

# Attorney General's Biennial Report



STATE OF IDAHO  
1945—1946



FRANK LANGLEY  
Attorney General

# **ATTORNEY GENERAL'S DEPARTMENT**

FRANK LANGLEY.....	ATTORNEY GENERAL
PHIL J. EVANS.....	Assistant Attorney General
J. R. SMEAD.....	Assistant Attorney General
THOS. Y. GWILLIAM.....	Assistant Attorney General
†W. B. BRODHEAD.....	Assistant Attorney General
M. REESE HATTABAUGH, SR.....	Assistant Attorney General
ROBERT W. BECKWITH.....	Assistant Attorney General
*CHARLES S. STOUT.....	Assistant Attorney General
*PAUL ENNIS.....	Assistant Attorney General
WALTER OROS.....	Assistant Attorney General
DAVID DOANE.....	Assistant Attorney General
*PAUL KEETON.....	Assistant Attorney General
DENEICE REINMUTH.....	Secretary to the Attorney General
*DOROTHY EYDMANN GRAY.....	Legal Stenographer
*AUDREY KEVER.....	Legal Stenographer
DOROTHY GRIMMETT.....	Legal Stenographer
PAULA NEVA.....	Legal Stenographer

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† Deceased

\* Resigned

# PROSECUTING ATTORNEYS—1945-46

(For the Counties of Idaho)

County	Name	Address
Ada.....	James W. Blaine.....	Boise
Adams.....	C. H. Swanstrom.....	Council
Bannock.....	C. M. Jeffery.....	Pocatello
Bear Lake.....	Charles C. Harris.....	Paris
Benewah.....	William D. Keeton.....	St. Maries
Bingham.....	Donald R. Good.....	Blackfoot
Blaine.....	J. J. McFadden.....	Hailey
Boise.....	T. E. McDonald.....	Idaho City
Bonner.....	Robert E. McFarland.....	Sandpoint
Bonneville.....	John A. Ferebaeur.....	Idaho Falls
Boundary.....	W. J. Nixon.....	Bonnors Ferry
Butte.....		Arco
Camas.....	Charles O. S. Scoggin.....	Fairfield
Canyon.....	V. K. Jeppesen.....	Caldwell
Caribou.....	R. J. Dygert.....	Soda Springs
Cassia.....	A. H. Nielson.....	Burley
Clark.....	George L. Barnard.....	Dubois
Clearwater.....	Frank F. Kimble.....	Orofino
Custer.....	Merle L. Drake.....	Challis
Elmore.....	Perce Hall.....	Mountain Home
Franklin.....	Arthur W. Hart.....	Preston
Fremont.....	Ralph Litton.....	St. Anthony
Gem.....	C. H. Higer.....	Emmett
Gooding.....	M. F. Ryan.....	Gooding
Idaho.....	Wilbur L. Campbell.....	Grangeville
Jefferson.....	Wm. P. Hemminger.....	Rigby
Jerome.....	R. H. Seeley.....	Jerome
Kootenai.....	Harold Purdy.....	Coeur d'Alene
Latah.....	J. Morey O'Donnell.....	Moscow
Lemhi.....	F. A. McCall.....	Salmon
Lewis.....	G. C. Pennell.....	Nezperce
Lincoln.....	Ross B. Haddock.....	Shoshone
Madison.....	Charles W. Poole.....	Rexburg
Minidoka.....	H. A. Baker.....	Rupert
Nez Perce.....	Earle W. Morgan.....	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.....	Tom Feeney.....	Cascade
Washington.....	Frank D. Ryan.....	Weiser

## ATTORNEYS GENERAL OF THE STATE OF IDAHO

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### 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
Frank Langley.....	1945-1946

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### JUSTICES OF THE SUPREME COURT

1945-1946

James F. Ailshie, Chief Justice.....	Coeur d'Alene
Alfred Budge, Justice.....	Pocatello
Raymond L. Givens, Justice.....	Boise
Edwin M. Holden, Justice.....	Idaho Falls
Bert H. Miller, Justice.....	Boise

December 1, 1946

HONORABLE ARNOLD WILLIAMS  
Governor of the State of Idaho  
Boise, Idaho

Dear Governor Williams:

I have the honor to present to you the biennial report of the Attorney General for the period ending December 1, 1946.

Chapter 64 of the 1941 Session Laws has set the fiscal year from July to June of each year and provides that the annual or biennial reports required to be made should include transactions to and including June 30. Section 47-601, Idaho Code Annotated, has not been amended and provides that annual and biennial reports should be compiled, printed and delivered to the Secretary of State on or before the first day of December. Consideration should be given to amending Section 57-601, I. C. A., so that only one report should be made and that report be made before the close of the fiscal year.

The Attorney General has rendered 182 official opinions to the various executive officials, department heads, county attorneys and other public officials as provided by law. In addition to said opinions the Attorney General has appeared in 128 cases in which the State of Idaho has been directly concerned including criminal appeals. A list of such cases are included in this report.

The Highway Department, the Unemployment Compensation Division of the Industrial Accident Board, and the State Insurance Fund each have an attorney spending full time with those departments but under the supervision of the Attorney General. In addition a special assistant to the Attorney General has been appointed to handle all inheritance tax matters.

Because of the lack of help the Assistant Attorney General in the Highway Department has assisted with work in the Attorney General's office, but a full time assistant should be appointed in the Highway Department.

The past two years as Attorney General have been very pleasant as has my association with you as governor and the other state elective officials. I regret that political fortunes will not permit the continuation of such agreeable associations.

Sincerely yours,

FRANK LANGLEY,

Attorney General

# ATTORNEY GENERAL'S REPORT

## Financial Summary

January 1, 1945, to June 30, 1945:

### APPROPRIATIONS

Salaries and Wages .....	\$11,120.00
Other Expense .....	1,092.14
Other Expense .....	125.00
Capital Outlay .....	2,875.00

### DISBURSEMENTS AND BALANCES

	Expended	Balances
Salaries and Wages .....	\$10,517.90	\$ 602.10
Other Expense .....	835.91	256.23
Other Expense—Travel .....	93.25	31.75
Capital Outlay .....	202.00	2,673.00

July 1, 1945, through June 30, 1947

### APPROPRIATIONS

Salaries and Wages .....	\$53,480.00
Other Expense .....	2,280.00
Other Expense—Travel .....	950.00
Capital Outlay .....	1,150.00

### DISBURSEMENTS AND BALANCES

July 1 through December 30, 1946, (November and December expenses estimated through necessity arising from the time this Report is due—Dec. 1.)

	Expended	Balances
Salaries and Wages .....	\$33,712.07	\$19,767.93
Other Expense .....	1,373.11*	907.69
Other Expense—Travel .....	605.11	344.89
Capital Outlay .....	2,926.94**	771.06

\*Other Expenses balance checks with exception of 80 cents which was brought forward and paid from the last biennium allotment.

\*\*Of the 1945-46 allotment only \$56.44 has been spent at this date. \$322.50 may be incurred for the November and December expenses. \$2548.00 was brought forward from the 1943-44 biennium and spent to renovate and clean the offices which had not been repaired since 1934.

**RESUME OF SOME OUTSTANDING CASES****E. K. KOON et al, vs. C. A. BOTTOLFSEN, EDWIN H. HOLDEN  
and L. E. GLENNON (Closed)**

Case No. 7283, (Civil), known as the Code Case involved the construction of Chapter 103 of the 1945 Session Laws of Idaho, providing for the preparation and publishing of a new Code of the laws of Idaho. The defendants constituted the Code Commission created by the Act and had entered into a contract with plaintiff E. K. Koon on June 23, 1943, under the terms of which plaintiff was to prepare and publish a new Idaho Code in accordance with said Act and said contract. Section 4 of the Act provided that said Code should be completed and ready for delivery by July 1, 1944. Plaintiff did not complete said Code by said date, and was granted an extension of time by the Code Commission to October 1, 1944, within which to complete said Code. The same was not completed by that time either and a new application was made to the Commission by plaintiff for a further extension of time which was denied by the Commission. A regular session of the legislature of Idaho commenced on January 13, 1945. No provision was made by this session of the legislature for extending the time for the completion of said Code and on March 6, 1945, plaintiffs brought an action in the District Court of the United States in and for the State of Idaho, southern division, against defendant for the purpose of having the Court fix rights of plaintiff and the duties of defendants in regard to the interpretation of said Act. The defendants were represented by the Attorney General of Idaho in this action and motion was filed on behalf of defendants asking dismissal of the same. This motion was granted April 17, 1945. Subsequently the Court permitted plaintiffs to file an amended complaint, but said complaint was later withdrawn.

On April 27, 1945, plaintiffs started another action against same defendants as a Code Commission under said Act, in the District Court of the Fifth Judicial District of Idaho in and for Bannock County in which plaintiffs prayed for a declaratory judgment, "fixing and stabilizing the rights of the plaintiff and the duties, rights and responsibilities of said defendants composing said Code Commission and that it be declared that it is the duty, power and authority of said Code Commission to complete said Code under the existing authority of Chapter 103 of the 1943 Session Laws, and in accordance with Exhibit A attached to the original complaint herein, (which was the contract between the parties for the preparation and printing of the Code)." The Attorney General again represented defendants in this action which was tried in said Court at Pocatello on October 22, 1945. On October 24, 1945, said Court found in plaintiff's favor and entered declaratory judgment holding that defendants had power and authority to complete said Code notwithstanding that the time

fixed in the Act for the completion and delivery of the same had expired.

Defendants contended that under the Act as provided by Section 4 thereof they were without authority to extend the time for the completion of said Code and that because of the fact that plaintiff had failed to complete the same within the time fixed by the Act and by the terms of the contract entered into between plaintiff and defendant, that the same could not be completed after said date so as to constitute a Code of the laws of Idaho at the time of its later publication, particularly in view of the fact that another regular session of the Idaho legislature had been held in the months of January, February, and March, 1945, which had enacted a large number of new laws, and repealed many old laws and amended many other old laws, none of which laws so passed would have been included in any Code completed after said session of the legislature, and that for that reason any such Code would be worthless for the State of Idaho because of its failure to include such new legislation, and that such a Code would be of no value to the state nor would the same be in compliance with the provisions of Chapter 103 of the 1943 Session Laws of Idaho, as the same would not constitute a complete Code of existing laws of the state at the time of its publication.

After the entry of the declaratory judgment mentioned by the District Court on October 24, defendants took their appeal to the Supreme Court of the State of Idaho from said judgment and on May 4, 1946, the Supreme Court of the state entered their judgment reversing the judgment of the District Court in said action and holding that the provisions of Section 4 of Chapter 103 of the 1943 Session Laws were mandatory and that the defendants were without authority to proceed further with said codification under said Act after July 1st, 1944.

While there is no question that the State of Idaho is in urgent need of a new Code, it is apparent that a Code that would not correctly and fully set forth the existing law of the state to the time of its publication, and which would have left out of said Code the changes that had been made in existing laws by the later regular session of the 1945 legislature would not only be worthless to the State of Idaho, its courts and attorneys, but would also have been misleading in the extreme. (Phil J. Evans)

**IDAHO MUTUAL BENEFIT ASSOCIATION INC., a corporation, vs.  
EDWARD B. McMONIGLE, DIRECTOR OF THE BUREAU OF  
INSURANCE OF THE STATE OF IDAHO**

Case No. 1270, (Civil)—This was an action brought by the plaintiff against the defendant for declaratory judgment in the District Court of the Third Judicial District of Idaho in and for the County of Ada for the purpose of seeking an interpretation of the provisions



of Section 7, Chapter 114 of the Session Laws of 1941 of the State of Idaho.

Section 7 of this Act provides as follows:

"All Mutual Benefit Life Associations licensed to transact business in this state shall file with the Department of Finance annually on or before the first day of March of each year, a statement, under oath, showing the amount of all gross premiums and all payments received by said associations in this state from its members during the year ending December 31 next preceding, and shall pay to the Department a tax of 3% on the amount of such gross premiums collected in excess of premiums and collections returned to such members and membership fees.

"Provided, however, that any association licensed to transact business in this state having more than 60% of its assets and funds either on deposit in a bank in this state, or invested as provided in Section 40-808, Idaho Code Annotated, shall pay a tax of 1% upon the gross premiums collected from its members in this state, except membership fees, in lieu of the tax above provided for."

It was the contention of the plaintiff that under these provisions of Section 7, that plaintiff was not required to pay any tax upon its gross premiums derived from its members residing outside of the state of Idaho, and that it was only required to pay a tax of 1% on such premiums received from its members residing within the State of Idaho, where such company had more than 60% of its assets and funds "either on deposit in a bank in this state, or invested as provided in Section 40-808, Idaho Code Annotated," while defendant as Director of the Bureau of Insurance took the position that plaintiff was required under said provisions to pay a tax of 1% on all such gross premiums regardless of whether the same were collected from its members residing within or without the state. It was admitted between the parties that the plaintiff did have more than 60% of its assets and funds either on deposit in a bank or invested as required by the Act. Defendant filed a cross complaint in which he sought to recover unpaid taxes for the statutory period of three years prior to the bringing of the action as no tax had been paid by plaintiff on the premiums received by it from its members residing outside of the state for these years, nor as a matter of fact for some years prior thereto, but under the statute of limitations of the state the state's right of recovery was limited to the tax owing for a three year period prior to the beginning of the action.

The case was tried in the District Court upon a stipulation of facts and on December 3, 1946, judgment was rendered in said Court in favor of said defendant and decree was accordingly entered in said Court on September 10, 1946, in favor of defendant.

As a result of this action the law was settled that companies like the plaintiff were required to pay taxes on premiums collected from its members residing outside of the state on the same basis as the taxes it was required to pay on premiums received from its members residing within the state; and defendant recovered from the plaintiff three years taxes on such amounts, amounting in the aggregate to over \$2,000.00. (Phil J. Evans)

Another civil case of importance has been fully submitted to the Supreme Court on appeal, and the decision of that Court would also be of considerable importance, although it is not available at the time of preparing this report.

It is the case of Thomas vs. Boise G. Riggs, Commissioner of Law Enforcement, and it is sought to enjoin the Commissioner of Law Enforcement from the issuance of licenses for the operation of coin-operated amusement devices on the ground that the law providing for such license is unconstitutional. The question is, at present, whether the plaintiff occupies any status or has any personal rights which invests him with the capacity to bring the action, which is a proceeding seeking a declaratory judgment. We believe that the Court's decision when available will be of great interest to all attorneys and of great importance to all those organizations holding such licenses. (Phil J. Evans and J. R. Smead)

With a few exceptions the criminal cases which have gone to our Supreme Court during the past biennium have offered no unusual questions for determination. Perhaps the most important decision of that court was in the case of State vs. Branch, not yet appearing in the Idaho Reports but found in 164 P. 2nd 182. A divided court held in that case that where the defendant in a criminal case takes the witness stand he may not be impeached by testimony to the effect that his reputation for truth, honesty and integrity in the community in which he resided was bad, unless he has first put such reputation in issue by defense evidence of good reputation. To that extent at least the decision holds that the statutory provisions of Section 16-1209 are not applicable in such a situation, except the defendant has first put his reputation in issue. The same section provides for impeachment by proof that a witness has previously been convicted of a felony. The decision does not deal with that provision, but in a recent case a trial court ruled that such a former conviction could not be put in evidence against the defendant, who had also taken the witness stand. Attention is called to this case because it is of great importance to the bench and bar of Idaho. The dissenting opinion of two members of the Supreme Court is also extensive and important.

Other than the Branch Case, there is another criminal appeal which has been fully presented and submitted to the Supreme Court but in which the decision will not be handed down until after the prepara-

tion of this report, which must be in the hands of the Secretary of State for distribution by December 1st of this year.

The case referred to is State vs. Carpenter, which originated in Twin Falls County. After conviction the defendant applied to the trial court for leniency in the matter of sentence. The section of the Code in point is Section 19-2501 as amended, Laws of 1943, Chapter 14. The statute now provides that leniency, such as a commutation of sentence such as occurred in the Carpenter Case may be granted "upon application by the defendant." The quoted phrase was inserted in the statute by the amending act. The question before the court is, when a convicted defendant has applied for leniency and it has been granted, does this result in a waiver of the right of appeal? The answer is of great importance to all Idaho lawyers and to many defendants who may be convicted hereafter.

The second question in the Carpenter Case concerns the extent of proof required in a criminal case where the defense is based upon a claim of common law marriage. In the Carpenter Case no question was made concerning the commission of the crime, which was the furnishing of certain hacksaw blades to enable a prisoner to escape. The defense contends that the defendant was the wife at common law of a prisoner and acted at his command and therefore under coercion. It is suggested that the decision of the Supreme Court be given thorough consideration by all members of the bench and bar. (J. R. Smead)

## ATTORNEY GENERAL'S OPINIONS

### Some Selected Opinions Follow:

3-12-45—Mr. Henry S. Martin, Prosecuting Attorney,  
Bonneville County:

This is in reply to your letter of December 7 addressed to the Attorney General. You have enclosed with said letter a communication between Boise G. Riggs, Commissioner of Law Enforcement, and one W. H. Elkington concerning, and also enclosing, a list entitled Retail Liquor Dealers in Idaho Falls, Idaho.

The communication of the Commissioner of Law Enforcement together with the list of reported liquor dealers in Idaho Falls has been presented to the County Commissioners of Bonneville County with the request that beer licenses issued to the places on the list be revoked under the provisions of Chapter 160 of the 1945 Session Laws. You ask the opinion of this office as to whether the list as presented is in sufficient compliance with said Chapter 160 of the 1945 Session Laws making it mandatory that beer licenses be revoked by the

holders of a United States Internal Revenue Retail Liquor or Wine Dealer's stamp.

You are, of course, familiar with the contents of Chapter 160 of the 1945 Session Laws but I quote herein the significant portion of said Chapter. —

"A license shall be revoked or refused when it appears that any licensee or the spouse thereof has, or any partner or actual manager or purchased any United States Internal Revenue Retail Liquor or Wine Dealer's stamp permitting on the part of the United States Government the sale at retail on said premises at said time or by any of said persons of alcoholic liquor, wine or beverages containing alcoholic liquor or alcohol except beer. A copy of such stamp or receipt or the record of the issuance thereof certified by a United States Internal Revenue officer having charge of such record, or if such officer shall refuse to certify such record, then the certificate of any law enforcement officer who has examined and made a copy of such record is sufficient showing of the issuance of such stamp, to support such revocation of license or refusal to issue the same."

Your letter asks two questions concerning the aforementioned law, particularly as follows:

1. Is the Certificate of Boise G. Riggs as Commissioner of Law Enforcement sufficient evidence to justify the revocation of the beer licenses of the persons named in the certificate as having United States Internal Revenue Retail Liquor or Wine Dealer's stamps or must there be a statement of a United States Internal Revenue officer?
2. If the Certificate of the Commissioner of Law Enforcement is sufficient to permit the revocation of the beer license of the persons concerned what is the opinion of this office as to the constitutionality of said law particularly with respect to the Fourteenth Amendment guaranteeing that property shall not be taken without due process of law?

An examination of the purported Certificate of Boise G. Riggs, Commissioner of Law Enforcement, reads as follows:

"TO WHOM IT MAY CONCERN:

This is to certify that the attached list of Federal Retail Liquor Stamp Holders in Bonneville County is true and correct to the best of my knowledge as of November 19, 1945."

The list is attached to the Certificate and is signed by Boise G. Riggs, Commissioner of Law Enforcement, State of Idaho, Boise, Idaho.

I may state that it is my opinion that the Certificate is not in con-

formity to Chapter 160 of the 1945 Session Laws which provides that the Certificate of any law enforcement officer must indicate that he has examined and made a copy of such record and in order to be the best evidence to present before the body or board expecting to act upon the application for revocation it should be a certificate in proper form indicating that the law enforcement officer has examined and made a copy of the record of the issuance of United States Internal Retail Liquor and Wine Dealer's stamps in the United States Department of Internal Revenue, and a showing that an officer of the United States Bureau of Internal Revenue has refused to certify to such record.

I am of the opinion, however, that a certificate in proper form by an officer of the Department of Law Enforcement would be admissible evidence and sufficient evidence to authorize the board acting upon an application for revocation of beer license to consider in passing upon such revocation. The law enforcement features of the liquor law and beer law of the State of Idaho have not been presented to our Supreme Court and hence we are required to go back to the time before the Eighteenth Amendment of the Constitution of the United States was adopted to obtain judicial thinking on the power of the legislature or municipalities to regulate the sale and use of intoxicating liquor. Prior to the adoption of the Eighteenth Amendment to the Federal Constitution many of the states of the Union had adopted prohibition legislation. In attempting to enforce such legislation the legislators of the various states adopted many police regulatory measures. It has been held that the issuance of a special tax or retail liquor dealer's Federal Stamp and, on payment, issued a special tax stamp or receipt, sometimes called a license, the fact that the defendant has paid the special tax was admissible in evidence, it being sometimes specially so provided by statute and also it has been held that a properly examined and certified copy of the record of special taxes kept by the Collector of Internal Revenue could be admitted in evidence as evidence of violation of a liquor law. (33 C. J. 783, Sec. 538)

Since the regulation of the sale of intoxicating liquors comes within the police powers of the state, the legislature may set out the conditions under which a license may be obtained and the conditions under which a license may be revoked. The recipient of such a license has no property right therein nor is the license a contract between the licensee and the State. It has been held:

"A license for the sale of liquor is not a contract between the State or a Municipality granting it and the person to whom it is issued in any such sense as to be within the protection of constitutional guaranty. It gives no vested rights such as cannot be abridged or abrogated by the legislative authority in the interests of the public,

nor is it in itself property or a right of property, in the ordinary meaning of those terms." (33 C. J. 532 Sec. 91)

In the case of P. E. Roberts et al vs. Boise City decided by our Supreme Court (23 Idaho 716) the Supreme Court said in passing upon the rights of one who had been granted an intoxicating liquor license:

"One who applies for a liquor license and pays the license tax thereby applies for the exercise of a privilege or grant rather than the exercise of a natural right and he does so with full knowledge of a condition of law on the subject and of the powers of the authorities granting such license to subsequently revoke the same, and also of the absence of a law authorizing the return of any unearned portion of the tax."

In that case the city council of the City of Boise had issued a retail liquor license to one Roberts. License was granted and prior to the expiration date of said license the same was revoked by the city council summarily entering on its record the reason for such revocation that the parties:

"Had been shown to be unfit persons in the judgment of the council to conduct a saloon."

The Supreme Court in discussing the question said:

"There can be no reasonable doubt about the authority of the city council, under the foregoing charter provision, to summarily and arbitrarily cancel a liquor license which it had previously granted."

While it appears from the various legislative enactments that the legislature has tried to separate beer from the so-called hard liquor in the matter of the sale thereof and regulation of such sale I think there can be no doubt that the sale of either of them is subject to the police regulatory powers of the State and that the legislature can enact such legislation as it may deem proper under its police powers to regulate the sale and disposition of beer as well as so-called hard liquors.

Returning then to Chapter 160 of the 1945 Session Laws, the legislature apparently has attempted to set forth the conditions under which a beer license may be revoked and to set forth the necessary evidence to be presented to the licensing authority permitting such authority to revoke the license.

I am therefore of the opinion that the said act of the legislature is constitutional and that if the Commissioner of Law Enforcement or any law enforcement officer would certify that he has examined and made a copy of the records of the Internal Revenue Department

of the United States and has determined that there has been issued United States Internal Revenue Liquor or Wine Dealer's stamps to persons who are holders of beer licenses that the board or body issuing such license may revoke the same. (Thos. Y. Gwilliam)

#### IN RE: TAX COMMISSION

4-5-45—Idaho State Tax Commission,

This office begs to acknowledge receipt of your letter of April 3, 1945, in which you ask for an opinion with reference to a number of questions pertaining to your duties and powers as the Tax Commission with reference to House Bill No. 51 creating your honorable body and House Bill No. 171, known as the Cigarette Tax Bill. Taking up these various questions in order:

First, "Is House Bill No. 171, known as the Cigarette Tax Bill, constitutional?"

In the opinion of this office, this Bill is constitutional. Various States such as the State of Utah and the State of Iowa have passed similar Bills and such Bills when enacted into law have been held constitutional. It is the opinion of this office that our court would follow the precedent set by the courts of these other states and hold this Act constitutional.

Second, "May the Tax Commission in the administration and enforcement of the Act use funds provided by Senate Bill No. 166 appropriating the sum of \$60,000.00 for the purpose of paying salaries and wages, travel and other current expense of the State Tax Commission?"

It is the opinion of this office that the Tax Commission has the power and authority under the provisions of House Bill No. 51 creating the Tax Commission and Senate Bill No. 166 making an appropriation for payment of the expenses of the Tax Commission to expend such appropriation for the performance of any duty placed upon the Tax Commission by the Legislature. Section 12 of Article 7 of the Constitution of the State of Idaho as amended now provides, among other things, that the State Tax Commission "shall have such other powers and perform such other duties as may be prescribed by law." This constitutional provision clearly gives the Legislature authority to prescribe such other powers and impose such other duties as they may see fit, not prohibited by the Constitution, upon the State Tax Commission. The Legislature has seen fit to pass House Bill No. 171, known as the Cigarette Tax Bill, and to place the duty and power of administering this Bill upon the State Tax Commission. Having done so, it is as much the duty of the State Tax Commission

to administer the Cigarette Tax Bill as it is to perform any other duties or exercise any other powers given them by law, and therefore the moneys appropriated to the use of the Tax Commission may be expended by them for the performance of any duties imposed by them by law.

Third. "Has the Legislature authority to delegate tax collecting power to a constitutional body as set up in House Bill No. 51?"

Yes. The Legislature has such authority where the Constitution itself gives them power to do so as in Section 12 of Article 7 of the Constitution quoted above. This amendment has been approved by the people and the people have power to make such provisions in the Constitution as they see fit as under our Constitution, Section 2 of Article 1, all political power is vested in the people.

Fourth. "What disposition should be made of funds received in the administration of the Cigarette Law?"

Section 57-1014 provides as follows:

"ACCOUNTING FOR FEES. All state officers, who receive any money or evidence of indebtedness for or on account of the State or in payment of any fee, license or tax due the State, shall daily or whenever the amount so received aggregates \$100.00, deposit the same with the state treasurer."

The remainder of the paragraph prescribes the duties of the State Treasurer and prescribes a penalty for violation of this section. It would therefore clearly be the duty of the State Tax Commission to deposit all money received by them in the administration of the Cigarette Law with the State Treasurer as provided by this section.

Fifth. "Are stamps to be affixed on each cigarette package or may they be affixed on unbroken cartons?"

It is the opinion of this office that the stamps required to be affixed under the Cigarette Tax Law are to be affixed on each package or container sold by retail in which cigarettes are wrapped or contained in a single package. In other words, every package regardless of size containing cigarettes in bulk in any quantity should contain or should have the stamp affixed to such package, regardless of the number of cigarettes that may be contained in such package sold by retail. Thus, if the retail package contained ten, twenty, one hundred, five hundred or any other number of cigarettes wrapped in a single package each package would require the stamp to be affixed to such package. In cases where a number of different packages are contained in a larger container or carton, it is the opinion of this



office that each individual package in such larger container must have the stamp imposed by this law attached thereto. In other words, it would not be sufficient to attach the stamp to a carton containing a number of individual packages without affixing stamps to the individual packages themselves. (Phil J. Evans)

5-25-45—Mr. T. M. Roberts, Deputy Prosecuting Attorney,  
Boise, Idaho.

Your letter of the 19th inst. submits the inquiry, whether or not a Board of County Commissioners has authority to refuse to grant retail beer dealers' licenses for businesses to be conducted outside the corporate limits of cities and villages within the county.

After a considerable investigation of the subject as dealt with by the authorities, I am compelled to the conclusion that they have no such power. To do this would be, plainly, to discriminate between applicants, to establish a classification of applicants, permitting those of the one class to obtain licenses and denying the right or privilege to the others. Such a classification would, of course, be based upon the locations of the two classes of business. While such a classification and consequent action by the Board might be constitutionally permissible had the legislature so provided, as to which I express no opinion, the applicable law contains no such provision so far as County Commissioners are concerned. **Chapter 167, Laws of 1943**, among other provisions repealed **Section 5** of the law on this subject (**Chapter 132, Laws of 1935**, as amended by **Section 1, Chapter 246, Laws of 1939**), and added to the law as it then existed, three new sections designated 5, 5-a and 5-b. Section 5-a was amended in **1945, Ch. 160**. Section 5, among other provisions, specifically requires that each applicant for a retail license shall, among other qualifications there provided, possess all of the qualifications provided by a municipal ordinance and none of the disqualifications so provided; then further provides that all applications must conform to the provisions of the statutes last cited, and that each retailer's license issued shall be subject to the restrictions and rest upon the conditions specified by the statutes "and, as to the municipal license, in the ordinance aforesaid." Having thus specifically included and provided for additional powers to be exercised by municipalities in the matter of qualification and disqualification of applicants, without mentioning any vestige of like power to be vested in county commissioners, I believe the well established rule, that the inclusion of the one thing excludes the other, would apply here. Which is to say, that had the legislature intended to authorize county commissioners to add to the provisions of the state law other specifications of qualification and disqualification of applicants, the statutes would have so provided. If this is correct, then the commissioners are limited to consideration of the statutory requirements and may not impose any other.

Other provisions of law which seem quite well established are also

considered applicable. In considering licensing statutes such as ours, the courts seem very generally to have made a quite definite distinction between a law which vests the issuing officer or board with discretion to grant or refuse a license, and a law which in itself fully and specifically sets out the conditions and requirements to be observed and possessed by the applicant. In the latter instance, where the conditions are fully observed and the requirements shown to be fully possessed by the applicant, the act of issuing the license is held to be a ministerial act only, and can be compelled by mandamus if a license is refused. This is very well stated and supported by numerous citations of authority in **34 Am. Jur. 956, Section 184**. It is there stated in part:

— "As a general rule, where all the requirements of law preliminary to acquiring a license to conduct a business have been complied with, the issuance of such license, if refused, may be compelled by mandamus, since such duty is merely ministerial."

Substantially the same rule is stated in **17 R. C. L. 562**. In fact, the same distinction and rules are definitely recognized and stated by our own court in **Darby vs. Pence, 17 Idaho 697 at Page 704**. The distinction between discretionary authority in such matters, and ministerial duty, is also well covered by an annotation found in **16 Ann. Cas. 184**.

Referring again to our statutes, Section 5-a as amended very definitely and categorically sets out the qualifications which must be possessed by such an applicant. An individual must be a United States citizen, must have been a bona fide resident of Idaho for one year preceding his application, and must be the bona fide owner of the business which he proposes to license. Like provisions apply to partnerships and corporations. As to disqualifications, he, or any partner of an applying partnership or actual manager or officer thereof, or an employee, or spouse, must not have been convicted of violating any state or Federal law regulating or prohibiting the sale of alcoholic drinks, and must not within two years have forfeited or permitted the forfeiture of a bond for appearance to answer any such charge; nor must he or any such partner or manager or officer of the partnership have been convicted of any felony within 5 years, or paid any fine or completed any sentence of confinement for a felony within 5 years. Also, a license shall be refused if any such person or spouse of such person has possession at or on the premises where beer is sold of any Federal Liquor Dealers Stamp showing authorization to sell any alcoholic liquor, wine or other alcoholic beverages other than beer.

These provisions here summarized are stated very fully and meticulously by the statutes, and there is nowhere any hint of discretion

vesting in county commissioners in a case where the statutory requirements have been complied with.

Section 5, summarized, provides that an application for a retailers license shall be made upon a form to be supplied respectively by the municipality, the county, or both if necessary, and by the State Commissioner of Law Enforcement, under oath, showing:

"that the applicant possesses all of the qualifications and none of the disqualifications of a retailer licensee under this act, and, as to the municipal license, under any ordinance thereof. Each application shall be accompanied with the required license fee, \* \* \*. If the application conform hereto the municipality, county and Commissioner, respectively, **shall** each issue a retailer's license to the applicant, subject to the restrictions and upon the conditions in this act specified, and, as to the municipal license, in the ordinance aforesaid." (Emphasis added)

This provision is thought to be mandatory. Another well settled rule is, that the words "shall" or "must" are to be taken as mandatory unless there are other provisions or forms of verbiage in the statute or act in which the word is used which should be considered as modifying the general rule. 50 Am. Jur. 49-52. I can find no language in the statutes nor any implication from the language used therein to indicate that the word here considered was intended to be merely directory, thus leaving it to the issuing authority to follow the express statutory provisions or not, or to add to the requirements to be observed in order to become entitled to a license. On the contrary, and in addition to the other provisions hereinabove summarized and quoted, Sections 5-a and 5-b make ample provisions for revoking licenses, (and "shall" was substituted in 1945, replacing the original "may") whether because of any false statement made in the application or the failure to have and retain the statutory qualifications of a licensee, or in a case where the applicant had at the time of application, or thereafter shall acquire, any disqualification provided by the statutes. Also a revocation shall occur if a licensee shall otherwise violate any of the other provisions of the licensing act here considered. These provisions would seem ample to protect against any imposition on the Board by the applicant for the license as well as to protect against any change in his required status as a licensee during the period covered by the license. Consequently, it seems to the writer that the legislative intent in such matters, which intent is always the guiding star, is well and fully expressed by the language of the statutes themselves and that had anything further been intended, such as the vesting of discretion or additional powers in county commissioners, the legislators would have expressed that intent also. As the law stands, the license **shall** issue on stated conditions and on a change of condition **shall be revoked**.

While we have no decision in this state expressly applicable here, the courts generally seem agreed that under such statutes as ours the issuance of a license can be compelled by mandate if the applicant has fully performed and conformed to their provisions. These decisions deal with various types of licenses and I here call attention to some of them. An illustrative case from Missouri is **State ex rel. vs. Ashbrook**, 55 S. W. 62, 48 L. R. A. 265, 268.

Another case involving a license for certain fishing rights also follows the general rule of ministerial duty.

State ex rel. vs. Darwin (Wash.)  
173 Pac. 29.

In the matter of retail liquor licenses, attention is called to decisions from Alabama and Florida.

Harlan vs. State (Ala.)  
33 So. 858.  
Howland vs. State (Fla.)  
47 So. 963.

In the Florida case an attempt was made to discriminate in the amount of the license fee to be paid, depending upon the locality in which the business was to be conducted. You will note that those facts establish some similarity to the matter here discussed. It was held that this could not be done in the face of the existing law and that the issuance of a license could be compelled.

In Massachusetts another rather similar case was decided. It was there provided that the licensing power should be vested in the city council or board of aldermen. The council had voted to issue a license and the mayor undertook to veto that action. It was held that he had no such power and the license was ordered issued by writ of mandate.

McMinn vs. Rockwood,  
113 N. E. 1037

It is also well established that even where the issuing authorities are vested with some discretion in such matters, the issuance of a license may be compelled by mandamus if that discretion is exercised arbitrarily.

An Illinois case discussed in Darby vs. Pence, supra, is illustrative of that rule.

Zazone vs. Mound City,  
103 Ill. 552.

I believe that case is properly applicable here, as well as the rule upon which the decision rests. It would seem that in refusing licenses to those fully qualified under our statutes merely because their places of business are or will be outside the corporate limits of the cities and villages of the county, and at the same time issuing licenses to others possessing exactly the same statutory qualifications but whose places are within such corporate limits, a Board of Commissioners would act arbitrarily. The classification of applicants thus set up is nowhere even hinted at by the statutes, nor are any powers of discretion in such Board suggested. The word "arbitrary" is defined as meaning "not fixed by rule or determined by statute; discretionary." This is its meaning in law as given in Funk & Wagnalls Standard Dictionary. Believing as I do, that County Commissioners are not in this matter authorized to prescribe rules other than those fixed by the statutes, I think the establishment and following of such a policy as here discussed, would also result in arbitrary action by the Board.

It has been here attempted to answer your question fully without extending this opinion unduly, and I trust that this has been done. If any detail which you have in mind has been overlooked this office will be glad to give the matter further attention upon being so advised. (J. R. Smead)

5/29/45—Mr. Ernest G. Hansen, State Auditor, Boise.

Your letter of May 16 submits the question, "What is the statutory salary for the month of May for the Justices of the Supreme Court?"

Chapter 77, L.L. 1945, amends Sec. 57-502, I. C. A., by substituting \$6,000.00 for \$5,000.00 per annum as salary of each of such Justices. The Act was approved February 28, 1945. Your question therefore is, more than sixty days having elapsed since the adjournment of that Legislature, such period having expired on May 8 last, is the amendment now in force? If it is, then the salary figure for the current month is a matter of simple calculation.

If this office felt that the subject so presented had not already been decided by our Supreme Court, the conclusion reached might possibly be other than the one which has been arrived at. However, in 1907 our Supreme Court considered and decided practically the same question. The legislative session of that year passed an Act raising the salary of Supreme Court Justices and District Court Judges to \$5,000.00 and \$4,000.00 per annum, respectively. L.L. 1903, p. 465. Therefore the salaries had been fixed by an Act of 1903 at \$5,000.00 and \$3,000.00 respectively. L.L. 1903, House Bill No. 151. The action referred to was commenced jointly by the District Judges of the State, then seven in number, to determine whether the 1907 Act became immediately effective and so superseded the Act of 1903.

The court referred the matter to Art. 5, Sec. 27 of our Constitution which provides as follows:

"Change in compensation of officers.--The legislature may by law diminish or increase the compensation of any or all of the following officers, to-wit: \* \* \* \* justices of the Supreme Court, and judges of the district courts \* \* \* \*"

The court held that while the Legislature may so increase or diminish such a salary, such diminution or increase does not affect the compensation of an officer "in office at the time of such diminution or increase." Thus the court concluded that the Constitution absolutely bars the application of a law increasing the salaries of our judges during the terms of any such officers in office when the law goes into effect. Applying that decision to the present state of facts to which your inquiry relates, it is thought that so long as the decision just summarized remains in force the matter is not open to construction. **Woods et al. vs. Bragaw, 13 Ida. 607.**

In the same decision the court also pointed out that the 1907 Legislature had made no appropriation sufficient to pay the increased salaries of the District Court Judges, and held that this in itself showed a legislative intent that the Act should not become presently effective, but should stand in abeyance until the expiration of the then current terms, so leaving the 1903 Act in force until that time should arrive. From information also obtained from your office, it appears that the same is true in this instance. No increase or addition was made to the 1943 appropriations for the biennium to expire, nor is the appropriation for "salaries and wages" to the Supreme Court for the forthcoming biennium, which commences next July 1, sufficient to pay the increased salaries of the Judges in addition to all other salaries and wages to be paid from that appropriation. Therefore, if the reasoning in **Woods vs. Bragaw** be sound, the decision also applies here, to the effect that the 1945 Legislature intended that the amendment should not become effective until the expiration of the respective current terms of the Justices.

Since it is not within the power of this office to contravene any rule heretofore announced by the court, I am reluctantly compelled to conclude that the salary increase here considered is not presently in force.

For the same reasons the same conclusion is necessarily reached as concerns District Court Judges, whose salaries were increased by the same amendment.

Some question was made in this office as to whether or not the Code section above cited still remains in force, because of the fact the legislative action here is, so far as procedure is concerned, a little different from that of 1907. As above stated, at that time a new Act was passed, repealing it or in any other way, while here the

1945 Act is expressly amendatory of the Code section under which these salaries have been paid ever since 1907. That is, whether present salaries should be paid pursuant to the Code section or whether the amendatory Act would in effect repeal it and so, not being presently effective, relate the matter of amount of salaries back to the 1903 Act or possibly to the salaries as originally and temporarily fixed by the Constitution. After considerable investigation the conclusion has been reached that the Code provisions, Sec. 57-502, remain in full force and effect until such a time as the amendatory Act becomes effective, which is to say, on the expiration of the respective current terms of office. California in particular has a decision arrived at under a constitutional provision very much the same as our own above cited which is squarely in point, the salary statute of that State having been amended expressly by a later Act, just as here. It was held that the former statute remained in force until the amendatory Act should take effect. **Harrison vs. Colgan, 82 Pac. 674.** The whole question was related to and decided under the well established general rule that no legislative Act becomes a law until its effective date, and the court held that in just such a situation as ours the Constitution fixed the effective date of the salary amendment.

It is not here intended to assert that the decision in Woods vs. Bragaw is necessarily beyond criticism. It must be remembered that in 1907 the proceedings, discussions and debates of our Constitutional Convention of 1889 were not available for consideration by our court as then constituted. The stenographic record was later studied and transcribed by the late I. W. Hart, then Clerk of our Supreme Court, and the transcription compiled and printed in a two volume work in 1912, thus constituting probably one of the greatest contributions to the bench and bar of Idaho, and therefore to the public, that has ever been made. Whether, had the Court of 1907 had access to those proceedings, a different decision might have been reached, one cannot say with any assurance, but a reference to the record furnishes interesting food for thought.

After fixing the salaries of Justices and Judges of Courts (**Art. 5, Sec. 17**) to be as there stated "until otherwise provided by the Legislature," and after also fixing the salaries of state executive officers, (**Art. 4, Sec. 19**) and in that connection providing that the Legislature might diminish or increase the compensation of such executive officers but that no diminution or increase should affect the salaries of such executive officers during their term, with the proviso that provision might be made for the payment of expenses of certain executive officers while traveling on the State's business, **Sec. 27, Art. 5** came up for consideration and discussion. It should be noted that up to that time there had been no inhibition against a change to that time there had been no inhibition against a change in the salaries of the Judges during current terms of office, the only provision be-

ing as above quoted, that the constitutional salaries should obtain until otherwise provided by the Legislature. When Sec. 27 was reached it originally provided that the Legislature might diminish or increase the **compensation** of the executive officers there named but that none such should affect the **compensation** of the officer then in office during his term. Then followed a proviso for payment of expense to certain named executives "incurred while in performance of official duty." "If "compensation" as there used be taken as synonymous with "salary" as already used in Art. 4, Sec. 19, the later section would seem to have been mere repetition of the former in the matter of increasing or diminishing salaries. Immediately there followed extensive discussion and debate among the members, all based upon the proposition that Sec. 27 of the Article (Art. 5) should also provide for the payment of the **expenses** of Judges and District Attorneys. (**Constitutional Convention Proceedings, Vol. II, pp. 1572-1573, 1584-1589**). The question of allowance of expenses seems to have been the only thing in the minds of the delegates and while the proponents of such allowances were not successful in procuring it to be included in the proviso with which Sec. 27 concludes, still it is about that question that the whole discussion occurred. The net result was that the Judges were included in the section previous to the proviso for the payment of expenses. When this is considered together with the section already adopted fixing court salaries and providing for the change thereof by the Legislature, there may be at least a fair question as to whether the convention deliberately included them in Sec. 27 as not qualified to receive the legislative increase of salary occurring during their current term of office, or whether the word "compensation" as used in Sec. 27 was then used and understood as applying to necessary expenses only as distinguished from "salaries." As above suggested, executive salaries and their increase or diminution had already been taken care of by the earlier section, and another earlier section had provided for temporary court salaries and otherwise left it to the Legislature later to provide, after the adoption of the Constitution, what those salaries should be. Reference to the printed report of the decision in *Woods vs. Bragav*, and to the briefs of opposing counsel as there summarized, discloses that the particular consideration here suggested was not presented or considered by the court at that time.

Viewed from the same angle, as the cited law now stands, it is impossible, if Sec. 27 of Art. 5 was intended to deal with salaries rather than with expense, to provide for an increase of the salaries of Supreme Court Justices which will take effect as to all incumbents at the same time. The terms are "staggered" and the natural result would be that certain of the incumbents, first one, and then three, will be paid larger salaries than the others, thus pro-



ducing an inequitable condition. This has been suggested as another matter which perhaps ought to be considered in determining the intent of the framers of the Constitution.

However, under the rule of stare decisis, it is thought that the conclusion is unavoidable, that the 1945 salary increases do not take effect until the respective terms of our incumbent Justices expire. —(Frank Langley)—

#### IN RE: MUTUAL FIRE INSURANCE COMPANIES

10-5-45—Mr. Edward B. McMonigle, Director of Insurance:

I have under consideration today your letter of October 1st, wherein you ask for an immediate opinion upon the following question:

"May the Board of Trustees of School Districts pledge the school district to become a member of the Snake River Mutual Fire Insurance Company, a domestic Mutual fire insurance company, for the purpose of purchasing fire insurance coverage on the buildings and contents owned by the District? The Snake River Mutual Fire Insurance Company is organized as provided for in Title 40, Chapter 17, Idaho Code Annotated, 1932, and all acts amendatory thereto."

The Idaho legislature has provided the method for paying insurance premiums by common school and common joint and independent school districts. Under Chapter 7 of the Idaho Code Annotated, Section 32-701, we find the following language:

"32-701. SCHOOL BUDGET.—Prior to the annual meeting in common and joint common school districts the board of trustees shall prepare, on forms prescribed by the state board of education and furnished by the county superintendent, a budget setting forth the expenditures of the district for the past year and the requirements for the school year next ensuing, itemized and classified as follows:

\* \* \*

"(g) Fixed Charges. Including (1) tuition, (2) rentals, (3) insurance premiums and (4) interest on outstanding bonds."

The legislature having delegated this power to common school districts for meeting premiums on insurance, the foregoing provisions of the statute should be complied with. It has even made the payment of premiums on insurance a fixed charge the same as maintenance and salaries of teachers. In my reading of Corpus Juris and other text writers in hope of finding a case exactly in point, which I have

been unable to do, a majority of the courts held that a budget levy is directory and when the legislature prescribes the method as it does in Idaho, it should be followed and obeyed.

In support of this statement I wish to cite an Idaho case wherein the Supreme Court of Idaho in a suit entitled School District No. 8 vs. Twin Falls County Mutual Fire Insurance Company, 30 Idaho P. 400, held that its "members cannot become members of appellant company or any such company without becoming an insurer of the property of its members and his liability for the benefit of the other members will be unlimited or limited only by the amount of insurance in force and the solvency of the members of the company." Further, see Tuttle vs. Salt Lake City, 294 Pac. Page 294. I find also citations in Corpus Juris, Volume 56, Page 639 holding that where levies are made and approved or adopted by school trustees, that this is the procedure that should be complied with by the school districts and no other. I have found one case in the State of Washington where a common school district diverted funds derived from a levy in order to aid their students in obtaining vocational benefits and model training in a Normal institution, and the Supreme Court held that this was invalid, and it is my judgment that the converse is true where the joining of a school district with a mutual insurance company to receive funds other than in a manner provided by law, would be invalid. See School District vs. Spokane County, 20 L. R. A. (ns) 1033. In other words, the legislature having provided the method in Idaho for a fixed charge which designated insurance premiums as a fixed charge, and specifying how the money shall be obtained is the law in this state, and it is my opinion that if the board of trustees pledged the district by joining a mutual insurance company, any taxpayer in the school district could enjoin them from such procedure.

Hence it is my opinion that it would be invalid for the common school district to become a member of a mutual insurance company in Idaho in order to obtain insurance coverage on school buildings and their contents. (M. Reese Hattabaugh, Sr.)

#### IN RE: INCOME TAX

12-14-15 Mr. J. G. Vaughan, Director, State Income Tax Department:

Referring further to the inquiry contained in your letter of September 29th last, a rather complete investigation has been made of the Federal and State decisions applicable.

Your question concerns the validity of the following provisions of the state law, with particular attention to Federal bonds:

"The term gross income includes \* \* \* all interest received from Federal, State, municipal, and other bonds."

That provision was placed in the Act in 1933, **Chapter 159, Section 4, amending code section 61-2412.**

There seems to be no question that the law is as stated in the letter of this office written on November 15th, that a state tax laid directly upon income from Federal bonds is not permitted by the Federal Constitution. Article 1, Section 8, Chapter 2. The provision cited empowers the Federal authority to borrow money and pledge its credit for the same. The case heretofore cited, **Macallen Co. vs. Massachusetts, 279 U. S. 620**, very definitely states the rule that a state may not tax income received from Federal bonds by the holder, whether or not there is a Federal statute prohibiting such taxation, stating that the Constitution itself prevents such taxation. A later decision reiterates the same rule. **Educational Films Corp. vs. Ward, 282 U. S. 379, 389, 75 L. ed 400, 405.** The same rule is referred to in **Northwestern Life Insurance Co., vs. Wisconsin, 275 U. S. 136, 72 L. ed 202.**

Referring to State decisions, the Washington court has cited the Macallen Co. case, and stated the same rule as applied to the taxation of income on Federal bonds. **Aberdeen S. & L. Ass'n. et al vs. Chase, 239 Pac. 536.**

In February of this year the California court stated the same rule, **Southern Pacific Co., vs. McColgan, 156 Pac. (2d) 81, 89.**

Perhaps Congress might by statutory law permit such taxation by the states, and accordingly search has been made for such a statute if any should be found to exist. None such has been discovered, and so far as the sources of such research go, it seems that no such statute exists. It must therefore follow that the provision of our state law here referred to does not empower state taxation of the income from Federal bonds. Perhaps I should add, that in numerous instances in the past, Congress has specifically provided that different varieties of such Federal obligations are exempt from taxation, but in view of the decisions based upon the Federal Constitution it would seem that any such provision in a special statute is unnecessary. I suggest this because it might otherwise be thought, from a comparison of the various acts of Congress authorizing bond issues, some specifically exempting them from taxation and some making no mention of that matter, that such a prohibition on the part of Congress is necessary to create the exemption. Such, however, seems not to be the case. (J. R. Smead)

#### IN RE: STORE LICENSES

3-11-46—Miss Margaret Brennan, Director, Store License Division,

Replying to your query as to whether a person holding a store license in his own name and also holding a store license or licenses as a partnership with another person or persons, is entitled to offset the taxes paid on his individual real property and improvements thereon

against the license fees paid on the partnership stores, I beg to advise you that in my opinion they would not be entitled to do so.

Your attention is directed to Section 5-a of Chapter 113 of the Session Laws of 1933, which explicitly provides:

"That any person, firm, corporation, co-partnership or association, upon which any license fee is imposed under this Act, hereafter in this section called "licensee," shall have the right to offset against such license fees all taxes paid by such licensee upon real property or improvements thereon; situated in the State of Idaho, owned and used by such licensee in connection with its business; \* \*".

It is clear from this section that a partnership licensee is not entitled to any offset except upon real property or improvements thereon owned and used by such licensee in connection with its business. If the licensee is a partnership the real property or improvements thereon must be used in connection with the business operated by such partnership licensee. The fact that one or more of such partners may be engaged in business as an individual or in partnership with other persons in some other business would not entitle such partner to offset taxes paid as a licensee in such other businesses against the license paid by the partners first named. In other words no licensee is entitled to offset any real property taxes against the store tax except the real property tax paid by the licensees on the particular business for which the store tax is charged. (Phil J. Evans)

#### IN RE: SCHOOL FUNDS

5-14-46 G. C. Sullivan, Supt. of Public Instruction.

Your letter of May 3 requests my opinion on the following question:

"Can an Idaho school district legally pay school districts of other states, from its general fund for services in providing schooling for Idaho children confined in convalescent wards of hospitals in other states."

Idaho has provided in three sections of the Code, how money may be raised and paid out in school districts. Section 32-615 Idaho Code Annotated, enumerates the power fixed in all school districts in Idaho. Section 32-616 gives additional powers to school districts and Section 32-617 also grants additional powers to independent Class-A districts. In none of the foregoing sections, or elsewhere, is there authority given to any school district in the state of Idaho to use funds to pay for schooling of Idaho children in a sister state receiving treatment as recited in your letter, and I have searched the Code of our state carefully and I find no section that authorizes the payment of money for this purpose. Hence, where there is no express

authority given in law for the payment, it is my opinion that the school districts cannot pay Utah, or any other state, for this service.

Our Supreme Court has held in a case entitled *Parsons v. Ben Diefendorf* in 53 Idaho 219 that the Commissioner of Public Investment could not spend school funds "except as expressly authorized by law."

It is, therefore, my opinion that an Idaho school district cannot legally pay school districts of other states from its general school funds for services in providing schooling for Idaho children confined in convalescent wards of hospitals in other states. (M. Reese Hattabaugh, Sr.)

#### IN RE: TEACHERS' RETIREMENT SYSTEM

6-24-46—G. C. Sullivan, Secretary, Teachers' Retirement System

This is in response to your letter of June 17, 1945, wherein you ask for an opinion of this office on the following questions:

- "1. What is the status of 70-year-old teachers in the Retirement System who have not signed a contract by June 30th?
2. Those teachers becoming 70, or will become 70 during the coming year, must they file an application for retirement prior to June 30th of this year?
3. How will they be affected under the Teachers' Retirement System if they become 70 and have not signed a contract for next year?"

The Act commonly called Teachers' Retirement System or what is known as H. B. No. 10 became a law in the State of Idaho upon its being signed by the Governor of Idaho on the 18th day of March, 1946, and, I believe, that your questions are fully answered in Section 5 (p. 7) of the Act beginning with line 2 thereof and ending with line 12 thereof. This Section reads as follows:

1. SERVICE RETIREMENT BENEFIT.—(A) Any member may retire upon written application to the Board of Trustees setting forth at what time, not less than thirty days nor more than ninety days subsequent to the execution and filing thereof, he desires to be retired, provided that such member at the time so specified for his retirement shall have attained the age of sixty years and not withstanding that he may have separated from service.

(B) Any member who shall attain the age of seventy years shall be retired forthwith under the provisions of this act; provided, however, that if such member shall attain the age of seventy years during a school term in which he shall be engaged in service as a teacher, such member may at his option commence his retirement at the end of such school term.

It will appear from the foregoing that a teacher has the right to elect to retire upon his becoming the age of 60 years. If the teacher does not elect to retire but has attained the age of 70 years, he must be retired forthwith.

"If such member shall attain the age of seventy years during a school term in which he shall be engaged in service as a teacher, such member may at his option commence his retirement at the end of such school term."

I am of the opinion from the foregoing that a teacher may voluntarily retire upon attaining the age of 60 or any of the years between the age of 60 and 70 but if the teacher has attained the age of 70 he must be retired. If, however, he arrives at the age of 70 during the school term he may at his option commence his retirement at the end of the school term.

I am of the opinion that the teacher who will become 70 years of age during the coming year would not have to file an application for retirement as the statute provides upon his becoming the age of 70 he should be retired forthwith.

I am further of the opinion that such teacher should be retired forthwith upon his attaining the age of 70 and the fact that he has or has not signed a contract for the coming year would make no difference. If a teacher has signed a contract and the teacher is teaching under the contract prior to his becoming the age of 70 he would be permitted to complete his school year under the provisions of the law, or if he desires to he may voluntarily retire upon his attaining the age of 70. (Thos. Y. Gwilliam)

#### IN RE: SCHOOL LUNCH PROGRAM

8-27-46 Mr. G. C. Sullivan, Superintendent of Public Instruction,

I beg to acknowledge receipt of your request for an opinion of this office on the following questions:

"1. May the State Superintendent of Public Instruction act as the State Educational Agency under the terms of Public Law 396 of the 79th Congress generally known as the National School Lunch Act?"

Yes, provided he is so designated as provided in sub-division 2 of paragraph (d) of Section 11 of the Act. This sub-division provides that the state legislature may designate the State Superintendent of Public Instruction as the "State Educational Agency" under the Act, or that during the period ending June 30, 1948, the Governor of the state may designate any agency or agencies within the state to carry out the functions required of a "State Educational Agency" under

the terms of the Act. Therefore, if the State Superintendent has been designated as such "State Educational Agency" either by the state legislature or by designation of the Governor, he may carry out the functions of such "State Educational Agency" as provided by the Act.

"2. May the State Superintendent so designated as the "State Educational Agency" under the Act administer the National School Lunch Program as provided under the Act and execute the necessary agreements, and receive funds from the Federal Government and reimburse participating schools for expenditures under such School Lunch Program and how are such expenditures to be handled?"

I feel that the State Superintendent having been designated as the "State Educational Agency" under the Act, would have power to administer such program and receive contributions as provided in the Act, and receive such contributions as are contemplated under the Act. Such contributions when received by the State Superintendent as such "State Educational Agency" would become state funds, and would be appropriated for the purpose of carrying out the provisions of the Act as provided by terms of Section 9 of Chapter 48 of the Standard Appropriations Act of 1945. Our Supreme Court in the case of *State vs. Robinson*, 59 Idaho, p. 485 held that such funds constitute public monies and are to be disbursed as other public funds are disbursed.

"3. May balance remaining in such fund of monies received from the Federal Government be returned to them at the end of the fiscal year?"

Yes, provided claim is first made therefore and the same is approved by the State Board of Examiners.

"4. May Federal monies contributed to such State Agency for School Lunch Program be distributed to non-profit private schools if they desire to participate in the program?"

No. As these monies become public monies of the state upon receipt by the State Agency, the State Constitution prohibits the State Agency from distributing any state funds to any private non-profit schools. The Constitution provides as follows:

"Article 9, Section 5. Neither the legislature nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or

sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose. (Phil J. Evans)

### AGRICULTURE

1-8-45--E. N. Pettygrove, Secretary, Idaho Advertising Commission. In re: 1. Idaho Advertising Tax not applicable to potatoes and onions shipped into Idaho from points outside of the State and later shipped out of Idaho under brands and markings indicating they were raised within Idaho. 2. Produce from states other than Idaho shall not be shipped from Idaho, under brands, labeling or markings on packages or containers in which produce is shipped indicating that the contents are Idaho products. (Phil J. Evans)

1-16-45--Hon. Jesse R. Farr, U. S. Dept. of Agriculture. In absence of ruling by our Supreme Court it cannot be said with assurance that there cannot be two summary foreclosures of chattel mortgages in two counties at the same time. It is suggested that the Canyon County property be replevied and thus remove it lawfully to Gem County where the mortgage is recorded, and there foreclose against the whole property in a single proceeding. (J. R. Smead)

3-23-45--Mr. George Hersley, Commissioner of Agriculture. A member of the legislature may also be appointed Dairy Inspector or be appointed to any other office as long as the duties of the two offices do not conflict and unless the office is one created by the legislature of which the appointee in question is a member. (J. R. Smead)

5-9-45--Mr. George Hersley, Commissioner of Agriculture. There is no way the state may regulate the extent of the noxious weed eradication program in each county. (Charles S. Stout)

6-23-45--Mr. Dillon W. Later, Department of Agriculture. Fees collected in the administration of the Artificial Insemination Law passed by the 1945 Session of the Legislature, in view of the lack of any appropriation of said fees by said legislature, must be deposited with the State Treasurer. (Phil J. Evans)

7-9-45--Mr. Chas. Shaw, Director of Dairying, Department of Agriculture. A storekeeper taking orders from a wholesaler for oleomargarine and delivering same to customers must have license and place stamp on such oleomargarine. (Phil J. Evans)

5-25-46--Wilson Kellogg, Bureau of Plant Industry. Beekeepers of other states may bring bees into Idaho so long as they have complied with the conditions of Section 22-1911, I. C. A. If said beekeeper re-



mains here during honey flow he must pay tax set out in Sections 22-1912 and 22-1913. (Thos. Y. Gwilliam)

8-27-46—Mr. George Hersley, Commissicner of Agriculture. (1) Cull potatoes may be shipped in bulk intrastate but not interstate. (2) Cull potatoes may not be shipped in containers either intrastate or interstate. (3) The law restricts the shipment of graded potatoes to containers both intrastate and interstate. (Thos. Y. Gwilliam)

#### AUDITOR

5-29-45—Mr. Ernest G. Hansen, State Auditor. The statutory salary for May for the Supreme Court Justices is \$5,000.00. Salary changes do not affect the officers in office when the law goes into effect. (Frank Langley)

9-14-45—Hon. Ernest G. Hansen, State Auditor. Bowling alley licenses should be issued and collected for on the fiscal quarters of a year—fiscal quarters being from January 1 to March 31, April 1 to June 30, July 1 to September 30 and October 1 to December 31 of any one year. (Phil J. Evans)

1-29-46—Ernest Hansen, Auditor. A district judge appointed during the present term would be entitled to the \$5,000.00 salary, passed by the 1945 Session Laws. The law prohibits the raise only during the term for which he was elected. (Thos. Y. Gwilliam)

#### BUREAU OF BEER REVENUE

4-18-45—Mr. J. A. McDevitt, Director, Beer Revenue. (1) Licensees for selling or distributing beer, should file a new schedule of prices conforming with those authorized by the OPA. (2) Beer stamps must be cancelled by retailer upon emptying of packages or containers. Containers or packages on which stamps have not been cancelled can be confiscated. (Phil J. Evans)

6-15-45—Mr. J. A. McDevitt, Beer Revenue. No person may lawfully sell beer to the ultimate consumer in the State of Idaho in any quantity unless they have a retail beer license authorizing such sale. (Phil J. Evans)

9-15-45—Mr. J. A. McDevitt, Director, Beer Revenue. Retail Beer licenses may not be issued over the signature of a manager or other employee of the applicant. (Phil J. Evans)

1-10-46—Mr. J. A. McDevitt, Director, Beer Revenue. Beer licenses cannot be transferred from one person to another upon the sale of property or at any other time. (Phil J. Evans)

**BUDGET BUREAU**

1-8-45—Mr. Alvin H. Reading, Director of Budget. Money in Governor's Law Enforcement Fund may not be spent for: (1) Uniforms for the National Guard. (2) Caretakers for National Guard Field Training Camp. (3) Water for National Guard Field Training Camp. (4) Freight expenses occasioned by shipment of equipment to various parts of the state. Such expenses should be cared for by legislative appropriations. (Phil J. Evans)

**CANDIDATES—ELECTIONS**

5-17-46—Mr. George Ambrose, Attorney at Law, Mackay, Idaho. A county auditor may keep his office open after closing time for the receipt of filings of nomination but he cannot be compelled to do so. The filing must be "in" the auditor's office and receipt of such papers in the store or in the home of the auditor would not constitute a legal filing. (Phil J. Evans)

6-6-46—Mr. Reilly Atkinson, Republican State Chairman. Platform Conventions may be held any time and place fixed by the State Central Committees after the expiration of 16 days from the time of the primary election. (Frank Langley)

6-18-46—John A. Ferebauer, Prosecuting Attorney, Idaho Falls, Idaho. The failure of a County Auditor to place names of candidates for nomination at the primary election on the ballots would result in voiding the election for such office. (Phil J. Evans)

6-26-46—W. J. Nixon, Prosecuting Attorney, Bonners Ferry, Idaho. Persons running in the primary for a political office and defeated by one party but written-in as a candidate for the same office by another political party, must comply with the provisions of Section 33-606 as a write-in candidate. (Frank Langley)

**COUNTY AND COUNTY OFFICERS****Assessor**

5-10-45—Mr. R. D. Leonardson, Ada County Assessor. Service men and women are entitled to the tax exemption for 1945 providing they comply with the regulations pertaining thereto. (J. R. Smead)

**County Commissioners**

1-17-45—Board of County Commissioners, Bonneville County. Board of County Commissioners is authorized (in absence of Supreme Court decision) to accept written oath and bond of man elected prose-

cuting attorney but absent serving in the armed forces. (J. R. Smead)

1-25-45—F. L. Davis, Clerk, Board of County Commissioners. It is unconstitutional for the legislature to appropriate funds for the benefit of private corporations or individuals. (W. A. Brohead)

#### Probate Judges

10-31-45—Hon. William B. Hoge, Probate Judge, Paris, Idaho. The collection of court fees not allowable in action quieting title. (Frank Langley)

#### Prosecuting Attorney

2-20-45—Mr. Donald R. Good, Prosecuting Attorney, Blackfoot. Only fines and forfeitures collected under the Idaho Liquor Act, Chapter 222, Laws of 1939, as amended, must be forwarded to the State Department. Money obtained for costs may be retained by the county. (J. R. Smead)

3-17-45—Mr. Robert E. McFarland, Prosecuting Attorney, Sandpoint. 1. Beer parlors may incorporate as "clubs" by following provisions of Section 2-(b) of Chapter 112 of 1945 Session Laws. 2. No "club" may operate slot machines it does not own and that are not registered with the Department of Law Enforcement in the manner provided by Section 4, Chapter 112, 1945 Session Laws. (Frank Langley)

5-11-45—Mr. W. C. Loofbourrow, Prosecuting Attorney, Twin Falls. The coroner of the county in which a dead body is held has jurisdiction over the inquiries. However, there is no statute which would prohibit the moving of the body from one county to another. (Frank Langley)

5-12-45—Mr. C. M. Jeffery, Prosecuting Attorney, Pocatello. The language used by Bannock County Board of County Commissioners in setting up their budget for the county is sufficiently broad to allow the employment of a person to assist veterans now returning. (Frank Langley)

5-25-45—Mr. T. M. Roberts, Deputy Prosecuting Attorney, Ada County. A Board of County Commissioners has no authority to refuse to grant retail beer dealers licenses for businesses to be conducted outside the corporate limits of cities and villages within the county. (J. R. Smead)

7-11-45—Mr. J. M. O'Donnell, Prosecuting Attorney, Latah County. A portion of the money raised by the extraordinary levy for post-war construction by highway district boards must be apportioned to municipalities. (Frank Langley)

9-13-45—Mr. Everett M. Sweeley, Prosecuting Attorney, Twin Falls. Vehicles weighing less than 10,000 lbs. may be driven in ex-

cess of 35 miles per hour provided it is safe and prudent to do so. Liability rests with driver. Vehicles weighing 10,000 lbs. or more cannot, in any event, be driven at a speed over 45 miles per hour and at that speed only if conditions permit. (P. J. Evans)

10-26-45—Mr. Robert McFarland, Prosecuting Attorney, Sandpoint. The legal rate of interest to be paid by independent school districts on warrants issued by them and later registered because of insufficient funds is 7 per cent per annum. (Frank Langley)

12-22-45—Henry S. Martin, Prosecuting Attorney, Idaho Falls. 1. A beer license may be revoked when the owner thereof or any person connected with the business is in possession of a U. S. Internal Revenue Retail Liquor or Wine Dealer's Stamp. 2. The legislature has the right to make laws allowing the revocation of a beer license. 3. Any law enforcement officer may make an affidavit that he has seen and copied the list of holders of Federal liquor stamps of the U. S. Department of Internal Revenue, and such certificate can be accepted as evidence in court. (Thos. Y. Gwilliam)

1-29-46—Mr. T. E. McDonald, Prosecuting Attorney, Boise County. The legal salary of the prosecuting attorney of Boise County is now \$1500.00 per year. (Frank Langley)

3-19-46—Mr. Everett M. Sweeley, Prosecuting Attorney, Twin Falls. Real estate should not be sold in the course of public administration unless necessary to defray the expenses of the deceased, but rather should be distributed to the state. (J. R. Smead)

4-25-46—C. M. Jeffery, Prosecuting Attorney, Pocatello. County Commissioners may employ counsel to assist the Prosecuting Attorney in the prosecution of civil cases, but they may not do so in criminal actions. (Phil J. Evans)

## EDUCATION

1-13-45—G. C. Sullivan, Superintendent of Public Instruction. School trustees may draw on County Teacher's Aid Fund if they have complied with the provisions of Chapter 7 Second Extraordinary Session, 1944 Legislature. (P. J. Evans)

1-20-45—G. C. Sullivan, Superintendent of Public Instruction. Menan District has been part of Midway Rural High District since 1915, is entitled to the privileges thereunder and should be taxed accordingly. (P. J. Evans)

2-12-45—Hon. G. C. Sullivan, Superintendent of Public Instruction. The Board of Education shall consider each and any instance where the question of use or non-use of a teacher's life certificate arises, with relation to continued validity or annulment on its own merits. (J. R. Smead)

2-20-45—Mr. J. C. Eddy, Asst. Superintendent of Public Instruction. The State Superintendent may make such allowance from the

State Teachers' Aid Fund as he considers necessary regardless of amount requested by County Superintendent. Levies cannot be determined until Board of County Commissioners meet. School trustees may employ counsel. (J. R. Smead)

2-21-45—Mr. G. C. Sullivan, Superintendent of Public Instruction. Japanese families who have settled in Idaho of their own accord and become citizens thereof are entitled to send their children to public schools without paying tuition. (Charles S. Stout)

2-21-45—Mr. G. C. Sullivan, Superintendent of Public Instruction. There must be 3 separate calls for bids, each published in accordance with law, before the State Board of Education can authorize the purchase of school busses. (P. J. Evans)

3-29-45—Hon. G. C. Sullivan, Superintendent of Public Instruction. It is the duty of the Canyon County Superintendent of Public Instruction to apportion, according to Senate Bill No. 147 (Chapter 186, 1945 Session Laws) all funds that accrued under Chapter 7, 2nd Extraordinary Session, and now a part of the County Teachers' Aid Fund, with the exception of that amount in the litigation in Canyon County. (P. J. Evans)

4-6-45—Hon. G. C. Sullivan, Superintendent of Public Instruction. The State Department of Education may accept the gift of \$5,000.00 for the purpose of conducting a health program. Said money to be deposited with State Treasurer. (C. S. Stout)

4-21-45—Hon. G. C. Sullivan, Superintendent of Public Instruction. Higher institutions of learning in Idaho have a right to charge the Veterans Bureau for vocational rehabilitation and education of veterans under Federal Acts. (P. J. Evans)

8-23-45—Hon. G. C. Sullivan, Superintendent of Public Instruction. The commissioner of boxing in Idaho has no right to interfere with the boxing tournaments held by the high schools each year, other than the observation of the rules and regulations, if any, concerning the conduct of the bouts and participants. (J. R. Smead)

5-14-46—Mr. G. C. Sullivan, Superintendent of Public Instruction. An Idaho school district cannot legally pay school districts of other states from its school funds for services in providing schooling for Idaho children confined in convalescent wards of hospitals in other states. (M. Reese Hattabaugh)

6-8-46—G. C. Sullivan, Superintendent of Public Instruction. Bursars, associate bursars, Chief Accountants, Assistant Chief Accountants, Purchasing Agents, Bookkeepers and Cashiers engaged in work which is contributing to the growth, indexing and educational work would qualify as members of the Retirement Act in the State of Idaho. (M. Reese Hattabaugh, Sr.)

7-22-46—G. C. Sullivan, Superintendent of Public Instruction. The Southern Branch of the University of Idaho has the power to borrow money from Federal Funds provided it is repaid according to Chapter

55, 1935, Session Laws and not from monies appropriated by the State Legislature. (P. J. Evans)

8-29-46--G. C. Sullivan, Superintendent of Public Instruction. The State Superintendent of Public Instruction may act as the State Educational agency for the purpose of administering Public Law 939. He would also be empowered to receive and administer funds received from the Federal Government. Funds cannot be allotted to private schools. (Phil J. Evans)

### FINANCE

3-6-45--Hon. J. B. Newport, Commissioner of Finance. While a setoff of a licensee against license fees due on store taxes is allowable, such offset could not be allowed a licensee from taxes paid by his predecessor. (P. J. Evans)

3-27-45--Hon. J. B. Newport, Commissioner of Finance. A licensed embalmer or mortician must buy a store license to sell caskets, vaults and other funeral accessories. (J. R. Smead)

4-17-45--Hon. J. B. Newport, Commissioner of Finance. Senate Bill 122 (Chapter 132 LL, 1945) is unconstitutional as it fails to set aside a percentage of the monies collected for the use of schools as provided by Article 9, Section 3 and 4 of the Constitution of the United States. (R. W. Beckwith)

5-25-45--Hon. J. B. Newport, Commissioner of Finance, and Stanton G. Ready, State Forester. A bank may deposit its securities to guarantee moneys deposited with it by the State Forester as the funds remain state funds and should be secured under the State Depository Law. (J. R. Smead)

6-30-45--Hon. J. B. Newport, Commissioner of Finance. Documents filed by investment companies as required by Section 25-1602 and 25-1608, Idaho Code Annotated, are by law open to public inspection during office hours. (Frank Langley)

7-31-45--Department of Finance. 1. A public administrator has the authority to collect from estates fees otherwise provided for administrators by the provisions of our laws of probate. 2. If the fees are collected, county officers are not entitled to retain them. (J. R. Smead)

8-25-45--Hon. J. B. Newport, Commissioner of Finance. 1. Concerns engaged exclusively in wholesaling merchandise are required to pay the Store License Tax. 2. Wholesalers of beer only are not required to pay the Store License Tax. (J. R. Smead)

2-19-46--Hon. J. B. Newport, Commissioner of Finance. Title Insurance Companies dealing through an Idaho Abstract of Title Company qualify under Chapter 117, 1945 Session Laws for issuing Insurance in this state. (J. R. Smead)

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**INHERITANCE TAX DIVISION**

7-30-45—Mrs. LaVera Swope, Director, Inheritance Tax Division. The portion of a Defense Bond that belonged to a person or persons surviving the deceased co-owner should not be subject to inheritance or transfer tax. (R. W. Beckwith)

8-18-45—Mrs. LaVera Swope, Inheritance Tax Division. When the court confirms the sale of real or personal property showing such sale was necessary or advantageous to the estate, the cost or expense of the sale would be deductible item for inheritance tax purposes. (R. W. Beckwith)

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**FISH AND GAME COMMISSION**

7-26-45—Mr. James O. Beck, Director Fish and Game Commission. The State Fish and Game Commission does not have the power to settle property damage caused by flood waters from a broken dam. There is actually no liability on the part of the state in such matters. (J. R. Smead)

7-16-46—James O. Beck, Fish and Game Department. The Fish and Game Department may pay the attorney fees incurred by two of its conservation officers who were sued for false arrest and acquitted. (P. J. Evans)

8-15-46—James O. Beck, Fish and Game Department. The Fish and Game Department has the authority to spend money to defray the expenses incurred on holding merit examinations. (Frank Langley)

9-13-46—James O. Beck, Director, Fish and Game Department. Residence is a matter of intent of the person concerned. (Frank Langley)

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**GOVERNOR**

1-10-45—Hon. Charles C. Gossett, Governor. A member of the state senate may be appointed to the office of commissioner in one of the civil departments in the executive division of the government following his resignation as senator providing said office was not created by the incumbent legislature. (Thos. Y. Gwilliam)

1-26-45—Hon. Charles C. Gossett, Governor. There is no limitation or prohibition in the Constitution which would operate to forbid the legislature from appropriating money to pay refunds accumulated in excess of the appropriation to Motor Fuels Refund Fund. (W. A. Brohead)

2-17-45—Hon. Charles C. Gossett, Governor. Senate Bill 26 does

not conflict with nor infringe upon H. B. 30. Both Bills relate to salaries of County officers. (J. R. Smead)

2-23-45—Hon. Charles C. Gossett, Governor. Senate Bill 37 providing for the licensing of qualified insurance agents to act as agents in Idaho for insurance companies not authorized to transact business in this state; et seq., conflicts with Section 10 of Article 11 of the Constitution of the State of Idaho and amendments to the U. S. Constitution and Section 13 of Article 1 of the Idaho Constitution is therefore unconstitutional. (P. J. Evans)

3-19-45—Hon. Charles C. Gossett, Governor. The Constitutionality of H. B. 139 is doubtful as the members of the Idaho Racing Commission are State Officers and money collected by them is state taxes, to be placed in State Treasury and not paid out until claims are presented and approved by Board of Examiners. (P. J. Evans)

3-28-45—Hon. Charles C. Gossett, Governor. All moneys collected under the additional gasoline tax instituted by H. B. No. 190, 28th Session, must be turned into the Highway Fund for use thereby. (P. J. Evans)

3-29-45—Hon. Charles C. Gossett, Governor. Warrants may be registered against the Motor Fuels Refund Fund to pay immediately the \$209,000.00 unpaid tax exempt claims to farmers and other non-highway gasoline users. (J. R. Smead)

4-5-45—Hon. Charles C. Gossett, Governor. There is a limitation on the appropriation of \$6,600.00 for salaries and wages to the State Historical Society (Chapter 187 of the 1945 Session Laws) in that the only salary authorized by law is a salary of \$900.00 per year payable to the librarian of the State Historical Society under Chapter 10 of the 1943 Session Laws. (Charles S. Stout)

5-15-45—Hon. Charles C. Gossett, Governor. After the abandonment of an office has been accomplished whether intentional or not, the former office holder has no further right to the office and it may be filled by the Governor. (P. J. Evans)

6-11-45—Hon. Charles C. Gossett, Governor. Any person who shall buy or use any motor fuel for the purpose of operating or propelling stationary gasoline engines, tractors or motor boats is entitled to a refund of the tax paid regardless of the amount of fuel purchased. (P. J. Evans)

9-5-45—Hon. Charles C. Gossett, Governor. Any unemployment compensation payments received under the Federal law would be deducted from payments payable to benefit recipient under the Idaho law. (Thos. Y. Gwilliam)

9-29-45—Hon. Charles C. Gossett, Governor. With the approval of the trial court the Attorney General may compromise a claim brought by the state. (Thos. Y. Gwilliam)

5-8-46—A. R. McCabe, Lieutenant Governor. The Governor of Idaho has the power to appoint a Lieutenant Governor without the ratification of the appointment by the Senate. (P. J. Evans)



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**HIGHWAYS**

2-12-46—Mr. T. Matt Hally, Director of Highways. The Department of Public Works may use the money accumulated by the levy of the additional 1c per gallon on gasoline for the purpose of defraying the expenses, debts and costs incurred by the Department. (Thos. Y. Gwilliam)

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**INSURANCE**

3-12-45—H. M. Cullimore, Bureau of Insurance. A person holding power of attorney for an Idaho Insurance agent may not sign policies for the agent without authorization from the agents' principal. (P. J. Evans)

10-4-45—Mr. Edward B. McMonigle, Director, Bureau of Insurance. 1. An Idaho Mutual Benefit Association should convert to a legal reserve company before it is purchased by a foreign legal reserve life insurance company. 2. Such foreign company would be subject to the laws of the state where organized, as to purchasing an Idaho mutual benefit association, if such foreign state should have applicable statutes. 3. A merger, consolidation or transformation of a mutual benefit association must be approved by 2/3 of the members as distinguished by 2/3 of those present in person or by proxy at a meeting called to consider such action. (J. R. Smead)

10-5-45—Edward B. McMonigle, Director, Bureau of Insurance. It would be invalid for a common school district to become a member of a mutual insurance company in Idaho in order to obtain insurance coverage on school buildings and their contents. (M. Reese Hattabaugh, Sr.)

10-8-45—Mr. Edward B. McMonigle, Director of Insurance. a. Mutual life insurance companies may invest their surplus funds in a building to be used by them. b. Such investment would not violate the provisions of the statute regarding "non-profit" organizations. (M. Reese Hattabaugh, Sr., and J. R. Smead)

12-24-45—Mr. Edward B. McMonigle, Director of Insurance. All Mutual Benefit Life Associations licensed and doing business in the State of Idaho must pay to the state a tax of 3 per cent upon the amount of gross premiums collected by it in the state in excess of premiums and collections returned to its members and membership fees but if the association has more than 60 percent of its assets and funds invested or deposited in a bank in this state the tax is only 1 percent upon such gross premiums. (M. Reese Hattabaugh, Sr.)

5-17-46—Mr. Edward B. McMonigle, Director of Insurance. Forfeiture of the right of foreign insurance companies to do business in Idaho rests with the Department of Finance. (J. R. Smead)

9-6-46—Mr. Edward B. McMonigle, Director of Insurance. Idaho Motor Club, Inc., would come under the insurance laws but it is recommended that the Director of the Bureau of Insurance have legislation enacted controlling such clubs. (Thos. Y. Gwilliam)

9-13-46—Mr. Edward B. McMonigle, Director of Insurance. Municipal corporations may take out insurance with mutual insurance companies issuing non-assessable insurance policies. (Thos. Y. Gwilliam)

#### LAND DEPARTMENT

1-26-45—Mr. Robert Coulter, State Land Commissioner. The State Board of Land Commissioners is authorized under the constitutional and statutory provisions to lease Lava Hot Springs and may do so independent of Lava Hot Springs Foundation. (Charles S. Stout)

4-11-45—Mr. Robert Coulter, State Land Commissioner. Idaho may exchange her school lands with the National Forests for Federal lands therein but must have legislative permission to do so. (J. R. Smead)

5-3-45—Mr. Robert Coulter, State Land Commissioner. The State Board of Land Commissioners has the absolute power to reinstate any cancelled certificates upon the application of a former purchaser and upon such condition as the board may impose. (P. J. Evans)

5-26-46—Mr. Robert Coulter, State Land Commissioner. The first qualified bidder to make the ceiling price bid at a timber sale would become the purchaser. (J. R. Smead)

10-3-46—Mr. Robert Coulter, State Land Commissioner. Water assessments levied upon land covered by state mortgage may be paid by the state out of Farm Mortgage Funds. (Phil J. Evans)

#### LAW ENFORCEMENT

##### Bureau of Motor Fuels

6-22-45—Mr. George Thiessen, Director, Motor Fuels. Government bonds of the "E" Series are not acceptable for deposits as Motor Fuel Bonds. (P. J. Evans)

2-5-46—Mr. George Thiessen, Director, Motor Fuels. The motor fuels tax is imposed on the dealers and the Government is entitled to its refund only when it has complied with the provisions of the law and is entitled to a refund on the same basis as any other purchaser. (Phil J. Evans)

3-12-46—Mr. George Thiessen, Director, Motor Fuels. The decision

of the Supreme Court to the effect that the extra 1c per gallon gas tax levied by the 1945 legislature would have to be refunded, to non-highway users, would have no effect in extending the time limit for claiming such refund. (P. J. Evans)

#### **Brand Inspector**

2-21-46—Wm. Lasley, Brand Inspector. Brand inspection laws of Idaho for inspection of stock in transit are intended to be complementary with the laws providing for the inspection of the hides and carcasses of slaughtered animals. (P. J. Evans)

6-14-46—H. W. Lasley, State Brand Inspector. It is a misdemeanor for any person or company (including railroad companies) to transport any cattle, horses or mules without correctly and fully prepared certificates of inspection and ownership. (P. J. Evans)

7-12-46—Wm. Lasley, State Brand Inspector. The Brand Inspector has the right to collect Inspection Fees on livestock at the Portland yard. It would be unwise to change the tariff at this time. (P. J. Evans)

#### **Bureau of Motor Vehicles**

6-13-45—Mr. Boise G. Riggs, Commissioner of Law Enforcement. It is the duty of the sheriffs of the several counties of Idaho to take applications for automobile driver's licenses, when so authorized by the Department of Law Enforcement, and to collect the fees required to be paid in connection therewith and cause the same to be transmitted to the Department of Law Enforcement, without compensation to the sheriffs for the services performed by them. (Frank Langley)

4-27-46—Mr. Boise G. Riggs, Commissioner of Law Enforcement. A person working in a grocery store as a clerk part time and making deliveries twice daily would not be required to have a chauffeur's license. (P. J. Evans)

6-14-46—Mr. Boise G. Riggs, Commissioner of Law Enforcement. The Department of Law Enforcement may utilize the services of special investigators of the Liquor Law Enforcement Bureau in the investigation of the operation of beer dispensaries. (P. J. Evans)

7-18-46—Mr. Boise G. Riggs, Commissioner of Law Enforcement. 1. Persons operating a motor truck for hire would be required to take out a commercial truck license. 2. Operators hauling finished products of the forest or mines would be required to take out a private truck license for trucks engaged in such business. (P. J. Evans)

#### **Bureau of Occupational Licenses**

5-5-45—Agnes Barnhart, Bureau of Occupational Licenses. Persons having served in the armed forces and earned sufficient credits

should be allowed to take the examinations necessary for licenses in professions usually requiring a high school diploma. (Charles S. Stout)

9-20-45—Mrs. Agnes Barnhart, Bureau of Occupational Licenses. Plans and specifications prepared by a registered engineer and not by a registered architect for public and commercial buildings costing less than \$7500 and located within corporate limits of city or village may be accepted with the exception of buildings to be built for the state and costing more than \$500.00. Specifications for the latter must be furnished by the Commissioner of Public Works. (P. J. Evans)

10-5-45—Mrs. Agnes Barnhart, Bureau of Occupational Licenses. The Idaho Board of Examiners for Certified Public Accountants may not add to the provisions of Section 53-203, a stipulation that applicant must have had at least one year's experience in accounting in Idaho. (P. J. Evans)

10-5-45—Mrs. Agnes Barnhart, Bureau of Occupational Licenses. Where the cost of municipal, county or city building or the repair thereof exceeds \$7,500.00, the plans thereon must be prepared by a registered architect. (P. J. Evans)

10-15-45—Mrs. Agnes Barnhart, Bureau of Occupational Licenses. The Board of Examiners of Certified Public Accountants has the authority to pass upon the qualifications of applicants for reciprocal licenses. (P. J. Evans)

5-17-46—Mrs. Agnes Barnhart, Bureau of Occupational Licenses. Persons acquiring barber experience in the Armed Forces of the U. S. would have to comply with the provisions of the statute in regard to qualifications to take barbers examination. (P. J. Evans)

#### Store License Division

3-13-46—Margaret Brennan, Director, Store License Division. Property taxes can be offset against the license fees paid on store licenses only if the owner of the real property is also operating the store therein. (P. J. Evans)

#### MISCELLANEOUS

1-11-45—Hon. Jesse Vetter, Representative, Kootenai County. Proposed act to pay actual expenses of members of the legislature while serving at state capital unconstitutional. (P. J. Evans)

1-27-45—James H. Young, Senate Finance Committee. Legislature may disregard remaining balance in General Fund in fixing total amount of state tax for the forthcoming biennium. (J. R. Smead)

1-30-45—Geo. L. Ambrose, Chairman, Senate Highway and Military

Affairs Committee. Counties, cities and villages, highway districts and school districts may be authorized to levy a tax to create a reserve fund for highway building and improvements and for local services, repairs and improvements after the shortage of manpower and materials, now existing, has ended. (J. R. Smead)

2-15-45—Hon. Nellie Cline Steenson, Senator, Bannock County. House Bill No. 126 dealing with possible credits to be received by members of the armed forces from the U. of I., Southern Branch, does not seem to come within any of the kinds of prohibited legislation, and thereby the Constitution opposes no obstacle to legislative action on the subject with which it deals. (J. R. Smead)

2-21-45—Hon. F. C. Gillette, State Senator, Chairman, Education and Educational Institutions Committee. The President and Secretary of the State Board of Education should include in their report to the legislature any recommendation they may care to make for the good of Idaho's public schools. (Frank Langley)

2-27-45—Hon. Lloyd F. Barron, House of Representatives. H. B. No. 139 of the 28th Session of the legislature does not violate any provision of the Constitution of the State of Idaho. (Frank Langley)

3-5-45—Hon. Nora L. Davis, House of Representatives. Senate Bill 89 allows no class-room unit if the district had a daily attendance of 5 pupils or less for 6 consecutive months during the previous school year. (Frank Langley)

3-6-45—Mr. Frank M. Rettig, Attorney at Law, Jerome, Idaho. There is no limitation upon amount of tax that can be levied for road purposes by commissioners of road districts upon the district under their control. (P. J. Evans)

3-17-45—Jeannette Y. Chamberlain, Treas. and Tax Collector, Cassia County. 1. Funeral expenses are a lawful charge against an estate and in connection with escheat estate if the county pays the burial fees of an indigent, it should be reimbursed from the estate. 2. Claim should be presented against the estate in writing. (Charles S. Stout)

6-10-45—Hon. Glenn W. Todd, President, Lewiston Normal School. The name of "Lewiston State Normal School" is fixed by statute and cannot be changed or set aside, or used in conjunction with the name "State College of Education-North." (P. J. Evans)

5-31-45. Mr. C. V. Peckham, Chairman, Embalmers and Funeral Directors. The appointment of Arthur Hall as member of the Embalmers & Funeral Directors Examining is not in accordance with the provisions of Chapter 129, 1937 Session Laws. (J. R. Smead)

8-14-45—Mr. W. A. Thurber, Board of Accountants. An applicant holding a bachelor's degree in accounting may make up his major in accounting at a later date by taking a major course in accounting from a four year college or university. (P. J. Evans)

2-26-46—Hon. Jesse Vetter, Representative, Kootenai County. The First Extraordinary Session of the Twenty-eighth Legislature is not

empowered to amend House Joint Resolution No. 8 passed by the regular session of the legislature. To do so, in special session, the amendment would have to be included in the Governor's call. (P. J. Evans)

2-26-46 -- Hon. F. C. Gillette, Senator, Teton County. Schools closed for the harvest vacation during the school year 1945-46 cannot be given credit in the apportionment of school funds for those days used in harvest vacation. (Frank Langley)

2-27-46 -- Hon. Austin Schouwieler, Senator, Gooding County. The language of Section II, Subd. (i) of the Governor's call for a special session is broad enough to permit the legislature to make provision if they so desire for hospitalization of tubercular patients at the State Tuberculosis Hospital at Gooding. (P. J. Evans)

3-1-46 -- Hon. W. H. Elkington, Representative. Other moneys of a school district, a junior high-school district or a county, legally available for the purpose can be drawn on to supply a deficiency in the amount of special tax levied only in an instance where such taxes although levied have not been paid or collected in due course. (J. R. Smead)

3-1-46 -- Hon. F. M. Bistline, Representative, Bannock County. Only such members of the armed forces who attended the U. of I. Southern Branch while in the service are entitled to receive credits for upper division work. (Frank Langley)

3-6-46 -- Hon. James H. Young, Chairman, Senate Finance Committee. Personnel of the State Liquor Law Enforcement Bureau could not be employed or used to perform the duties of the state police. (P. J. Evans)

4-8-46 -- Veterans Welfare Commission. Chapter 22 of the First Extraordinary Session of the Twenty-eighth Legislature pertaining to males of 18 years of age entering legal contracts, is constitutional. (Frank Langley)

4-8-46 -- John I. Hillman. Ralph Farmer and Himena Hoffman are eligible for appointment to the Administrative Board of Trustees. (M. Reese Hattabaugh, Sr.)

4-9-46 -- Mr. Raymond J. Briggs. 1. A corporation may not use the words "engineer," "engineering" or "surveyor" or "Surveying" in its corporate company name or advertising. 2. A corporation or company may not legally practice or offer to practice engineering or professional engineering or land surveying in this state. (Thos. Y. Gwilliam)

#### AERONAUTICS

4-23-46 -- Mr. Chet Moulton, Director, Aeronautics. It is necessary to obtain the approval of the State Board of Examiners to trade or

exchange State personal property. In addition it is necessary to get the approval of the State Purchasing Agent if such purchase is made through him. (P. J. Evans)

#### IDAHO EDUCATION SURVEY

9-15-45—Hon. Asher B. Wilson, Chairman, Idaho Education Survey Commission. The Idaho Education Survey Commission has the authority to expend \$2,000.00 to prepare quarters for their use. (P. J. Evans)

10-9-45—Hon. Asher B. Wilson, Chairman, Idaho Education Survey Commission. Assistants and employees of the Survey Specialists would not be required to take and present receipts for their travel and personal expenses incurred by them in their work, in order to entitle said Survey Specialists to their monthly compensation from the State of Idaho. (P. J. Evans)

#### MINE INSPECTION

1-10-46—Mr. Arthur Campbell, State Mine Inspector. Locators must file each year before 12 o'clock meridian of July 1, his desire to hold said mining claim. The claims do not have to be worked or improved until the President or Congress declare the cessation of hostilities of World War II. (P. J. Evans)

2-11-46—Mr. Arthur Campbell, State Mine Inspector. Supplement to opinion to Mine Inspector of January 10, 1946, regarding locators of mines. (P. J. Evans)

#### DEPARTMENT OF PUBLIC ASSISTANCE

5-11-45—Mr. Joel Jenifer, Commissioner, Department of Public Assistance. Sufficient statutory evidence exists for the Department of Public Assistance to cooperate with the Federal Government in carrying out the provisions of Public Law No. 113 in providing vocational rehabilitation for the blind. (Charles S. Stout)

7-8-46—Joel Jenifer, Commissioner, Department of Public Assistance. Persons not citizens of the United States would not be eligible to take the merit examination under Sec. 4 (b) of Chapter 181, S. L. 1941 (M. Reese Hattabaugh, Sr.)

#### Charitable Institutions

3-7-45—Hon. Joel Jenifer, Director, Charitable Institutions. Idaho's sterilization law would be upheld as constitutional but a great de-

gree of caution should be indulged in its application. (Thos. Y. Gwilliam)

5-27-46. Dr. Harold E. Dedman, Chairman, Charitable Institutions Commission. The Commission may not purchase residences for the use of members of the staff of the State Hospital South pending construction of residences authorized by the provisions of Chapter 39 of the 1st Extraordinary Session of the 1945 legislature. (P. J. Evans)

5-31-45—Mr. Joel Jenifer, Director, Charitable Institutions. Money received by charitable institutions for the care of patients committed there by Federal authority should be placed to the credit of the appropriation for the institution. (Charles S. Stout)

#### DEPARTMENT OF PUBLIC HEALTH

5-24-45—Mr. L. J. Peterson, Administrator-Director, Department of Public Health. All moneys collected as fines for violations of Chapter 77 of the 1939 Session Laws as amended, should be deposited with the State Treasurer to the credit of the general fund (Sec. 36-104, I. C. A.). Checks for fines should be made payable to the State Treasurer. (Charles S. Stout)

5-24-46—Mr. L. J. Peterson, Department of Public Health. Counties cannot be required to pay any of the expenses of the patients hospitalized in the State Tuberculosis Hospital at Gooding. (P. J. Evans)

#### PUBLIC UTILITIES COMMISSION

4-24-45—Mr. J. W. Cornell, President, Public Utilities Commission. Trucking companies not operating between fixed termini within Idaho or between a point in this state and some other state are not Auto Transportation Companies as are required to secure permits to operate from the Public Utilities Commission. (P. J. Evans)

3-5-46—W. B. Joy, Commissioner, Public Utilities Commission. The Public Utilities Commission could rightfully request foreign vehicles to pay the same fees as are required of the Idaho vehicle even though Idaho may have a Highway Reciprocity Agreement with the state of origin. (Thos. Y. Gwilliam)

5-11-46—W. B. Joy, Commissioner, Public Utilities Commission. 1. Only non-residents of Idaho are entitled to the exemptions from payment of motor vehicle registration fees. 2. Where a doubt exists as to the fact of residence the P. U. C. may set the matter for hearing for the purpose of determining that fact. (Frank Langley)



## DEPARTMENT OF RECLAMATION

1-17-45—Mark R. Kulp, Reclamation Engineer. Interest on money due state is collectible only when some action has been taken to secure payment of money and not when lack of payment is result of neglect of creditor to demand and enforce such payment. (W. A. Brohead)

2-9-45—Mark R. Kulp, Reclamation Engineer. 1. Permit and license to storage rights below present low water elevation of lake could not be issued to power companies. 2. Water could not be leased for development of electrical energy to be used out of state. 3. Flood control is not in conflict with Chapter 2, 1927 S. L. and Section 41-408, Idaho Code Annotated, so long as the amount of water drained from the lake is not sufficient to reduce the amount otherwise required to be utilized to preserve the lake in the manner and for the purposes specified. (J. R. Smead)

3-10-45—Mark R. Kulp, Reclamation Engineer. Fees filed under provisions of Section 41-202, I. C. A. may not legally be refunded to applicants. (Charles S. Stout)

2-19-45—Mark R. Kulp, Reclamation Engineer. Supplementing opinion of February 10, 1945. The legislature has power to authorize the Governor to permit use of water below the natural low water level by those desiring it for irrigation or generation of electric power. (J. R. Smead)

3-31-45—Mark R. Kulp, Reclamation Engineer. The Reclamation Engineer has authority within his discretion to approve application for storage of water in Idaho for use in Wyoming. (P. J. Evans)

11-3-45—Mark R. Kulp, Reclamation Engineer. 1. The State Reclamation Engineer does not have the right to issue an order closing the irrigation season as of November first, but they do have the right and duty of notifying the water masters to cease distribution of water to any canal company or individual as of November 1st of each year. 2. The Reclamation Engineer does not have the right to declare that in no case does the irrigation season extend beyond November 1. (J. R. Smead)

1-19-46—Mark R. Kulp, Reclamation Engineer. The Governor does not have the authority to take control in the matter of sanitation on Coeur d'Alene Lake. The matter is for local control. (J. R. Smead)

2-19-46—Mark R. Kulp, Reclamation Engineer. Regarding the validity of Water Permits Nos. 16979 and 17276. (Thos. Y. Gwilliam)

7-24-46—Mark R. Kulp, Reclamation Engineer. Water originally belonging to the Boom Creek Canal Company although diverted and permitted to flow through the channel of Squirrel Creek still belongs to the Boom Creek Canal Company and can be reclaimed by them

unless the right to the use of the water has been abandoned by the water users of Boom Creek. (Thos. Y. Gwilliam)

3-2-46--Mark R. Kulp, Reclamation Engineer. Questions concerning unrecorded water rights are not germane to a hearing under Chapter 12, 1945 Session Laws. (Frank Langley)

#### SECRETARY OF STATE

1-8-45--Hon. Ira H. Masters, Secretary of State. The name of Victor Morris shall be certified by the Secretary of State as Senator from Latah County providing that it is indicated on such certification, that his election is being contested under provisions of Chapter 18, Title 33, I. C. A., and by transmitting to the presiding officer of Senate all documents and exhibits relative to such contest in accordance with provisions of Section 33-1816, I. C. A. (Chas. S. Stout)

1-12-45--Hon. Ira H. Masters, Secretary of State. Similar trade marks may be filed by different companies providing the products or articles they cover can in no way be confused. (J. R. Smead)

3-7-45--Hon. Ira H. Masters, Secretary of State. Articles of incorporation drawn up in 1892 should have been filed with the Secretary of State but failure to do so would not prevent the corporation having a valid legal existence. They should now be filed, however, with the payment of the nominal fee due for this service. (Charles S. Stout)

5-2-45--Hon. Ira H. Masters, Secretary of State. Corporations heretofore not required to file annual statements are not now required to do so. (Frank Langley)

2-5-46--Hon. Ira H. Masters, Secretary of State. The Articles of PEETS INC. cannot be accepted until they show three incorporators who are citizens and of age. (Phil J. Evans)

7-16-46--Hon. Ira H. Masters, Secretary of State. The Idaho Compensation Company, a domestic corporation is not exempt from the annual license fee tax provided for by Sections 29-602 and 29-603, I. C. A. (J. R. Smead)

3-28-45--Hon. Ira H. Masters, Secretary of State. A corporation asking reinstatement must pay its annual license tax and a \$10.00 penalty for each year of its delinquency including the current year ending June 20, 1945, but is not required to file an annual statement until the fiscal year starting July 1, 1945. (Frank Langley)

#### STATE BOARD OF PHARMACY

1-7-46--Idaho State Board of Pharmacy. 1. The State Board of Pharmacy is without authority to renew any pharmacy licenses with-

out collecting the penalty provided by law when the renewal is not made before October 1 of each year. 2. The Board is without any discretionary power to waive penalty for failure to renew license prior to October 1st of each year. (P. J. Evans)

#### STATE INCOME TAX DEPARTMENT

9-15-45—Mr. J. G. Vaughan, Director, State Income Tax Department. The cigarette tax is a deductible item for state income tax purposes. (P. J. Evans)

12-15-45—Mr. J. G. Vaughan, Director, Income Tax. The State may not tax the income from Federal Bonds. (J. R. Smead)

1-18-46—Mr. J. G. Vaughan, Director, Income Tax. Any non-resident person employed in Idaho and there earning and receiving his salary is subject to the state income tax law. (J. R. Smead)

7-30-46—Mr. J. G. Vaughan, Income Tax. Profits derived from sale of real estate by corporations must be computed for the purpose of State Income Tax and a tax paid thereon in addition to the tax on corporations as shown in Section 61-2437. (P. J. Evans)

#### STATE LIQUOR DISPENSARY

3-9-45—Hon. E. P. Horsfall, Superintendent, State Liquor Dispensary. There is no provision in the law prohibiting a person from holding more than one permit, although the intention was such. It is the duty of the Superintendent to draw up rules and regulations of his department, which rules and regulations could be made to read that only one permit be allowed each person. (P. J. Evans)

#### STATE PLANNING BOARD

9-5-45—Mr. Alvin H. Reading, Exec. Sec. State Planning Board. State owned property with the exception of mining property cannot be leased for a longer term than 10 years. The Board of Land Commissioners is the only agency having authority to lease Heyburn Park and the leasing of Lava Hot Springs is controlled by the Board of Land Commissioners in conjunction with the Lava Hot Springs Foundation. (J. R. Smead)

9-27-45—Mr. Alvin H. Reading, State Planning Board. State owned property with the exception of mining property or mineral springs property cannot be leased for more than 10 years. The Board of Land Commissioners is the only agency having authority to lease Heyburn Park and the leasing of Lava Hot Springs is controlled by the Board of Land Commissioners in conjunction with Lava Hot Springs Foundation. (J. R. Smead)

10-3-45—Idaho State Planning Board. Neither the Lewiston State Normal nor the Board of Education has the authority to procure federal money with which to finance the planning and preparations for post-war construction. It is up to the legislature to decide what post-war construction shall occur and what shall not. (J. R. Smead)

#### STATE PURCHASING AGENT

1-16-46—Mr. George R. Jones, State Purchasing Agent. The matter of whether or not to list the losers in competitive bids and keep their bids is one of administrative interpretation. Heads of departments or state employees may sell goods to the state if the bidding is competitive, but it would appear unwise so to do. (T. Y. Gwilliam)

#### TAX COMMISSION

3-10-45—J. A. Harrington, Chief Auditor, Office of Tax Commissioner. Salary or compensation received by individuals in the Armed Forces is taxable only in cases where such person has an established residence in Idaho and is not here pursuant to military assignment. Being in Idaho as a result of military assignment does not necessarily establish residence in this state. (Charles S. Stout)

4-6-45—Idaho State Tax Commission. 1. The Cigarette Tax law is constitutional and it is the duty of the Idaho State Tax Commission to administer it. 2. The legislature has authority to delegate tax collecting power to a constitutional body. 3. Funds collected are to be deposited with State Treasurer. 4. Stamps are to be fixed to each separate packages of cigarettes. (P. J. Evans)

8-27-45—State Tax Commission. 1. Cigarettes given by reason of punch board chances must bear the tax stamp or be confiscated. 2. Persons selling cigarettes must have a registration certificate as provided under Section 5. Procedure for prosecution of violators is instituted through county prosecuting attorneys. (J. R. Smead)

1-12-46—State Tax Commission. 1. "Cash value" for the purpose of taxation refers to the cash value of the property of the claimant after equalization by the Board of County Commissioners, as provided in Section 61-401, Idaho Code Annotated. 2. The final date for exemption claims—claims must be made on or before the 4th Monday of June of each year. (P. J. Evans)

10-4-46—State Tax Commission. It would be illegal to extend the school tax levied by Ashton Independent School District to the unorganized territory taken into the district after the levy was made. (P. J. Evans)

#### TEACHERS' RETIREMENT SYSTEM

6-24-46—G. C. Sullivan, Exec. Secretary, Teachers Retirement System. 1. Any member of the Teachers' Retirement System may re-

tire upon written application to the Board of Trustees provided he has reached the age of 60 years and notwithstanding that he may have retired from the service. 2. Members becoming 70 years of age shall be retired forthwith, unless such member becomes 70 within school term. He may then retire at the end of the term. 3. A teacher having reached the age of 70 must retire and it is not necessary for him to file an application for retirement. (Thos Y. Gwilliam) 8-7-46—H. F. Willmorth, Teachers' Retirement System. Should the annual school tax meeting neglect or refuse to levy taxes for the purpose of the Teachers' Retirement Act, the Board of Trustees may make the same and certify to the Board of County Commissioners the amount of such levy as provided in Section 32-703, Idaho Code Annotated. (Thos. Y. Gwilliam)

## DOCKET

### UNITED STATES SUPREME COURT

1249—William C. Hulbert and Chester Bowles, Admr. O. P. A. vs. Twin Falls County. Re: Petition for Writ of Certiorari.

### UNITED STATES DISTRICT COURT

(Closed)

1212—United States of America vs. State of Idaho et al. Re: Condemnation suit.

1224—United States of America vs. 18,217.58 Acres of Land, more or less, in Butte and Jefferson Counties, Idaho; Chas. M. Blocker, et al. Re: Condemnation suit.

1231—United States of America vs. 110 Acres of Land in Ada County, Idaho; John Archibal, et al. Re: Condemnation suit.

1233—United States of America vs. 40 Acres of Land in Minidoka County, Idaho. Robt. Coulter, et al. Re: Condemnation suit.

1237—E. K. Koon; Frank Barmettler, American National Bank vs. C. A. Bottolfsen, Edwin M. Holden et al. Re: Declaratory Judgment.

1246—Western Loan & Bldg. Company vs. J. B. Newport, State of Idaho, et al. Re: Declaratory Judgment.

### UNITED STATES DISTRICT COURT

(Pending)

1247—United States of America vs. Cassia Creek Irrigation Company, Inc. Mark Kulp, et al. Re: Foreclosure.

**INTERSTATE COMMERCE COMMISSION****(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 Craigmont.

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

1241 Herman P. Falls vs. Boise Riggs et al. Re: Writ of Prohibition.

**SUPREME COURT****Civil Appeals****(Closed)**

1114 State of Idaho vs. Clara Hunter, surviving wife of John W. Hunter, deceased, and Grayce Pease, ex-officio Public Administratrix and Administratrix of the estate of John W. Hunter, deceased. Re: Foreclosure.

1167 Orland A. Scott, et al. vs. C. A. Bottolfson, et al. Re: Declaratory Judgment.

1192 American Federation of Labor, an unincorporated Association, et al vs. Bert Miller, Attorney General of Idaho, et al. Re: Declaratory Judgment.

1228 E. N. Hanson vs. T. M. DeCoursey et al. Re: Declaratory Judgment.

1242 E. K. Koon, Frank Barmettler et al vs. C. A. Bottolfson et al. Re: Declaratory Judgment.

1245 Union Pacific Railroad Company vs. Boise G. Riggs et al. Re: Declaratory Judgment.

1257 C. H. Higer vs. Ernest G. Hansen et al. Re: Writ of Mandate.

**SUPREME COURT OF IDAHO****Civil Appeals****(Pending)**

1201 State of Idaho vs. Canyon County et al. Re: Quiet Title.

1276 In the Matter of the Application of James O. Malone for permit to operate intrastate freight service.

**Criminal Appeals****(Closed)**

- 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.  
1227—State of Idaho vs. Richard Haynes. Re: Burglary.  
1230—State of Idaho vs. Pryce B. Scriver. Re: Appeal from conviction of driving motor vehicle while intoxicated.  
1234—State of Idaho vs. Horace Mundell. Re: Burglary.  
1236—State of Idaho vs. Mike Koseris. Re: Crime of Gambling and sale of intoxicating liquor.  
1244—State of Idaho vs. E. A. Branch. Re: Grand larceny.

**Criminal Appeals****(Pending)**

- 1243—Ben Thomas vs. Boise Riggs et al. Re: Slot Machine Law.  
1248—State of Idaho vs. Marion Groseclose. Re: Roaming of Cattle in village streets.  
1253—State of Idaho vs. Ascha Shryer and Joan Carpenter. Re: Assist Prisoner to escape.  
1254—State of Idaho vs. Paul D. Kottoff. Re: Attempted rape.  
1256—State of Idaho vs. J. B. Musser. Re: Violation of City Ordinance drinking liquor in public place.  
1258—State of Idaho vs. Walter Varnes. Re: Burglary.  
1259—State of Idaho vs. Cornelia White. Re: Violation of City Ordinance.  
1260—State of Idaho vs. Tom Romich. Re: Violation of City Ordinance unlawful sale of liquor.  
1262—State of Idaho vs. Katherine Leonard. Re: Violation of City Ordinance unlawful sale of liquor.  
1265—State of Idaho vs. Ray Taylor. Re: Manslaughter.

**Criminal Appeals****(Pending)**

- 1267—State of Idaho vs. Fred E. Stotter. Re: Violation of City Ordinance in permitting the unlawful sale of liquor.  
1268—State of Idaho vs. Louis Brunello. Re: Violation of City Ordinance in permitting the unlawful sale of liquor.  
1271—State of Idaho vs. Bea Finch. Re: Violation of City Ordinance in permitting unlawful sale of liquor.  
1275—State of Idaho vs. George Burwell. Re: Adultery.  
1284—State of Idaho vs. Reinhardt Elsen. Re: Attempted rape.

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

1223—State of Idaho vs. Estate of Jacob Schrenk, deceased, D. C. Kennison, Administrator. Re: Recovery old age assistance.

1239—State of Idaho vs. Estate of Elizabeth Stroup, deceased, Victor Leinun, Executor. Re: Recovery of tax.

1240—State of Idaho, et al vs. Western American Company. Re Water rights.

1250—Dept. of Agriculture of State of Idaho vs. Max Lutz. Re: Personal injury.

1251—State of Idaho et al vs. Estate of Corjia Arkoosh Liggett, deceased, Kesser Arkoosh, Executor. Re: Recovery of old age assistance.

1280—Disabled American Veterans vs. Ira H. Masters. Re: Initiative Referendum petition.

1282—Franklin Girard vs. Otto F. Peterson, Arnold Williams et al. Re: Declatory Judgment.

1283—State of Idaho et al vs. Carlton R. Smith, et al. Re: Escheat Personal Property.

**Civil Cases****(Pending)**

1232—Henry F. Little, J. R. Herald, et al vs. H. C. Baldridge, et al. Re: Declaratory Judgment.

1255—State of Idaho et al vs. John E. Wakefield et al. Re: Quiet Title.

1261—State of Idaho vs. Estate of Irene Weil, deceased, Margaret Thomason and Vera MacKelvie, Joint Executrixes. Re: Recovery of old age assistance.

1269—Frank J. Keenan vs. Farmers Lumber Co. Inc. Re: Mortgage foreclosure.

1270—Idaho Mutual Benefit Association vs. Edward B. McMonigle, et al. Re: Declaratory Judgment.

1272—State of Idaho et al vs. Estate of N. E. and Effie M. Ware, deceased, R. H. Ramey, Administrator. Re: Recovery of old age assistance.

1274—State of Idaho et al vs. Estate of Robert Chrisinger, deceased, F. O. Brocke, Administrator. Re: Recovery of old age assistance.

1277—State of Idaho et al vs. Estate of Christian Ellingson, deceased, Alfred Ellingson, Executor. Re: Recovery of old age assistance.

1278—State of Idaho et al vs. Estate of Laura A. Dewey, deceased, Iva Dewey Gelwick, Executrix. Re: Recovery of old age assistance.



1279—State of Idaho et al vs. Estate of Olive E. Whitman, deceased, Florence G. Sensenig, Administratrix. Re: Recovery of old age assistance.

1281—State of Idaho et al vs. Estate of W. O. Parker, deceased, David Eugene West, Administrator. Re: Recovery of old age assistance.

### PROBATE COURT

#### Civil Cases

##### (Closed)

1264—In the Matter of the Estate of Theodore S. Baldwin, deceased, Willa Hatfield, Administratrix. Re: Certificate for Money in the Escheat Suspense Fund in the State Treasury of the State of Idaho.

### UNEMPLOYMENT COMPENSATION DIVISION

#### List of Cases Pending and Closed, 1945-1946

#### INDUSTRIAL ACCIDENT BOARD

##### Pending Cases

State of Idaho vs:  
Margaret C. Jackson

##### Closed Cases

State of Idaho vs:  
Albertson's Food Center  
of Boise, Inc.  
Albertson's Food Center  
of Caldwell, Inc.  
Albertson's Food Center  
of Emmett, Inc.  
Albertson's Food Center  
of Nampa, Inc.  
O. O. Alexander Boise Club, Inc.  
Arthur A. Bedal  
Virginia M. Black  
Buffalo Club, Inc.  
Business Men's Assurance  
Chester Chapman  
E. S. Chrisman  
Continental Oil Company  
Mirko Cupic  
C. V. Dowlin  
Forresters' Club, Orofino, Ida.,  
Inc.

Fruitland Amusement Club  
G. C. Waldner  
Geneva G. Gill  
Ray R. Hagadone  
Idaho State Merchants'  
Protective Association  
Robert E. Irwin  
Ruby T. Ivie  
Wm. Lee Johnson, et al  
Stanley Jones  
Joy Drug  
Ivan Clay Miller  
Oasis Club, Orofino, Inc.  
Bertha S. Prevost  
Richfield Oil Corporation  
Ralph Simmons  
Zula Virginia Snell  
The Idahoan Club, Inc.  
Wicks' Club, Inc.

**PROBATE COURT****Pending Cases**

State of Idaho vs:	Progressive Shoe Shop
James N. Auxier	Red Ledge, Inc.
Consolidated Mines Synd.	John H. Rees
Bob Edwards	Walt Rember
Ed Edwards	Silver Rock Mining Co.
Blanche W. Fredricks	Arthur R. Trott
Gordon K. Henderson	Herbert W. Wait dba Idaho
Marvin Hollis Henderson	Hatchery
Hartzell K. Henry	Hadyn H. Walker dba Boise
Oscar E. Hopkins	Baseball Club
Elton G. King	George P. Zehner dba Gem State
Madsen Brigham	Body Shop
Gerald McCall	
Preston Peterson	

**Closed Cases**

State of Idaho vs:	Fred P. Ludwig
Mary L. Boardman	Alastair MacKenzie
Browning Motor Co., Inc.	W. L. Martz
Bryon Brunzell	Paul P. Masar
Coleman Cardin	Maynard & Maynard
Arnold Daniels	Sawtooth Tours & Hotels, Inc.
H. B. Farwell	Frank Senter
Ivan Harral	Harry B. Stanton
Clifford Higby	Arnold C. Tueller
Stanley Huff	W. R. Tilson
B. F. Kennedy	Joseph J. Turner
Charles M. Knapp	
Knapp Refractory Ore	
Processing Co.	

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

State of Idaho vs:  
Farmers' Lumber Co., Inc.  
H. G. Hammond  
Henry A. Hanson  
Priest Lake Lumber Co.  
Sawtooth Tours and Hotels, Inc.

**Closed Cases**

State of Idaho vs:  
L. W. Arave

**Closed Cases**

O. B. Hamilton  
International Shoe Co.  
J. L. Newland  
Wendell F. Stout  
Chris. Weisgerber  
Wicks' Club

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

Continental Oil Co. vs. Unemployment Compensation Division.

**Closed Cases**

State of Idaho vs:  
Ada County Dairymen's Association  
Farmers' Cooperative Creamery Co.  
International Shoe Co.  
P. G. Batt vs. Unemployment Compensation Division  
General Electric Company vs. Unemployment Compensation Division  
Ray Hagadone vs. E. A. Kirkpatrick and Unemployment Compensation Division  
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.



FRANK LANGLEY  
Attorney General  
State of Idaho  
1945-1946



ARNOLD WILLIAMS  
Governor  
State of Idaho  
1946