. Clark	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	Frank D. Ryan	Weiser

(Attorney's name 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.....	1941-1944

\* Deceased

## JUSTICES OF THE SUPREME COURT

1913-1944

Edwin M. Holden, Chief Justice.....	Idaho Falls
James F. Ailshie, Justice.....	Coeur d'Alene
Alfred Budge, Justice.....	Pocatello
Raymond L. Givens, Justice.....	Boise
S. Ben Dunlap, Justice.....	Caldwell

November 25, 1944

HON. C. A. BOTTOLFSEN  
Governor of the State of Idaho  
Boise, Idaho

DEAR GOVERNOR BOTTOLFSEN:

In compliance with statutory requirements, I have the honor to report for the biennial period ending December 1, 1944.

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. Particularly is this true with respect to his personal participation in law enforcement incident to liquor law violations and the suppression of the various forms of gambling.

Because of the nature of our national affairs, and our connections therewith, the past biennium has brought into consideration many questions of extreme importance for solution. Such matters have been handled and disposed of with dispatch and, I am reasonably 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, instructive, 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 considerable 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 pleasant associations.

Sincerely yours,

BERT H. MILLER,

Attorney General

for the State of Idaho.

# ATTORNEY GENERAL'S REPORT

## Financial Summary

January 1, 1943, to June 30, 1943:

APPROPRIATIONS		
Salaries and Wages.....		\$10,500.00
Other Expense .....		420.00
Other Expense—travel .....		74.60
Capital Outlay .....		910.40

DISBURSEMENTS & BALANCES		
	Expended	Balance
Salaries and Wages.....	\$10,440.30	\$ 59.70
Other Expense .....	419.23	.77
Other Expense—travel .....	74.60	
Capital Outlay .....	181.00	729.40

(It was necessary to encumber \$719.40 of the above balances for use during the following twenty-four months, in order to fulfil existing contracts for the purchase of law books for the library of the Attorney General's office. The transfer was necessary because of inadequate capital outlay appropriation to make these necessary purchases under already existing contracts. As of November 30, 1944, \$411.90 of this encumbrance has been expended for such purchases.)

July 1, 1943, through June 30, 1945:

Salaries and Wages.....	\$43,980.00
Other Expense .....	1,900.00
Other Expense—travel .....	1,000.00
Capital outlay .....	500.00

DISBURSEMENTS & BALANCES		
As of November 30, 1944:	Expended	Balance
Salaries and Wages.....	\$28,025.19	\$15,954.81
Other Expense .....	950.63	949.37
Other Expense—travel .....	450.62	549.38
Capital Outlay .....	500.00	225.50

### CONTINGENT FUND

Amount Expended .....	\$ 1,261.86
Balance in Fund .....	\$ 188.14

### UNFAIR SALES ACT DIVISION

#### FINANCIAL SUMMARY

January 1, 1943, to June 30, 1943:

Amount of Appropriation.....	\$ 4,784.64
Amount expended .....	2,075.36
Balance of Appropriation.....	\$ 2,709.28

July 1, 1943, through June 30, 1945:

(As of November 30, 1944)	
Amount of Appropriation.....	\$11,250.00
Amount expended .....	7,861.67
Balance of Appropriation .....	\$ 3,388.33

TOTAL UNEXPENDED BALANCE .....	\$ 6,097.61
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## 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, 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 ascer-

tain 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 pleaded 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 probably would be wise to consolidate the Unfair Sales Act for administrative purposes. If such consolidation were effected consideration should then be given as to whether or not the consolidated acts should be placed in the office of Attorney General for administration or in the Bureau of Store License of the Department of Finance. Violations of either of said acts ultimately reaches the office of the Attorney General for enforcement purposes or for prosecution thereof. It is quite likely that some of those affected by the acts, particularly the Unfair Sales Act, will urge some administrative changes. Any changes that will make either of said acts more efficient and less expensive of operation should be adopted. Undoubtedly the consolidation of said acts and placing the same in one department or bureau would be the means of lessening the expenses of operation as the personnel of either of the departments could take care of the needs of the other without material costs to

the other. 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

### GEORGE LUKER vs. GEORGE H. CURTIS, Secretary of State (136 Pac. (2d) 978) (Closed)

Case No. 1166 (Civil)—An initiative measure known as the "Senior Citizens' Grants Act" was submitted to the vote of the people at the General Election on November 3, 1942, and was adopted by a majority of the aggregate vote cast for the office of Governor. The proclamation of the Governor as provided by law and dated November 23, 1942, declared the same to have been approved by the requisite number of voters and thereby became a law of the State of Idaho. The main features of said Act provided for a monthly award of not less than \$40; \$8.00 per month for medical, dental, surgical, optical, hospital and nursing care; and \$100 upon the death of a recipient for funeral expenses to eligible applicants who had attained the age of sixty-five years. On the convening of the Twenty-seventh Session of the Legislature in January, 1943, considerable opposition was manifest by numerous legislators against the Senior Citizens' Grants Act. A legislative committee was appointed to make a detailed study of said Act and report its findings to the legislature. The report urged various objections, among other things that the state could not finance the same. As a result House Bill No. 74 (Chapter 31) carrying an emergency clause was introduced and passed by both branches of the legislature, and approved and signed by the Governor, February 6, 1943, thereby repealing said Act.

The repeal of the Senior Citizens' Grants Act was of far reaching significance. Threats to recall all legislators participating in the repeal were freely made, and petitions for the recall of Governor Bottolfson for signing the repeal Act were extensively circulated. An inadequate number, however, were not properly certified and filed in the office of the Secretary of State to authorize the calling of an election. Perhaps no other factor contributed more to the defeat of Governor Bottolfson for the United States Senate than that of signing the repeal Act.

Mr. George Luker with the aid and assistance of others commenced prohibition proceedings in the Supreme Court to restrain Secretary Curtis from publishing in the session laws of the twenty-seventh legislative session, House Bill No. 74, which purported to repeal the Senior Citizens' Grants Act. The matter was heard at the March, 1943 term at Pocatello, and on April 28, 1943, a peremptory writ of prohibition was denied and the proceeding dismissed. Regardless of the action of the court in denying a peremptory and dismissing the proceeding there are yet numerous people who stoutly argue

and insist that an initiated law cannot be repealed by the legislature and, accordingly, that the action of the court does not correctly state the law. In passing we might say that the right of the legislature to repeal an initiated measure is again before the Supreme Court in another pending case.—(Bert H. Miller)

**CHARLES T. HAWKINS vs. CHARLES E. WINSTEAD, Judge of the District Court of the Third Judicial District of Idaho, in and for Ada County. (Closed)**

Case No. 1168 (Civil)—The plaintiff, Hawkins, applied to the Supreme Court of Idaho for a writ of mandate to require Charles E. Winstead, District Judge, to take jurisdiction of a suit in divorce commenced in district court August 24, 1942, and wherein plaintiff and Laura Hawkins, defendant, were the parties thereto.

It appears that May 22, 1941, plaintiff, while a private in the U. S. Army at Langley Field, Virginia, married, and shortly thereafter was transferred to Westover Field, Mass., and in January, 1942, he was transferred to Gowen Field, Idaho. Shortly after arriving at Gowen Field, plaintiff obtained leave and was granted permission to live in the city of Boise. He rented a room in Boise, lived there, reporting for duty at Gowen Field as required. He decided to make Boise his future home. He registered as an elector and did everything he consistently could do to establish a bona fide residence.

Section 5 of Article VI of the Constitution provides: "For the purpose of voting, no person shall be deemed to have gained or lost a residency by reason of his presence or absence while employed in the service of this state, or of the United States, \* \* \*."

Following filing of the complaint in the divorce proceedings, summons issued, was served by publication, and the defendant Laura Hawkins, in due time, was defaulted. The plaintiff submitted his proof in support of his complaint and rested. The district judge was in doubt as to whether a person serving in the armed forces of the United States could establish a new residence while serving his country. October 23, 1942, Judge Winstead entered an order holding that a person could not, while serving in the armed forces, establish a new residence because of the provisions of Section 5, Article VI, and for that reason the court was without jurisdiction, and on that ground denied the divorce. To compel the district judge to take jurisdiction of the divorce proceedings and adjudicate the same was the occasion for the mandamus proceedings.

The question for determination, an account of the provisions of Section 5 of Article VI, was whether or not one employed in the armed forces of the United States could establish a new residence in Idaho so as to take him without the prohibitions of Section 31-701 I. C. A., as follows: "A divorce must not be granted unless the plaintiff has been a resident of the state for six full weeks next preceding the commencement of the action." The majority decision of the Supreme Court was to the effect that one employed in the armed forces of the United States could establish a new residence in Idaho, and that the district court had jurisdiction of the subject-matter of the action and of the persons thereto. A peremptory writ was issued directing and requiring the district judge to take jurisdiction and dispose of the divorce proceedings. (Bert H. Miller)

**BABB, PETITIONER, vs. DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT, ET AL (Closed)**

Case No. 1191 (Civil)—One of the important court matters, important because of general concern throughout the state, was the

case of Babb, petitioner, vs. the District Court of the Second Judicial District, and Honorable A. L. Morgan, Judge.

It was sought by the petitioner therein to prohibit the calling of women on a jury panel in a criminal case there awaiting trial, the contention being that the recent legislative amendment of our statute (Laws 1943, Chapter 158) including women as qualified jurors, was contrary to the provisions for juries and jury trials contained in our constitution. It was argued that the framers of the constitution had in mind the old common law of England at a time when only men were qualified jurors. The action was original in our Supreme Court, for a writ of prohibition against the calling of women jurors, and its consideration included consulting a number of previous decisions of that court.

On the part of the defendants, represented by this office, it was contended that the thing provided and preserved by our constitution was the right of a jury trial in criminal cases, without intention to restrict the personnel of juries to men only.

The court, without a written opinion, denied the writ of prohibition, which, as we understand it, amounts definitely to a holding that women are now fully qualified to act as jurors. The statutory amendment authorizes them to refuse to serve if they choose, but this is optional and in no way affects their qualifications. (J. R. Smead)

#### **LEONA DREPS vs. BOARD OF REGENTS (Closed)**

Case No. 1133 (Civil)—November 1, 1940, Leona Dreps, a niece of the wife of Regent J. F. Jenny, was appointed nurse at the infirmary of the University of Idaho, at an agreed salary of \$90.00 per month, and this action was commenced by Dreps to recover the salary earned under her appointment. The necessity for said action was due to the refusal of the Board to pay said salary on the grounds that her employment violated the Nepotism Act, Section 57-701, Idaho Code Annotated. The case was tried before Hon. A. L. Morgan, judge of the Second Judicial District of Idaho, in and for the County of Latah, which resulted in a judgment in favor of Dreps. An appeal from the judgment was taken to the Supreme Court of Idaho.

Two questions were presented by the appeal:

(1). Does the Nepotism Act apply to the Board of Regents of the University of Idaho? (2). If it was intended to so apply, did the legislature have the power to make it applicable to the Board of Regents of the University of Idaho?

Following the creation and organization of the University during territorial days, the Constitutional Convention met in August, 1889, drafted and submitted to the people a constitution which was ratified and approved, and by the terms of which the University of Idaho was recognized as a separate and independent institution, and among other things, provided: "All the rights, immunities, franchises, and endowments heretofore granted thereto by the territory of Idaho are hereby perpetuated unto the said University." After the citation of numerous authorities, the Supreme Court held that the legislature had no power to place any restrictions on the Board of Regents in the matter of their employment of employees, nor can the legislature tell the Board of Regents who it may or may not appoint, and concluded by saying that it was not the intention of the legislature to extend the Nepotism Act to the University of Idaho or the Board of Regents thereof. (Leo Bresnahan-Bert H. Miller)

**STATE vs. PRINCE AND BEAUDOIN (Closed)**

Case No. 1106 (Criminal)—Perhaps one of the most interesting criminal cases throughout the biennium and one attended by important consequences, was that of State vs. Prince and Beaudoin. It presented to our court the question of what constitutes a "persistent violator" under our statute which makes one who has theretofore been twice convicted of a felony, and who is again convicted of a felony in Idaho, a persistent violator and subject to sentence as such, in addition to the sentence imposed for the felony of which he is convicted in the instant case.

The courts of other states have not been altogether uniform in their decisions, and the principal propositions presented on behalf of the convicted appellant were: (1) that where either one or both of the two previous convictions of felony have occurred in a state other than Idaho, the law of such state, and the facts constituting the felony, must be substantially the same as required by some like statute of Idaho; in other words, the state of facts upon which a defendant is convicted in another state must have constituted a felony under Idaho law; (2) what constitutes sufficient proof on the part of the prosecution to show that the court or courts of such other state or states had jurisdiction to entertain and hear the charge there placed against the defendant?

In a comprehensive and well considered opinion, our court, after analyzing the issues and reviewing the authorities quite inclusively held that it matters not whether the state of facts in another jurisdiction, another state, would have constituted a felony in Idaho. The thing inveighed against and made separately punishable by our statute is the demonstrated inclination of the individual to violate the law, whether of this or some other state. Accordingly, the court held the convictions in the case valid and affirmed the judgment of the lower court.

On the second proposition, the proof of jurisdiction of the courts of other states, the determination thereof required consideration of the full faith and credit clause of the Federal Constitution, the Act of Congress passed pursuant thereto (28 U. S. C. A., Sec. 687), and our own statute. (Sec. 16-310 I. C. A.). After quoting these provisions, with reference to certified copies of the judgments of conviction involved which had occurred in each instance in Oregon, and each of which copies showed that the respective court had a presiding judge, a clerk and a seal, our court held that in such a state of the record the presumption in an Idaho court is that the court of the foreign state is one of general jurisdiction; its judgment so certified is proof of what it shows on its face, is the best and only competent evidence thereof, imports absolute verity and is final and conclusive. This phase of the opinion would seem in itself to be of very considerable importance to the bar and to all litigants in Idaho.

On the whole, we believe this case and this final decision has covered practically all questions of importance emanating from our persistent violator statute, with, possibly, a single exception, namely, does a conviction in a Federal Court become such a prior conviction that it may be proven against a defendant in Idaho charged as a persistent violator? This phase was not before our court, and may at some future time present a question of extreme interest as well as of extreme importance. (J. R. Smead)

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## ATTORNEY GENERAL'S OPINIONS

### Some Selected Opinions Follow:

#### IN RE: IDAHO STATE GASOLINE TAX

One of the most important questions submitted to the office during this biennium concerned the application of our excise tax on the sale of gasoline. Its particular importance lay in the fact that it involved, necessarily, the extent, and the limits, of the powers of the state to burden federal operations by its laws. This necessarily included the consideration and proper application of certain federal constitutional provisions. The opinion, rendered to the Governor at his request, follows:

"With regard to our state gasoline tax as applicable in cases of purchase by the Federal Government or its agencies, **Section 10** of the Motor Fuels Tax Law, Chapter 46, Laws of 1933, as amended by Chapter 57, Laws of 1937, provides for an excise tax of five cents per gallon to be paid by the dealer as that word is defined by the Act. The term "dealer" is defined as including any person who imports, produces, manufactures, compounds, refines, or blends motor fuels in this state.

"The term 'retail dealer' is defined to mean any person or organization who engages in the retail sale of such motor fuels in Idaho.

"**Section 10** expressly refers to any dealer who sells, distributes, or uses any motor fuels within the state. Every dealer who imports or manufactures fuel in this state is required to make a monthly report of the amount, (**Sec. 11**) and every seller or distributor is also required to make a monthly report and at the same time pay the excise tax of five cents per gallon. There is another slight tax, one mill per gallon, for special use in paying certain bridge purchase indebtedness, with which you are also familiar. (Chap. 233, SL, 1939) This is also levied against the dealer.

"**Section 12** provides for refunding the tax paid under the Motor Fuels Act, under some circumstances, and creates a refund fund for that purpose. **Section 18** provides specifically the types of use of fuels on which purchases the tax may be refunded upon proper application and proof by the purchaser. This section contemplates that a purchaser will probably be required to pay the amount of the gallonage tax by the seller of the fuel, which we know to be the practice which is very generally followed by sellers of fuel throughout the state. As we understand it, the amount of all taxes is included in the price of the fuel sold. We do not understand that the tax is collected as a tax by the seller, that is, as a separate item apart from the price of the fuel.

"As yet we have not received any information of the practice followed in two of the neighboring states under their motor fuels tax laws, but we understand it to be desirable to render this opinion at this time concerning the matter of the payment of our state tax.

"It is well settled that a governmental operation of the Federal government cannot be taxed, as such by a state. The question herein is, is our own fuels tax a direct tax on any Federal governmental operation if the seller be required to pay it in the manner above summarized? The decision of the United States Supreme Court most nearly in point in this matter is the case of **Alabama vs. King and Boozer**, 314 U. S. 1, 86 L. ed. 3. In that case certain individuals were contractors holding a contract to do certain construction work for the United States, which was being done in connection with and as a part of certain governmental operations. They contended that they were not properly required to pay a state sales

tax on lumber purchased for use in the construction work, for the asserted reason that they were acting for the Government in the accomplishment of a governmental purpose, constructing an Army camp, and that such tax would be in effect 'laid on a transaction by which the United States secures the things desired for governmental purposes,' and thus would violate the Federal Constitution concerning taxes on Government operations. The Alabama law required such a tax to be paid by the purchaser of goods and required the seller to add the amount of the tax to the sales price and thus collect the same as the price should be paid. The contractors were operating under a 'cost-plus' contract, and it seems to have been conceded by all concerned that the sales tax, if payable by the contractors, would be added to the cost of construction which the United States had agreed to pay the contractors, with the further amount also agreed on for the contractors' services. The particular purchase involved had been made originally on credit and apparently the total price to be paid hinged on the determination of the tax question. King and Boozer were the dealers who had sold the lumber involved, and so far as they were concerned the question was, whether or not they would be required to add the sales tax to the price otherwise chargeable for the lumber. The contractors had in fact paid for the lumber later, apparently without paying the sales tax, and the tax had been assessed against King and Boozer, who in turn carried on the litigation as here outlined.

"It was held that the contractors were the purchasers, and although the amount of the tax would become a part of the cost of construction, and thus be paid by the United States to the contractors, and although the contractors 'in a loose and general sense were acting for the Government in purchasing the lumber,' the tax was nevertheless collectible and did not constitute such a direct burden upon a Federal operation as to violate the Federal Constitution.

"It is thought that our Fuels Tax Act comes within the ruling in the case just discussed. It does not lay a tax upon any purchaser, but on the contrary taxes the seller. He is not required to collect the tax as was the case in Alabama, which takes the Idaho situation even farther away from the prohibition against taxation of Federal governmental operations. Our act merely provides for a refund under some circumstances to any person 'who shall have paid any excise tax on such motor fuel hereby required to be paid, whether directly to the vendor from whom it was purchased, or indirectly by adding the amount of such excise tax to the price of such motor fuel.' (Section 18) As above pointed out, Section 10 expressly lays the tax on the seller and requires him to pay it. Presumably he would increase his price to the purchaser to the same extent, but this was absolutely required, in practical effect, in the Alabama case discussed. Since that tax was properly payable by the sellers of the lumber, and was not an invalid provision in spite of the fact that the state law also required the seller to collect from the purchaser, we do not see any reason why the seller of motor fuels is not also required to pay the Idaho tax. Whether or not he is reimbursed by increasing the price of the fuels would seem to be his own affair, and if he seeks such reimbursement by fixing his price on the fuels sold, and thus increases the cost to the particular Federal Agency concerned, still the result is no different than in the Alabama case.

"As we understand it, in some instances the Federal Agency buys its fuel direct and imports it into Idaho from elsewhere. Of course, the United States cannot be taxed under those circumstances, nor required to procure such a permit for importation as our law re-

quires of the individual dealer; and where fuel is purchased by some Federal Agency for such use as makes the amount of the tax, if paid to the seller, refundable to the purchaser, as specifically provided by Section 18, the amount is refundable to the proper Federal Agency just as in the case of any other purchaser."

A little later the Comptroller General of the United States apparently took a different view of the matter, resulting in correspondence with this office in the course of which a copy of the opinion above quoted was submitted to him. In due course, the following was received from the Comptroller General, which seems to settle the matter in accordance with the opinion to our Governor:

"Reference is made to your letter of January 19, 1944, with enclosure, relative to the effect of the provisions of the Idaho Motor Fuels Tax Law so far as concerns the reported indebtedness of the State in the amount of \$46.74 on account of the State tax required to be paid on certain gasoline purchased for the official use of the United States.

"It appears from a consideration of the terms of said law and the contents of your opinion of October 9, 1943, with respect thereto to the Governor of Idaho, a copy of which accompanied your letter, that the excise tax prescribed thereby is not laid on the vendee but on the vendor of the gasoline involved in a particular case. Hence, the legal incidence of the tax may not properly be regarded as resting on the Government in the case of purchases of gasoline for official use; and, in view of the decision of the Supreme Court of the United States in the case of *Alabama v. King & Boozer, et al.*, 314 U. S. 1, the conclusion is no longer tenable that the imposition of the tax conflicts with the implied constitutional immunity of the United States to procure the supplies required for the discharge of its governmental functions free from interference or control by a State. Moreover, it does not appear that claim for refund of the amount of the taxes here involved was filed with the State authorities within the period fixed therefor by the laws of Idaho.

"In view of the foregoing the conclusion is required that this office would not be justified in withholding an amount otherwise payable to the State for the purpose of liquidating the reported indebtedness. Therefore, it is requested that the instant claim, and the schedules and certificates relating thereto, which were resubmitted to the Commissioner of Law Enforcement of Idaho by this office under date of November 18, 1943, be returned to this office." (J. R. Smead).

January 5, 1943, Hon. Calvin E. Wright, State Auditor:

We are submitting herewith the opinion of this office in answer to your question of recent date as to the following:

Is a profit taken upon the sale of securities purchased with endowment funds to be treated as an increase of the principal of the endowment fund or as "interest" under Constitution Art. IX?

The status of endowment funds as trust funds in the hands of the State as trustee is beyond question (*State vs. Peterson*, 61 Ida. 50, 97 Pac. (2) 603).

The normal law of trustees appears to be settled that profits taken from the sale of securities held in trust are to be treated as principal increments and not as "income" wherever the trust allow for expenditure of income only.

Thus, in *Restatement, Trusts*, #233, it is said:

"Profits arising from the sale or exchange of the principal of

trust property or any enhancements in the value of trust property are allocable to principal, not income." Again, in the same work (#239f):

"Even though he (the trustee) sells the bonds before their maturity at a price greater than the purchase price paid by him the amount retained by him to amortize the premiums remains principal."

In 65 C. J. 859, #736 the following statement occurs:

"Where stock, bonds or other property belonging to the trust estate are sold, the money received, including profits, if any, ordinarily constitutes a part of the corpus of the estate. \* \* So the increased value of stock on sale by a trustee, due to enhancement of the original value, is a part of the corpus and belongs to the remainderman."

In the present instance the Constitution provides not for expenditure of "income" but only for the expenditure of "interest" language which was borrowed directly from Constitution of Colorado, Article 9, Section 3.

It does not appear that either in Idaho or Colorado the term "interest" as so used has ever been judicially defined as respects profits on sales of securities.

The term interest has received a vast number of refining definitions. Thus interest is defined as a profit (State vs. Multnomah County, 10 Pac. (2) 635, 13 Ore. 287; First Nat. Bank vs. Lee, 66 S. W. 413). As stated in Re Reed's Will, 17 NYS (2) 658, "Interest is that which is of advantage or profit, participation in profit, or payment for the use of money."

In some Idaho decisions the word "income" has been added to the constitutional language and the funds usable have been referred to as "interest and income." (See inter alia Roach vs. Gooding, 11 Ida. 244.)

The term "income" certainly is sufficient to include profits (31 C. J. 396). Examination of the cases cited to the text discloses that the terms "income," "interest," "profits," "earnings," "revenue" and similar expressions are used with much laxity and with little care to precise refinements.

In Idaho it is the preservation of the corpus of the endowment funds which is a sacred obligation, the "interest" being expendable and therefore not surrounded with the perpetual bulwarks of the principal.

Examination of the Constitutional Debates indicates that the word "interest" as used in discussion of Article IX was understood to mean "interest" in its ordinary sense of a sum paid in compensation for the use of money (See Vol. 1. p. 788; p. 800; p. 654). As stated by Mr. Poe in the oration which probably swung the convention to the side of allowing sales of endowment lands to be made at all:

"The proposition is now that this land be sold, that it be placed in the custody of the treasurer of the territory and then be placed at interest, and that the interest arising from the fund shall be appropriated to the payment of the current expenses of the public schools. Now then, it is further provided in this report that that fund itself, that the principal shall be held intact. Now it is a well known fact here that if that principal is held intact forever, the future is provided for." (Debates Vol. 1. p. 659)

The framers of the Constitution even want the length of debating how much interest could be charged. Mr. McConnell (Vol. 1. p. 660) stated: "I will guarantee that at the present time every dollar of the proceeds from sales of these school lands, if it were in the

treasury today, could be loaned on farm loans in this territory at ten per cent. I call that pretty good interest."

It therefore appears that the gentlemen of the convention probably had in mind only the return of compensation for use of money, interest, as ordinarily defined, and gave no consideration to questions of profit on sales of securities.

This office has heretofore, under former Attorneys General, expressed views indicating that profits are part of the principal, not of the interest fund. See opinion of February 26, 1932, to the Bureau of Public Accounts, and opinions of December 5, 1931, and December 28, 1932.

It is not possible to say what the Supreme Court might hold in event this question were judicially tested. It is my opinion, however, that pending such a judicial clarification of the meaning of the word "interest" profits taken on a sale of securities, by reason of their increase in value, should be credited to the principal of the endowment funds, and not to the interest funds. The principles upon which this conclusion is reached are stated as follows:

1. It is highly uncertain that such profits are "interest" within the meaning of the constitution. If they are not, their expenditure is expressly prohibited by law and the constitution. Where of two courses one is fraught with doubts of validity, and the other is not, the latter will be followed.

2. If there is any error in holding the funds involved to be principal instead of interest, the error will be harmless, since the funds will be preserved inviolate, and invested at interest, and no ultimate loss will be sustained by anyone.

3. If the funds are treated as interest, and expended, then liability for an unlawful expenditure immediately arises on the part of all officers concerned.

4. The side of caution and safety requires the holding that the profits referred to belong to the principal.

5. In logic, the profits are part of the principal. Thus, prior to a sale, the securities in specie represent the corpus of the endowment, pro tanto, and no one would say that any part of the securities held would or would not be sufficient to replace the state's investment therein, if held until paid in the ordinary course. Meanwhile, interest, in the ordinary sense is customarily being collected.

It is my opinion, therefore, that profits on sales of securities by increase in the value thereof between the date of purchase and the date of sale, are part of the endowment funds and not of the earning funds. (Ariel L. Crowley)

March 12, 1943, Honorable C. W. Poole, Prosecuting Attorney,  
Madison County:

This acknowledges receipt of yours of March 9th, 1943, in which you say among other things that at the regular monthly meeting of the Board of County Commissioners of Madison County yesterday, application was made by some of the county officers for increases of salaries, pursuant to the provisions of Senate Bill Number 135, enacted by the recent legislature, and that in considering said applications your Board was met by the "County Budget Law," and that you advised your Board that you knew of no provision, either in the new act or any other statute, which would empower them to authorize expenditures by any officer of the County or for the payment of salaries or wages over the amounts fixed by the County Budget.

Heretofore, I had agreed with myself that I would make no public expressions relative to said law or to the manner in which the same might be made operative, as I deemed it a purely local matter. Since making said decision, however, I have been confronted with numerous requests from various boards of county commissioners and prosecuting attorneys throughout the State, and because of the fact that it is a matter of general concern and might not receive the same construction from various prosecuting attorneys, plus the further fact that some of said prosecuting attorneys might take the position that because of other existing laws it would be entirely inoperative, I have concluded to give public expression to my views in connection with said law and the operation thereof.

As you have observed, it is an amendment of Section 30-2606, Idaho Code Annotated, as amended by Chapter 73, Session Laws of 1937, as amended by Chapter 142, Session Laws of 1941. The only new matter contained therein is found in the proviso, as the conclusion of Section 1, and is as follows:

"Provided, that for the period following the effective date of this Act and ending on the second Monday of January, 1945, the Board of County Commissioners of any county may, at any time during such period, change the salary of any county officer and fix the same at a higher or lower rate than that fixed at the regular April, 1942, meeting of said Board, and may by any means authorized by law provide for the payment of such salaries."

You will likewise observe that it was evidently the intention of the legislature that said law would go into effect and become operative at once because of the emergency clause contained in Section 2 thereof.

The County Budget Law was intended to and does check many abuses that otherwise might arise but for said law. I see little or no occasion, however, to be particularly concerned about the County Budget Law in the instant matter, for the reason that the new matter contained in Senate Bill Number 135 and heretofore quoted suspends the effectiveness of the County Budget Law during the effective period of Senate Bill Number 135, as applied to any action of the Board of County Commissioners of any county in changing the salary of any county officer at a higher or lower rate of pay.

At the time of the consideration of Senate Bill Number 135 (effective March 5th, 1943), the legislature knew that the various counties of the State had made their budgets, and likewise knew, if there were no method by which said budgets could be modified, that the enactment of Senate Bill Number 135 (Chapter 155, Session Laws of 1943) would be nothing more or less than an idle gesture, incapable of any beneficial results. The Supreme Court of the State of Idaho, in the comparatively recent case of *Justus versus T. M. DeCoursey, et al.*, 63 Idaho, 115 Pacific (2d) 756, had a more or less similar question before it in connection with Chapter 66, Session Laws of 1941, in which the legislature amended existing law to increase the then existing levy of two mills on the dollar to three mills, for direct relief. The chief complaint of Plaintiff Justus in seeking a writ of prohibition to restrain the Board of County Commissioners of Canyon County from making the three mill levy strenuously urged that such action would be violative of the County Budget Law. The Idaho Court, in passing upon said question, observes:

"Plaintiff's position as to the bar of the budget law, however, is not well taken because that law itself expressly provides for contingencies such as this arising after the initial setting up of the budget:

"Section 30-1205, I. C. A.: ' \* \* \* \* In the event of any unforeseen contingency arising, which could not reasonably have been foreseen at the time of making the budget, and which shall require the expenditure of money not provided for in the budget, the board of county commissioners, by unanimous vote thereof, shall have the right to make an appropriation from the "general reserve appropriation" to the office, department, service, agency or institution in which said contingency arises, in such amount as shall be determined by resolution of said board \* \* \* \*' "

The Board of County Commissioners at the time of fixing the salaries of county officials at their meeting in April following their election, and also at the time that they made up the County Budget last January, could not positively know, even though they might anticipate, that the legislature would pass a law suspending for a period of time the effectiveness of the County Budget Law, as applied to the salaries of county officials, and for that reason and because of such contingency, plus the emergency, would have a right to resort to the provisions contained in Section 30-1205, Idaho Code Annotated. In a consideration of this matter, you will bear in mind that the levy for any item budgeted under the County Budget Law is not fixed until September (see Section 61-801, Idaho Code Annotated).

The natural thing to do in the event there is serious doubts as to the authority of the Board of County Commissioners to act upon the applications now before them for increase of salary to county officers because of other assumed prohibitive acts would be to bring a test case, to have any questions arising in connection therewith determined and settled. As I view the matter, however, it does not appear to me to justify any such action.

It is my opinion, based upon the authority above cited and a consideration of other matters involved, that your Board of County Commissioners has the authority not only to act upon the applications to increase salaries of county officers, as contemplated by Senate Bill Number 135, but likewise to fix a levy at the September meeting to provide the necessary funds to cover any increase in excess of that now fixed by the County Budget Law. (Bert H. Miller)

August 25, 1943, Mr. H. M. Cullimore, Director, Bureau of Insurance:

This is in response to your letter of August 20, 1943, requesting an opinion from this office relative to the following question:

Has the Insurance Department the right to issue a license to a non-resident of Idaho so that he may solicit business for a benefit association in Idaho, when such association is not licensed to do business in the state of which the proposed agent is a resident?

The benefit associations referred to are, we assume, those organized under Chapter 110 of the 1933 Session Laws, and Chapter 114 of the 1941 Session Laws, and which are authorized to write death benefit certificates and accident benefit certificates.

Chapter 195 of the 1937 Session Laws, being an act regulating the examination and licensing of insurance agents, requires that an insurance agent be a resident of the State of Idaho; however, death benefit associations are excepted from the provisions of such statute, as will appear from Section 10 of said Act, which is as follows:

"Section 10. Exemptions. This Act shall not apply to life insurance companies, death benefit associations, reciprocal or inter-insurance exchanges, county mutual insurance companies or associations, or to anyone acting for or in their behalf, or to

salaries officers or salaries representatives of any insurance company."

We have been unable to find any provision in the law which would seem to us to require the agent for a benefit association to be a resident of the State of Idaho, and in the absence of such a requirement, we do not believe that the department would be empowered to make such a requirement, as will appear from 30 C. J. (Insurance) at page 999:

"If an applicant for a license complies with the statutory conditions to its issuance, he is entitled to a license as a matter of right, and the insurance commissioner cannot prescribe additional conditions."

We therefore advise you that in our opinion the fact that a person is a non-resident of Idaho would not preclude him from being issued a license to sell insurance for a benefit association in Idaho. We have some doubts as to the necessity of an agent for a benefit association securing a license but express no opinion on this question. (Charles S. Stout)

November 10, 1943. Mr. W. B. Trowbridge, Director,  
Beer Revenue Administration:

Since last discussing the matter with you, a great deal of attention has been given the question of the issuance of a beer license to Mr. McFee. As our statutes now read, 1943, Chapter 167, a retail license shall not be issued if the applicant "has \* \* \* been convicted of the violation of any law of the State of Idaho or of the United States, regulating, governing or prohibiting the sale of alcoholic beverages or intoxicating liquor \* \* \*" or if he "has \* \* \* been convicted of any felony within five years, or has paid any fine or completed any sentence of confinement therefor within five years." I realize that it has heretofore been the practice not to issue any such license to anyone who had at any previous time been convicted of any such violation of either a state or Federal law, and undoubtedly this applicant was so convicted on several counts under the former Volstead Act. The question now before me has arisen for the first time.

After quite an extensive examination of the reported decisions, I am compelled to believe that the statute should be construed to apply only to any such conviction as may have occurred since our beer license law went into effect. You will recall that so far as this matter is concerned, the same provision concerning convictions of violations of the liquor laws of any type has been a part of the Act. I reached the conclusion just stated for the reason that, if the law is construed to be retroactive in the sense of applying to such convictions occurring before the act was passed, I believe it would violate the Federal Constitutional provision that no bill of attainder or ex post facto law shall be enacted.—U. S. Constitution, Article I, Sec. 9.

The two leading Federal cases on the subject are *Cummings vs. Missouri*, 71 U. S. 277, 18 L. ed. 356, and *Ex parte Garland*, 71 U. S. 333, 18 L. ed. 366. While those cases did not deal with the specific state of facts which are here considered, they plainly held that to exclude one from following an ordinary avocation of life because of a past offense on his part, for which he has either been prosecuted and punished or for which he may still be subject to prosecution and punishment, is to add an additional penalty to that already provided by the law which he has violated, and hence such a statute is both an ex post facto act and a bill of attainder. Another case holding

to the same effect and approving the two above cited is **Pierce vs. Carskadon**, 83 U. S. 236, 21 L. ed. 276.

The State courts in cases where like questions have arisen have followed the rule of the Federal decisions here cited.

You will note that I have quoted above two provisions of our statute, one of which deals with violations of the laws of all sorts and descriptions governing or regulating the sale of any type of alcoholic beverage, and the other dealing with any conviction of felony within five years before the license is issued. Under the Volstead Act the offense for which this applicant was convicted was a misdemeanor only. It is true that he was charged and convicted of conspiracy in and under the same indictment, which is a felony, but which in no sense is a violation of any liquor law. If he or anyone similarly situated can be denied a retail beer license, then all such applicants would be, in my opinion, very greatly discriminated against when compared with others who have committed felonies. In the latter case, however great the offense may have been, the conviction must have occurred within five years before the date of the license, otherwise the applicant is not barred from obtaining such a license; while in the case of one convicted of an unlawful sale of some alcoholic beverage, the stigma, the attainer, would attach to him forever thereafter if the statute were to be given retroactive effect. I believe this in itself, being highly discriminatory, would invalidate the statute if it were so construed.

I also have in mind **Section 70-101, I. C. A.**, to the effect that our laws shall not be construed retroactively unless the statute itself expressly so declares, and the decision of our own court in **Lawrence vs. Defenbach**, 23 Ida. 78, wherein it was held that, as a general proposition, statutes should not be construed to have a retroactive effect, and further that all statutes must be construed, if possible, so as to be valid, hence a statute must never be so construed when to do so would render it unconstitutional, if the words of the statute admit of any other construction. I believe that rule is well applied here, for the reasons I have given above.

I appreciate the fact that if the opinion here expressed is sound, it states a general rule and is contrary to the effect which has been given this statute by the administrative authorities in the past. Nevertheless, I feel compelled to the conclusion which I have stated. (J. R. Smead.)

November 10, 1943, to Members of the Board of  
Prison Commissioners:

The question has arisen, may the warden of the State Penitentiary legally be paid for services rendered to the State any compensation in addition to that provided as salary by Chapter 128 of the 1943 Session Laws?

There has recently been installed in the penitentiary a laundry which does commercial work from which the penitentiary derives a substantial income. The laundry is operated by prison labor, supervised by the warden. The Board of Prison Commissioners have under consideration the matter of giving the warden additional compensation for his services in supervising the laundry operations, if this may legally be done.

The compensation of the warden of the penitentiary is fixed by Sections 20-304 and 20-305, I. C. A., which entitles him to a yearly salary of \$2400. and to the use of living quarters, fuel, lights and feed for himself, wife and children at the expense of the State.

The State's appropriation of money with which to operate the

penitentiary during the biennium ending June 30, 1945, is made by Chapter 111, Laws of 1943. Sections three and four of said Chapter read as follows:

"Sec. 3. That except as otherwise provided by law the compensation and salaries of all state officials, deputies and employees appropriated by Section 1 of this act shall be in full for services to be rendered by such officials, deputies or employees to the state during the period for which such appropriations are made and where not fixed by law such salaries shall be fixed by the head of the department or office. No increase or reduction in the salary of any official, deputy or employee shall be made until after notice thereof in writing shall have been given to the Director of the Budget."

"Sec. 4. No portion of the appropriations herein made for expenses other than salaries and wages shall be expended in payment of salaries and wages, but with the consent of the State Board of Examiners, any portion of any appropriation herein made for the payment of salaries and wages may be expended for other expenses of the particular office or institution for which it is appropriated."

From the foregoing it clearly appears that the salary of the warden of the State Penitentiary cannot be legally increased except by legislative action. There then remains the question of whether the Board of Prison Commissioners may create a new position, i. e., manager of the penitentiary laundry, and designate the warden as such manager, and pay him additional compensation or salary for attending to his additional duties. Section 65-2311, I. C. A. as amended by Chapter 132, Laws of 1933 reads as follows:

"Section 65-2311. Officers to Devote Entire Time to Official Duties.—Exceptions.—Each executive and administrative officer shall devote his entire time to the duties of his office and shall hold no other office or position of profit; provided, that an elective or appointive state officer may be appointed to any office herein created, in which event he shall receive no salary other than by virtue of his elective office \*, or in the case of any appointive state officer, he shall receive no salary other than by virtue of the appointive office held by him at the time of his appointment to an additional office."

Section 65-2311 is found in those chapters of the Code which deal with and enumerate the Civil State Departments. The penitentiary is not a Civil State Department and, I think, is not affected by said section of the Codes.

Section 20-301, I. C. A., enumerates the officers of the penitentiary. It is very questionable whether any person, other than one from the classes enumerated, may be placed in charge of the supervision of the operation of the penitentiary laundry. Said section of the Codes reads as follows:

"20-301. Officers of the Penitentiary Enumerated.—The officers of the penitentiary shall consist of one warden, who shall be the principal keeper of the penitentiary; one deputy warden, who shall be the chief turnkey of the penitentiary, both of whom shall reside at the penitentiary; one clerk, one physician, and such number of assistant keepers and guards as the warden and board of state prison commissioners shall deem requisite."

This office has often held that no state official or employee may legally be paid a salary or compensation for performing the duties of more than one state office at the same time. (See opinions dated March 22, 1932, November 6, 1933, and August 17, 1937, to Governor Ross, State Auditor Parsons, and State Senator Just, respectively.)

Also, Sec. 3 of Chapter 111 of the 1943 Session Laws, Supra, which appropriates the compensation and salaries of all state officials, deputies, and employees for the current biennium, specifically provides that such compensation and salary shall be in full for services to be rendered by such officials, deputies, or employees of the state, during the period for which such appropriations are made.

There seems to be no escape from the conclusion that the warden of the State Penitentiary cannot legally be paid for services rendered to the State, as compensation, in addition to that provided as salary by Chapter 128 of the 1941 Session Laws, and it is therefore my opinion that it cannot be done. (Frank Langley)

January 28, 1944, Mr. Chas. E. Spoor, Commissioner,  
Department of Law Enforcement:

We have your letter of January 25, requesting the opinion of this office on the following:

The question has arisen as to whether or not a Police Officer is in violation of law if he runs through a stop sign or a red light in pursuit of a violator?

Also what is the status of a Police Officer in exceeding the prescribed maximum speed laws when pursuing a violator?

We approach your question bearing in mind the well established principle of law that it is a pre-requisite to the validity both of statutory provisions and of city ordinances regulating the use of highways and streets, that the regulations be reasonable. Sub-division 12 of Sec. 65-3101 I. C. A. gives to the Department of Public Works the power to prescribe rules and regulations affecting State Highways, and to enforce compliance with such rules and regulations.

Section 48-521 I. C. A. relating to motor vehicles on intersecting and through highways, provides as follows:

"Through highways—Vehicles on intersecting highways to stop  
—Signs.—Local authorities with reference to highways under their jurisdictions are hereby authorized to designate main traveled or through highways by erecting at the entrances thereto from intersecting highways signs notifying drivers of vehicles to come to a full stop before entering or crossing such designated highway, and whenever any such signs have been so erected it shall be unlawful for the driver of any vehicle to fail to stop in obedience thereto. All such signs shall be illuminated at night or so placed as to be illuminated by the headlights of an approaching vehicle or by street lights."

Section 48-504 contains restrictions as to speed of motor vehicles on highways, and reads in part as follows:

"Restrictions as to Speed.—a. Any person driving a vehicle on a highway shall drive the same at a careful and prudent speed not greater than is reasonable and proper, having due regard to traffic, surface and width of the highway and of any other conditions then existing, and no person shall drive any vehicle upon a highway at such a speed as to endanger the life, limb or property of any person."

Section 48-508 which provides that the speed limits on vehicles driven by the public generally shall not apply to police officers when engaged in the apprehension of law violators, reads as follows:

"When Speed Limit Not Applicable.—The speed limitations set forth in this chapter shall not apply to vehicles when operated with due regard for safety under the direction of the police in the chase or apprehension of violators of the law or of persons

charged with or suspected of any such violation, nor to fire department or fire patrol vehicles when traveling in response to a fire alarm, nor to public or private ambulances when traveling in emergencies. This exemption shall not however protect the driver of any such vehicle from the consequences of a reckless disregard of the safety of others."

From a reading of the above quoted section, 48-508, it is clear that the statutory speed limit, applicable to motor vehicles driven by the public generally, do not apply to police officers when engaged in the apprehension of law violators; but I am unable to find any statutory provision relating to the question of whether a police officer is in violation of the law if he runs through a stop sign or red light when in pursuit of a law violator. In such a situation it would seem that the officer should have the same exemption that he has under Sec. 48-508 when he exceeds the speed limits.

It is therefore my opinion that a police officer who exceeds the speed limits prescribed by statute or by city ordinance, or who drives a motor vehicle through a stop sign or red light on a highway or street when attempting to place a law violator under arrest is not himself violating the law; however, such an officer, under such conditions, is required to exercise such care and prudence as the circumstances of the particular case permit, and he is responsible for the consequences of a reckless disregard of the rights of others. (Frank Langley)

February 21, 1944, Honorable C. A. Bottolfson,  
Governor of the State of Idaho:

We are submitting herewith the opinion of this office in response to your inquiry of recent date on the following:

"Can the legislature reduce the age qualification of voters?"

Article VI, Section 2 of the Idaho Constitution relative to the qualifications of electors, provides in part as follows:

"Except as in this article otherwise provided, every male or female citizen of the United States, twenty-one years old, who has actually resided in this state or territory for six months, and in the county where he or she offers to vote, thirty days next preceding the day of election, if registered as provided by law, is a qualified elector; \* \* \*

Article VI, Section 4 of the Idaho Constitution provides as follows:

"The legislature may prescribe qualifications, limitations, and conditions for the right of suffrage, additional to those prescribed in this article, but shall never annul any of the provisions in this article contained."

The provision of Article VI, Section 2, supra, with respect to the age of a qualified elector was not discussed in the Constitution Convention, and from this we may infer that it did not seriously occur to any of the framers of our Constitution, that any age other than 21 years should be adopted as the minimum age of a qualified elector. The reason why this minimum age was adopted becomes apparent when it is considered that all the States required that a voter shall have reached the age of twenty-one years. (McCrary on Elections 4th Ed., page 51, Sec. 65; 18 American Jurisprudence (Elections) page 215, Section 53.)

In view of this age requirement contained in Article VI, Section 2, supra, may the legislature reduce the age qualification? The provisions of Article VI, Section 4, supra, would seem to clearly indicate that the legislature may not reduce the age qualification.

In the case of *Knight v. Trigg*, 16 Idaho 256, the supreme court

of this state had occasion to construe the provision of Article VI, Section 2, prescribing a residence qualification, it appearing that the legislature had passed an act providing that all persons registered as voters at the last general election could vote at a special election. In holding such statute repugnant to Article VI, Section 2, and therefore void, the court made the following statement, appearing at page 262 of the Idaho Report:

"In the first place, the act provides in specific terms that 'all persons registered as voters at the last general election' shall be qualified to vote at the special election. Now, it must be apparent at once that a great many, perhaps hundreds, of persons who were registered and qualified to vote at the last general election are not now residents of the county in which they were registered. Under the constitution they would not be entitled to vote. (Sec. 2, art. 6). This provision would therefore be repugnant to the constitution. The legislature could not authorize persons to vote who have ceased to be citizens of the county and state, even though they be registered."

We see no reason to suppose that the age requirement appearing in Article VI, Section 2, would be subject to any other interpretation than was given the residence requirement in the above cited case.

The Supreme Court of Florida in the case of *Riley v. Holmer*, 100 Florida 938, 131 Southern 330, had occasion to pass on an act of the legislature contemplated to relax the age requirement under a constitutional provision similar to ours, and in holding such statute void in so far as it was intended to affect the age requirement of a voter, made the following statement:

"Our statute as here quoted for the removal of the disability of married male minors appears to have been designed to remove all civil disabilities imposed by reason of minority, but as to the right to vote it is inoperative, because, Section 1 of Article 6 of the Constitution, in defining the qualifications to vote, among others, limits the right of suffrage to male citizens 21 years of age. Article 19 of the amendments to the Federal Constitution in effect extends the right of suffrage to females without reference to age as to either, that being a matter left for the State to determine. Section 215, Revised General Statutes of 1920 (sec. 248, Florida General Laws of 1927), executed the provisions of Section 1 of Article 6 of the Constitution. **Where the constitution in terms prescribes qualifications for suffrage, the legislature is powerless to modify these qualifications.** McCreary on Elections (Third Edition) Sec. 11."

"Furthermore, not only may the legislature not change, by legislative act, the provisions of Section 2, Article VI with respect to the age requirement, but it is also evident from Section 4 of said Article VI, that the framers of the Constitution intended that the same and other provisions should never be changed by legislative act."

In view of the constitutional provisions and authorities hereinbefore cited we advise you that in our opinion the legislature cannot reduce the age qualification of voters below the minimum age of 21 years prescribed by Article VI, Section 2 of the Idaho Constitution. (Bert H. Miller) (Chas. L. Stout)

May 4, 1944, Mr. Charles Stout, Attorney at Law,  
Glenns Ferry, Idaho:

By your letter of May 1, 1944, you ask whether or not the offices

of County Commissioner and Highway District Commissioner can be held by one and the same person.

Idaho has no constitutional or statutory provision bearing upon this question.

"At common law the holding of one office does not of itself disqualify the incumbent from holding another office at the same time, provided there is no inconsistency in the functions of the two offices in question. But where the functions of two offices are inconsistent, they are regarded as incompatible. The inconsistency, which at common law makes offices incompatible, does not consist in the physical impossibility to discharge the duties of both offices, but lies rather in a conflict of interest, as where one is subordinate to the other and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power to remove the incumbent of the other or to audit the accounts of the other." (46 C. J. Page 941)

"An office is incompatible when the nature and duties of two offices render it improper from consideration of public policy for one person to retain both." (State vs. Wittmer, 144 P. 618)

"Two offices are incompatible so as to preclude the same person from holding both where the performance of the duties of one interferes with the performance of the duties of the other, and there is an inconsistency in the functions of the two offices." (Deyche vs. Davis, 142 P. 264)

An examination of Chapter 15, Title 39, Idaho Code Annotated the "Highway District Law" will disclose many instances where the duties of County Commissioners and Highway District Commissioners are interwoven and could also very readily be antagonistic, for instance Section 39-1521 provides that Highway Districts may contract with Counties for the construction of highways. This is also true of Section 39-1522, Section 39-1523 which provides that in the case of a main highway connecting different parts of the county, it shall be kept in good and sufficient repair by the highway district, and upon a failure so to do, the Board of County Commissioners may require that said work be done by the Highway District, and if not so done, the County may do the work and charge the Highway District.

Other instances in Chapter 15, Title 39 will be found prescribing respective duties of the Board of County Commissioners and the Highway District Board, which show obvious inconsistencies between the duties of the two boards.

Chapter 17 of said Title 39 prescribes the duties of the Board of County Commissioners when two or more Highway Districts desire to consolidate giving the said Board jurisdiction to hold a hearing on such petitions and exercise a certain amount of discretion in the matter of calling an election, and this is true also of Chapter 18, of said title, relating to consolidation. It is also true of Chapter 20, Title 39, prescribing the duties of the Board of County Commissioners with reference to the dissolution of Highway Districts.

Section 39-1513 provides that in the event of a vacancy occurring in the office of Highway District Commissioner, and the remaining members of the Board are unable to agree upon a person to fill the vacancy within 10 days after such vacancy occurs, the Chairman of the Board of County Commissioners shall forthwith become a member of such Highway Board for the purpose of filling such vacancy only. This at least infers that a member of the Board of County Commissioners could not become a member of the Board of Highway District Commissioners for any other purpose.

Under the provisions of Section 5 of Chapter 16, Session Laws of 1939, certain duties are prescribed to be performed by the Board of County Commissioners in the matter of apportionment of the County Motor Tax Fund to Highway Districts.

From the foregoing, I have come to the conclusion that the offices of County Commissioner and Highway District Commissioner are inconsistent and incompatible, and therefore under the common law and as a matter of sound public policy, the said offices may not be held by the same person. (William A. Brodhead)

June 22, 1944, Hon. Mark R. Kulp, State Reclamation Engineer:

Refer your verbal request for an opinion from this office as to your authority to control the operation of the gates maintained by the Washington Water Power Company at Post Falls in Kootenai County on the Spokane River, which gates are designed to regulate the level of the water in Coeur d'Alene Lake.

You state that said company is now holding the level of the lake at 2128.45 feet, instead of 2126.5 feet, the level established for many years after natural high water has subsided.

You also state that the said company has made no application for storage in the lake or to appropriate any of the waters of Coeur d'Alene Lake for power purposes.

Admittedly the company is holding and thereby storing said water for power purposes generated by the flow of the Spokane River for distribution in both Idaho and Washington.

The right of the State to regulate and limit the use of any stream for power purposes is recognized by Section 3 Art. 15 of the Constitution, as follows:

"The right to divert and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the State may regulate and limit the use thereof for power purposes \* \* \*"

As early as 1915 the legislature forbade the appropriation or impounding of the waters of Lake Coeur d'Alene "where such waters or electrical energy to be developed therefrom, is to be used outside of the State of Idaho." (Sec. 41-408 I. C. A.).

By the provisions of Sec. 65-4004 I. C. A., referring to Lake Coeur d'Alene and other lakes, it is declared that:

"The preservation of said water in said lakes for scenic beauty, health, recreation, transportation and commercial purposes necessary and desirable for all of the inhabitants of the State is hereby declared to be a beneficial use of such water."

Said statute authorized the Governor to appropriate, in trust for the people of the State of Idaho, all of the unappropriated water of Priest, Pend Oreille and Coeur d'Alene Lakes, or so much thereof as may be necessary to preserve said lakes in their present condition.

Pursuant to the direction of said law, Hon. H. C. Baldrige, then Governor of Idaho did, on the 27th day of January, 1927, make application to appropriate 1,000,000 acre feet of the water of Coeur d'Alene Lake. Said application was granted and numbered 16641, and on April 12, 1928, a license was granted to H. C. Baldrige, Governor of Idaho and Trustee for the people of the State of Idaho, confirming the right to the use of 1,000,000 acre feet of the waters of Coeur d'Alene Lake, annually, in accordance with Chapter 2, Section 1, Session Laws of 1927, now Sec. 65-4004, Idaho Code Annotated.

The said appropriation was made prior to any attempt by the

Washington Power Company to raise the level of the lake above 2126.5 feet.

Section 41-502 defines the duty of the Department of Reclamation, relative to the control of the distribution of water from all of the streams in Idaho, as follows:

"41-502. Department of Reclamation to Supervise Water Distribution.--It shall be the duty of the department of reclamation to have immediate direction and control of the distribution of water from all of the streams to the canals and ditches diverting therefrom. The department must execute the laws relative to the distribution of water in accordance with rights of prior appropriation.

"The department of reclamation shall, in the distribution of water from the streams to the canals, be governed by this title."

In the case of *Arkoosh vs. Big Wood Canal Company*, 48 Ida. 383, 283 Pac. 522, by the decree of the lower court, certain parties owning water rights involved in said action were given the exclusive right to determine the time when water could be beneficially used by them, and they held that the said parties had the right to demand water for the purpose of irrigation, at any time during the entire year when the same could be applied to a beneficial use. The Supreme Court held that this was error, and held that the decree in that respect was too broad, and said "our present status gives the Commissioner of Reclamation the immediate direction and control of the distribution of water from all of the streams to the canals and ditches diverting therefrom." (Citing CS Sec. 5606, now 41-502 I. C. A.)

From an examination of the foregoing provisions of the Constitution and Statutes, I am of the opinion that you, as State Reclamation Engineer, have legal authority to regulate and control the level of the water in Cocur d'Alene Lake, and that you may demand that the Washington Water Power Company regulate its gates, so that the level of the lake will not be higher than 2126.5 feet. (William A. Brodhead)

August 17, 1944. W. L. Brewrink, Esq., Auditor, Bonnevill County:

Some days ago I had a more or less informal talk with Mr. York of the Syms-York Company, Boise, Idaho, which was predicated, as I understand it, upon some former communication relative to those eligible to make application for an absentee ballot for electors in the military service of the United States.

You, of course, are aware that the legislature of the State of Idaho was convened in extraordinary session for the purpose of facilitating the means of caring for those engaged in the military service and in order that they might participate in the coming election, and that the primary election was advanced some sixty days so as to afford a greater period of time for the transmission and delivery of absentee ballots to those concerned.

Section 7 of Chapter 3, First Extraordinary Session, 1944, among other things, provides:

"Upon the written request of any elector in the military service, or any interested person, made not less than five days before the general election, containing the name and home address of the elector for whom the ballot is requested, address where the ballot is to be sent, and name of person requesting the same, it shall be the duty of the county auditor to mail such elector in the military service, at the address given at the time the request is made, a ballot for the use of such elector in casting his vote in the general election."

I suggest that it might be well for the auditors of the State of Idaho to familiarize themselves with the doctrine announced by the Supreme Court in the case of Fuller versus Corey, 18 Ida. 558, 110 Pac. 1035, as it occurs to me that the principle therein announced might assist auditors in a determination as to whether or not they were exceeding their authority as ministerial officers.

There has been a lot of complaint, perhaps justly, that the electors of the state of Idaho were not availing themselves of the privilege of voting, and various suggestions have been made as to a means of inducing electors to avail themselves of their privilege in participating in primary as well as general elections. In the recent primary election, in spite of the fact that there was considerable opposition for practically every State office, only approximately one-third of the qualified electors of the State interested themselves to the extent that they expressed their preference for the various candidates for nomination, and it is a known fact that vast numbers of the qualified electors of the State seemingly lack interest in participating in the general election.

I take it that the term "interested person" as mentioned in said Section 7, supra, would include any citizen of the State of Idaho, as practically every citizen is or should be interested in seeing to it that all electors of the State participate in elections. It is reasonable to assume that many of those engaged in the military service have not been advised that there was an extraordinary session of the legislature for the purpose of enabling them to participate in the ensuing general election, nor are they advised as to the methods to be employed in obtaining a ballot. I incline to the opinion that the auditors of the state of Idaho should accept applications for absentee ballots from any reputable citizen, and that it is not for such auditors to exercise judicial functions in connection therewith.

Therefore, it would seem to me that the submission of the name and other required data concerning one in the military service of the United States by any citizen of the State of Idaho would be sufficient to warrant an auditor to transmit to the absent elector a ballot, so as to enable him or her to vote at the ensuing general election. (Bert H. Miller)

#### AGRICULTURE

3-4-43—Arvid L. Johnson, Director, Bureau of Dairying. In re: House Bill No. 136, 27th Legislative Session—establishing "Dairy Inspection Account." (Ariel L. Crowley)

3-9-43—Hon. J. C. Sorenson, State Brand Inspector. In re: Is it lawful to record more than one brand in the name of one stock grower, in view of the prohibition of Sec. 24-1002, as amended? (Ariel L. Crowley)

3-29-43—Hon. F. C. Sheneberger, Idaho Grazing District #2. In the opinion of this office, allocations of money (commonly called "50% money") to Grazing Districts may not be expended for the purchase of real estate, title to be taken in the name of the board. (Ariel L. Crowley)

5-20-43—Dr. Scott B. Brown, State Veterinarian. Requirement that no hogs in certain areas may be shipped, except for purpose of immediate slaughter, unless inoculated against cholera is wholly justified in law. (Ariel L. Crowley)

8-28-43—Dr. Scott B. Brown, State Veterinarian, Dept. of Agriculture. In re: the proper form for a slaughterhouse license under Chapter 102, 1943 Session Laws. (Ariel L. Crowley)

10-7-43—Harvey Schwendiman, Commissioner of Agriculture. In the opinion of this office a person buying farm produce from a commission merchant, broker, or dealer in the State of Idaho for the purpose of shipping or resale is not required under Chapter 139, 1935 Session Laws as amended, to procure a license for transacting such business. (Frank Langley)

11-10-43—Mr. Harvey Schwendiman, Commissioner of Agriculture. In the opinion of this office money erroneously collected by the Dept. of Agriculture, under the provisions of Chapter 139 of the 1935 Session Laws, as amended by Chapter 141 of the 1943 Session Laws, cannot legally be refunded. (Frank Langley)

3-16-44—Mr. D. A. Stubblefield, Acting Commissioner, Dept. of Agriculture. It is the opinion of this office that a State licensed warehouse is not required to return to its customers grain that has the same protein content as was contained in the grain that was stored by said customer. (Frank Langley)

3-31-44—Dr. Scott B. Brown, Director, Bureau of Animal Industry. It is the opinion of this office, when an owner gives explicit instructions requiring the selling agent to conform with the provisions of Sec. 6, Chap. 150, 1939 Laws, and the agent disobeys, the owner is entitled to recover his damages, one element of which would be the loss of indemnity which otherwise would be paid. (Ariel L. Crowley)

4-11-44—Mr. D. A. Stubblefield, Director of Plant Industry, Dept. of Agriculture. In the opinion of this office a commercial fertilizer dealer in Idaho, who buys unadulterated nitrogen, phosphate and potash and mixes the same and sells on farmers' orders, must (Sec. 22-605, I. C. A.) register the newly made brand of fertilizer and pay required registration fee and the additional license fee of ten cents per ton on every ton of the new commercial fertilizer product sold within the State. (Frank Langley)

5-11-44—Mr. R. H. Young, Commissioner of Agriculture. In the opinion of this office, any person wishing to engage in the business of buying from producers grains, beans, peas and seeds is required to file a bond with the Commissioner of Agriculture as mentioned in said Sec. 1, of Chapter 146, 1939 Laws. (Frank Langley)

6-15-44—A. H. Caine, Chairman, State Predatory Animal Board. It is the opinion of this office that:

1. The State Predatory Animal Board has authority to institute a uniform program of predatory animal control over the State, provided that such program does not interfere with the jurisdiction given to the various boards of County Commissioners, Chapter 23, Title 24, I. C. A.;

2. The State Predatory Animal Board cannot organize districts composed of two or more counties and spend money that has been raised by taxation on sheep assessments within the individual counties included therein throughout the district without regard for county boundary lines. (Frank Langley)

9-1-44—Hon. R. H. Young, Commissioner, Dept. of Agriculture. It is the opinion of this office that warehousemen must issue receipts for wheat actually stored in a bonded warehouse; Sec. 67-222, I. C. A. (Frank Langley)

9-5-44—Hon. R. H. Young, Commissioner, Dept. of Agriculture. (Supplementing opinion to Mr. Young of Sept. 1, 1944) It is the opinion of this office that a warehouseman duly licensed and bonded under the Bonded Warehouse Law of this State must receive and store grain that is tendered for storage without discrimination, and

such warehouseman may not lawfully require the owner of the grain to sell any part thereof in order to obtain the privilege of storing the remaining part or portion of the grain. (Frank Langley)

#### AUDITOR

1-4-43—Hon. Calvin E. Wright, State Auditor. In re: Examination of opinion #248, Thomas Y. Gwilliam, Unemployment Compensation Division on Employment Service Fund appropriation. (Ariel L. Crowley)

1-4-43—Hon. Calvin E. Wright, State Auditor. In re: Comparative status of rules of Board of Examiners and State Purchasing Agent. The Board of Examiners, being a constitutional body, possesses probable ultimate authority in determination of propriety of claims. (Ariel L. Crowley)

1-5-43—Hon. Calvin E. Wright, State Auditor. In re: Fund Structure, Soldier's Memorial Fund. The appropriation has been cut off and the fund should be abolished in the books and the unexpended balance recommitted to the general fund. (Ariel L. Crowley)

1-5-43—Hon. Calvin E. Wright, State Auditor. It is the opinion of this office that profits on sales of securities by increase in the value thereof between the date of purchase and the date of sale, are part of the endowment funds and not of the earning funds. (Ariel L. Crowley)

1-7-43—Hon. Calvin E. Wright, State Auditor. It is the opinion of this office that the appropriation contained in Chapter 228, 1929 Session Laws, has lapsed, and is subject to present recommitment to the general fund. (Ariel L. Crowley)

1-7-43—Hon. Calvin E. Wright, State Auditor. It is the opinion of this office that the auditor may close the Carey Act Relief Fund and the money may be recommitted to the general fund. (Ariel L. Crowley)

1-20-43—Hon. Calvin E. Wright, State Auditor—

1. Where there is insufficient money in the Highway Fund, registered warrants may issue against the same for payment of lawful claims.

2. It is our opinion that registered warrants may not issue to make allocations to counties under Chapter 16, 1939 Session Laws.

3. A claim in the usual course against the highway fund by a creditor of the State whose claim arises through the department of public works must be paid, if there are funds in the highway fund with which to pay the same, regardless of impending necessity for allocation of funds to counties, and regardless of any depletion in allocable amount which may result from such payment. (Ariel L. Crowley)

4-14-43—Hon. Calvin E. Wright, State Auditor. In re: Budget appropriation of 1943 applying to the liquor fund. In the opinion of this office the expenses of the liquor dispensary incurred between January 1, 1943, and January 29, 1943, inclusive of both dates, must be charged to the continuing appropriation. (Ariel L. Crowley)

4-14-43—Hon. Calvin E. Wright, State Auditor. In the opinion of this office the salary of the State Forester, under present conditions of law, is \$3,000.00 per annum, and no increase over that sum by use of Clarke-McNary grants to the state is permissible. (Ariel L. Crowley)

5-3-43—Hon. Calvin E. Wright, State Auditor. In the opinion of this office, it is lawful for the State Insurance Fund to assign claims which it has against out of state persons to an out of state agency for the purpose of collection only, the total collections to be remitted to the State and charges for collection service to be billed against the insurance fund. (Ariel L. Crowley)

5-22-43—Hon. Calvin E. Wright, State Auditor; and Hon. John A. Viley, Collector of Internal Revenue. In the opinion of this office it is the State Auditor's duty to return notice of levy and warrant for distraint, used by the Collector of Internal Revenue and served on the State Auditor for the purpose of coercing payment by a state employee to the United States of a tax debt. (Ariel L. Crowley)

6-9-43—Hon. Calvin E. Wright, State Auditor. In re: definition of an "original invoice" within the requirement of the motor fuels refund statute. (Ariel L. Crowley)

7-16-43—Hon. Calvin E. Wright, State Auditor. In re: Handling of money taken from slot machines. Opinion of July 8, 1943, erred in directing that the money be put in the general fund under Sec. 65-1105. Money shall be transferred to the permanent school fund. Sec. 19-4802. (Ariel L. Crowley)

7-29-43—Hon. Calvin E. Wright, State Auditor. It is the opinion of this office that when a conditional sales contract is satisfied of record, the county recorder is authorized in law to return the original contract to the maker thereof. (Ariel L. Crowley)

8-2-43—Hon. Calvin E. Wright, State Auditor. In re: Disposal to be made of the money in the Soldiers' Home Suspense Fund deposited under the name of Robert Liberski, March 3, 1932, and under the name of W. G. Kuck, Oct. 21, 1933. (Ariel L. Crowley)

8-30-43—Hon. Calvin E. Wright, State Auditor. If supplementary proceedings on return of an execution nulla bona, issued upon an abstract of judgment from a Justice Court, are taken, it is the opinion of this office that the ordinary filing fee should be charged by the Clerk. Sec. 30-2701, as amended. (Ariel L. Crowley)

12-3-43—Comptroller General of the U. S., State Auditor, Calvin E. Wright, & Commissioner of Law Enforcement, Chas. E. Spoor. There being no appropriation for the making of refunds, the discussion of whether or not the U. S. is entitled to refund of gasoline tax, upon the basis of a letter of the Comptroller General dated Nov. 18, 1943, is moot. (Ariel L. Crowley)

1-14-44—Hon. Calvin E. Wright, State Auditor. Where osteopaths and veterinarians (Chap. 28, Title 65, I. C. -A.) renew annual licenses by check and the checks are lost through no fault of the persons remitting same, the licenses are, in fact, renewed—with an existence of debt, in the amount of the license existing from the licensees to the State. (Ariel L. Crowley)

#### BUREAU OF BEER REVENUE

11-10-43—Mr. W. B. Trowbridge, Director, Bureau of Beer Revenue. In re: Issuance of retail beer license to Mr. McFee. (J. E. Smead)

#### BUDGET BUREAU

7-29-43—Hon. Alvin H. Reading, Budget Director. In re: "Request for quarterly allotment"—what authority do such signed requests give the office of the State Auditor? (Ariel L. Crowley)

12-7-43—Hon. Alvin H. Reading, Director of the Budget. In the opinion of this office the fees received under Sec. 22-506 I. C. A., as amended, must be placed in the general fund of the state as directed by the statute, rather than in funds of the Board of Regents. (Ariel L. Crowley)

1-28-44—Hon. Alvin H. Reading, Budget Director. In the absence of the legislature and protest of the grantor, the Governor can direct the use of the T. B. Hospital at Gooding to house senile patients from state mental hospitals. (Ariel L. Crowley)

3-8-44—Hon. Alvin H. Reading, Budget Director. In re: Use of funds when an escheated estate falls to an endowed institution. (Soldiers' Home.) (Ariel L. Crowley)

4-18-44—Mr. Alvin H. Reading, Budget Director. In the opinion of this office the matter of payment of the secretary in the office of the Director of Charitable Institutions in part from the appropriations made for the State Hospital North, the State Hospital South, and the State School & Colony is discretionary with the Governor. (Ariel L. Crowley)

4-22-44—Hon. Alvin H. Reading, Budget Director. It is the opinion of this office that no office other than the Veterans' Welfare Commission has power to determine the question of assistance to veterans through any organization of veterans; Title 63, I. C. A. (Ariel L. Crowley)

#### CANDIDATES—ELECTIONS

3-12-43—Mayor D. W. Stowell, City of Rexburg. Where vacancies occur in the offices of city councilmen elected in a city of the second class for four year terms at the election held in April, 1941, and appointments were made to fill the vacancies, it is the opinion of this office that appointees hold office until the 1943 election only. (Charles S. Stout)

1-4-44—Ralph Litton, Esquire. In the opinion of this office, in filling a vacancy in office occasioned by the resignation of the clerk of the district court, the appointee shall hold the office until a successor is elected at the next succeeding term of the office in question. (Bert H. Miller)

5-24-44—Mr. Alex Boyle, Clayton, Idaho. In re: Interpretation of Election Laws, relative to voting at a general election. (Wm. A. Brodhead)

8-9-44—Zeola Stringham, Blackfoot, Idaho. It is the opinion of this office that if no person is elected to the office of County Coroner or Justice of the Peace at the general election held on November 7, 1944, the incumbent Coroner and Justice of the Peace will be entitled to continue in those offices during the biennium beginning on the second Monday of January, 1945, without filing a new official oath or a new bond. (Frank Langley)

8-10-44—Mr. E. Daubner, Gooding, Idaho. In the opinion of this office the Democratic Party is entitled to not less than one member on each set of election judges in each of the precincts in Gooding, under the statement of facts given herein. (Frank Langley)

8-21-44—Mr. H. D. Lenkersdorfer, Secretary, Bannock Co. Republican Central Committee. It is the opinion of this office that proxies may legally be voted in a County Central Committee organization meeting by a political party if such meeting votes to permit the use of proxies. (Frank Langley)

11-6-44—Hon. Nora L. Davis, Letha, Idaho. In re: Marking of a ballot where a "split ticket" is voted; Section 33-804, I. C. A., as amended by Chapter 49, 1941, Session Laws, as amended by Chapter 2, First Extraordinary Session 1944. (Bert H. Miller)

## COUNTY AND COUNTY OFFICERS

### Assessor

5-18-43—R. D. Leonardson, Ada County Assessor. In re: Amendment of Sec. 61-105, I. C. A., as amended by Ch. 97, Session Laws of 1935, as amended by Senate Bill 56, Ch. 129 of the Session Laws of 1943. (Bert H. Miller)

2-5-44—Mr. R. D. Leonardson, Ada County Assessor. In the opinion of this office the legislature intended to require the assessment, for taxation purposes, at the rate of not less than \$5.00 an acre, of all mineral rights reserved to any grantor, except the U. S. or the State of Idaho, by the terms of any conveyance of lands other than lands acquired under the mining laws of the U. S., and the County Assessor should carry out that intention unless and until the courts decide otherwise. (Frank Langley)

2-9-44—Mr. J. B. Engel, Assessor, Idaho County. In re: Construction of Sec. 61-414, I. C. A. In the opinion of this office and under facts outlined herein, there is no legal objection to entering personal property on the real property assessment roll. (Charles S. Stout)

7-14-44—Marie McDonald, County Assessor, Idaho City, Idaho. In the opinion of this office the five dollar assessment of reserved mineral rights only applies to reservation of minerals on ground other than patented mining property. See Sec. 61-2301, as amended in 1941. (J. R. Smead)

### Auditor

4-11-44—Mr. J. S. Ross, County Auditor and Recorder, Orofino, Idaho. Salaries of members of the boards of county commissioner are fixed by Sec. 30-2604, I. C. A., as amended by Chapter 91 of the 1937 Session Laws, in accordance with the classification of the respective counties. The Board of County Commissioners may not change the salaries of any county officer for services to be rendered prior to the second Monday of January, 1945, and fix the same at higher or lower rate than that fixed at the regular April, 1944 meeting of said Board. (Frank Langley)

8-17-44—W. L. Brewrink, Esq., Bonneville County Auditor. It is the opinion of this office that, under the provisions of Sec. 7, 1st Extraordinary Session Laws, 1944, auditors of the State of Idaho should accept application for absentee ballots from any reputable citizen, and that it is not for such auditors to exercise judicial functions in connection therewith. (Bert H. Miller)

10-20-44—Mrs. Lillian M. Campbell, Gem County Auditor. In re: General qualifications for those voting at a general election in the State. In the opinion of this office a challenge for want of residence must be passed upon by judges of election and not by the county auditor, whose duties are ministerial rather than judicial. (Bert H. Miller)

10-30-44—Philip Weisgerber, Esq., Nez Perce County Auditor. In the opinion of this office (1) an absentee voter's ballot \* \* \* may

delivered to the county auditor issuing the same by a person other than the absentee voter; (2) under the 1941 amendment, an absentee ballot may be mailed out by the auditor and returned by the voter at any time after such ballots are printed and irrespective of time. (Bert H. Miller)

#### County Commissioners

10-8-43—G. W. Alme, Clerk, Washington County Commissioners. It is the opinion of this office that the Board of County Commissioners may not legally make a levy of .0015 for Bond Interest and Sinking Road and Bridge Bonds if there is sufficient money received from the Motor Fuels Tax and Motor Vehicle License Funds to pay the Road and Bridge Bonds and the accrued interest thereon. (Frank Langley)

2-9-44—Board of County Commissioners, Preston. In the opinion of this office the equitable interest held by a purchaser of state or county owned land, under a contract to purchase on which only a part of the purchase price has been paid, may legally be assessed and taxed by the taxing authorities of the county in which the land is situated. (Frank Langley)

#### Probate Judges

5-19-43—John Jackson, Ada County Probate Judge. It is our opinion in estates in which the petition for letters of administration or letters testamentary was filed prior to the effective date of Chapter 19 of the 1943 Session Laws but the appointment of the executor or administrator made after the effective date of said act, that the time specified in the notice to creditors should be four months, as provided in said amendatory act. (Charles S. Stout)

7-25-43—Hon. John L. Phillips, Probate Judge, Lewiston.

1. In the opinion of this office upon the death of a wife, U. S. Savings Bonds purchased from community funds must be inventoried and appraised and considered subject to inheritance tax, if the estate is of sufficient amount to be above the tax levy.

2. It is the opinion of this office that the United States Savings Defense Bonds issued to a husband and made payable to his wife in the event of the husband's death, if they were purchased by community funds, constitute an asset of the community and are subject to inheritance tax in proper instances, even though the Federal Government has waived the requirement of a decree of distribution in order to pay the surviving spouse the proceeds of such bonds. (Bert H. Miller)

8-9-44—Hon. J. B. Carter, Probate Judge, Nezperce, Idaho. In re: Portion of undertaker's bill to be allowed and paid as a preferred claim against an insolvent estate of a married woman who recently died in Lewis County. (Frank Langley)

12-4-44—Hon. John Jackson, Ada County Probate Judge. It is the opinion of this office that: (1) the parent of a child who runs away and is found in another state has the legal right to follow the child into another state and to bring the child back without any warrant of arrest or legal paper; and (2) a peace officer of the State of Idaho would have no right to follow such child into another state and to place him under arrest and to return the child to the custody of his parents. However, if the child is a delinquent minor and a fugitive from a State Institution, he may be arrested and returned to said institution by any officer or citizen. (Frank Langley)

### Prosecuting Attorneys

2-1-43—W. R. McClure, Prosecuting Attorney. (1) It is the opinion of this office that the only power or authority of the county assessor is to assess the equity in state lands of a purchaser under a land sale certificate, and this equity should be assessed at its full cash value. (2) If certificate should be cancelled by default, the assessment of his equity would immediately terminate and any lien against the land for taxes assessed against his equity would automatically become void insofar as it might be construed as a lien against the land. (Leo Bresnahan)

3-12-43—Hon. C. W. Poole, Prosecuting Attorney. It is the opinion of this office that a board of county commissioners has the authority to act upon applications to increase salaries of county officers, as contemplated by S. B. #135, and to fix a levy at its September meeting to provide necessary funds to cover any increase in excess of that fixed by the county budget law. (Bert H. Miller)

4-13-43—Hon. C. W. Poole, Prosecuting Attorney. It is the opinion of this office that the maximum salary limit named in figures in Sec 30-2606, I. C. A., is the *Ultima qua non*, beyond which the county commissioners may not go, notwithstanding the exception set up by Chapter 155, 1943 Laws, for temporary purposes. (Ariel L. Crowley)

4-13-43—Hon. C. W. Poole, Prosecuting Attorney, Madison County. In re: What class county is Madison County, and what class county is Fremont County, for the purposes of determining prosecuting attorneys' salaries? (Ariel L. Crowley)

4-26-43—John W. Clark, Prosecuting Attorney, Oneida County. In the opinion of this office the county commissioners may not invest funds of the county in U. S. War Bonds except surplus money in a sinking fund, as authorized by Sec. 55-601, I. C. A. (Charles Stout)

4-29-43—Ross B. Haddock, Prosecuting Attorney, Shoshone. In re: Creation of a cemetery district which embraces more land than the contiguous land represented and owned by the signers of the petition. (J. R. Smead)

5-15-43—H. William Furchner, Prosecuting Attorney. In the opinion of this office a prosecuting attorney may not delegate to the Board of County Commissioners the authority to appoint a prosecuting attorney's deputy to serve pro tempore during the absence of the prosecuting attorney in military service. (Ariel L. Crowley)

6-8-43—Richard H. Seeley, Prosecuting Attorney, Jerome. In the opinion of this office, a board of county commissioners does not have legal authority to expend county money for construction and maintenance of a labor camp. (Frank Langley)

7-15-43—Hon. Frank Kimble, Prosecuting Attorney of Clearwater County, et al. (See opinion to Jack K. Conrad, May 5, 1942). Whether the jurisdiction of justice court covers the area within the corporate limits of the City of Orofino, in criminal matters which are also covered by the penal code of the city and fall within the jurisdiction of the police court. (Ariel L. Crowley)

9-17-43—M. F. Ryan, Prosecuting Attorney, Gooding, Idaho. It is the opinion of this office that common school districts may not legally invest any part of their bond redemption funds in U. S. War Bonds but that they may legally invest in U. S. War Bonds the surplus funds other than bond moneys. (Subdiv. 31, Sec. 32-6 I. C. A.) (Frank Langley)

10-4-43—Carl M. Buell, Prosecuting Attorney, St. Maries. In

Forest protection taxes certified by the State Board of Forestry against certain lands in Benewah County. (Ariel L. Crowley)

11-3-43—Mr. Robert B. Holden, County Attorney, Dubois, Idaho. In the opinion of this office the State Auditor is correct in offsetting warrants not presented against Clark County School District within two years after being called (Chap. 119, Sec. 3, 1935 Session Laws), in the making school apportionments and upon authority of Chap. 48, 1943 Session Laws. (Ariel L. Crowley)

11-27-43—Mr. V. K. Jeppesen, Prosecuting Attorney, Caldwell, Idaho. It is the opinion of this office that the majority of the members of the board of county commissioners can legally make an appointment of a county physician and fix his compensation, and that it is not necessary that the lowest bidder be employed. (Frank Langley)

1-6-44—Charles E. Harris, Prosecuting Attorney, Montpelier. In the opinion of this office the Board of County Commissioners of Bear Lake County, either with or without the affirmative vote of the member who is a nephew of the applicant, cannot legally appoint such applicant to fill a vacancy in the office of probate judge. (Frank Langley)

1-25-44—Mr. Albert J. Graf, Prosecuting Attorney, Wallace. It is the opinion of this office: (1) that where the county holds a tax deed to certain lands, and the former owner, by quit claim deed, transfers all his right, title and interest to another party, such new owner may legally redeem the property by paying to the county all delinquent taxes with statutory interest, penalty and costs; (2) that where on the second Monday in January the county holds a tax deed to certain land and soon thereafter, and before the month of June of that year, the county sells and deeds the land to a new owner, the county assessor may not legally assess such land for that same calendar year. (Frank Langley)

2-19-44—W. Kent Naylor, Esq., Prosecuting Attorney, Idaho Falls. In the opinion of this office a cemetery owned and operated by Fielding Memorial Park, Inc., and Fielding Memorial Park Ass'n, is not a public cemetery and all lands embraced therein are taxable property. (Frank Langley)

3-1-44—J. W. Clark, Prosecuting Attorney, Malad. In the opinion of this office neither the State of Idaho nor any of its counties in which a noxious weed eradication program is being carried out is under any legal liability to a livestock owner who loses an animal through accidental poisoning as a result of said program. (Frank Langley)

3-21-44—Mr. J. E. McDonald, Prosecuting Attorney, Idaho City. It is the opinion of this office that a board of county commissioners does not have authority to reclassify the lots in an unincorporated townsite into acreage; et cetera. (Frank Langley)

3-23-44—Mr. William S. Hawkins, Prosecuting Attorney, Coeur d'Alene. In re: Status of certain easements held by Bunker Hill and Sullivan Mining and Concentrating Company along Coeur d'Alene River. (J. R. Smead)

3-29-44—Mr. W. R. McClure, Prosecuting Attorney, Payette. In the opinion of this office a qualified elector of the State of Idaho who is absent from the state working for a contractor who is working on government contracts comes within meaning of Sec. 33-715, I. C. A., and is entitled to register by mail. (Frank Langley-Ariel L. Crowley)

4-1-44—Mr. Chas. E. Harris, Prosecuting Attorney, Montpelier.

After authorization of the qualified electors in a district it is our opinion that a board of trustees has full authority to lease or rent a school house or other school property to a game club or other organization for the purpose of holding a dance to raise funds. (Frank Langley)

7-13-44—Robert E. McFarland, Prosecuting Attorney, Sandpoint, Idaho. In the opinion of this office Chapter 129 of the 1943 Session Laws (Senate Bill No. 56) and Chapter 131 (Senate Bill No. 77) of the 1943 Session Laws are both in full force and effect. (J. R. Smead)

8-31-44—Mr. Donald R. Good, Deputy Prosecuting Attorney, Blackfoot, Idaho. It is the opinion of this office that the fees and mileage of jurors are not properly taxable as costs against a defendant convicted upon a charge of a statutory misdemeanor after a trial by jury called upon his demand therefor in a Probate or Justice Court. (Frank Langley)

9-1-44—Mr. Ralph Litton, Prosecuting Attorney, St. Anthony, Idaho. It is the opinion of this office that it was not the intention of the legislature to permit more than one County Hospital in a county; it is our further opinion that the Board of County Commissioners of Fremont County does not have jurisdiction to call a bond election for the purpose of establishing a hospital at Ashton and also one at St. Anthony. (Wm. A. Brodhead)

#### EDUCATION

2-25-43—Hon. C. E. Roberts, State Supt. of Public Instruction. In re: Is Midway Rural High School #1, a joint rural school district? (Ariel L. Crowley)

3-27-43—L. A. Thomas, Supt., Ind. School Dist. #2, Kimberly. It is the opinion of this office that, under Sec. 32-704, I. C. A., Ind. School Dist. #2 is entitled to use a surplus in their current fund for continuing construction work on a partially completed school building, construction of which was begun under the W. P. A., not out of existence. (J. R. Smead)

4-9-43—C. E. Roberts, Supt. of Public Instruction. In the opinion of this office the question as to whether or not a library shall be established (by Ind. School Dist. #6 of Madison County) should be submitted at the first election held for the purpose of electing member as members of the board of trustees, and not at an election to determine the school district levy. (Ariel L. Crowley)

4-15-43—F. C. Gillette, State Senator. (1) It is not lawful, without enabling statute for a rural high school district to pay out general fund moneys to retire bonds of the district. (2) Bonds of the district are not within the enumerated securities in which its fund may be invested. Sec. 32-615, I. C. A. (31). (Ariel L. Crowley)

4-29-43—C. V. True, Department of Education. In our opinion it is legitimate for the president and secretary of the Board of Education and Board of Regents of the University of Idaho to affix their signatures to the orders for payment of money described in 32-2308, 32-2505 and 32-2606, by use of "plate signatures" (i.e. signatures written by running instruments through a check or drafting machine.) (Ariel L. Crowley)

\*5-7-43—Hon. C. E. Roberts, Supt. of Public Instruction. In re: Contract form for employment of teachers for Sandpoint Public Schools. (Ariel L. Crowley)

5-14-43—C. E. Roberts, Supt. of Public Instruction. It is the opinion of this office that the children of Japanese parents who are placed in a school district by the Federal War Relocation Authorities are not entitled to receive free school privileges from the school district. (Charles S. Stout)

5-22-43—C. E. Roberts, Supt. of Public Instruction. In the opinion of this office, and under Chapter 55, 1st Extraordinary Session of 1935, it is permissible for the University of Idaho Southern to borrow funds with which to purchase equipment and pay operating costs in order to offer special military training functions. (Ariel L. Crowley)

5-29-43—C. E. Roberts, State Supt. of Public Instruction. In re: What constitutes residence in the matter of payment of high school tuition? See opinion to R. A. Weston, Sept 25, 1939. (Ariel L. Crowley)

6-24-43—State Board of Education. Bond form, as submitted, for Naval V-12 Training Program, U. I. S. B., appears adequate, except that it contains no clause limiting maturities to 30 years or less, as provided by statute. (Ariel L. Crowley)

7-19-43—Mrs. Belva E. Asmussen, Clerk, School Dist. #6 Payette, Idaho. In the opinion of this office, School Dist. #6 will not lapse if by agreement with the Payette School District it transports and pays the tuition of its school children while attending for one school year the Payette grade schools. (Frank Langley)

8-5-43—Hon. C. E. Roberts, Supt. of Public Instruction. In re: Regulations and limitations relating to the opening of mechanical trade schools in the State of Idaho under private auspices. (Ariel L. Crowley)

9-17-43—Hon. Chas. R. Howe, Donnelly, Idaho. It is the opinion of this office that provisions of Sec. 2, Chap. 243, S. L. 1939, must be read into and considered to be incorporated within the terms of the agreement of August 6, 1943, between the school boards of Independent School Dist. #2 of McCall and Rural High School Dist. #1 of Donnelly, and that such agreement is valid and legal. (Frank Langley)

10-27-43—Hon. C. E. Roberts, Supt. of Public Instruction. (1) The legal date on which the Biennial Report of the Dept. of Education should be prepared is June 30th in each even numbered year. (2) The next biennial report should cover the biennium ending June 30, 1944. (3) The cost of printing report is an encumbrance for the quarter current when encumbrance requisition for the printing is filed. (Ariel L. Crowley)

10-28-43—Hon. C. E. Roberts, Supt. of Public Instruction. In the opinion of this office the University of Idaho is a governmental agency, performing governmental functions in which it enjoys the general immunity of the State from liability for negligence of its employees. (Ariel L. Crowley)

11-3-43—Hon. C. E. Roberts, State Superintendent, and Hon. E. P. Newby, Superintendent, Idaho Industrial Training School. Although a district court has the power to commit children eight years old to the Industrial School for felonies, except murder and manslaughter, that power is in derogation of the common law, and by creating the exception the legislature has negated the power of the district court to commit any person to the Industrial School under the age of eight years. The superintendent must receive children when committed, upon a commitment regular on its face. (Ariel L. Crowley)

11-15-43—Hon. C. E. Roberts, Supt. of Public Instruction. It is the opinion of this office that the average daily attendance of adults receiving Americanization education under the provisions of Sec. 32-1901, I. C. A., cannot legally be counted in determining classroom units under the provisions of Sec. 2, Chap. 205, Laws of 1933, as amended. (Frank Langley)

12-1-43—Hon. C. E. Roberts, Supt. of Public Instruction. In the opinion of this office sums which should have been contributed by the county from the county levy, but were not, cannot be raised in subsequent years and thus make up to the districts which have suffered by the error, for reasons herein enumerated. However, such prohibition extends to the apportionment following failure to make levy, and does not forever prohibit any apportionment of subsequent date for a year in which the correct levy was made. (Ariel L. Crowley)

12-1-43—Hon. C. E. Roberts, Supt. of Public Instruction. In re: The lawful qualifications for the office of County Superintendent of Public Instruction. (Ariel L. Crowley)

12-2-43—Hon. C. E. Roberts, Supt. of Public Instruction. In the opinion of this office, the State Board of Education, under its powers of general supervision and without aid of any statute, has the absolute right to demand and receive full information concerning all financial and scholastic operations of any specially chartered school district. (Ariel L. Crowley)

12-2-43—Hon. C. E. Roberts, Supt. of Public Instruction. (1) If request for salary or other information from charter districts were made through the county superintendent's office, Section 32-214, I. C. A., could be invoked on failure of that office to supply the information. (2) In the opinion of this office, Sec. 32-1101, I. C. A. applied to Lewiston but does not apply to Emmett or Boise. (3) In the opinion of this office, (Sec. 32-1101, I. C. A.) the duty of the county superintendent covers all schools, whether independently chartered or not. (4) In the opinion of this office, the State Board of Education is not justified in excluding from its computation under Sec. 32-1603 the salary of a teacher who holds a state certificate if that teacher holds an authorization to teach by reason of the power of a specially chartered district. (Note: Exception in the case of Lewiston). (Ariel L. Crowley)

1-12-44—Hon. O. D. Garrison, Bursar, Southern Branch, and Hon. C. E. Roberts, State Supt. of Public Instruction. In the opinion of this office, and as of Dec. 24, 1943, at 5:00 o'clock p.m. that abstract of title No. 12149, prepared and certified by Bannock Title-Abstract Co. under date of Dec. 24, 1943, is adequate and the title is accordingly approved for purchase. (Ariel L. Crowley)

1-25-44—Ahsahka P. T. A., Mrs. Adron Pelton, President. In the opinion of this office members of a Parent-Teachers Assn. may employ an accountant to examine the books as fully as they desire. (Ariel L. Crowley)

3-7-44—Hon. C. E. Roberts, Supt. of Public Instruction. In the opinion of this office, nothing in the statute (Sec. 32-702, I. C. A.) prohibits the joinder of general school funds and proceeds of special high school levy for accounting purposes, so long as the sum drawn for common school purposes does not invade the proceeds of the special high school levy, the use of which is restricted to high schools. (Ariel L. Crowley)

3-10-44—Mr. Fred J. Price, Clerk, School Dist. No. 2, Paris, Idaho. In the opinion of this office a board of trustees of a school district

has a right to employ a teacher for one school year only. (Ariel L. Crowley)

3-16-44—Department of Education. In the opinion of this office in re: Funds received from the fire at Albion State Normal School, this insurance should be added to the General Fund appropriation made by Chapter 154, 1943 Laws. (Ariel L. Crowley)

3-16-44—W. H. Mendenhall, Justice of the Peace, Thatcher. (1) School law provides no compensation for treasurer of the district. (2) The office of treasurer is incompatible with the office of clerk, and the two cannot be held by one man. (3) Temporary combinations of school districts are made under Chap. 243, 1939 Laws; the voices, which each district shall have in the matter of employees is determinable only by contract. (4) Two sets of trustees have such voices in the employment of teachers and the conduct of the school generally as is provided in the contract for temporary combinations; Sec. 35-330A, 1940 Code Supplement. (Ariel L. Crowley)

3-22-44—Hon. A. H. Chatburn, State Superintendent of Public Instruction. When the school district of a county complies with the law and is eligible for aid in time of emergency (H. B. 9, Sec. 2) the county commissioners have no discretion, except as to amount, and must make a levy for the County Teachers' Aid Fund, not to exceed  $1\frac{1}{2}$  mills. (Ariel L. Crowley)

4-22-44—Hon. A. H. Chatburn, State Supt. of Public Instruction. (1) It is the duty of the board of trustees of Common School Dist. No. 12 to treat the Prairie School and the Anderson Dam School on a basis of as nearly absolute equality as possible; the funds raised for or apportioned to the district must be utilized for the support of both schools in the district. (2) In re: Powers of County Supt. in case of refund on part of trustees of a school district to perform their duties. (3) It is the legal duty of the board to declare the lapsation of school districts in order that the property may be administered by the County Superintendent. If it fails to enter such an order the superintendent may proceed in the usual course of mandamus to compel action. (Ariel L. Crowley)

8-16-44—Mr. A. H. Chatburn, Supt. of Public Instruction. It is the opinion of this office that: (1) A child must have attained the age of six years before he can lawfully be admitted as a pupil in an Idaho public school; (2) The public school districts' duty to refuse admission by transfer of a child who is under the age of six years is not affected by the fact that such other school district has permitted such child to attend its school; (3) A state and county apportionment of public school funds based on the enrollment of a first grade child not of legal school age may not be withheld from the public school district in which such child is attending school in the absence of a judicial determination of the question to the contrary. (Frank Langley)

8-17-44—A. H. Chatburn, Supt. of Public Instruction. It is the opinion of this office that a non-operating school district which is in temporary combination with an operating district is entitled to receive aid from the County Teachers' Aid Fund and the State Teachers' Aid Fund, if such non-operating district has fully complied with the provisions of Chapters 6 and 7 of the Second Extraordinary Session Laws of 1944. (Frank Langley)

8-29-44—A. H. Chatburn, Supt. of Public Instruction. It is the opinion of this office that the Board of Trustees of a school district in this state may not lawfully issue bonds under the provisions of Chapter 157 of the 1933 Session Laws for the payment of the war

rant indebtedness of such district incurred at any time subsequent to March 11, 1935, without first submitting the question to a vote of the electors of the school district. (Frank Langley)

8-29-44—Mrs. Myrtle Koppes, County Supt. of Public Instruction, Idaho City, Idaho. In re: When a levy has been made for tuition purposes, can money collected for that purpose be used for transporting high school students to an accredited high school in another school district? (Frank Langley)

8-31-44—Mr. A. H. Chatburn, State Supt. of Public Instruction. In the opinion of this office the election held for the purposes of annexing additional territory to the Midway Rural High School District, though in some respects irregular, was a legal one and the additional territory was legally annexed to the district. (Frank Langley)

9-5-44—Hon. A. H. Chatburn, Supt. of Public Instruction. Supplementing opinion of May 14, 1943, to Hon. C. E. Roberts, then Supt. of Public Instruction: it is the opinion of this office that the children of Japanese parents brought in from coastal or defense areas to relocation centers are not entitled to demand and receive free school privileges from a school district in which the parents were placed by the federal war relocation authorities. (Bert H. Miller)

#### FINANCE

5-21-43—G. L. Jenkins, Commissioner of Finance. In the opinion of this office there is no authority in law for the Inheritance Tax Division to grant an inheritance tax release or consent to transfer of securities on account of real and/or personal property subject to the jurisdiction of Idaho for probate where there is an absence of probate proceedings, even where the estate is small and it is obvious that there would be no inheritance tax payable. (Bert H. Miller)

6-30-43—G. L. Jenkins, Commissioner of Finance. In the opinion of this office the Commissioner of Finance cannot legally accept tax receipts for taxes paid more than eight months prior to the time when they are first presented as an offset against license fee owing under Chapter 115 of the 1935 Session Laws. (Frank Langley)

11-4-43—Hon. G. L. Jenkins, Commissioner of Finance. In the opinion of this office: (1) a county bank may amend its charter as to change its place of business; (2) the jurisdiction of the Commissioner of Finance, in the above situation, is limited to investigation to determine that the corporate capital complies with the provisions of Sec. 25-201; (3) the Commissioner of Finance has no authority, in the transfer of its place of business by a country bank beyond examination and refusal of the change for insufficient capital. (Ariel L. Crowley)

12-7-43—Hon. G. L. Jenkins, Commissioner of Finance. In the opinion of this office: (1) If a loan company lends to any person any sum in excess of \$300.00 the 3% monthly rate cannot be applied to any part of the total sum. (2) Neither filing fees, insurance premium attorneys' fees, nor any other fee or charge of any kind can lawfully be charged against a borrower, unless such items constitute a part of, and are included in the maximum 3% per month charge made. (3) A licensee can charge a commission on the insurance written in connection with a loan, wherein the insured receives the protection, except that certain enumerated restrictions must be observed. (4) Whether any other form of business may be conducted in the same office as that of a loan company is a question of fact and

to be determined by the Commissioner of Finance, under the Statute. (Ariel L. Crowley)

3-7-44—Hon. G. L. Jenkins, Commissioner of Finance. In re: Form of trust receipt, in case of multiple branches of the First Security System. (Ariel L. Crowley)

3-20-44—Hon. G. L. Jenkins, Commissioner of Finance. Assuming sufficient capitalization and that the articles are amended so as to remove its principal place of business to a new site, the removed bank still may not conduct a banking business at the new site without consent of the Commissioner of Finance. (Ariel L. Crowley)

4-24-44—Mr. G. L. Jenkins, Commissioner of Finance. Re: Small Loan Bill, Chapter 55, 1943 Session Laws; discretion and jurisdiction of the commissioner of Finance under said chapter. (Wm. A. Brodhead)

6-24-44—Hon. G. L. Jenkins, Commissioner of Finance. In the opinion of this office it would be permissible for a suspense fund or other special fund to be set up in which fees collected from small loan businesses would be deposited, and that the same could be used by the Dept. of Finance for the cost of administration of the Small Loan Law, Chap. 55, 1943 Session Laws. (Thos. Y. Gwilliam.)

#### FISH AND GAME COMMISSION

4-14-43—Fish and Game Commission. In the opinion of this office, the Fish and Game Commission has no authority to designate other grades of conservation officers than already designated by statute, or to allow any salary in excess of the statutory amounts. (Charles S. Stout)

5-25-43—James O. Beck, Director of Fish and Game. In re: Persons in federal service who are entitled to purchase resident hunting and fishing licenses, under the provisions of House Bill No. 157, being Chapter 140 of the Idaho Session Laws of 1943. (Charles S. Stout)

12-16-43—Fish and Game Department. In the opinion of this office, it is a misdemeanor for a fur dealer to have in his possession beaver pelts in the State of Idaho without having attached thereto a tag issued and attached by the Fish and Game Commission showing that the same are lawfully taken and are lawfully in the possession of the holder thereof, such possession being a violation of Sec. 35-1308, I. C. A., and Sec. 35-1202, I. C. A., as amended by Chapter 115 of the 1943 Session Laws. (Charles S. Stout)

1-7-44—Fish and Game Commission. In the opinion of this office the Fish and Game Commission may legally enter into contracts with individuals to sein sockeye salmon in Lake Pend d'Oreille to relieve the overcrowding of said fish in the lake, the fish so caught to be sold and the State to receive a percentage or royalty on the amount received for the fish, where it is not possible to relieve the overcrowding by longer seasons or increased bag limits. (Charles S. Stout)

1-8-44—Fish and Game Commission. In the opinion of this office the Idaho Fish and Game Commission may not legally enter into a cooperative agreement with the Game Commission of the Province of British Columbia, Canada, for the purpose of the construction of a fish trap on the Lardeau River in Canada, to supply both Commissions with eggs from a large species of rainbow trout known as Kamplook Rainbow. (Charles S. Stout)

3-28-44—Mr. Walter Fiscus, Fish and Game Commission. In re: Expenditure of moneys in the Fish and Game Fund. (Ariel L. Crowley)

10-26-44—James O. Beck, Director, Department of Fish and Game. It is the opinion of this office that a total of \$6,000.00 and no more (Sec. 35-117, I. C. A.) may be transferred each year from the State Fish and Game Fund to the Predatory Animal Fund. (Charles S. Stout)

### FORESTRY

2-26-43—Hon. Franklin Girard, State Forester. (a) A child may not be employed in forest fire fighting if he is under 16 years of age. (b) There is no statutory prohibition against employment of minors without consultation with parents. (c) General forestry work is usually regarded as hazardous. (Ariel L. Crowley)

4-14-43—Hon. Franklin Girard, State Forester. Logs sunk in the Coeur d'Alene Lake, when raised are "prize logs," and must be sold by the district inspector after publication of notice, and the proceeds must be divided among persons who have driven logs during the year. (Ariel L. Crowley)

5-1-43—Franklin Girard, State Forester. In the opinion of this office the matter of allowance to the State Forester of any compensation for purely Federal services compensable under the Clarke-McNary Act is the matter for determination by the State Land Board, subject to the approval of the State Board of Examiners. (Sec. 37-131, and the 1943 Amendments thereof in Chapter 125, 1943 S. L.) (Ariel L. Crowley)

5-10-43—Hon. Franklin Girard, State Forester. (1) The forester is the person directly responsible for slash disposal on state forest lands. (2) The clearance certificate on slash disposal should be issued by the State Forester, subject to the regulations of the State Board of Land Commissioners. (Ariel L. Crowley)

2-10-44—Mr. T. H. Van Meter, Forest Supervisor, Payette National Forest. In re: Construction of Sec. 37-107, I. C. A. For the purposes of said Sec. forest land is deemed adequately protected within a radius of one mile of the place where the owner actually resides during the closed season. (Charles S. Stout)

### GOVERNOR

1-13-43—Hon. C. A. Bottolfsen, Governor. It is the opinion of this office that in case of a vacancy in the office of Clerk of the District Court, and Ex-Officio Auditor and Recorder, the vacancy should be filled by appointment by the Board of County Commissioners until the next election held for the election of a County Auditor, and that same rule should also apply to the office of Prosecuting Attorney. (Leo Bresnahan)

1-15-43—Hon. C. A. Bottolfsen, Governor. (1) The State is not liable either for the torts or crimes of its employees. (2) Is a claim presented against the State for wholesale liquor license a valid claim? (Ariel L. Crowley)

2-2-43—Hon. C. A. Bottolfsen, Governor. Comments of Attorney General in ruling that the State Legislature has the constitutional authority to repeal an initiative measure that has been passed and has met all requirements of law. (Bert H. Miller)

2-12-43—Hon. Edwin Nelson, Acting Governor. It is the opinion

of this office that all laws which were in any degree affected by the terms of the Senior Citizen's Grants Act are in full force and effect, and reinstated as the laws of the State. (Ariel L. Crowley)

3-3-43—Hon. C. A. Bottolfsen, Governor. Concerning constitutionality of House Bills No. 12 and No. 73, directed to the relief of Providence Hospital at Wallace and St. Joseph's Hospital at Lewiston. (J. R. Smead)

3-8-43—Hon. C. A. Bottolfsen, Governor. In the opinion of this office, House Bill #130, 27th Legislative Session, is unconstitutional in its present form. (Ariel L. Crowley)

5-4-43—Hon. C. A. Bottolfsen, Governor. In the opinion of this office the State Board of Education may not prescribe a four-year course at the University of Idaho, Southern Branch, for the purposes of giving teachers training. (Charles S. Stout)

5-12-43—Hon. C. A. Bottolfsen, Governor. Recommendations as to procedure where an adult woman, feeble-minded and an inmate of State School and Colony, requires a cesarean operation (Areal L. Crowley)

6-9-43—Hon. C. A. Bottolfsen, Governor. It is the opinion of this office that express legislative authority is a mandatory prerequisite to any gift of the tuberculosis hospital to the United States. (Ariel L. Crowley)

7-29-43—Hon. C. A. Bottolfsen, Governor. In re: Compact between State of Idaho and the U. S., in the Albeni Falls Dam matter, it is the opinion of this office: (1) That a binding compact may be entered into between the U. S. and the State of Idaho. (2) That the power to enter into such compact is legislative, not executive, and cannot be recognized in the absence of an act of Congress and of the Legislature of Idaho. (3) That the surrender of the higher public use, as relates to power, plus the surrender of the State's precedent location of power sites, plus the deprivation of the benefits of the public trust above noted, may constitute a sufficient consideration to make such a compact of binding force. (Bert H. Miller)

8-18-43—Hon. C. A. Bottolfsen, Governor. In re: Expenses of transportation to the Idaho State School and Colony of a child recently committed by the Probate Judge of Idaho County. (J. R. Smead)

9-21-43—Hon. C. A. Bottolfsen, Governor. In re: Proposed joint statement of policy transmitted by General Kenyon A. Joyce of the U. S. Army. In the opinion of this office the proposed joint statement correctly recapitulates and extends into practical operative form the requirements of the seventy-fourth Article of War. (Ariel L. Crowley)

9-27-43—Hon. C. A. Bottolfsen, Governor. (1) The State of Idaho has the exclusive right under existing laws to transport liquor into the State of Idaho, except that the State Dispensary may grant a license to a manufacturer of alcoholic liquor to manufacture, which license may include transportation of ingredients; and, under Section 802, ministers, priests, rabbis and religious organizations are authorized to import sacramental wines. (2) The State of Idaho has the exclusive right of sale of liquor within the State of Idaho, except that licensed manufacturers may sell to customers outside the State. (Ariel L. Crowley)

10-9-43—Governor C. A. Bottolfsen. In re: Idaho's state gasoline tax is applicable in cases of purchase by the Federal Government or its agencies. (J. R. Smead)

10-28-43—Hon. C. A. Bottolfsen, Governor. The Superintendent of the State Hospital South cannot enter into contracts for payment of wages to inmates for labor performed simply as a matter of contract. But in the opinion of this office the medical superintendent may (Title 64 Chap. 1, I. C. A.) determine the treatment and the mode of controlling the patients most conducive to their welfare. Sec. 64-110. (Ariel L. Crowley)

1-18-44—Hon. C. A. Bottolfsen, Governor of Idaho. In re: Special constitutional and statutory provisions, which must be given consideration in the solution of the soldier vote problem. (Ariel L. Crowley)

2-21-44—Hon. C. A. Bottolfsen, Governor of Idaho. In the opinion of this office the legislature cannot reduce the age qualification of voters below the minimum age of 21 years prescribed by Art. IV., Sec. II., of the Idaho Constitution. (Charles S. Stout)

3-2-44—Hon. C. A. Bottolfsen, Governor. In re: Application of the terms of Sec. 59-207, I. C. A., to the resignation of R. H. Young as a member of the P. U. C., to accept appointment as Commissioner of Agriculture. (Frank Langley)

3-3-44—Hon. C. A. Bottolfsen, Governor. In the opinion of this office, the Governor may reject or approve in toto as many items as he desires of an appropriation bill passed by the legislature, but may not reduce any item and approve such item as reduced. (Charles S. Stout)

3-8-44—Hon. C. A. Bottolfsen, Governor. In the opinion of this office, a public officer in Idaho may require payment of a special fee before testifying as an expert witness for a private litigant and need not account to the State, but may lose salary for time absent from official duty in excess of his annual vacation leave. (Frank Langley)

3-9-44—Hon. C. A. Bottolfsen, Governor. House Bill No. 1, 2nd Extraordinary Session (amendatory of the charter of the Lewiston School District) is constitutional. (Ariel L. Crowley)

3-9-44—Hon. C. A. Bottolfsen, Governor. Re: Constitutionality of Senate Bill #2, 2nd Extraordinary Session. 27th Legislature. (Ariel L. Crowley)

3-9-44—Hon. C. A. Bottolfsen, Governor. In the opinion of this office, House Bill No. 3 and Senate Bill No. 3 of the 27th Legislature, 2nd Extra Session, are both unconstitutional for reasons herein given. (Ariel L. Crowley)

3-9-44—Hon. C. A. Bottolfsen, Governor. Re: Constitutionality of House Bills 8 and 9 (Teachers' Aid Bill) 2nd Extraordinary Session of the 27th Legislature. (Ariel L. Crowley)

4-11-44—Hon. C. A. Bottolfsen, Governor. In the opinion of this office a contribution of one hundred dollars toward expenses of the 36th Annual Governors' Meeting is a legitimate expenditure by the Governor. (Ariel L. Crowley)

10-3-44—Hon. C. A. Bottolfsen, Governor. In the opinion of this office salary of the Commissioner of Public Assistance may be increased in the amount suggested, if the funds are paid out of funds which come from the Federal Govt. to be used in the administration of old age assistance and aid to dependent children and dependent blind. (Thos. Y. Gwilliam)

12-4-44—Hon. C. A. Bottolfsen, Governor of Idaho. It is the opinion of this office that the incumbent Governor is not authorized to appoint the members of the State Tax Commission, as pro-

vided for in SJR #3, which amendment was approved on November 7th, in advance of the convening of the Senate, nor until the legislature has made the amendment workable by appropriate legislation. (Frank Langley)

### HIGHWAYS

4-7-43—Andrew G. Sathre, Cottonwood. It is the opinion of this office that a Highway District in the State of Idaho may expend money for repairs or construction of roads outside of the borders of its own district. (Sec. 39-1521, Sec. 39-1522.) (Wm. A. Brodhead)

6-10-43—Joe D. Wood, Director of Highways. In the opinion of this office the legislature has made no provision for continuing appropriation for capital outlay, Sec. 21-207, I. C. A., for the Bureau of Aeronautics, and the unappropriated moneys in the State Aeronautics Fund cannot be devoted to the use. (Ariel L. Crowley)

8-17-43—R. H. McFarland, Naples, Idaho. In re: Status of a country road used by the public for fifteen years and which has never been worked by the county. (Wm. A. Brodhead)

1-24-44—Hon. Joe D. Wood, Director of Highways. In the opinion of this office, County Commissioners in the exercise of their duties as defined in Sec. 30-705, I. C. A., may lawfully expend money from the County Road Fund to pay the expense of snow removal from county roads. (Wm. A. Brodhead)

5-4-44—Mr. Charles Stout, Attorney at Law, Glenns Ferry, Idaho. It is the opinion of this office that the offices of County Commissioners and Highway District Commissioners are inconsistent and incompatible, and as a matter of sound public policy said offices may not be held by the same person. (Wm. A. Brodhead)

9-5-44—Mr. E. M. Rayborn, Attorney at Law, Filer, Idaho. It is the opinion of this office that: (1) it would be legal for the local highway district to spend money to cover a ditch as part of improvement of a certain road; and (2) it would not be a legal expenditure for the city to spend money on that portion of the ditch outside the incorporated limits. (Wm. A. Brodhead)

### INDUSTRIAL ACCIDENT BOARD

2-8-43—Opinion of Mr. Thomas Y. Gwilliam to Members of the Industrial Accident Board. It is my opinion that the Industrial Accident Board can legally and properly accept additional funds for increase of salary, if the Social Security Board deems it necessary for the proper and efficient administration of the Unemployment Compensation Law.

7-14-44—Industrial Accident Board, Statehouse. It is the opinion of this office that the Industrial Accident Board may designate a purchasing Agent for the purpose of purchasing supplies necessary in the operation of the Unemployment Compensation Division, for reasons herein given. (Bert H. Miller)

### INSURANCE

2-4-43—Howard M. Cullimore, Director of Insurance. It is the opinion of this office that the State would not be extending its credit by entering into a policy of liability insurance in an inter-insurance exchange, provided the membership fee, premium and

any contingent liability there may be is not disproportionate to the rates charged by stock companies for the same class of insurance.

6-29-43—Howard Cullimore, Director of Insurance. In the opinion of this office it is not legal for a county mutual fire insurance company, organized under the laws of this state and with total assets of fifty thousand dollars, to invest twenty-five thousand dollars of their emergency fund, as provided under Sec. 40-1808, in Guaranty Fund certificates, as set forth in Sec. 40-1708, I.C.A. (Frank Langley)

7-27-43—Howard M. Cullimore, Director of Insurance. In the opinion of this office, the proposed undertaking of the Bingham County Mutual Fire Insurance Co. and private individuals for retirement of illegal investments may be approved, as equitable. (Ariel L. Crowley)

7-30-43—Howard M. Cullimore, Director, Bureau of Insurance. In the opinion of this office an association newly organized and doing business under Ch. 110 of the 1933 Session Laws, may legally issue only one certificate to any member, and that such certificate may cover either death or accident or both, and that the maximum amount payable on any certificate is \$3,000.00 (Frank Langley)

8-25-43—H. M. Cullimore, Director of Insurance. In the opinion of this office the fact that a person is a non-resident of Idaho would not preclude him from being issued a license to sell insurance for a benefit association in Idaho. (Charles S. Stout)

9-27-43—Howard M. Cullimore, Director of Insurance. In re: Necessity, if any, for the attorney in fact of a reciprocal fire insurance exchange to qualify to do business in the State of Idaho. (Ariel L. Crowley)

10-21-43—Howard M. Cullimore, Director of Insurance. It is the opinion of this office that a county mutual fire insurance company may, by proper amendment of its Articles of Incorporation, convert itself into and become qualified to transact business as a domestic mutual fire insurance company, subject to certain provisions herein mentioned. (Frank Langley)

12-13-43—Howard M. Cullimore, Director of Insurance. In the opinion of this office the fact that an insurance company has 50% of its assets on deposit in Idaho banks does not except it from the requirements of Secs. 40-803 and 40-804, I. C. A., as amended, of paying an annual tax of 3% of the gross premiums collected. (Frank Langley)

12-22-43—Mr. H. M. Cullimore, Director of Insurance. In the opinion of this office the amount in the benefit fund of a mutual benefit association, organized and operating under Chapter 110 of the 1933 Session Laws as amended by Chapter 114 of the 1941 Session Laws, may legally be invested in bonds or securities guaranteed by the Federal Government and issued by a building and loan association organized under the laws of Idaho, provided that such bonds or securities are not estimated above their current market value. (Frank Langley)

12-20-44—H. M. Cullimore, Director of Insurance. In the opinion of this office, Chapter 43-1713, I. C. A. as amended, applies only to the State Insurance Fund and not to all Workmen's Compensation carriers. (Frank Langley)

2-14-43—Mr. H. M. Cullimore, Director of Insurance. It is our opinion that a domestic life insurance company is not required to deposit with the Dept. of Finance the \$50,000.00 surplus required of it at the time of its qualification to transact business in Idaho.

However, a domestic life insurance company is required to have a \$50,000.00 surplus; Sec. 40-707, I. C. A. (Frank Langley)

2-15-44—Mr. H. M. Cullimore, Director of Insurance. In the opinion of this office a mutual benefit association, organized and doing business under the laws of the State of Idaho, and having 60% or more of its assets invested in securities of a building and loan association of Idaho, which securities are guaranteed by the government of the U. S., is required to pay a tax of 1% only of the gross premiums collected by it, and not a tax of 3%. (Frank Langley)

7-31-44—Howard M. Culimore, Director of Insurance. It is the opinion of this office that the Director of Insurance may legally authorize and license a domestic mutual fire insurance company organized under the provisions of Chap. 17, Title 40, I. C. A., to write only fire insurance coverage on the property, both real and personal, of its members, subject to the limitations on the amount of the coverage as stated in Sec. 40-1718; and insofar as property of the foregoing description is listed in Sections 40-302, 40-303 and 40-313, I. C. A., it may be insured by a domestic mutual fire insurance company. (Frank Langley)

8-8-44—Mr. Howard M. Cullimore, Director of Insurance. It is the opinion of this office that unpaid guaranty fund certificates of the Snake River Mutual Fire Insurance Co. may not be refunded by a new issue of certificates. (Frank Langley)

#### LAND DEPARTMENT

9-17-43—Robert Coulter, Land Commissioner. It is the opinion of this office that certificate of clearance mentioned in the State Fire Wardens' agreement does not exonerate timber producers from statutory liability for slash disposal. (Ariel L. Crowley)

10-7-43—Robert Coulter, State Land Commissioner. In re: Action to be taken by the State Board of Land Commissioners in the matter of conveyance of the SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Sec. 16, T. 35 North, R. 3 W., B. M., and Lots 25, 26, 27 and 28, of Sec. 16, T. 35 N., R. 3 W., B. M. (Ariel L. Crowley)

10-9-43—Hon. Robert Coulter, State Land Commissioner. In the opinion of this office, that if, as a matter of policy, the State Board of Land Commissioners desires to allow an application for lease made jointly by a partnership having a  $\frac{2}{3}$  interest in the lease and a corporation having a  $\frac{1}{3}$  interest therein, there is no legal obstacle. (Ariel L. Crowley)

10-12-43—Robert Coulter, State Land Commissioner. In the opinion of this office it is not a lawful proceeding for the State to subordinate its reserved title to a mortgage to be given to the U. S. or one of its agencies for development of irrigation, and the Land Board and the Land Commissioner must be held without jurisdiction to enter into such an agreement. (Ariel L. Crowley)

11-3-43—Hon. Robert Coulter, State Land Commissioner. In re: Transfer of land sales certificate rights from Emma B. Egbert, deceased, upon showing by her heirs as to an agreement between them. The Land Dept. is without authority to recognize transfers made solely by agreement to the transferees. (Ariel L. Crowley)

12-6-43—Hon. Robert Coulter, State Land Commissioner. In the opinion of this office (1) a probate proceeding may be had in Idaho, and upon that proceeding the land department may recognize distributees as the owners of the existent rights under the land sales

certificates distributed, (2) where a probate proceeding is otherwise unnecessary, the land board has full authority to adjudicate the claims of the distributees under an Oregon decree, (3) unless there is a probate proceeding, or a determination by the land board upon application to it, the Oregon decree is without force, being made without jurisdiction. (Ariel L. Crowley)

1-14-44—Robert Coulter, State Land Commissioner. In re: The power of the State to sell leased lands by advertising the same. (Ariel L. Crowley)

1-17-44—State Board of Land Commissioners. In re: Sec. 37-108, I. C. A. and Sec. 56-403, I. C. A., in general, the law of slash disposal on forest lands; certificate of clearance and cooperative contract; criminal liability and liability on slash disposal bond. (Ariel L. Crowley)

1-25-44—Hon. Robert Coulter, State Land Commissioner. In re: Ownership of mineral rights in the NE $\frac{1}{4}$  of the SW $\frac{1}{4}$  and the S $\frac{1}{2}$  of the SW $\frac{1}{4}$  of Sec. 15, T. 14 S., R. 43 E., B. M., Bear Lake County. (Ariel L. Crowley)

2-11-44—Hon. Robert Coulter, State Land Commissioner. In the opinion of this office the quit claim deed attached to the State Land Sale Certificate No. 19975 is not sufficient as an assignment for reasons therein given. (Ariel L. Crowley)

3-18-44—Hon. Robert Coulter, State Land Commissioner. It is the opinion of this office that when lands given to the State by Mr. Arthur G. Ewing are sold, the proceeds should be put in the permanent public school endowment fund. (Ariel L. Crowley)

3-21-44—Hon. Robert Coulter, State Land Commissioner. When an applicant for purchase of timber is the successful bidder and only bidder at a timber sale, it is our opinion that the contract arose at the instant the bid was accepted. (Ariel L. Crowley)

3-21-44—Hon. Robert Coulter, State Land Commissioner. It is the opinion of this office that the O. P. A. ceiling prices on timber are not binding on the State. (Ariel L. Crowley)

## LAW ENFORCEMENT

### Bureau of Mines and Kilowatts

4-15-43—Harrison C. Dale, President, University of Idaho. (1) The Bureau of Mines is not an agency independent of the University, yet it is not exclusively under the control of the University. (2) The expenditure of the sum appropriated to the Bureau of Mines and Geology does not rest under the direction of the president of the University. (3) The Board of Regents is responsible for the regularity of disbursement of appropriation made to the University for the Bureau of Mines and Geology. (Ariel L. Crowley)

3-23-44—Mr. Charles E. Spoor, Commissioner, Dept. of Law Enforcement. In the opinion of this office a mine license tax paid in 1943 for the privilege of mining during that year may be deducted from the gross receipts of the operator in 1943, in arriving at the net proceeds upon which to calculate the license tax for 1944 operations. (J. R. Smead)

3-23-44—Mr. E. F. Carpentier, Director, Mine and Kilowatt Bureau. In the opinion of this office: (1) a person who registered and voted in his own county last election and has since moved but has not registered elsewhere, would retain his legal right to vote in such county, if his intention is that said county will remain his

legal residence; (2) a state employee temporarily absent from the county in which he lived with the intention of returning when his employment by the State ceased, would not be considered to have changed his residence. (Chas. S. Stout)

#### Miscellaneous

11-1-43—Charles E. Spoor, Commissioner of Law Enforcement. In the opinion of this office conditional sales contracts covering trailer houses should not be filed in the office of the Dept. of Law Enforcement, but should be filed in the office of the county recorder as provided by Secs. 62-801 and 62-805, I. C. A. (Frank Langley)

2-8-44—Hon. Charles E. Spoor, Commissioner of Law Enforcement. In re: Letter of Dr. J. L. Harrison, acting for the Board of Chiropractic Examiners, and defining "reciprocity." (Ariel L. Crowley)

#### Bureau of Motor Vehicles

5-12-43—Hon. Chas. E. Spoor, Commissioner of Law Enforcement. School districts are prohibited from leasing their busses to auto transportation companies for use during the summer season. (Ariel L. Crowley)

5-12-43—Hon. Chas. E. Spoor, Commissioner of Law Enforcement. (1) The Commissioner of law enforcement has no power to make any deviation relative to reduced license plate fees or other fees, or the 1% gross revenue tax for a bus operator with a P. U. C. I. permit operating a common carrier system for a period of three months between Boise and Mountain Home. (2) Interpretation of Sec. 48-127, Subdivision G, I. C. A. relative to the seating capacity of busses. (Ariel L. Crowley)

12-20-43—Hon. Chas. E. Spoor, Commissioner of Law Enforcement. In re: Certificate of title No. 450135, covering Motor No. K 64570, 1942 Nash Coupe Model 4242, registered in the name of Harold C. Fuller. In the opinion of this office, no lien existed and the department should issue a duplicate of the original title issued to Harold C. Fuller without lien. (Ariel L. Crowley)

1-28-44—Chas. E. Spoor, Commissioner, Dept. of Law Enforcement. In the opinion of this office a police officer who exceeds the speed limits prescribed by statute or by city ordinance, or who drives a motor vehicle through a stop sign or red light on a highway or street when attempting to place a law violator under arrest, is not himself violating the law. (Frank Langley)

9-5-44—Chas. E. Spoor, Commissioner, Dept. of Law Enforcement. It is the opinion of this office that a part-year's license may lawfully be issued for aircraft based on the dates governing the issuance of a part year's motor vehicle license. (Frank Langley)

#### Bureau of Occupational Licenses

5-12-43—Hon. Chas. E. Spoor, Commissioner of Law Enforcement, Bureau of Occupational Licenses. In the opinion of this office a shop having one registered cosmetician may have one apprentice, but may not have two apprentices until there are at least three registered cosmeticians employed there. (Ariel L. Crowley)

7-27-43—Chas. E. Spoor, Commissioner of Law Enforcement. (1) Idaho Embalmers and Funeral Directors' Examining Board may not allow credit for time served as apprentice before receipt of application for apprentice embalmers' licenses by the Dept. of Law Enforcement. (2) In the opinion of this office the "twenty-five

human bodies" required to be embalmed need not have been embalmed within the State of Idaho. (Ariel L. Crowley)

8-17-43—Mrs. Lela D. Painter, Director, Occupational Licenses. In re: Bolton Nurse Training Act, Nurse Cadet Corps. As long as the standards of the Idaho law (Sec. 53-1602) are met, there is no reason why an Idaho Training School may not, by association with other institutions, provide for transfers of its students for any special training or practice required by the Federal Act, as part of the training in the Idaho School. (Ariel L. Crowley)

11-1-44—Mr. Chas. E. Spoor, Commissioner of Law Enforcement. It is the opinion of this office that the University of Idaho is bound by Chapter 88, 1935 S. L. (concerning chauffeur's license) as well as its employees, provided that the employment in any given case is for the principal purpose of driving a motor vehicle, and that the driving is done, in some part at least, on one or more public highways. (J. R. Smead)

#### MISCELLANEOUS

1-8-43—Hon. Perry Mitchell, State Senator. It is the opinion of this office that it is not necessary that the State Council of Defense request the payment of necessary expenses of a local council of defense before the board of county commissioner's may legally pay such necessary expense; Sec. 65-3790, I. C. A. (Charles S. Stout)

1-13-43—Hon. Perry W. Mitchell and George L. Ambrose, State Senators. It is the opinion of this office that the 27th Session of the State Legislature may either amend or repeal the Senior Citizen's Grants Act. (Bert H. Miller)

1-27-43—Hon. S. Reed Andrus, Hon. F. C. Gillette, State Legislators. In re: Lava Hot Springs. Does the State have power to lease the Lava Hot Springs property, and if so how may it be accomplished? (Ariel L. Crowley)

2-3-43—Hon. Geo. Donart, State Senator. The question of prohibiting peaceful picketing is a purely federal question; however, the practice of peaceful picketing is within the protection of the constitutional guarantees of free speech. (Ariel L. Crowley)

2-5-43—Hon. J. D. Price and Hon. Moses Christensen, State Legislators. In re: House Bill No. 86, as to the validity of this proposed legislation. It is the opinion of this office that any attempt to regulate or control the owner of the land in his property rights in a well which he may drill upon his own premises as contemplated by this act would be unconstitutional and void. (Leo Bresnahan)

2-12-43—Hon. F. C. Gillette, State Senator. (1) In re: Proposed disposal by the Legislature of the Soldiers' Home. Sec. 12 of the Admission Bill forbids any use being made of this land or the buildings, except for the purpose of establishing, supporting or maintaining charitable institutions endowment fund. (2) The Gooding Hospital is a creature of statute and is subject to legislative control. (Ariel L. Crowley)

2-24-43—Hon. M. L. Horsley, Speaker of House of Representatives. (1) What acts, and what parts of what acts did the Senior Citizens' Grants Act repeal? (2) Can House Bill 74, a repealing act, revive those acts or parts of acts repealed in view of Constitution Article 3, Section 18? (3) Does Section 65-512, I. C. A., conflict with Constitution Article 3, Section 18? 4. Would it be advisable to reenact Chapters 180 and 181, 1941 Laws, or amend them so as to reenact them in effect? (Ariel L. Crowley)

2-25-43—Hon. R. L. Anderson, State Representative. It is the opinion of this office that it is not lawful for a legislator to contract with the State for the purchase of livestock from the prison farm. (Ariel L. Crowley)

3-9-43—Hon. C. E. Simonson, Bursar, Albion Normal. In re: State employee doing other work while drawing salary from the State; Sec. 65-2010, I. C. A. (Ariel L. Crowley)

4-1-43—Brigadier-General McConnell, Adjutant General, State of Idaho. (1) Officers of the National Guard who have been ordered to active duty status for one year, and have accumulated leave during that time, are to be granted leaves as though they were officers in the regular Army of the U. S. (2) The Statute governing civil department leaves of absence (Sec. 65-2407, I. C. A.) has no application to the military department. (Ariel L. Crowley)

4-13-43—Secretary, Lava Hot Springs Cemetery District. In the opinion of this office, funds of a cemetery district cannot be invested in government bonds or other securities. (Charles S. Stout)

4-29-43—Ray Wilson, Clerk of the District Court. In re: House Bill #80. In the opinion of this office a leave of absence granted a clerk of a district court by the county commissioners of his county should not extend beyond the time of the next general election, which would be in 1944. (J. R. Smead)

5-4-43—Albert G. Jones, Commander of the G. A. R. By virtue of Sec. 63-401 and Sec. 63-402, I. C. A., the G. A. R. may occupy space provided in the capitol building, and utilize storage space, but cannot incur any valid obligation against the State without an express appropriation. (Ariel L. Crowley)

10-6-43—Mark M. Merrell, Medimont, Idaho. In the opinion of this office it is unlawful to drive a motor vehicle past a school bus or other vehicle used by a school district to transport children to and from school at a time when anyone is getting on or off said bus or other vehicle. See Sec. 48-1104, I. C. A. (Wm. A. Brodhead)

11-3-43—American National Detective Agency, Salt Lake City. In re: Legal status of the American National Detective Agency; i.e., is it within the Blue Sky Law, the Collection Agency Law, or the law prohibiting the practice of law without a license? (Ariel L. Crowley)

12-6-43—B. E. Lutterman, Law Dept., Chicago, Milwaukee, St. Paul and Pacific R. R. Co., Seattle, Washington. In the opinion of this office that, as relates to public conveyances, drinking of intoxicating liquor therein, opening of containers containing intoxicating liquors therein, and all other uses of intoxicating liquor therein, are prohibited. (Ariel L. Crowley)

1-19-44—Hon. Lindsay C. Warren, Comptroller General of the U. S. In re: Suggested refund to federal agencies of state gasoline tax. See opinion to Gov. Bottolfson of 10-9-43. (J. R. Smead)

1-31-44—Hon. Carl W. Beck, Supt. Fort Hall Indian Reservation. What is the legal affect of the pre-marital blood test law upon common-law marriages in Idaho? (Ariel L. Crowley)

2-10-44—Mr. J. H. Blandford, City Attorney, Twin Falls. In the opinion of this office a municipality may not call for payment and refund of municipal bonds where the bonds are not callable according to their terms and the municipality is not in default in the payment of such bonds even though it may be to the advantage of the municipality to do so, unless the bondholders agree to the plan. (Charles S. Stout)

3-4-44 Hon. J. R. Meeker, Member of House of Representatives, Bonners Ferry. In re: Right of Boundary County to assess and tax real property which has escaped taxation in recent years because it was at one time exempt from taxation, but changed ownership several years ago and the present owner failed to record his deed. (Frank Langley)

3-7-44—Mr. John Lee, Rigby, Idaho. In the opinion of this office in dividing a county into commissioners' districts, the Board of County Commissioners may legally exercise a reasonable discretion in fixing the boundaries of such districts, and may properly take into consideration the topography, transportation facilities, and the wishes of the voters of the county; such districts need contain only approximately equal populations. (Frank Langley)

3-23-44—Mr. B. P. Thamm, Clerk of the District Court, Hailey. It is the opinion of this office that, in order for a girl to be a deputy clerk of the District Court, and ex officio auditor and recorder, she must be at least 21 years of age, as well as meeting the other requirements of that office. (Charles S. Stout)

4-3-44 Mr. Ernest Anderson, Attorney for the Village of Wilder. In the opinion of this office: (a) a municipal official, upon his entry into U. S. military service, may not be granted a leave of absence by the appointive power to extend during the remainder of his term with the right to return to his position any time prior to the expiration of his term; (b) it therefore follows that such municipal officer may not require his successor in office to surrender the office. (Frank Langley)

5-8-44—Mr. F. G. Harrell, City Clerk, Sandpoint, Idaho. It is the opinion of this office that: (1) The State through its legislature may delegate authority to cities or villages to establish by ordinance the number of beer or other liquor dispensaries for which city licenses will be issued; (2) The city may by ordinance restrict the operation of beer parlors and the sale of beer generally to locations or zones within which it will license such places; (3) There is no provision or permission for license fees or the issuance of licenses to organizations of any sort for the privilege of selling or in any way dispensing or handling any other type of alcoholic beverage except beer, for which license charges are definitely established by state statutes. (J. R. Smead)

#### BOARD OF PRISON COMMISSIONERS

3-26-43—Board of Prison Commissioners. In the opinion of this office it is within the authority of the State Board of Prison Commissioners to provide care, either by direct expenditure of money or by contract, for a prisoner who is injured by the violent act of another prisoner while incarcerated in the penitentiary. (Ariel L. Crowley and Charles S. Stout)

11-10-43—To Members of the Board of Prison Commissioners. In the opinion of this office the warden of the State Penitentiary cannot legally be paid for services rendered to the State any compensation in addition to that provided as salary by Chapter 128 of the 1943 Session Laws. (Frank Langley)

#### STATE PENITENTIARY

5-26-44—Mr. S. M. Poarch, Warden, State Penitentiary. It is the opinion of this office that it is the duty of the Warden to have

a seriously injured prisoner removed to the penitentiary only as soon as such prisoner has recovered to the extent that there is no longer danger of complications due to any such removal, and when facilities for caring for him within the penitentiary are adequate. (J. R. Smead)

#### DEPARTMENT OF PUBLIC ASSISTANCE

1-2-43—Hon. Albert Lee, Commissioner of Public Assistance. In re: Further interpretation and explanation of the Senior Citizens' Grants Act. (Ariel L. Crowley)

4-15-43—Dept. of Public Assistance. In the opinion of this office the recovery clause (Sec. 24-a of Sec. 2, of Chapter 119, 1943 Session Laws) is retroactive. (Ariel L. Crowley)

5-4-43—H. C. Baldrige, Commissioner of Public Assistance. In re: Constitutionality of Sec. 24-a of Chapter 119, 1943 Session Laws. See also opinion of June 4, 1937, to Robert E. Dow. (Ariel L. Crowley)

5-26-43—H. C. Baldrige, Commissioner of Public Assistance. In re: Form No. 102-G of the Department of Public Assistance, in cases arising under subdivision (b) of Sec. 5, Chapter 180 1941 Laws. (Ariel L. Crowley)

5-29-43—H. C. Baldrige, Commissioner of Public Assistance. The State of Idaho has no responsibility for a defective child who was released by the parent to a Utah agency, and the release signed by the mother is valid. (Ariel L. Crowley)

6-1-43—H. C. Baldrige, Commissioner of Public Assistance. In re: Rule-making authority of the Dept. of Public Assistance, in ruling the income and resources from agricultural labor shall be disregarded in determining grants of recipients of old-age assistance. Subsec. (b), Sec. 2, Chap. 181, S. L. 1941; Subsec. (a) & (b) Sec. 3, Chap. 181, S. L. 1941. (Ariel L. Crowley)

6-7-43—Dept. of Public Assistance, Division of Child Welfare. In re: Legal status of Ruth Huitt. Can a marriage contracted by her be legal? (Ariel L. Crowley)

11-3-43—Hon. H. C. Baldrige, Commissioner of Public Assistance. In re: Subletting by the Dept. of Public Assistance of buildings located on Tax Lot 10, Flannigan Tract, Boise. In the opinion of this office the consent of the county would be necessary to the validity of any arrangement with Morrison-Knudsen Co. (Ariel L. Crowley)

6-16-44—H. C. Baldrige, Commissioner, Department of Public Assistance. Re: Two minor children, eligible for adoption: (1) Guardianship now rests with Childrens' Home Finding and Aid Society; (2) Right to guardianship, custody and control of the children reverted to the Childrens' Home Finding and Aid Society when the children were released from the State School and Colony. (Frank Langley)

#### Division of Charitable Institutions

6-25-43—Hon. H. C. Baldrige, Director of Charitable Institutions. Within certain exceptions noted, in the opinion of this office the Dept. of Charitable Institutions may enter into a "Gentleman's Agreement" with the State of Washington relating to transfers of insane persons. (Ariel L. Crowley)

8-7-43—Hon. H. C. Baldrige, Acting Director, Charitable In-

stitutions. The State of Idaho has no reciprocal statute on return of delinquent children and no appropriation therefor. The Oregon proposal for return of non-resident insane would be governed by opinion of this office to the Department of Charitable Institutions of June 25, 1943. (Ariel L. Crowley)

11-1-43—Hon. H. C. Baldrige, Director of Charitable Institutions. An agreement exists between Idaho and the state of Washington covering return of feeble-minded persons to this state, and it is the opinion of this office that the Washington commitment is full authority (Sec. 64-114, I. C. A.) to receive and hold the feeble-minded person, assuming (a) that he has "no home or friends to whom he can be delivered" in Idaho and that (b) the department is satisfied that the incompetent is a resident of Idaho. (Ariel L. Crowley)

1-26-44—Hon. H. C. Baldrige, Director of Charitable Institutions. In re: Status of Laurina Williams Herian, inmate of State Hospital South. (Ariel L. Crowley)

1-28-44—Hon. D. A. McClusky, Supt. of State Hospital South, Hon. H. C. Baldrige, Director of Charitable Institutions. In re: Status of Clarence L. Mortensen, a patient at State Hospital South. Under circumstances outlined in said opinion, Mr. Mortensen is not a voluntary patient and can not leave at will. (Ariel L. Crowley)

3-7-44—Hon. H. C. Baldrige, Director of Charitable Institutions. In re: Use of funds left by deceased inmates of the Insane Asylum, State Hospital South, to establish a burial fund. (Ariel L. Crowley)

2-16-44—Hon. H. C. Baldrige, Director of Charitable Institutions. Dr. C. Sanford Allen, Supt. State School and Colony. In the opinion of this office the hospital bill incurred in the appendicitis operation of Gordon Frantzich is not chargeable to the State School and Colony appropriation. (Ariel L. Crowley)

10-12-44—Hon. H. C. Baldrige, Director of Charitable Institutions. In the opinion of this office, (1) arrangements may be made for a physician on duty at the State Hospital South to conduct physical and/or mental examinations of one or more claimants of the Veterans' Administration there hospitalized, if it is done for the benefit of the patient; (2) and if the doctor is allowed additional compensation, in accordance with the Veterans' Administration schedule of fees, such allowance should be made a part of the physician's salary. (Charles S. Stout)

#### Vocational Rehabilitation

9-18-43—Milo T. Means, Supervisor, Vocational Rehabilitation. In the opinion of this office, the Department of Public Assistance is not authorized to provide vocational rehabilitation to the adult blind, and is without authority to administer the plan for vocational rehabilitation adopted under public Law #113, 78th Congress. (Ariel L. Crowley)

#### Division of Public Health

2-11-43—Dr. E. L. Berry, Director of Public Health. It is the opinion of this office that the appropriation contained in House Bill No. 98, to the "Tuberculosis Hospital" could not be used for hospitalization costs and other costs in carrying out the tuberculosis program of the Department under Chapter 4, of Title 38 of the Idaho Code Annotated, as amended. (Charles S. Stout)

4-13-43—J. L. Peterson, State Bacteriologist. (1) It is the duty of the county recorder to attach the certificate form to the marriage license affidavit and file the same with the marriage license

affidavit. (2) In the opinion of this office a form presented to the county recorder which contains the information required by the 1943 act and by the Department of Public Health, may be considered sufficient to comply with Chapter 42, 1943 Laws, though it may be obtained from another state. (Ariel L. Crowley)

4-26-43—H. C. Clare, Director, Public Health Engineering. An establishment making sausages for farmers for a consideration and incidental to its other business, but only when the meat is furnished by the farmer, is subject to the annual license fee provided by Sec. 6 of Chapter 77 of the 1939 Laws. (Charles S. Stout)

4-29-43—Dr. E. L. Berry, Director of Public Health. In the opinion of this office no liability attaches to the physician who certifies in good faith to marital fitness under the terms of Chapter 42, 1943 Laws, in the event he is ultimately in error in so certifying. (Ariel L. Crowley)

6-25-43—Ruth Raattama, Director of Maternal and Child Health and Crippled Children's Service. In the opinion of this office osteopaths are not precluded by law from practicing obstetrics. (Ariel L. Crowley)

8-20-43—L. J. Peterson, Director of Public Health. In the opinion of this office the power to classify and restrict professional service and assistance, (for the purpose of administering a program of medical care for soldiers' wives and children) both by statute and precedent does exist. (Ariel L. Crowley)

8-20-43—L. J. Peterson, Adm. Dir., Dept of Public Health. In the administration of the medical care program for soldiers' wives and children: (1) Out-of-state hospitalization is permissible, so long as the patient is otherwise regularly eligible to aid in Idaho; (2) Approval by a sister state of the hospital to be used is not sufficient, but the institution must stand approved by the department under the same rules and regulations as are applied to similar institutions within the State of Idaho. (Ariel L. Crowley)

12-2-43—Hon. L. J. Peterson, Director of Laboratories. In the opinion of this office osteopaths are "physicians" within the meaning of the pre-marital blood test laws, and are able to make the certificate required by Sec. 1, Chap. 42, 1943 Laws. (Ariel L. Crowley)

2-3-44—Mr. L. J. Peterson, Asst. Dir., Dept. of Public Health. In re: Proposal to utilize Lincoln Hall, Soldiers' Home, for use as a treatment center for venereal diseases. In the opinion of this office the Governor has full power to utilize the unused quarters at the Soldiers' Home for public health purposes, so long as the use is charitable in nature. (Ariel L. Crowley)

5-1-44—Ruth J. Raattama, M. D., Dir. Maternal and Child Health and Crippled Children's Service. It is the opinion of this office that there is no legal objection to proposed co-operation and participation in the demonstration of clinical treatment of rheumatic fever of the State Department of Public Health and the State of Washington, using a Federal grant-in-aid. (Ariel L. Crowley)

#### PUBLIC INVESTMENTS

12-2-43—G. L. Jenkins, Commissioner, Dept. of Public Investments. In re: Form of deed to be used and title to be conveyed upon sale of the Peckham Tract taken by the Department of Public Investments on behalf of the State in trust for the State Insurance Fund and now about to be sold. (Ariel L. Crowley)

3-7-44—Hon. G. L. Jenkins, Commissioner, Dept. of Public Investments. In re: Procedure necessary to participate in exchange offering of securities through the Federal Reserve Bank. (Ariel L. Crowley)

3-31-44—Hon. G. L. Jenkins, Commissioner, Dept. of Public Investments. In re: Reasons for rejection of proceedings in Common School District #19, Bonner County, bond issue and election. (Ariel L. Crowley)

#### PUBLIC UTILITIES COMMISSION

12-1-43—Public Utilities Commission. In the opinion of this office an original policy must be filed with the P. U. C., and not a certified copy of the original. Sec. 59-806, I. C. A. (Ariel L. Crowley)

12-2-43—Public Utilities Commission, J. D. Rigney, Secretary. In the opinion of this office Sec. 59-315, I. C. A., is not enforceable either by the Public Utilities Commission or any private citizen through judicial means, as against a municipal corporation. (Ariel L. Crowley)

2-19-44—Public Utilities Commission. In re: Order of P. U. C. in Case No. F-1244, Order No. 1762.—Is it invalid as discriminatory? (Ariel L. Crowley)

4-22-44—Public Utilities Commission. In the opinion of this office the P. U. C. is without jurisdiction over airways to entertain a petition for certificate of convenience and necessity as prayed for in the application of Bradley Mining Co. a corporation. (Ariel L. Crowley)

#### PUBLIC WORKS

8-5-43—Hon. Joe D. Wood, Commissioner of Public Works, Boise. Hon. O. D. Garrison, Bursar, U. of I., Pocatello. It is the opinion of this office that the Naval V-12 Construction at the Southern Branch, financed by revenue bond issued under Ch. 55, 1935, 1st Ex. Session and U. S. Funds, is not within the jurisdiction of the Department of Public Works. (Ariel L. Crowley)

8-4-44—Mr. J. T. R. McCorkle, Registrar, Public Works Contractors State License Board. It is the opinion of this office that the Idaho Public Works Contractors' License Board cannot legally refund certain license renewal application fees in an instance where the applicant, after filing his application and paying the requisite fee, fails to complete the same on or before March 15th of the current year by filing a financial statement. (Wm. A. Brodhead)

#### RECLAMATION

4-29-43—James Spofford, State Reclamation Engineer. In the opinion of this office, the mere non-use of water, without intention to abandon it on the part of the irrigation district, for a period of five years will not work an abandonment of the right. (W. A. Brodhead)

4-29-43—James Spofford, State Reclamation Engineer. Application for extension of time to Lynn Crandall, Watermaster of Water District #36, within the terms of Sec. 41-204, I. C. A. (Wm. A. Brodhead)

9-27-43—James Spofford, Commissioner of Reclamation. In the

opinion of this office the decree on Owsley Canal Co. vs. Bauerle does nothing to make the inchoate permit rights described in that decree final, and proof before the Department of Reclamation is an absolute essential in the absence of a decree specifically establishing such rights. (Ariel L. Crowley)

10-12-43—James Spofford, Commissioner of Reclamation. In re: Unpaid charges assessed by Water District No. 17 (Portneuf River) and procedure to follow in bringing suit to collect unpaid assessments. (Frank Langley)

10-12-43—James Spofford, Commissioner of Reclamation. Since the amendment of Sections 41-108 and 41-216, do Sections 41-108 and 41-216, as amended, nullify Sec. 41-205? It is the opinion of this office that there was no legislative intention to repeal Sec. 41-205. (Ariel L. Crowley)

1-6-44—Hon. James Spofford, State Reclamation Engineer. In re: Change of point of diversion in 1920; is it sufficient to give the transferee title to the water transferred under change of point of diversion No. 56 of record in the Engineer's office? (Ariel L. Crowley)

1-8-44—Hon. James Spofford, State Reclamation Engineer. In re: Application for permit to sell water rights, Home Security Company: Sec. 41-2201, I. C. A. (Wm. A. Brodhead)

4-11-44—Mr. James Spofford, State Reclamation Engineer. In re: Right of John Whitesell, ex-service man, as settler on the land involved and described in this opinion (and pertaining to reclamation of Carey Act Lands). (Ariel L. Crowley)

5-5-44—Mr. Mark R. Kulp, State Reclamation Engineer. In re: Transfer of Basinger Water Right, Little Lost River. (Wm. A. Brodhead.)

5-6-44—Mr. Mark R. Kulp, State Reclamation Engineer. In re: Transfer of Knollen Water Right, Little Lost River. (Wm. A. Brodhead)

6-22-44—Mr. Mark R. Kulp, State Reclamation Engineer. It is the opinion of this office that the State Reclamation Engineer has the legal authority to regulate and control the level of water in Coeur d'Alene Lake, and that he may demand that the Washington Water Power Co. regulate its gates so that the level of the lake will not be higher than 2,126.5 feet. (Wm. A. Brodhead)

9-15-44—Mr. Mark R. Kulp, State Reclamation Engineer. In re: Storage on Rock Creek, Blaine County. It is the opinion of this office that the construction and use of the reservoir, as projected, could not successfully be opposed by any other user of the waters of Big Wood River as its tributaries. (Wm. A. Brodhead)

10-19-44—Mr. Mark R. Kulp, State Reclamation Engineer. In re: Protest against Extension of Time applied for by Western American Company under the provision of Chapter 79, S. L. 1943. (Wm. A. Brodhead)

#### SECRETARY OF STATE

3-22-43—Hon. George H. Curtis, Secretary of State. It is the opinion of this office that there is no legal objection to the employment of a person to serve two separate and distinct departments and to be paid by each of said State departments for services. (Bert H. Miller)

8-6-43—Hon. George H. Curtis, Secretary of State. It is the opinion of this office that the preliminary petition for recall of

Gov. Bottolfsen, presented to the Secretary of State on August 6, substantially conforms with the provisions of Ch. 209, 1933 Session Laws, with certain exceptions herein enumerated. (Ariel L. Crowley)

11-8-43—Hon. George H. Curtis, Secretary of State. In re: Interpretation of Secs. 43-501 and 43-507, I. C. A., do said sections permit the registration of assumed business names with the Secretary of State? (Ariel L. Crowley)

12-27-43—Hon. George H. Curtis, Secretary of State. In the opinion of this office any district judge now appointed (1943) by the Governor to fill a vacancy in the office of district judge is entitled to hold the office until the first Monday in January, 1947, and until his successor is elected and qualified, and that his successor cannot be chosen at the election to be held in November, 1944. (Frank Langley)

12-28-43—Hon. George H. Curtis, Secretary of State. In the opinion of this office the law (Chap. 86, 1943 Laws) contemplates filing with the Secretary of State of duplicate copies of articles of incorporation in the case of domestic insurance corporations. (Ariel L. Crowley)

12-29-43—Hon. George H. Curtis, Secretary of State. In the opinion of this office the corporate life of a domestic corporation may be extended notwithstanding the fact that its charter term has already expired, and notwithstanding the fact that its right to do business has been forfeited for non-payment of "license fees and penalties;" and reinstatement and extension of term may be simultaneous. (Ariel L. Crowley)

1-6-44—Hon. George H. Curtis, Secretary of State. (1) A mine is "productive" when or if the mine workings are idle, but from previous operations its mill and waste dumps contain quantities of low grade ore which with upward trend of market prices or through improved metallurgy become valuable shipping ore and are shipped and sold to the ore smelters. (2) A Mining Corporation's Annual Statement to your Department must disclose whether or not the corporation owns or operates a productive mine; otherwise the corporation must pay the annual license tax as provided by statute. (Frank Langley)

3-8-44—Hon. George H. Curtis, Secretary of State. In re: Copies of application for "war ballot." (Bert H. Miller)

3-31-44—Hon. George H. Curtis, Secretary of State. In re: The Last Chance Ditch Company, an Idaho corporation. In the opinion of this office, Sec. 29-608, I. C. A. providing a \$10.00 penalty for each year during which no annual license was paid applies to said corporation. (Ariel L. Crowley)

4-18-44—Hon. George H. Curtis, Secretary of State. In re: Use in the State of Federal Ballot envelopes. (Ariel L. Crowley)

4-20-44—Hon. George H. Curtis, Secretary of State. This office advises the rejection by the Secretary of State of any lodging or filing of declarations of candidacy supported by petitions which patently violate the limit of 300 signatures prescribed by statute, and to decline to supply disproportionately large numbers of petition forms to be circulated for such purpose. (Ariel L. Crowley)

#### STATE LIQUOR DISPENSARY

2-20-43—Hon. L. W. Rawson, Supt. of State Liquor Dispensary. In re: Sale by the City of Boise to the State of Idaho liquor which

originally was purchased through the State, and application of 20% State Tax. It is the opinion of this office that there is no lawful reason obstructing the purchase by the Liquor Dispensary of liquors owned by a city or county. Municipal corporations are not held to be within the scope of excise taxes. (Ariel L. Crowley)

3-11-43—L. W. Rawson, Supt of State Liquor Dispensary. Since the repeal of the 20% tax on liquor under H. B. No. 178, the 20% tax check should be returned where tendered, on liquor delivery on and after March 2nd. (Leo Bresnahan)

4-9-43—State Liquor Dispensary. In re: Freight expense from warehouses to dispensaries within the State (entirely intrastate shipments)—can charge be made against continuing appropriation. (Sec. 18-141) (Ariel L. Crowley)

4-13-43—L. W. Rawson, Supt., State Liquor Dispensary. In re: Duties of Supt. with respect to the establishment of a wine manufacturing plant by private persons in Idaho under license. (Ariel L. Crowley)

8-20-43—L. W. Rawson, Supt. State Liquor Dispensary. In re: Proposed agreements with Foster & Co. In the opinion of this office the proposed contract of sale and deposit agreement are not such as may be lawfully entered into by the liquor dispensary. (Ariel L. Crowley)

9-1-43—L. W. Rawson, Supt., State Liquor Dispensary. In the opinion of this office, the United States may buy intoxicating liquor officially, for government use within the state, without compliance with the Idaho Liquor Law; however, private importation of intoxicants for use of individuals, whether those individuals are officers of the United States or not, is prohibited by our laws. (Ariel L. Crowley)

10-28-43—Hon. L. W. Rawson, Supt., State Liquor Dispensary. In the opinion of this office no permit from the State Liquor Superintendent is necessary to the purchase of liquor warehouse receipts representing lawfully stored liquor in other states; Chapter 222, 1939 Session Laws. (Ariel L. Crowley)

12-14-43—Leland Rawson, Supt., State Liquor Dispensary. In the opinion of this office no proceeding is necessary for the State Liquor Dispensary to sell confiscated liquor, seized from Eugene Finch. (Ariel L. Crowley)

1-14-44—Hon. L. W. Rawson, Supt., State Liquor Dispensary. In the opinion of the office holders of stock in liquor companies may not convert the stock into whiskey and ship the same into the state for their own personal use. (Ariel L. Crowley)

1-29-44—Mr. L. W. Rawson, Supt. of State Liquor Dispensary. In the opinion of this office the interest of a married woman in her husband's property is such that she holds or enjoys, in whole or in part, a contract by which the husband rents that property to the state. (Ariel L. Crowley)

3-11-44—Mr. L. W. Rawson, Supt. State Liquor Dispensary. In re: Payment of current cash items and creation of a revolving fund. (Ariel L. Crowley)

10-19-44—State Liquor Dispensary. In the opinion of this office a refund from the Federal Government for an overpayment by the State Liquor Dispensary of a "Floor Stock Tax" must be repaid to the Liquor Control Fund, from which fund the tax was originally paid. (Bert H. Miller)

**TAX COMMISSION****Income Tax Division**

5-25-43—P. G. Neill, Director, Income Tax Division. In re: Taxation of income of resident persons from salary or compensation derived from sources outside the State of Idaho. (J. R. Smead)

6-9-43—J. A. Herrington, Income Tax Division. In the opinion of this office, the use of the term "abstract," in Ch. 63, 1939 Session Laws, allows disclosure only of the name of the taxpayer, the amount and the county, but not the contents of the return. (Ariel L. Crowley)

9-2-43—J. A. Herrington, Auditor, Income Tax Division. Where a ranch owner owns a ranch just north of the Nevada line in this state and also owns another ranch across the line in Nevada and counts on the business of stockraising by using the facilities of both ranches, what income, if any, is attributable to Idaho? 1941 Session Laws, as amended, Chap. 115, p. 197. (J. R. Smead)

3-31-44—Mr. J. A. Herrington, Income Tax Division. In the opinion of this office, where a wife acquires property consisting of real estate and personal property in Germany by gift and the property is lost by confiscation, the wife must claim the entire loss for income tax purposes. (Ariel L. Crowley)

8-4-44—Income Tax Division, Attn. Mr. J. A. Herrington. In the opinion of this office salaries of county prosecutors are definitely to be taxed by the 1921 Income Tax Law in the same manner as the salaries of other county officers. (J. R. Smead)

**TRAVELING LIBRARY**

5-12-43—Grace M. Bell, Librarian, Traveling Library. There are presently no funds available for making refunds of erroneous payments made in good faith to the Traveling Library, and auditor is without power to authorize disbursement for refund purposes. (Ariel L. Crowley)

5-20-43—Mabel Adamson, Asst. Librarian, Traveling Library. Under the terms of the appropriation act of 1943 (Chapters 123 and 11) it is our opinion that the State Library Commission is an educational institution and is entitled to the benefit of the provisions of Sec. 2, Chapter 123, and Sec. 16, Chapter 11. (Ariel L. Crowley)

**STATE TREASURER**

6-9-43—Hon. Myrtle P. Enking, State Treasurer. In re: Validity of treasury note proceedings of the Idaho Code Commission. (Ariel L. Crowley)

6-23-43—Hon. Myrtle P. Enking, State Treasurer. In re: Sufficiency of proceedings for issuance of code notes. (Ariel L. Crowley)

6-25-43—Hon. Myrtle P. Enking, State Treasurer. In re: Form of bond supplied by Attorney General, upon direction of the 1943 codification act. (Ariel L. Crowley)

8-12-43—Hon. Myrtle P. Enking, State Treasurer. Interest earnings of the Industrial Special Indemnity Fund are to be deposited in the Industrial Special Indemnity Fund, not in the General Fund. Sec. 43-1114, I. C. A. (Ariel L. Crowley)

**UNEMPLOYMENT COMPENSATION DIVISION**

8-19-44—Unemployment Compensation Division. In re: Manner of payment of Veteran's Readjustment Allowances under the G. I. Bill. It is the opinion of this office that it would not be possible to spend any of the money out of the U. C. D. Fund for the payment of benefits under the G. I. Bill. Funds for such payment are not State funds and should not be deposited with the State Treasurer, but should be handled as directed in this opinion. (Thos. Y. Gwilliam)

**VETERANS WELFARE COMMISSION**

7-9-43—Wm. O. Hall, Secy., Veterans' Welfare Commission. In the opinion of this office the Veterans' Welfare Commission may authorize expenses of the Secretary at its discretion and within the limits of appropriated funds; as to other four members of the commission, the statute excludes payment of any expenses except actual traveling expenses incurred in attending any regularly called meeting of the commission. (Ariel L. Crowley)

5-11-44—Mr. Wm. O. Hall, Veterans' Welfare Commission. It is the opinion of this office that a county clerk is required to record, without being paid any fee or compensation, the honorable discharge certificate of any serviceman or servicewoman. (Frank Langley)

5-11-43—Hon. C. Sanford Allen, Supt. of State School and Colony. (1) May income from farm operations of the Nampa School and Colony be used to pay salaries in addition to the amount appropriated specifically for salaries from the State General Fund? (2) Must the superintendent admit to residency without careful review of application for said residence each applicant committed to the State School and Colony without the sanction of the Superintendent? (Ariel L. Crowley)

5-14-43—C. Sanford Allen, Supt., State School and Colony. In the opinion of this office it is the duty of the Superintendent to receive at the State School and Colony any person regularly committed thereto by the Probate Court, and that upon receiving notice of such commitment he is required to send, if necessary, his agent to convey such person to the institution. (See Sec. 64-512, I. C. A.) (Charles S. Stout)

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**DOCKET**

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**UNITED STATES DISTRICT COURT**  
(Closed)

1024--Board of Trade of Missouri, et al, vs. United States of America, Interstate Commerce Commission and Public Utilities Commission. Re: Grain rates.

1121--United States of America vs. State of Idaho. Condemnation suit.

1124--State of Idaho vs. Gamble-Skogmo, Inc. Re: Multiple Store Tax.

1172--United States of America vs. 85.6 Acres of Land in Elmore County, et al, vs. State of Idaho. Condemnation suit.

1213--United States of America vs. 80.66 Acres of Land, More or Less in Kootenai County, Otis A. Wright, et al. Condemnation suit.

1218--United States of America vs. 65 Fifths of Graves Imported Gin, et al. Proceeding for forfeiture.

**(Pending)**

1122--United States of America vs. 68,666.89 Acres of Land in Bingham County, Mary O. Johnson, et al. Condemnation suit.

1130--United States of America vs. 3,969.59 Acres of Land, State of Idaho, Kootenai County, et al. Condemnation suit.

1207--United States of America vs. 138.5 Acres of Land in Elmore County and State of Idaho. Condemnation suit.

1212--United States of America vs. State of Idaho, Orville Colthrop, et al. Condemnation suit.

1224--United States of America vs. 18,217.58 Acres of Land, Charles M. Blocker, et al. Condemnation suit.

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**INTERSTATE COMMERCE COMMISSION****(Closed)**

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.

**(Pending)**

1142--Fresh Fruits and Vegetables from Idaho and Oregon.

1188--In the Matter of the Application of the Nezperce and Idaho Ry. Co. to Abandon Railroad from Nezperce to Craighmont.

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**SUPREME COURT OF IDAHO****Original Proceedings (Closed)**

1166--George Luker vs. George Curtis, Secretary of State. Re: Senior Citizens' Grants Act.

1168—Charles T. Hawkins vs. Charles E. Winstead, Judge of 3rd Judicial District of Idaho for Ada County. Proceedings for Writ of Mandate. Re: Jurisdiction of court in divorce suit.

1180—State of Idaho, ex rel, vs. Don Headrick, Sheriff of Ada County. Proceedings for Writ of Mandate. Re: Drivers' licenses.

1191—Donald Raymond Babb, vs. District Court of 2nd Judicial District and A. L. Morgan. Re: Qualification of women as jurors.

1225—P. C. Winter vs. F. L. Davis, Clerk of District Court and Ex Officio Auditor and Recorder of Madison County, Idaho. Re: Tenure of office of Clerk of District Court.

#### Civil Appeals (Closed)

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 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.

1178—Application of U. P. R. R. Co. for leave to Discontinue Agency at Franklin, Idaho, vs. Public Utilities Commission.

I-177—In the Matter of George Schrecongost. Re: Compensation for death.

#### Civil Appeals (Pending)

1161—Mica Bay Land Co. vs. Kootenai County. Re: Determination of forest protection levy.

1167—Orland A. Scott, et al, vs. C. A. Bottolfson, et al. Re: Determination of right of legislature to repeal Senior Citizens' Grants Act.

#### Criminal Appeals (Closed)

1020—State of Idaho vs. James R. Sedam. Re: Issuing check without funds.

1106—State of Idaho vs. Frank Prince and Anthony Boudoin. Re: Persistent violators statute.

1125—State of Idaho vs. Richard Haynes. Re: Burglary.

1148—State of Idaho vs. John McConville and Charles Jackson. Re: Indian fishing licenses.

1165—State of Idaho vs. Earl Gilbert. Re: Burglary.

1179—State of Idaho vs. William Behler. Re: Murder.

1195—State of Idaho vs. Hansen and McBride. Re: Violation of statute.

1205—State of Idaho vs. John Finney. Re: Violation of statute.

1206—State of Idaho vs. Fritz Landaher. Re: Violation of statute.

#### Criminal Appeals (Pending)

1211—State of Idaho vs. William K. Hart. Re: Concealed weapon.

1219—State of Idaho vs. Winston Churchill Henry, Albert Malloy Hilbert and James Turner Owens. Re: Grand larceny.

1221—State of Idaho vs. Corbett Robert (Bob) Miller. Re: Manslaughter.

1227—State of Idaho vs. Richard Haynes. Re: Burglary.

**DISTRICT COURTS****Civil Cases (Closed)**

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

1012--J. O. Jordon and Son vs. Calvin E. Wright. Re: Collection.

1023--State of Idaho vs. Tom Harris (Fruitland). Re: Fruit and Vegetable Tax.

1037--State of Idaho vs. M. C. Henshaw. Re: Fruit and Vegetable Tax.

1038--State of Idaho vs. A. F. Tolcott. 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. Buntin. 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.

1072--C. S. Gambel vs. Berg. Commissioner of Reclamation. Re: Water Rights.

1073--State of Idaho vs. Waldemar Weddle. Re: Mortgage foreclosure.

1083--State of Idaho vs. Everett Heseman. Re: Fruit and Vegetable Tax.

1090--State of Idaho vs. Drainage District No. 4. Re: Quiet title to real estate.

1094--State of Idaho vs. J. H. Seaver. Re: Fruit and Vegetable Tax.

1109--State of Idaho vs. William C. Davis, et al. Re: Mortgage foreclosure.

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

1146--Utah Construction Co. vs. Lois Collier, et al. Re: Quiet title to real estate.

1147--Lucy W. McPherson vs. Unknown Heirs. Re: Quiet title.

1162--Wm. S. Woodland and Muriel C. Woodland vs. Unknown Heirs of Albert W. Jones, et al. Re: Quiet title.

1175--Bert D. Barlow and Mildred A. Barlow vs. John F. Otjen. State of Idaho. Re: Quiet title to real estate.

1176--State of Idaho vs. W. W. Newcomb. Re: Fruit and Vegetable Tax.

1177--State of Idaho vs. H. J. Weaver. Re: Fruit and Vegetable Tax.

1182--State of Idaho vs. Countryman. Re: Violation of statute.

1185--Otto F. Peterson, et al. vs. Idaho Independent Voters' League, et al. Re: Declaratory judgment.

1186--Romboch vs. Doman and State of Idaho. Re: Quiet title to real estate.

1189--In the Matter of the Gem State Mutual Accident Association. Re: Writing of health insurance.

- 1190—J. M. Lyda also known as James M. Lyda vs. State of Idaho. Re: Quiet title.
- 1193—State of Idaho vs. C. S. Gamble. Re: Quiet title.
- 1202—State of Idaho ex rel Calvin E. Wright, State Auditor, vs. Albert Schlehuber. Re: Action for rent.
- 1204—State of Idaho vs. Clough, Hansen and McBride. Re: Quiet title to real estate.
- 1208—Lake Reservoir Co. vs. State Board of Land Commissioners, et al. Re: Determination of water rights.
- 1209—State of Idaho on Relation of the Board of Regents of the University of Idaho vs. M. F. Lynch. Re: Trespass.
- 1214—Wm. E. Smith vs. State of Idaho, et al. Re: Quiet title.
- 1220—George F. Shrum, et al, vs. Leslie L. Clark, et al. Re: Quiet title.
- 1226—Gem State Mutual Accident Association, Inc., a corporation, vs. Bert H. Miller, Attorney General, and Howard M. Cullimore, Director of Insurance, State of Idaho. Re: Amendment of articles of incorporation of insurance company.

#### Civil Cases (Pending)

- 1005—Utah-Idaho Sugar Co. vs. Jefferson County. Re: Recovery of taxes.
- 1047—State of Idaho vs. Alvin Jones. Re: Recovery of tax.
- 1096—Lyons vs. Bannock County. Re: Quiet title.
- 1159—State of Idaho on Relation of Harry C. Parsons, State Auditor, vs. C. E. Hays, dba Hays Motor Co. Re: Collection.
- 1160—State of Idaho vs. Hopkins Motors, Inc., a corporation. Re: Collection.
- 1163—F. M. Bistline vs. Southern Branch of University of Idaho, et al. Re: Quiet title.
- 1171—Fred Chresst vs. James M. Bell and Ella S. Bell, et al, State of Idaho. Re: Quiet title.
- 1187—City of Pocatello vs. Bannock County, State of Idaho, et al. Re: Quiet title.
- 1196—State of Idaho on Relation of Joe D. Woods, Acting Commissioner of Public Works, vs. Royal D. Bisbee. Re: Condemnation of land.
- 1201—State of Idaho vs. Canyon County, et al. Re: Quiet title.
- 1216—State of Idaho vs. Ostrander. Re: Mortgage foreclosure.
- 1223—In the Matter of the Estate of Jacob Schrenk, deceased, D. C. Kennison, Administrator. Re: Recovery of old age assistance.
- 1228—E. N. Hanson vs. T. M. DeCoursey, R. S. Brown, et al. Re: Levy for teachers' salaries.

#### DISTRICT COURT

##### Criminal Cases (Closed)

- 1179—State of Idaho vs. Wm. Behler.
- 1210—State of Idaho vs. Verouteren and Cuddeford. Re: Murder.

**PUBLIC UTILITIES COMMISSION OF IDAHO****(Closed)**

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

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

1134—Application of Oregon Shortline Ry. Co. for the abandonment of Paris Branch in Bear Lake County, Idaho, and authorizing Union Pacific Ry. Co., Lessee, to abandon operation thereof.

1169—In the Matter of the application of Cantlay and Tanzola, Inc., for auto transportation permit.

1178—Application of U. P. R. R. Co. for leave to discontinue agency at Franklin, Idaho, vs. Public Utilities Commission.

**PROBATE COURTS****(Closed)**

705—In the Matter of C. S. Flint, Mental Incompetent, Everett E. Hunt, Guardian. Re: Proceeding to recover for maintenance.

1013—In the Matter of the Estate of Callahan McCarthy, also known as Cal McCarthy, deceased. Re: Proceeding to determine inheritance tax.

1015—In the Matter of the Guardianship of the Estate of Hortense Wickham, an insane person.

1028—In the Matter of the Estate of Clara B. Austin, an incompetent. Re: Collection of Claim.

1043—State of Idaho vs E. F. Palmer. Re: Liquor funds.

1174—In the Matter of the Estate of Mary J. Rankin, deceased. Re: Proceedings to establish record title to community property.

**(Pending)**

1152—State of Idaho, Department of Public Assistance, Claimant, vs. Idaho First National Bank, Executor of Estate of Emory V. Michaels. Re: Collection of old age assistance.

1215—In the Matter of the Estate of Austin Daniel Norrick, Deceased. Re: Escheat.

**JUSTICE COURTS****(Pending)**

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

1203—State of Idaho vs. Enid Green. Re: Violation of liquor law.

**BEFORE THE INDUSTRIAL ACCIDENT BOARD****(Closed)**

I-176—In the Matter of Kenneth Sletten.

I-177—In the Matter of George Schrecongost.

I-178—In the Matter of Reed Johnson Maughn.

**(Pending)**

I-175—In the Matter of Richard H. Sachs.

I-179—In the Matter of Horace B. Tanner, State of Idaho, ex rel. Calvin E. Wright, State Auditor, vs. Union Pacific Ry. Co.

I-180—In the Matter of Jose Fajardo Gomez.

## UNEMPLOYMENT COMPENSATION DIVISION

## List of Cases Pending and Closed, 1943-1944

## PROBATE COURT

## Pending Cases

State of Idaho vs:

James N. Auxier	Alastair MacKenzie
Browning Motor Company, Inc.	Brigham Madsen
Bryan Brunzell	W. L. Martz
Consolidated Mines Syndicate	Paul P. Masar
Arnold Daniels	Frank Senter
H. B. Farwell	Harry B. Stanton
H. A. Ferris, Zella Cannon and	W. R. Tilson
Robert Clark	Arthur R. Trott
Gordon K. Henderson	Arnold C. Tueller
Oscar E. Hopkins	Joseph J. Turner
Stanley Huff and John R. Black	Haydn H. Walker
Fred P. Ludwig	

## Closed Cases

State of Idaho vs:

G. L. Arnett	Mary J. Gist
E. C. Atkins	Marion Glavota
Kathrine B. Baker	Lloyd Goodrich
Lorené C. Bales	E. A. Guidinger
V. C. Ballantyne	George Hagan
Walter Barr	O. B. Hamilton
E. M. Bennett and Raymond H.	K. A. Hardin
Bennett	William Seward Heizer
Joe Bernasconi	T. A. Helms
Black Rock Mining Company	Henry Stampede & Stock-
C. J. Bloxham	men's Reunion, Inc.
Lowell F. Brannon	Grant C. Hicks
Buffalo-Idaho Mining Company	Carl Holst
Rex Cameron	James Jameson
A. B. Christensen	The Idaho Commoner
W. B. Christenson	C. E. Jepeson
Carl C. Conklin	P. E. Johnson
John Q. Cook	Alice Randolph Kearby and
Robert Cox	Ted Kearby
Clare Crockett	F. E. Kempf
J. W. Crow	W. B. Kennedy
H. B. Curtis, Bert Trask, and	Kimberly Gold Mines, Inc.
L. H. Fosford	W. M. Knauff
Roy O. Cutler	L. G. Knight
Patrick J. Daly	Florence Krall and Lou V. Krall
C. H. Davis	Hans Lauesen
Dickens-East Mining Company	R. W. Leonard
Howard Douglas	Charles S. Lord
Jack W. Duckworth	Walter P. March
James Dunn and Robert Dunn	Leo Marsters
Vernon C. Eller	Leslie J. McCain
Ellis Drug Company, Inc.	George McIntyre
Cliff E. Emerick	W. E. Miller
L. M. Erhardt and Glenn Erhardt	Carl Moeller
L. E. Eytchison	C. Roy Peterson and Mrs. C.
L. W. Girard	Roy Peterson

**Probate Court, Cases Closed (Continued)**

State of Idaho vs:

John Peterson  
 Loren T. Peterson  
 Frank T. Prendergast  
 Ralph Prescott  
 L. C. Puelz  
 P. M. Ramsing  
 Dewey Raymond  
 Owen W. Ricks  
 H. P. Riep  
 A. L. Rinearson  
 Clarence Ross  
 J. A. Rouse  
 Arthur T. Sahlberg  
 L. G. Sidle  
 Owen Simpson  
 Clark Sizemore  
 E. F. Snapp  
 V. H. Sprute  
 Gordon Squires  
 S. A. Steenburg

L. C. Stenstrom  
 William R. Sterzick  
 Art. I. Stoner  
 C. A. Sundberg and H. M.  
 Sundberg  
 Sunrise Mines Company  
 D. A. Thomas  
 C. H. Thomas  
 Monte Thornton  
 E. W. Tuttle  
 Harvey S. Walters  
 Lester Ward  
 W. H. Wardle  
 Jesse D. Watson  
 Western Gold Exploration  
 Company, Inc.  
 Harvey N. White  
 W. E. Wuthrick  
 Zion's Cooperative Mercantile  
 Institution

**DISTRICT COURT****Pending Cases.**

State of Idaho vs:

L. W. Arave  
 H. G. Hammond

International Shoe Company  
 Chris Weisgerber

**Closed Cases**

State of Idaho vs:

Ada County Dairymen's Association	Joy J. Maxwell
Dairymen's Cooperative Creamery of Boise Valley	Madison Lumber & Mill Company
Falk Mercantile Company, Ltd.	A. O. Miller
A. L. Heine Mines, Inc.	C. H. Nethaway, Debbs Sarchet, and Josephine Vedder
K. E. Klason	Howarth Ostler
	Charles A. Sturmer

The American Home Benefit Association, Inc.  
 Beneficial Protective Association, Inc.  
 Gem State Mutual Life Association, Inc.  
 Idaho Mutual Benefit Association, Inc.

vs.

W. L. Robison, G. W. Suppiger and Frank Langley, constituting and being the Industrial Accident Board of the State of Idaho.

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**SUPREME COURT****Pending Cases**

State of Idaho vs:

Ada County Dairymen's Association  
Farmers' Cooperative Creamery Company

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P. G. Batt vs. Unemployment Compensation Division

General Electric Company vs. Unemployment Compensation Division

Ray Hagadone vs. E. A. Kirkpatrick and Unemployment Compensation Division

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Gem State Mutual Life Association, Inc.

Beneficial Protective Association, Inc.

Idaho Mutual Benefit Association, Inc.

vs.

W. L. Robinson, G. W. Suppiger, and B. W.  
Oppenheim, constituting and being the  
Industrial Accident Board of the State  
of Idaho.

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**Closed Cases**

State of Idaho vs. L. E. Burrell

W. S. Meader vs. Unemployment Compensation Division

In the Matter of the Liability of Carstens Packing Company a  
corporation, for contributions under the Unemployment Com-  
pensation Law.

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**STATE INSURANCE FUND**

For some years past whenever a question as to the compensability of a claim arose, it has been the practice of officials administering the Fund to deny the same. Sec. 43-1413 as amended provides that "all questions arising under this Act, if not settled by agreement or stipulation of the parties interested therein, with the approval of the board, shall except as otherwise herein provided, be determined by the board." It is not in keeping with the spirit of the Act to have administrative officials perform functions which are by law vested in the Board. Therefore it is recommended that the practice of denying claims cease and that whenever a question arises that the claimant be advised of his right to have the matter determined by the Board.

In the matter of examining claims, each claim involves legal questions. This requires an extensive knowledge of the law—not only of the Workmen's Compensation Law, but all law in general. The present acting Claims Examiner has been with the Fund for the past ten years and has gained an experience which fully qualifies him for the position. If, however, he is replaced or if in the future any

change be made, it is recommended that an attorney be appointed to that position.

There are still a number of delinquent accounts due on cancelled policies. Most of them have accumulated from past administrations. It has been the policy of the present Manager of the State Insurance Fund to hold the administrative expenses, particularly salaries, to an absolute minimum. This fact coupled with the scarcity of persons with stenographic experience has made it difficult to secure competent stenographic assistance. As a result, the attorney was not able to have the work done preparatory to commencing action for the collection of these accounts. It is recommended that the appropriation for legal administration of the Fund be increased. It is also recommended that the Attorney General select the secretarial and stenographic assistance for the attorney assigned to the Fund.

During the past biennium the number of claims has decreased by almost forty per cent. There were only 7,245 filed between December 15, 1942, and December 19, 1944, while 12,210 were filed between January 6, 1941, and December 15, 1942. This is due to some extent to the fact some private employers have withdrawn from the Fund and insured in private companies. Another factor influencing this is the high wage scale and the low rate of compensation.

The number of claims denied has decreased in even greater ratio. Only 41 claims were denied during the period of December 15, 1942, to December 19, 1944, while 250 were denied between January 6, 1941, and December 15, 1942. There were, however, in addition to these denials, 17 petitions filed before the Industrial Accident Board where no denial was made. Besides these, there were 12 cases pending before the Board at the beginning of the biennium.

There were seven appeals from decisions of the Industrial Accident Board pending before the Supreme Court at the beginning of the biennium, one having been appealed by the Fund and six by the various claimants. One of the latter was reversed to take further testimony and the Board's action was sustained in the remainder. Four cases have since been appealed to the court, one of these by the Fund. This was reversed in favor of the Fund and one in which the claimant appealed was sustained. The other two are still pending.



BERT H. MILLER  
Attorney General  
State of Idaho  
1943-1944



C. A. BOTTOLFSSEN  
Governor  
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1943-1944