

THIRTY-SIXTH BIENNIAL REPORT

of the

ATTORNEY GENERAL

of

IDAHO



For the period beginning July 1, 1960
and ending June 30, 1962

FRANK L. BENSON

Attorney General



FRANK L. BENSON
ATTORNEY GENERAL

ATTORNEY GENERAL'S DEPARTMENT

July 1, 1960 — June 30, 1962

Frank L. Benson	Attorney General
E. G. Elliott	Assistant Attorney General
Thos. Y. Gwilliam	Assistant Attorney General
Wm. E. Swope	Assistant Attorney General
Warren Felton	Assistant Attorney General
B. James Koehler, Jr.	Assistant Attorney General
Frank Langley	Assistant Attorney General
Will S. Defenbach*	Assistant Attorney General
Dwight F. Bickel*	Assistant Attorney General
Jedd G. Owens*	Assistant Attorney General
Robert E. Bakes*	Assistant Attorney General
Wm. M. Smith	Assistant Attorney General
LaVar Marsh	Assistant Attorney General
John Kugler	Assistant Attorney General
Peter Leriget	Assistant Attorney General
Vern E. Herzog, Jr.	Assistant Attorney General
John Burgess	Special Clerk-Investigator
Jon Wyman	Special Clerk-Investigator
Donald M. Edwards	Executive Secretary and Clerk-Investigator
Jean Conkin*	Secretary-Bookkeeper
Virginia Peters	Secretary-Bookkeeper
Shirley Peterson*	Secretary-Bookkeeper
Alice M. Shoup	Secretary
Elaine Turner*	Secretary
Venira Draisin*	Secretary
Larry Evans	Investigator
Aldo P. Sarchiapone	Investigator

*Resigned

PROSECUTING ATTORNEYS

1960-1962

Ada	William C. Roden*	Boise
	Eugene C. Smith	
Adams	Carl H. Swanstrom	Council
Bannock	Hugh C. Maguire, Jr.	Pocatello
Bear Lake	Elbert E. Gass	Paris
Benewah	Richard McFadden*	St. Maries
	Thos C. Morris	
Bingham	Dean Williams	Blackfoot
Blaine	V. K. Jeppesen	Hailey
Boise	Louis H. Cosho*	Idaho City
	Harold A. Ranquist	
Bonner	Stephen Bistline	Sandpoint
Bonneville	Eugene L. Bush	Idaho Falls
Boundary	W. W. Nixon	Bonnerr Ferry
Butte	Hartely P. Kester	Arco
Camas	Robert Garry Newhouse	Fairfield
Canyon	William J. Brauner*	Caldwell
	C. Robert Yost	
Caribou	Francis J. Rassmussen**	Soda Springs
	Wallace A. Transtrum	
Cassia	Norman H. Neilson*	Burley
	R. Tom Church	
Clark	W. J. Anderson	Dubois
Clearwater	Ralph H. Haley	Groffino
Custer	Jack B. Furey	Challis
Elmore	Robert F. McLaughlin*	Mountain Home
	Francis H. Hicks	
Franklin	Dell W. Smith	Preston
Fremont	Nels T. Sahl	St. Anthony
Gem	Louis Gorrano	Emmett
Gooding	Cecil D. Hobdey*	Gooding
	Andrew F. James	
Idaho	Wayne C. McGregor, Jr.	Grangeville
Jefferson	H. Reynold George*	Rigby
	Jay F. Bates	
Jerome	Richard H. Seeley	Jerome
Kootenai	James W. Ingalls*	Coeur d'Alene
	William A. Reagan	

PROSECUTING ATTORNEYS

1960-1962

Latah	Cope R. Gale*	Moscow
	Len Bielenberg	
Lemhi	Charles Herndon	Salmon
Lewis	John R. Kemper	Nezperce
Lincoln	Howard E. Adkins	Shoshone
Madison	Ray W. Rigby	Rexburg
Minidoka	William T. Goodman*	Rupert
	George E. Redford	
Nez Perce	Owen L. Knowlton	Lewiston
Oneida	Wesley Crowther	Malad
Owyhee	James W. Blaine	Murphy
Payette	Dwaine L. Welch	Payette
Power	L. R. Schou	American Falls
Shoshone	Robert J. Fanning*	Wallace
	Richard G. Magnuson	
Teton	H. S. Forbush	Driggs
Twin Falls	Edward Babcock*	Twin Falls
	James J. May	
Valley	James L. Schoenhut	Cascade
Washington	D. L. Carter*	Weiser
	Frank H. Joseph	

** Resigned

* Completed term ending January 1961

ATTORNEYS GENERAL FOR THE STATE OF IDAHO

Since Statehood

George H. Roberts	1891-1892
George M. Parsons	1893-1896
Robert E. McFarland	1897-1898
Samuel E. Hays	1899-1900
Frank Martin	1901-1902
John A. Bagley	1903-1904
J. J. Guheen	1905-1908
D. C. McDougall	1909-1912
Joseph H. Peterson	1913-1916
T. A. Walters	1917-1918
Roy L. Black	1919-1922
A. H. Conner	1923-1926
Frank L. Stephan	1927-1928
W. D. Gillis	1929-1930
Fred J. Babcock	1931-1932
Bert H. Miller	1933-1936
J. W. Taylor	1937-1940
Bert H. Miller	1941-1944
Frank Langley	1945-1946
Robert Ailshie	1947
Robert E. Smylie	1947-1954
Graydon W. Smith	1955-1958
Frank L. Benson	1959-1962

JUSTICES OF THE IDAHO SUPREME COURT

1960-1962

E. B. Smith, Chief Justice.

C. J. Taylor

Henry F. McQuade

E. T. Knudson

Joseph J. McFadden

Louis Bideganeta, Clerk of the Supreme Court

DISTRICT JUDGES

First	James G. Towles	Wallace
Second	Jack McQuade	Moscow
Third	J. Ray Durtschi	Boise
	Merlin S. Young	
	Hamer Budge	
Fourth	Charles Scoggin	Fairfield
Fifth	John A. Carver	Pocatello
	Arthur P. Oliver	
Sixth	Ezra P. Monson	Blackfoot
Seventh	Robert B. Dunlap	Caldwell
	Gilbert C. Norris	Weiser
Eighth	Clay V. Spear	Coeur d'Alene
	Robert F. McFarland	Sandpoint
Ninth	Henry S. Martin	Idaho Falls
	Boyd R. Thomas	
Tenth	John W. Cramer	Lewiston
	Paul W. Hyatt	Grangeville
Eleventh	Lloyd J. Webb	Burley
	Theron W. Ward	Twin Falls
Twelfth	Willard C. Burton	Rexburg
Thirteenth	Francis J. Rasmussen	Soda Springs

November 30, 1962

Honorable Robert E. Smylie,
Governor of Idaho
Statehouse
Boise, Idaho

Dear Governor Smylie:

Pursuant to Section 67-1201, Idaho Code, I present for the consideration of yourself and the Thirty-seventh Session of the Legislature, the Report of the Attorney General for the past biennium.

Respectfully submitted

FRANK L. BENSON
Attorney General
State of Idaho

ATTORNEY GENERAL'S FINANCIAL REPORT

STATEMENT OF EXPENDITURES

Office of the Attorney General for period July 1, 1960 - June 30, 1962

Personal Services	Travel Expense	Other Expense	Capital Outlay	Total Expenditures
\$115,424.49	\$8,725.80	\$22,609.99	\$8,223.17	\$154,983.45

ANALYSIS OF GENERAL FUND APPROPRIATIONS

ATTORNEY GENERAL'S OFFICE

Twenty-four months' period ending June 30, 1962

Unencumbered Appropriation 7-1-59 to 6-30-61	Authorized Appropriation 7-1-61 to 6-30-63	Direct Receipts 7-1-60 to 6-30-62	Total Available
\$78,532.66	\$160,000.00	\$226.84	\$238,759.50

Total Disbursements 7-1-60 to 6-30-62	Lapsed 1959-1961 Appropriation 6-30-61	Unencumbered Appropriation Balance 6-30-62
\$154,983.45	\$16.25	\$83,759.80

7-1-60—HAROLD JOHNSON, Executive Secretary, State Tax Commission

(I) In determining the tax exemption under Sec. 63-105(4) of the **Idaho Code**, "full cash value" means actual assessed value. The statute applies to actual assessed value of the property sought to be exempt, and also to any other property owned by the applicant upon the assessment rolls.

The meaning of the term "net income" must be determined under Sec. 63-3012 of the **Idaho Code**, being gross income less deductions. (Jedd G. Owens)

7-11-60—ROSS E. BARNEY, Assistant State Superintendent of Public Instruction.

A school district may pay the tuition of students for completion of their high school work outside the state in lieu of furnishing transportation when the district involved offers only two years of high school and when the nearest and most accessible high school is outside the state. (B. James Koehler, Jr.)

7-22-60—HON. PETER R. DUFRESNE, Probate Judge, Shoshone County.

Under Sec. 16-1816 of the **Idaho Code** the Youth Rehabilitation Act of 1955 makes it discretionary with the Probate Judge as to whether the official records of the Probate Court in juvenile delinquent cases shall be open to the public; and except when the Probate Judge has made an order in writing in an individual case, the records are open to inspection. (William E. Swope)

7-26-60—(1) ANTHONY J. MESSURI, Certified Public Accountant, Caldwell.

The County Commissioners may levy not to exceed 80 cents on each \$100.00 of assessed valuation to be used on the county roads exclusive of state highways and secondary roads. The additional levy authorized of not to exceed 50 cents on each \$100.00 of assessed valuation may be used only on state highways or secondary roads wherein matching state and federal funds are used. (Thos. Y. Gwilliam)

7-26-60—(2) REX ENGELKING, Superintendent of Schools, Buhl.

Sec. 33-512 of the **Idaho Code** provides that upon the establishment of a newly organized Class A school district, the trustees from the original districts shall meet within ten days and elect or appoint five qualified residents of the area to serve as trustees until the next annual election, at which time five new trustees will be elected: one for 1 year, two for 2 years and two for 3 years. (B. James Koehler, Jr.)

7-27-60—(1) TERRELL O. CARVER, M. D., Administrator of Health Department and DR. MYRICK W. PULLEN, Superintendent of State Hospital North.

(I) Under Sec. 66-318 of the **Idaho Code** a person may be admitted voluntarily to a state mental hospital without a court order or commitment either on "patient" status or on "lodger" status for a period of evaluation not to exceed two days, at the end of which time he may be admitted to patient status or discharged. (II) The head of the hospital (state) may refuse admission to any applicant under this Section when he feels that the applicant's welfare or the welfare of society is better protected by the commitment provisions under court order of Sec. 66-329 of the **Idaho Code**. (III) Under Sec. 66-325 of the **Idaho Code** the head of any hospital is authorized to receive therein any individual committed thereto by a court of competent jurisdiction under law. (Jedd G. Owens)

7-27-60—(2) TERRELL O. CARVER, M. D., Administrator of Department of Health.

In the absence of statutory provision to the contrary, public institutions created, owned and controlled by the state are not liable for the negligence of their agents. (Jedd G. Owens)

7-27-60—(3) HON. D. F. ENGELKING, Superintendent of Public Instruction.

Under the provisions of Sec. 33-1303(b) of the **Idaho Code** a certificate may be renewed for a teacher after he (or she) has reached the age of 70 years; but the certificate is valid only for substitute teaching after the close of the school year in which the holder attains his (or her) 70th birthday. (B. James Koehler, Jr.)

7-27-60—(4) HON. D. F. ENGELKING, Superintendent of Public Instruction.

(I) Sec. 33-514 of the **Idaho Code**, as amended, provides that: A plan for division of school district should be approved by the State Board of Education. (II) When a plan is submitted to the State Board it is highly advisable to notify the Local Board that it may be given an opportunity to present relevant facts prior to the approval or disapproval of the plan by the State Board. (III) If the plan is approved, an election must be called by the Board of County Commissioners (Sec. 33-510 of the **Idaho Code**.) (IV) It appears that a simple majority of electors may determine the issue of division. (B. James Koehler, Jr.)

8-2-60—(1) MISS BETH MOON, Heyburn.

A store license is not required for the operation of home dressmaking and the making of rugs in the home. Under Sec. 63-2409 of the **Idaho Code** the term "store" is defined as an establishment at which goods, wares or merchandise are sold at retail or wholesale. (E. G. Elliott)

8-2-60—(2) DONALD H. WOODMAN, Gem County Auditor; Emmett.

(I) Sec. 34-638 of the **Idaho Code** provides that vacancies occurring after the holding of any nominating election may be filled by the party committee of the state, district or county. (II) Sec. 34-648 of the **Idaho Code** provides the committee may fill the vacancy and the chairman and secretary shall then file with the proper officer a certificate setting forth the cause of the vacancy, the name of the person nominated, the office for which he was nominated, the name of the person for whom the new nominee is to be substituted, the fact that the committee was authorized to fill vacancies and such further information as is required to be given in an original certificate of nomination. (III) The Secretary of State, when such certificate is filed with him, is required to notify the county auditors to insert the name of the person who has thus been nominated in place of the original nominee. (E. G. Elliott, Frank L. Benson)

8-5-60—POTATO AND ONION COMMISSION, Boise.

Article VIII, Section 2 of the Idaho Constitution provides that "The credit of the state shall not, in any manner, be given, or loaned to, or in aid of any individual, association, municipality or corporation". (II) No authority is vested in the Idaho Potato and Onion Commission by which it may delegate its discretionary authority to a private corporation. (E. G. Elliott, Frank L. Benson)

8-18-60—ROSS E. BARNEY, Assistant Supervisor of Public Instruction.

Sec. 33-806(8) of the Idaho Code limits the use of public school transportation equipment owned or operated wholly or in part by the school district to the transportation of public school pupils to and from public schools or to and from approved extra-curricular activities. (Frank Langley)

8-22-60—BILL NEWNHAM, Boise.

The use or sale of used motor oil which has been reprocessed or reclaimed is governed by Sec. 37-2514 to 37-2520 of the Idaho Code. These statutes provide for the labeling of containers, the indication on containers of the use of reclaimed oil used in blending or compounding in any other petroleum product offered for sale, the affixing of a visible metal tag to the inlet and of the filler pipe storage of the underground tank, displaying and labeling of baskets containing bottles of oil, the forbidding or intermingling of containers of reclaimed oil with unused oil and penalties for violation. (E. G. Elliott, Frank L. Benson)

8-23-60—HON. RULON SWENSON, State Treasurer.

The State Treasurer may invest moneys of the Firemen's Retirement Fund in corporate or municipal bonds backed one hundred percent by the United States Government. (Jedd G. Owens)

8-25-60—WILLIAM T. GOODMAN, Prosecuting Attorney, Minidoka County.

Real property annexed to a city during July is subject to assessment of city taxes for that same year, as Sec. 50-1914 of the **Idaho Code** declares that the fiscal year of municipalities commences on the first day of May, and Sec. 50-1915 of the **Idaho Code** provides that the annual appropriation bill and assessments shall be made during the first quarter of the fiscal year. Note: Chapter 117 of the 1961 Session Law specifies the assessment date as the "second Monday in January." F. L. Benson

8-26-60—LEO J. LECLERC, INC., Insurance Adjusters, Seattle, Washington.

Spraying and Dusting Laws of the State of Idaho, (Sections 22-2208 to 22-2230) make no mention of a time limit wherein a person claiming damage must notify a person causing the damage, thus the Statute of Limitations governing damage to property would apply. (William E. Swope)

8-30-60—(1) DEANE S. SHIPLEY, Chairman of the Democratic Central Committee, Twin Falls.

Sec. 34-624 of the **Idaho Code** in providing for the election of precinct committeemen makes no mention of qualifications. Sec. 34-627, as amended, authorizes the County Central Committees to make their own rules and regulations. It would seem that public policy would require a precinct committeeman to be a resident of the precinct which he represents. (E. G. Elliott, Frank L. Benson)

8-30-60—(2) RICHARD L. McFADDEN, Prosecuting Attorney, Benewah County.

(I) An appointee to the office of County Commissioner serves only until the next election following the occurrence of the vacancy. (II) If a vacancy on the ticket is not filled by the County Central committee prior to the printing of the ballots, stickers may be affixed to the ballots under the provision of Sec. 34-649 of the **Idaho Code**. (E. G. Elliott, Frank L. Benson)

8-31-60-MRS. ALICE WEIGAND, County Auditor, Benewah County.

The name of a candidate should be placed on the general election ballot in the same form that was used in the nominating ballot. However, if changes or misspelling in the name of a candidate is discovered in the canvassing of votes, Sec. 34-1401 of the **Idaho Code** requires that the election judges count the ballots for such candidate if the intention of the electors to vote for him is apparent. (E. G. Elliott, Frank L. Benson)

8-31-60-MRS. DORIS L. KENNEY, Bonner County Auditor.

(I) Idaho law makes no provision for an independent ticket on the ballot. A candidate of a political party must be nominated under provisions of Chapter 6 of Title 34 of the **Idaho Code** (Sec. 34-601 to 34-649) that is, by the voters at a nominating election, by party committee in case of vacancy, or by convention under provisions of Sec. 34-640 to 34-642 of the **Idaho Code**. (II) The use of stickers as provided in Sec. 34-649 of the **Idaho Code** is restricted to the filling of a vacancy by a proper party committee. (III) A write-in candidate may distribute stickers to voters which they may affix on the ballot under Sec. 34-642 of the **Idaho Code** in lieu of writing in the name, but such candidate would not be a candidate of a political party. (Frank L. Benson)

9- 6-60-MRS. ELSIE M. WEBB, Crouch.

It is our opinion that a Constable should not serve as an Election Registrar during his term of office, although there appears to be no statutory law prohibiting such practice. (Frank L. Benson)

9-13-60—HON. JOHN J. O'CONNELL, Attorney General, State of Washington.

Under Sec. 63-105 of the **Idaho Code** property situated in Idaho but owned and used by a Washington municipality is not exempt from Idaho taxation. (Jedd G. Owens)

9-14-60—JOHN G. WALTERS, State Land Commissioner.

(I) Under Sec. 43-725 of the **Idaho Code**, state lands lying within a legally organized irrigation district may not be assessed by the Irrigation District. (II) Where a contract purchaser of state lands defaults in the payment of an irrigation assessment the district may not take title to the lands until the sums due the State have been paid in full. (Jedd G. Owens)

9-15-60—MRS. FRANCES T. DEMAREST, Long Beach, California.

(I) Prior to the enactment of Chapter 299 of the Idaho Session Laws for 1959, the State of Idaho income tax was levied only on income earned within the State; but Sec. 24 of this Act imposes the tax upon a resident from whatever source. (II) A resident is defined by Sec. 13 of the Act as " * * any individual, who at any time during the taxable year resides within the State of Idaho for other than a temporary or transitory purpose," thus, an individual may not be considered a resident for a part of the year and a non-resident for the rest of the year. (III) Sec. 31 of the Act provides that if either the husband or wife are non-residents, they may not file joint returns. (Robert E. Bakes, Frank L. Benson)

9-16-60—(1) MRS. MILTON DALPINO, Florissant, Missouri.

(I) Section 5 of Article VI of the **Idaho Constitution** provides that a person neither gains nor loses residence for the purpose of voting by reason of his presence or absence while employed in the service of this State or of the United States. (II) A native of Idaho in the service who has voted in another state loses his Idaho residence by doing so; and to re-establish his residence here he must actually live or "reside" within the State of Idaho again for at least six months next preceding the day of election at which he proposes to vote. (Frank L. Benson)

9-16-60--(2) D. L. CARTER, Prosecuting Attorney, Washington County.

(I) Whenever an error has been made by the Election Judges in canvassing votes and making their return, such error should be corrected. (II) If as a result of an error in canvassing votes a certificate of nomination is erroneously issued, certifying as the nominee a candidate who did not get the most votes, such certificate is void and ineffective and should be so declared. (III) Sec. 34-634 of the **Idaho Code** provides that should two candidates of a political party receive the same number of votes for the same office at the nominating election, such candidates should determine by lot which shall be the candidate of the Party. (IV) Unless the candidates who are tied determine by lot within a reasonable time after the primary, or after the tie is discovered, a vacancy occurs on the ticket and such vacancy may be filled by the county central committee as provided by Sec. 34-648 and 53-649 of the **Idaho Code**. (E. G. Elliott)

9-21-60--LEO R. MANWARING, Director of Finance and Accounting, Department of Public Assistance.

Sec. 15-312 of the **Idaho Code** lists the priorities in right of administration of the estate of a person dying intestate. If there are no living heirs of the estate of recipients of "Old Age Assistance," or if the heirs lack interest in serving as administrator, the Director of the Department of Public Assistance may petition for appointment as administrator, as a creditor or as a special administrator as provided by Sec. 15-355 of the **Idaho Code** et seq. (Jedd G. Owens)

9-27-60—HON. WARREN G. MAGNUSON, United States Senator,
State of Washington, Washington, D. C.

(I) A railroad employee who is a Washington resident but whose post of duty is in Idaho, and who in the course of his employment may cross the state line into Washington but returns to his post of duty in Idaho before terminating his daily employment, is subject to the Idaho income tax. (II) Conversely, where a Washington resident's post of duty is in Washington, and who in the course of his employment crosses the state line into Idaho and then returns to his Washington post of duty before terminating his daily employment, is not subject to the Idaho income tax. (III) Non-residents of Idaho may not file joint returns under the Idaho Income Tax Law. (Robert E. Bakes)

9-28-60—FLOYD YOUNG, Superintendent of School District 272,
Rathdrum.

Sec. 34-1601 of the **Idaho Code** provides that: (I) Special elections shall be conducted and the results thereof canvassed and certified as near as practicable in like manner as general elections, except as otherwise provided. (II) Special elections may not be held within ninety days next preceding a general election. (Jedd G. Owens)

9-30-60—HON. JOE R. WILLIAMS, State Auditor.

Assignments of obligations owing by the State are governed by Sec. 67-1022 which provides in part as follows:

"* * * The state auditor may recognize assignments for the purpose of paying or collecting federal excise taxes required to be collected by the state or any of its instrumentalities, assignments for the purpose of purchasing securities of the United States or of the State of Idaho in time of war for the benefit of the assignor, the United States or the State of Idaho; assignments to the State of Idaho in whole or partial retirement of any obligation to the state or any of its instrumentalities; and such other assignments as may be specially approved by the State Board of Examiners." (II) Except for the assignments which are specifically exempt in said Sec. 67-1022, a garnisher will prevail over an assignor unless and until the Board of Examiners has recognized such assignment. (Frank L. Benson).

- 10- 4-60—MR. LOUIS LOKEN, JR., Attorney at Law, Watertown, South Dakota.

(I) A person registered to vote in Idaho who is temporarily absent from the State may cast an absentee ballot by writing to and obtaining an election ballot from the County Auditor of the county of his residence in Idaho. (II) A person who leaves Idaho with the intent of making another state his home is deemed to have lost his Idaho residence and he is, thus, ineligible to vote in Idaho. (III) A person qualified to vote in Idaho may register by mail under the provisions of Sec. 34-815 of the **Idaho Code**. (IV) Registration must be accomplished before a voter is entitled to vote in Idaho. (Frank L. Benson)

- 10- 5-60—HONORABLE H. MAX HANSEN, Former State Senator, Camas County, Fairfield.

(I) The State Department of Public Assistance has no authority to sell property belonging to an old-age recipient. (II) In the event the State of Idaho acquires title to real property of an old age recipient through foreclosure of its lien, it may become surplus and would be subject to disposal by the State Land Board under the provisions of Sec. 58-331 of the **Idaho Code**. (III) Upon notice from the Department of Public Assistance that an old-age recipient has transferred real property upon which the State has a lien it is the duty of the Prosecuting Attorney to foreclose the lien.

(IV) In the event of the death of an old-age recipient and the probate of his (or her) estate, the Department of Public Assistance should present its claim to the executor or administrator of the estate. (E. G. Elliott)

ATTORNEY GENERAL'S REPORT

10-6-60—HON. WILLIAM WEBSTER, State Representative, Kootenai County.

(I) A municipal corporation, incorporated under the laws of the State of Washington and contemplating doing business in Idaho would be a foreign corporation and required to comply with Idaho statutes applicable to foreign corporations. (II) an out-of-state corporation must qualify to do business in Idaho before undertaking any construction in Idaho, such as the building of dams or other operations. (III) A foreign municipal corporation doing business in Idaho would be subject to the tax laws of Idaho. (IV) A foreign corporation may not appropriate water in Idaho for power purposes unless previously qualified to do business in the State. (B. James Koehler, Jr.)

10-10-60—HARTFORD FIRE INSURANCE COMPANY GROUP, Spokane, Washington.

Sec. 54-101 of the **Idaho Code** provides that persons compiling abstracts of title to real estate and demanding and receiving pay for the same, shall file in the office of the County Recorder in which such business is conducted a surety bond in the penal sum of \$10,000.00 for the payment of damages that may accrue to any party or parties by reason of error, deficiency or mistake in any abstract or certificate of title. (Jedd G. Owens)

10-11-60—HON. KELLER H. GILBERT, Judge of the Municipal Court, Philadelphia, Pa.

Extradition in the State of Idaho applies only to criminal cases; and contempt of court orders are not extraditable offenses. (William E. Swope)

10-13-60—R. U. SPAULDING, Commissioner of Finance.

(I) The operation of an Idaho investment company which plans oil drilling operation on its leases in Oregon, but contemplates selling securities only to residents of Idaho would come within the jurisdiction of the Idaho Department of Finance. (II) The underlying purpose of all Blue Sky Laws is to protect the investing public. (III) The Commissioner of Public Investments may not arbitrarily refuse to license a Corporation wishing to sell stock in Idaho; there must be reasonable grounds for his refusal. (Jedd G. Owens)

10-17-60—(1) DOLORES HUNT, Sandpoint.

In order to carry a concealed weapon a person (excepting county, state, and United States officials, peace officers, guards of a jail or officers of an express company on duty) must obtain a permit from the sheriff of the county in which he wishes to carry such weapon concealed. (William E. Swope)

10-17-60—(2) MRS. FLORENCE M. GARDNER, MGR. Station K.T.F.I., Twin Falls

The **Idaho Constitution** in Article III, Section 20 provides as follows: "The legislature shall not authorize any lottery or gift enterprise, under any pretense or for any purpose whatever." (II) A lottery is defined in Sec. 18-4901 of the **Idaho Code** thus: "A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property, or a portion of it, or any share or interest in such property, upon any agreement, understanding or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle or gift enterprise, or by whatever name the same may be known." (III) The Department of Law Enforcement is charged with the duty of enforcing the gambling laws of the State, together with other laws. (William E. Swope) Note: The Sheriffs and Prosecuting Attorneys are also charged with enforcing the gambling and other laws of the State in their respective counties. (Frank L. Benson)

10-21-60—TOM PETHTEL, Kamiah.

(I) Generally, in Idaho cattle may run at large except within herd districts established by the county commissioners in their respective counties (Chapter 24 of Title 25 of the **Idaho Code**), or within cities or villages (Sections 50-1113 and 50-1114 of the **Idaho Code**). (II) The right to graze cattle upon public lands of the United States is regulated or prohibited by Federal legislation or regulation thereunder. (E. G. Elliott)

10-27-60—HUGH C. MAGUIRE, JR., Prosecuting Attorney, Bannock County.

(I) Voters wishing to write-in the name of a candidate should be advised to use the blank space provided for write-in candidates. (II) The crossing out by a voter of the name of a candidate and the writing-in in that space of a name of a write-in candidate should be counted because the intention of the voter is plain. (E. G. Elliott, Frank L. Benson)

11-7-60—(1) MISS BESS C. JENKINS, Deputy Clerk of the District Court, Fremont County, St. Anthony.

(I) Article 6, Section 3 of the **Idaho Constitution** and Sec. 34-402 of the **Idaho Code** recognizes the necessity for and the right to "restoration of citizenship" of persons who have been convicted of a felony. (II) Since statehood, the Governor has been vested with authority to restore citizenship to one convicted of a felony excepting treason, such authority having been contained in the **Idaho Code Annotated** as Sec. 19-3810. (III) It is the opinion of this office that this section has not been repealed, although it was omitted from the **Idaho Code** by the compiler. (E. G. Elliott)

11-7-60—(2) BANDELIN & COGSWELL, Attorneys at Law, Sandpoint.

(I) Sec. 54-1218 of the **Idaho Code** requires that the Board of Trustees of a school district engage the services of a registered professional engineer in drafting plans and specifications for a major alteration or renovation of a school building involving professional engineering. (II) A regulation of the State Board of Education requiring school districts to engage a licensed architect is reasonable and should be given serious consideration. (E. G. Elliott, Frank L. Benson)

11-15-60—(1) WILLIAM S. RILEY, Chief of Police, Arco.

(I) Under Sec. 31-2002 of the **Idaho Code**, a constable is a precinct officer, and a constable's precinct is the same as that of a Justice-of-the-Peace and should be established by the County Commissioners. (II) Sec. 34-207 of the **Idaho Code** provides that constables shall be elective officers; thus, if no constable is nominated in a Justice-of-the-Peace precinct, one may be elected by write-in votes. (III) The general duties of constables are prescribed in Sec. 31-3002 of the **Idaho Code**. They must attend the courts of Justice-of-the-Peace within their precincts whenever so required, and within their counties execute, serve and return all processes and notices directed or delivered to them by a Justice-of-the-Peace in such county, or by any competent authority. (E. G. Elliott)

11-15-60—(2) HAROLD JOHNSON, Executive Secretary, State Tax Commission.

(I) Sec. 63-2801 of the **Idaho Code** provides for a tax of mineral rights reserved upon a conveyance other than a patented mining claim conveyed from the United States Government, such assessment to be not less than \$5.00 per acre. (II) On patented claims, when the net annual proceeds tax is not being imposed on reserved mineral rights reservation, this property may be taxed as other real property at its actual cash value. (Dwight F. Bickel)

11-15-60—(3) STANLEY I. TRENHAILE, Idaho Commissioner of Agriculture.

The Idaho Potato Producers Association is a private incorporated organization; and the payment of the potato tax to the Potato and Onion Commission does not make the grower paying such tax a member of the Idaho Potato Producers Association. (William E. Swope)

11-18-60—NELS T. SAHL, Prosecuting Attorney, Fremont County.

(I) The County Commissioners, under the provisions of Sec. 31-3501 of the **Idaho Code** are authorized to make a levy in order to provide for the indigent children of the county at the Children's Home. (II) Under said Sec. 31-3501, the County Commissioners are vested with authority "to maintain * * * buildings and to equip the same" for the purpose of caring for the **dependent poor**. We are of the opinion that this language is broad enough to authorize the County to contribute to the Children's Home to assure that facilities will be available for dependent children of the County in the future. (William E. Swope)

11-23-60—(1) BOARD OF TRUSTEES, School District No. 60, Shelley.

Sec. 33-1503 of the **Idaho Code** (amended by Chapter 33 of the 1957 Session Laws) provides that in the event a teacher should elect to become a member of the Teachers' Retirement System "such election shall be irrevocable, notwithstanding possible subsequent withdrawals from, and re-entries into service." (B. James Koehler, Jr.)

Note: Chapter 302 of the 1961 Session Laws provides that any member of the System "may elect to cease to be a member at any time by filing with the (Retirement) Board a notice of such election on a form prescribed by the Board. Any such election to cease to be a member shall be irrevocable." (F. L. B.)

11-23-60—(2) MR. CLARK HAMILTON, Donnelly.

Selling potatoes in containers, or sacks, falsely labeled as to grade or quality is both criminally and civilly illegal. Title 22, Chapter 9, of the **Idaho Code** provides for the packing and grading of potatoes for sale "within the State of Idaho, or offered for shipment within or outside the State of Idaho", under the proper label, or grade, whether state or federal; and Sec. 22-912 of the **Idaho Code** provides for a penalty for violation: A fine of not more than \$500.00 or imprisonment in the county jail not to exceed six months, or both. (E. G. Elliott)

12-1-60—JOHN A. EVANS, Sheriff, Oneida County.

Section 4, Chapter 198, Session Laws (Sec. 34-2303 of the **Idaho Code**) provides that upon receiving the application for a re-count of votes together with the remittance required by Sec. 34-2302, I.C., the Attorney General shall cause all ballot boxes used in such election in the precinct or precincts in which re-count is to be made, to be immediately impounded and taken into custody by the sheriff. (Frank L. Benson)

12-7-60—STANLEY I. TRENHAILE, Commissioner of Agriculture.

Sec. 37-1003b(f) of the **Idaho Code Annotated** prohibits "the sale or offer to sell or giving of any article in any transaction involving the sale or disposal of milk, cream or dairy products, for less than the invoice or replacement cost thereof, whichever is lower, to secure or retain the milk, cream, or dairy products business of any wholesale customer or any person who buys as a consumer." (William E. Swope)

12-19-60—NELS T. SAHL, Prosecuting Attorney, Fremont County.

A disabled veteran may claim as exempt property under Sec. 63-105 of the **Idaho Code**, a trailer house owned and occupied by him as a home. (Dwight F. Bickel)

12-23-60—MRS. HELEN LINCK, Clerk of Washington County Board of Commissioners, Weiser.

(I) In a situation where the courthouse was destroyed by fire, thus destroying the county tax records, and leaving the County Treasurer with an incomplete account of taxes delinquent; and the County Treasurer thereafter inserts only taxes which have accrued or become delinquent subsequently, the fire does not relieve the tax payer of his obligation to pay the taxes. (II) The fact that the County Treasurer has failed to insert on a person's tax notice taxes due does not void the assessment and the County after discovering that a property owner is delinquent may thereafter charge the taxes against his property and if such taxes are not paid they become a lien against the property by the County Treasurer when taxes have been delinquent for three years. (III) The only legal action required of the County Commissioners is to require that the County Treasurer and County Recorder act as the law provides. (Frank L. Benson)

- 1- 6-61—(1) MR. HARRY M. WATSON, Attorney at Law, Ely, Nevada.

Sec. 55-104 of the **Idaho Code** provides that the creation of a joint tenancy must be expressly declared within the instrument itself. (Jedd G. Owens)

- 1- 6-61—(2) MRS. J. P. KELLY, Jerome.

The Idaho State Board of Education is vested with power to select the basic text books and related material for Idaho schools. The policy of the Board is to permit school districts to select such from a list approved by the Board. (B. James Koehler, Jr.)

- 1- 6-61—(3) MRS. MYRTLE KAIL, Twin Falls.

Sec. 63-105 of the **Idaho Code** provides that property belonging to widows is exempt from taxation in an amount not to exceed \$1,000.00 of the full cash value, providing the person owning the same and claiming exemption thereon does not own property the full cash value of which exceeds \$3,600.00, and the person's net income does not exceed \$3,600.00 a year. The person must have been a resident of Idaho for the entire year and the property must be occupied by the person as a home. (Jedd G. Owens)

- 1- 10-61—MR. I. W. STODDARD, In Behalf of Ada County Commissioners, Boise.

The State of Idaho, acting through the Land Board may convey an easement to a county for the maintaining of a public road through real property acquired by the State for use of the State Penitentiary. (E. G. Elliott)

- 1- 12-61—(1) HON. D. F. ENGELKING, Superintendent of Public Instruction.

The provisions contained in Article VI, Section 2, of the **Idaho Constitution** that a voter must have resided in the county where he or she proposes to vote for 30 days next preceding the day of election applies to school elections. But after an election has been held non-compliance with this provision will not void such an election unless it be shown that the results of the election would have been changed by illegal voting. (B. James Koehler, Jr.)

1-12-61—(2) MR. WM. KINNEY, Bonner County Assessor.

Under Sec. 7-717 of the **Idaho Code**, three disinterested residents of the County are appointed by the district court or by Judge thereof, as commissioners to assess and determine damage to land condemned for gas line purposes. Under Sec. 7-718 of the **Idaho Code**, costs may or may not be allowed and, if allowed, may be apportioned at the discretion of the court. (B. James Koehler, Jr.)

1-19-61—HON. WM. J. LANTING, Twin Falls County Representative.

There is no constitutional requirement that a maximum figure must be placed in a bill providing for the payment of the salary for the county weed supervisor; thus, the Legislature may leave the fixing of the salary to the County Commissioners. (Frank L. Benson)

1-20-61—MR. MERTON LOGUE, Sheriff, Valley County, Cascade.

The County is not liable for the expenses incurred by a sheriff who without authority makes a trip outside the State to return two juveniles who were under Probate Court parole. (E. G. Elliott, Frank L. Benson)

1-23-61—HON. ALVIN JOSLYN, State Representative, Elmore County.

Sec. 31-3106 of the **Idaho Code** provides that the County Commissioners shall at the regular session in April next preceding any general election fix the salaries of the County officers to be elected at said general election for a term commencing on the second Monday in January next after such meeting. After the salaries have been fixed they may not thereafter be changed. (Frank L. Benson)

1-31-61—(1) L. C. ROSS, Idaho Falls.

One Justice-of-the-Peace may not enter judgment nor issue execution for another even though both Justices are in the same precinct and have only one Clerk who keeps an official docket for both officials in one set of books. (Frank Langley, Frank L. Benson)

- 1-31-61—(2) RAY W. RIGBY, Prosecuting Attorney, Madison County, Rexburg.

(I) Counties and cities may participate in the cost and expenses of acquiring and maintaining airports and in such proportions as they may mutually determine. (II) Each county or city participating may levy the two mills specified in Sec. 21-404 of the **Idaho Code**. (E. G. Elliott, Frank L. Benson)

- 2-1-61—(1) ALAN ERWIN, Hagerman.

Under Sec. 33-512 of the **Idaho Code**, a school trustee who moves from one trustee zone and establishes his residence in another within the same school district loses his office as trustee. (E. G. Elliott)

- 2-1-61—(2) JOHN G. WALTERS, Commissioner, State Land Department.

When the purchaser of state timber defaults under a timber sales certificate and a contract which specifies that title to the timber does not pass until the timber is cut, scaled and payment for stumpage at the contract rates has been made to the state, and state may resell the timber without a court order to prevent losses caused by weather. (Dwight F. Bickel)

- 2-3-61—EUGENE C. SMITH, Prosecuting Attorney, Ada County.

The language of House Joint Resolution No. 9, appearing on page 661 of the 1959 Session Laws, which initiated the constitutional amendment to abolish the office of county surveyor, specifically provided that the amendment would not go into effect until the general election in 1962; and county surveyors elected in 1960 have a right to that office for the two-year period for which they were elected. (William E. Swope)

- 2-6-61—(1) TERRELL O. CARVER, M. D., Administrator of Health.

Sec. 16-1815 of the **Idaho Code** provides that whenever a child is placed by the Court in custody other than that of his parents, or is given medical, psychological or psychiatric treatment under order of the Court, the child shall be a charge upon the County in which such child resides; but the Court may order the parent to pay the charges for the care and treatment of the child as is within his ability to pay. (Jedd G. Owens)

2- 6-61—(2) DWIGHT CROWELL, Sandpoint.

The Idaho Supreme Court in the cases of Pacific Northwest Pipeline Corporation vs. Waller, Volume 8 of the Idaho Reports, Pages 105-110, and Yellowstone Pipeline Company vs. Drummond, Volume 77 of the Idaho Reports, Pages 36-45, held that the 1953 amendment of Sec. 7-717 of the **Idaho Code**, which purports to vest title in the condemner upon entry of order for immediate possession prior to determination and payment of just compensation, does not provide for due process of law as required by Article I, Section 14, of the **Idaho State Constitution**. (Jedd G. Owens)

2- 9-61—CHARLES HERNDON, Prosecuting Attorney of Lemhi County, Salmon.

When the District Court holds a tax paid under protest void, or orders an assessment cancelled or reduced, the refund should be made from the county current expense fund under Sec. 63-2202 of the **Idaho Code**. The County Auditor should then reimburse the county current expense fund by collecting the charge from the Taxing Districts or offsetting the charge from future revenues of the District. (Dwight F. Bickel)

2-10-61—BELLWOOD & GOODMAN, Attorneys at Law, Rupert.

(I) The form of taxpayer's statement referred to in Sec. 63-1202 of the **Idaho Code** is the form prescribed by Sec. 63-212, I.C. (II) The State Tax Commission has not prescribed as mandatory the use by county assessors of the form "Merchant's Statement of Merchandise Inventory" but has no objection to its use by county assessors; such form may be offered by the assessors as a convenience to the taxpayer to supply information which the assessor could demand under oath. (Dwight F. Bickel)

2-15-61—HON. D. F. ENGELKING, Superintendent of Public Instruction.

(I) Sec. 33-720 of the **Idaho Code** prohibits a school board member from being paid for services rendered during the time he serves as such member. (II) Under Sec. 5-217 of the **Idaho Code**, the statute of limitations for medical examination is four years. (III) A bill for medical examinations of students made by a doctor who is elected a member of the school board may be paid before he enters into the duties of his office. (B. James Koehler, Jr.)

2-22-61—MR. HOMER CROLLARD, Trust Department, Yakima, Washington.

(I) No person who is not a bona fide resident of the State is competent to serve as an administrator under the provisions of Section 15-317 of the **Idaho Code**. (II) Sec. 30-511 of the **Idaho Code** provides that no foreign corporation may act as, or be appointed as, administrator or executor of an Idaho estate. (Warren Felton)

2-24-61—EUGENE TAYLOR, Latah County Assessor, Moscow.

(I) Sec. 63-105B of the **Idaho Code** (Section 3, House Bill No. 17 of 1961 Legislative Session) provides that a house being purchased by a church for use as a parsonage must be occupied as such to be exempt from taxation. (II) Vacant farm land purchased by a church under an unrecorded contract of sale is not exempt from taxation since it is not being used for public worship. (III) Taxes are assessed against the record holder of real property; and the assessor is not bound to look behind the records as to ownership of property. (Dwight F. Bickel)

2-27-61—HON. CARL BURT, Ada County Representative.

If House Bill 21, now under consideration by the Idaho Legislature, becomes law, it will have repealed House Bill 71 which was approved by the Governor February 18, 1961, because of irreconcilable inconsistency between the two bills, and where such inconsistency exists the last law enacted will prevail. (Robert E. Bakes)

2-28-61—(1) J. WRIGHT BAYLOR, Superintendent of Schools, Cottonwood.

(I) The Board of Trustees of a school district proposing to discontinue an attendance unit located within the boundaries of what was a previously organized district, which attendance unit is now wholly situate within the boundaries of the reorganized district and which attendance unit was maintained as a school during the year previous, must give notice of the proposal by posting and printing not later than July 1 preceding the term for which such discontinuance is to be effective. (II) If five qualified electors of such previously organized district at any time between June 1 and August 1 petition the Board for an election on the question of discontinuance, the Board shall order an election to be held. (III) If two-thirds of the electors in such previously organized district shall vote against discontinuance, the Board shall be without power to discontinue such attendance unit. (Warren Felton, Frank L. Benson)

2-28-61—(2) MRS. GRACE CUMMINGS, New Plymouth.

(I) The guardian of a minor who resides outside the State of Idaho may remove personal property belonging to the minor upon application to the Probate Court of county in which the property is situated. (II) If the minor owns real property in Idaho it would appear advisable to have an Idaho resident appointed guardian of the Idaho estate. (Frank L. Benson)

2-28-61—(3) HAROLD JOHNSON, Executive Secretary, State Tax Commission.

(I) Uranium ores which are mined outside the State of Idaho by a corporation incorporated under the laws of the State of Washington which are stored in a warehouse while awaiting use by the Atomic Energy Commission are not exempt from taxation if the corporation owns the warehouse. (II) Maintaining a warehouse within the State of Idaho is doing business within the State and a corporation owning such would be required to comply with the laws of the State pertaining to foreign corporations. (Dwight F. Bickel)

3-1-61—(1) MRS. LEONARD GAFFNEY, Wallace.

Idaho law does not require dealers or manufacturers of household appliances to keep replacement parts available for purchasers and users thereof. (E. G. Elliott)

3-1-61—(2) GEORGE GREBE, Attorney at Law, Kuna.

(I) Section 14 of Article V and Section 2 of Article XII of the **Idaho Constitution** limits the jurisdiction of the Village Police Judge to offenses committed within the territorial limits of the Village. (II) The language of Sec. 50-712 of the **Idaho Code** neither directly nor by inference gives the Village Police Judge jurisdiction over offenses committed beyond the territorial limits of the village; and any such construction of said section would be contrary to the above cited provisions in the Constitution. (E. G. Elliott, Frank L. Benson)

3-1-61—(3) FRANCIS J. RASMUSSEN, Prosecuting Attorney, Caribou County.

(I) Sec. 19-3910 of the **Idaho Code** provides that the defendant must be personally present before the trial can proceed. (II) A non-resident Fish and Game Law violator may not appoint by letter a Fish and Game conservation officer or any other person to appear before the Justice Court for him and plead guilty and tender a fine in settlement of a misdemeanor or charge. (III) Conservation officers may arrest a game law violator and take him before the Probate Judge or a Justice of the Peace, who may require a bond; and if the violator does not appear at the time set for trial the magistrate may declare the bond forfeited. (E. G. Elliott, Frank L. Benson)

3-3-61—(1) J. F. ARNOLD, Spokane, Washington.

(I) Idaho law requires that Articles of Incorporation must be signed in triplicate by each of the incorporators and acknowledged by at least three of them before an officer authorized by the laws of Idaho to take acknowledgments. (II) Persons contemplating forming an Idaho Corporation should consult an Idaho lawyer to advise them on matters of Idaho corporation law. (Frank L. Benson)

- 3- 3-61—(2) HAROLD JOHNSON, Executive Secretary, State Tax Commission.

The furnishing of electric power on a wholesale basis by one rural electric cooperative to another for subsequent resale to users, upon which resale the gross earnings tax will be imposed, is not "distribution and delivery of electric power" within the meaning of Sec. 63-3501(b) of the **Idaho Code** by the first cooperative; and the receipts of cooperative No. One are not subject to the three and one-half gross earnings tax. (Dwight F. Bickel, Frank L. Benson)

- 3- 3-61—(3) FRED F. KONDO, Attorney at Law, Priest River.

Under the Public Depository Law of Idaho (Section 57-101 through 57-145 of the **Idaho Code**), a Branch Bank may qualify as a depositor of public funds. (Frank Langley)

- 3- 3-61—(4) STANLEY MORRELL, Arco.

(I) Under the provisions of Sec. 43-111 of the **Idaho Code** as amended, and Sec. 43-113, I.C., a voter in an irrigation district election must be a land owner within the district and a resident of the district and of the county within which the district or a portion thereof is located. (II) Registration is not required of a voter in an irrigation district, but judges of the election should require each person who offers to vote to subscribe to an elector's oath. (E. G. Elliott)

- 3- 3-61—(5) GLEN RAMSEY, Worley.

A land owner has no right to close a public road which was established by prescription, nor to interfere with traveling thereon in any way, unless the road had been abandoned for five years. (E. G. Elliott, Frank L. Benson)

- 3- 5-61—LORIN H. HASKINS, Twin Falls.

There appears to be no Idaho statutes pertaining to dog racing. Sec. 18-3801 through 18-3809 of the **Idaho Code** prohibit certain types of gambling, and Sec. 18-3809 specifically prohibits "pool-selling" or "book-making." Article III, Section 20 of the **Idaho Constitution** provides that lotteries shall not be authorized by the Legislature. (Frank Langley)

- 3- 7-61—MRS. KIRK M. MCGREGOR, Lewiston.

Although there is no specific law on the matter, a precinct committeeman should be a resident of the precinct he represents. (E. G. Elliott)

- 3- 8-61—(1) PERCY CHRISTENSEN, Oakley.

(I) To organize an irrigation district, fifty or a majority of the land owners within the proposed district must sign and present to the County Commissioners a petition for the organization. The petition must then be approved by the Department of Reclamation and two-thirds vote of the land owners is required to authorize its formation.

(II) A land owner within the proposed district may present objections to the County Commissioners and to the State Reclamation Department before the election.

(III) After the District has been organized, a land owner may petition the Board of Directors to have his land excluded. (E. G. Elliott)

- 3- 8-61—(2) HON. MANNE LINDHOLM, Consul General of Sweden, San Francisco, California.

Chapter 44 of the 1959 Idaho Session Laws amended Sec. 32-206 of the **Idaho Code** so as to delete therefrom the provision prohibiting "marriages of white persons with mongolians, negroes and mulattoes." (Frank Langley)

- 3- 9-61—(1) MRS. VIRGIL CASEY, Portland, Oregon.

(I) Under Sec. 63-105 of the **Idaho Code**, as amended, widows to be entitled to a tax exemption must have been Idaho residents a full year and must occupy the property as a home. (Frank Langley)

3-9-61— HON. RALPH R. HARDING, House of Representatives,
Washington, D. C.

(I) A "river bed" was defined by the United States Supreme Court in the case of Howard v. Ingersall, Volume 54 of the U.S. Supreme Court Reports, pp. 338-429, on page 427 thus: "*** the bed is that soil so usually covered by water as to be distinguishable from the banks, by the character of the soil, or vegetation, or both, produced by the common presence and action of flowing water." (II) The Idaho Supreme Court in the case of Northern Pacific Railway Company v. Herzel, Volume 29 of the Idaho Reports, pp. 438-463 held that the Legislature may not alienate the title of the State to the beds of navigable streams and that the State acquired absolute property in and dominion and sovereignty over all soil under the navigable waters within its borders upon its admission into the Union. (Frank L. Benson)

3-10-61—R. G. BEOWN, Brigham City, Utah.

No person shall be permitted to have more than one motor vehicle operator's license at any one time as provided by Sec. 49-307 of the **Idaho Code**. No one shall receive an Idaho operator's license unless and until he surrenders all valid operator's licenses issued to him by other jurisdictions. (Frank L. Benson)

3-14-61—(1) FREDERICK HUGHES SNOOK, Attorney at Law,
Salmon.

(I) All valid contracts previously entered into by any of the component school districts shall become obligations of a newly formed district, but bond issues must be carried on within the old districts. (II) The new board of trustees **may** carry on the continuing contract rights of teachers if the position still exists at the same employing unit. (III) There should be a strict compliance with the provisions contained in Sec. 33-508 of the **Idaho Code** relative to the giving of notice of public hearings of any proposal by the County Committees for reorganization of a school district. (Warren Felton)

3-14-61—(2) EDWARD YAZDA, Edmonton, Alberta, Canada.

Sec. 49-1006 of the **Idaho Code** provides that the driver of a vehicle involved in an accident resulting in injury or death to any person, or property damage to an apparent extent of \$50.00 or more, shall give immediate notice to the local police department if the accident occurs within a municipality, otherwise to the office of the county sheriff or nearest office of the state police. Within 5 days after such an accident the driver of the vehicle must forward a written report of the accident to the Department of Law Enforcement. (Will S. Defenbach)

3-16-61—WILLIAM E. WELSH, Secretary-Manager of the National Reclamation Association, Washington, D. C.

Article XV, Section 3 of the **Idaho Constitution** provides that when the waters of a natural stream are not sufficient for the service of all those desiring the use of the same, those using the water for domestic purposes shall have preference over those claiming it for any other purpose, and those using the water for agricultural purposes shall have preference over those using the same for manufacturing purposes. In an organized mining district, those using the water for mining or milling purposes connected with mining, shall have preference over those using the same for manufacturing or agriculture. (E. G. Elliott, Frank L. Benson)

3-17-61—E. R. HOPPER, Commissioner of Law Enforcement.

Since House Bill No. 180 of the 36th Legislature contains no emergency clause, Section 3 of the Act which provides that "this act shall take effect as from January 1, 1961," is unconstitutional and is of no force. The invalidity of Section 3 does not effect the validity of its remaining portions and the act becomes effective 60 days from the end of the session. (Will S. Defenbach)

3-20-61—HAROLD JOHNSON, Executive Secretary, State Tax Commission.

For the present, and until House Bill No. 180 of the thirty-sixth legislative session becomes effective May 2, 1961, (See Opinion of Will S. Defenbach, 3-17-61), trailer houses should be assessed under the old law, that is Sec. 63-1203 of the **Idaho Code**. (Dwight F. Bickel)

- 3-21-61—HONORABLE D. F. ENGELKING, State Superintendent of Public Instruction.

Any teacher under the age of seventy, serving an employing unit for the third continuous or consecutive year or for a longer period of consecutive years, is entitled to a continuing contract under Sections 33-1316 through 33-1321 of the **Idaho Code**. (Warren Felton)

- 3-28-61—(1) DALLAS G. ATOR, Superintendent of Schools, Coeur d'Alene.

Article IX, Section 5, of the **Idaho Constitution** and Sec. 33-806(8) of the **Idaho Code** prohibit public schools from using "equipment owned or operated wholly or in part at public expense" for transporting parochial children to and from school, regardless of whether or not the school district would be paid for this service. (Warren Felton)

- 3-28-61—(2) MR. AND MRS. HAROLD SELDERS, New Plymouth.

Article IX, Section 5 of the **Idaho Constitution** and Sec. 33-2704 of the **Idaho Code** prohibit the use or introduction into any public schools of books, papers, tracts or documents of a political, sectarian or denominational character. (Warren Felton)

- 3-30-61—(1) WARNER C. MILLS, Director Liquor Law Enforcement, Department of Law Enforcement, Boise.

It was not the Legislature's intent to include bowling alleys within the term "sports arena" as used in Sec. 23-944(c) of the **Idaho Code**, and persons under the age of twenty-one would be prohibited from entering bowling alleys wherein beer or intoxicating liquor is sold. (Will S. Defenbach)

- 3-30-61—(2) STANLEY I. TRENHAILE, Commissioner of Agriculture.

The amendment of Sub-section 11, Sec. 22-1207 of the **Idaho Code** by House Bill 238, in providing that no expenditures by the Potato and Onion Commission shall be authorized except upon the affirmative vote of six or more members of the Commission, was intended to apply to the new Commission which will be appointed July 1, 1961. Until that time the present Commission should continue to operate under the old law as it was before House Bill 238 became effective. (Frank L. Benson)

- 3-31-61—ARCHIE W. SERVICE, Lava Hot Springs Foundation, Lava Hot Springs.

There is no liability on behalf of the State or the members of the Lava Hot Springs Foundation for tort liability to patrons of the Foundation's facilities. (Frank L. Benson)

- 4-4-61—J. R. MICHELS, Assistant Vice President, First Security Bank of Utah, Salt Lake City, Utah.

(I) Sec. 33-909 of the **Idaho Code**, as amended by Section 1, Chapter 50 of the 1959 Session Laws, provides that if two-thirds of the votes cast in a school-bond election favor the issuance of the bonds, they may be issued at any time within two years of the date of such election. (Warren Felton)

- 4-7-61—(1) EVERETT B. TAYLOR, City Attorney, Hailey.

Article I, Section 20, of the **Idaho Constitution** provides that "No property qualification shall ever be required for any person to vote or hold office except in school elections, or elections creating indebtedness, or in irrigation district elections." (Frank Langley)

- 4-7-61—(2) MRS. NELL BREWER, Village Clerk, Stanley.

Sec. 50-1704 of the **Idaho Code**, provides that an elector must reside within the limits of a city or village for a minimum of three months next preceding an election to be eligible to vote in the village or city election. (Frank Langley)

- 4-7-61— HENRY T. DRENNAN, State Librarian, Boise.

(I) A library district created pursuant to Chapter 26, Title 33 of the **Idaho Code**, is eligible to issue tax anticipation notes. (II) Under the provisions of Sec. 63-3102 of the **Idaho Code**, tax anticipation bonds or notes may be issued only for, and during the "current fiscal year" in which the taxes are to be collected, and for only seventy-five percent of the taxes levied for the year and not collected. (Dwight F. Bickel)

- 4-10-61—AGENCY CREEK THORIUM AND RARE METALS CORPORATION, Salmon.

(I) Sec. 30-102 of the **Idaho Code** requires that two-thirds of the incorporators of an Idaho general business corporation be citizens of the United States. (II) Under the provisions of Sec. 30-139 of the **Idaho Code**, the directors of a corporation need not be share holders. (III) Both the Federal law (30 U.S.C.A.) and Sec. 47-911 of the **Idaho Code** require that mining claims on Federal land be located by and patent secured by American citizens or persons who have declared their intention to become citizens. (Frank L. Benson)

- 4-12-61—(1) JAMES J. MAY, Prosecuting Attorney, Twin Falls County.

(I) A motor vehicle used by a canal company would come within the term "operating property" and would be exempt from taxation under Sec. 63-105(1) of the **Idaho Code**. (II) House Bill No. 17 of the 1961 Session Laws contained an emergency clause becoming effective February 19, 1961; and such vehicles are exempt from taxation for the entire year. (Dwight F. Bickel)

- 4-12-61—(2) MRS. IRIS B. SCOTT, Valley County Assessor, Cascade.

(I) Sec. 63-307 of the **Idaho Code** provides that the validity of the assessment shall not be affected by any mistake in the name of the owner or failure to designate such owner. (II) When two persons claim ownership of the same parcel of land, the county assessor under Sec. 63-310 of the **Idaho Code** may enter the names of both as owners in the column provided for that purpose. (Dwight F. Bickel)

4-14-61—(1) G. H. SHELLABERGER, Clerk of the City of Nampa.

No provisions should be made on the ballot for write-in candidates in a "run-off" or second election, since to do so would nullify the effect of Sec. 5-3724 of the **Idaho Code**. The Legislature intended that the first election should be the election at which the candidates should be chosen and that the second should be held only if no candidate received a majority of the votes cast. (Frank L. Benson)

4-14-61—(2) HENRY T. DRENNAN, State Librarian, Boise.

Real property situated within a Library District and then annexed by a city which is not in the District ceases to be a part of the District upon annexation to the city; and the owner of the property would not thereafter be subject to pay taxes to the District except for the ensuing year. (Dwight F. Bickel)

4-19-61—RITA DEL MAR, Humane Affiliates, El Monte, California.

Idaho law provides that the statutes of limitation is five years for action for the recovery of real property, for actions arising out of the title to real property or rents and profits of the same, for entry upon real estate as a claim, and for adverse possession of real property. (William E. Swope)

5-1-61—EUGENE L. BUSH, Prosecuting Attorney, Bonnevile County.

Prosecuting Attorneys may not represent as private counsel a person in a controversy with the State Tax Commission. Sec. 63-3086 of the **Idaho Code**, (Chapter 29 of the 1959 Idaho Session Laws) specifically provides that the Attorney General and the various **Prosecuting Attorneys** shall be the legal counselors and advisors of the State Tax Collector. (Frank L. Benson)

- 5- 5-61—(1) A. S. FORBUSH, Attorney at Law, Driggs.

(I) A county would be prohibited under Article VII, Section 4, and Article XII, Section 4, of the **Idaho Constitution** from making a levy to assist in the remodeling of a privately owned hospital or in the construction of a new privately owned hospital. (II) If a county should construct a hospital under its statutory authority without any contract or agreement with the privately owned hospital, it may lease the hospital under the provisions of Sec. 31-836 of the **Idaho Code** as amended, and Sec. 31-3504 of the **Idaho Code**. (III) There is no authority for the county to appoint a hospital board to make periodical reports to the County Commissioners where it appears that the County intends to cooperate with a privately owned hospital in the payment of hospital claims and bills of the county's sick and poor. (E. G. Elliott)

- 5- 5-61—(2) FRANK H. JOSEPH, Prosecuting Attorney, Washington County.

Under Sec. 63-904, **Idaho Code**, County Commissioners have the authority to spend money on secondary roads without having such funds met and matched by State or Federal Aid Funds. (Frank L. Benson, Frank Langley)

- 5-16-61—(1) PEARL PRODUCTION THEATRICAL AGENCY, Blackfoot.

Under Sec. 23-943 of the **Idaho Code** a girl under the age of twenty-one is prohibited from appearing as a member of an entertainment group in a dance hall where intoxicating liquor is sold or consumed. (E. G. Elliott)

- 5-16-61—(2) MRS. LOUISE ANDERSON, City Civil Service, Commission Idaho Falls.

Although Senate Bill 27 of the 1961 Legislative Session amended Section 50-1115 of the **Idaho Code** to remove residence requirements on all but elective city officials, the City Commission may require that all employees of a city reside within the city. (Frank L. Benson)

5-22-61— TILLMAN McCURDY, Culesac.

(I) Article VII, Section 7, of the **Idaho Constitution** requires that all taxes for state purchases shall be paid into the State Treasury, and Article VII, Section 13, provides that no money shall be drawn from the Treasury but in pursuance of appropriations made by law; (II) The Idaho Outfitters and Guides Board created by Senate Bill 85 of the 1961 Legislature is a State Board and fees collected for licenses become state moneys and are subject to the above constitutional provisions. (E. G. Elliott, Frank L. Benson)

5-23-61— P. G. NEILL, State Tax Collector.

The 1961 amendments to Sections 63-3059, 60, 61 and 62 of the 1959 Idaho Income Tax Act, pertaining to the serving of distraint warrants by Deputy Tax Collectors, and the amendments to Sec. 63-3056 in the same Act authorizing the use of collection agencies for collection of tax liabilities, are applicable to outstanding tax liabilities incurred prior to the enactment of the amendment as well as those of the year in which the liability occurred subsequently. (Robert E. Bakes)

5-26-61—(1) E. W. LARSON, Auditor and Recorder, Kootenai County.

The provisions in Sec. 31-3212 of the **Idaho Code** providing that county officials shall not charge the state "for any services rendered in any action or proceeding in which the State of Idaho, or any state board, or state officer in his official capacity, is a party" would not preclude a county from charging state departments a fee for recording documents or furnishing certified copies of recorded documents. (Frank L. Benson)

5-26-61—(2) DR. HARRY F. McEWAN, Animal Industry, Department of Agriculture.

The conducting of "veterinary schools" by a veterinarian at which farmers are claimed to be taught to understand livestock diseases and to treat their own stock, is not a violation of Idaho Law. (E. G. Elliott)

5-26-61—(3) E. HENSTOCK, Route 1, Twin Falls.

Money for redemption of municipal bonds should be held for at least five years by the village treasurer after the advertisement for payment of the bonds at which time the right to collect would be barred by the Statute of Limitations; then the money would probably be subject to transfer by the village trustees under the provisions of Sec. 50-1916 of the **Idaho Code**. Trustees of a village should consult their village attorney on such matters. (E. G. Elliott, Frank L. Benson)

5-26-61—(4) CLYDE TAYLOR, Meridian.

Incidental or temporary operation, or moving of a farm tractor on highways does not require an operator's license under the provision of Sec. 49-308 of the **Idaho Code**. (E. G. Elliott)

5-31-61—HON. D. F. ENGELKING, Superintendent of Public Instruction.

(I) Article IV, Section 18, of the **Idaho Constitution**, provides that in the administration of moneys in cooperation with the federal government the legislature may prescribe any method of disbursement required to obtain the benefits of federal laws; Sec. 33-127 of the **Idaho Code** designates the State Board of Education as the agency to accept financial and other assistance from the United States under such terms and conditions as may be prescribed; and Title 42, Section 1757 of the **United States Code Annotated** provides that funds paid to any state to be used for the school lunch program "shall be disbursed by the State educational agency in accordance with such agreements approved by the Secretary (of Agriculture) as may be entered into by such State Agency and the schools in the state"; thus it is not necessary that a contract between the Department of Education and a freight and storage company which ships the food products involved in this program be put out for bids. (II) In view of the above cited provisions the Department of Education would be vested with authority to the exclusion of all other state agencies to enter into a contract providing for the furnishing of foods for the school lunch program if the contract meets the approval of the U. S. Secretary of Agriculture. (Warren Felton)

6. 2-61—HON. LEONARD JOSEPHSON, Mayor of Payette.

(I) Article XII, Section 1 and 2 of the **Idaho Constitution** provides that the Legislature shall provide general laws for the organization of cities and towns and limits the power of cities and towns to making such ordinances as are not in conflict with the general laws. (II) A city ordinance creating the office of City Administrator and vesting him with the powers and duties of the Mayor would be in violation of the **Idaho Constitution** and Sections 50-317 and 50-321 of the **Idaho Code**. (E. G. Elliott, Frank L. Benson)

6. 4-61—OWEN L. KNOWLTON, Prosecuting Attorney, Nez Perce County.

Under Sec. 11-202 of the **Idaho Code** wages or salaries of certain state employees are subject to execution and garnishment, but there are no statutes relating to garnishment of wages or salaries of municipal employees. (E. G. Elliott, Frank L. Benson)

6. 6-61—STANLEY I. TRENHAILE, Commissioner of Agriculture.

(I) Where inter-state commerce is involved federal laws and regulations control and supersede state laws or regulations if there is a conflict. (II) Sec. 37-1201 of the **Idaho Code** would apply to frozen desserts made and consumed in Idaho but the regulations contained in the Federal Register, Volume 25, No 145, Part 2 would apply to interstate shipments. (Warren Felton)

6. 9-61—D. F. ENGELKING, Superintendent of Public Instruction.

Under Sec. 33-1006 (B) of the **Idaho Code** as amended by Chapter 331 of the Idaho Session Laws, a school district may not claim more classroom units in the computation of its Foundation Program than the number of teachers actually employed. (Warren Felton)

6-12-61—LEN BIELENBERG, Prosecuting Attorney, Latah County.

The records in the County Assessor's Office are public record and subject to inspection as Sec. 9-301 of the **Idaho Code** makes all public records subject to inspection of every citizen except as otherwise expressly provided by statute. (E. G. Elliott)

6-12-61—RALPH E. HALEY, Prosecuting Attorney, Clearwater County.

(I) When a county has re-districted its Justice-of-the-Peace precincts so that it has but one county-wide precinct, it would then have only one constable for the entire county. (II) The distance of travel involved for a constable serving the outlying areas would not be considered a legal prevention in the performance of his duties as to come within the provisions of Sec. 31-301c of the **Idaho Code** for the purpose of appointing a special constable. (III) In a large county with an area (or areas) where people live a considerable distance from where the Justice-of-the-Peace and Constable reside, it would probably be advisable for the County Commissioners to designate such area a separate Justice-of-the-Peace precinct, which would thereby require a Constable. (IV) The sheriff might appoint a deputy residing in an outlying area which has no Constable to perform duties that a Constable would be obligated to perform. (E. G. Elliott, Frank L. Benson)

6-16-61—T. G. PATTERSON, Attorney at Law, Spokane, Washington.

A mission society of a church, if incorporated and authorized to take and hold real property in Idaho, may legally act as trustee for a member who wishes to place his property in the name of the church, and allow the church to operate it until his death, when the property would pass to the church. If the society is not incorporated, a member of the society may act as trustee. (E. G. Elliott)

6-21-61—JOHN G. WALTERS, State Land Commissioner, Boise.

The Statute of Limitations is no defense to the collection of damages for trespass upon state land and the removal of unsold timber, if the property in question is trust property such as that included in Federal grants for public schools, university, agricultural college, penitentiary, etc. (E. G. Elliott)

6-26-61—(1) GORDON A. MADSEN, Assistant Attorney General, Salt Lake City, Utah.

Section 30-501 of the **Idaho Code** requires that every corporation not created under the laws of Idaho or of the United States shall, before doing business in Idaho, file certified copies of the articles of incorporation with the Secretary of State and with the County Recorder of the county designated as its principal place of business in this state. Sec. 30-502, **Idaho Code**, requires such corporation to file in the office of the Secretary of State the name and address of its statutory agent in Idaho. (Frank Langley)

6-26-61—(2) ARLO M. RASMUSSEN, Secretary and Treasurer, St. Charles Irrigation Co., St. Charles.

Irrigation water that is appurtenant to one parcel of land under gravity may be used on other and higher land from the same point of diversion, by use of a sprinkler system, if the water rights of others are not injured by such change. (E. G. Elliott)

7-5-61—(1) JOHN R. KEMPER, Prosecuting Attorney, Lewis County.

Section 40-1612 of the **Idaho Code** provides that whenever the construction, maintenance or repair of a highway or portion thereof in the County may benefit a District in which the highway or portion is not included, the County Commissioners and the respective boards of Highway District Commissioners shall have the power to contract with each other for apportionment of the costs and the levy by the County Commissioners shall be upon all the assessable property of the County. (Frank Langley)

- 7- 5-61— ROBERT M. COLE, Executive Director, Territorial Centennial Commission of Idaho.

Section I of Article II of the **Idaho Constitution** provides as follows:

"The powers of the Government of this State are divided into three distinct departments; the Legislative, the Executive, and Judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any powers properly belonging to either of the other except as in this Constitution expressly directed or permitted."

Since ten members of the Legislature are included as members of the Centennial Commission and are vested with executive powers in controvention of the above section of the Constitution, there is a question as to the validity of Chapter 141 of the 1959 Session Laws which established the Commission. If the Act is valid, there would be no legal objection to private contributions to the Commission for the support of activities named in the Act. (E. G. Elliott)

- 7- 5-61—(2) MRS. LA MONTE BAUER, Clerk of the District Court, St. Anthony.

There is no legal objection to the employment by the County Commissioners of a person nineteen (19) years of age, in a non-official capacity. (E. G. Elliott)

- 7- 5-61—(3) W. D. STEARNS, Director, Unfair Sales Act.

Under Section 48-407 of the **Idaho Code** a retailer may lower his price on the same or similar article to meet a legitimate price of another retailer in the same locality or trade area, but may not lower the price to meet an illegal price of the other. (Warren Felton)

- 7- 6-61—NICK IHLI, County Clerk, Owyhee County.

A person who wishes to vote in a Fire Protection District election must meet the residence qualifications required of an elector under the General Election Laws but he need not be a property owner. (Warren Felton)

7-13-61—WILLIAM J. LANGLEY, City Attorney, Twin Falls.

(I) Chapter 101 of the 1961 Session Laws amends Section 50-1914 of the **Idaho Code** making the fiscal year for cities and villages to begin on the 1st day of January. (II) Chapter 93 of the 1961 Session Laws amends Sec. 50-1701 of the **Idaho Code** to provide that city and village elections shall be held on the first Monday of November, 1963 and biennially thereafter. (Dwight F. Bickel)

7-17-61—(1) ROSS E. BARNEY, Assistant State Superintendent, Public Instruction.

If a lapsed high school district is to be divided and to be annexed by more than one operating district, the State Board of Education is required to hold hearings to consider the merit, or lack of merit, of the petition asking such division and annexation. The State Board of Education is limited to approving or disapproving the petition and may not initiate changes therein. (Warren Felton)

7-17-61—(2) COLONEL R. W. DEWEES, President Missouri Auction School, Kansas City, Missouri.

Section 63-2311 of the **Idaho Code** requires an auctioneer to obtain a license from the Tax Collector and to pay therefor \$5.00 per month; but upon the payment of \$20.00 in advance he may procure an annual license dated from the 1st of March each year which entitles him to conduct auction sales in any county in Idaho. (Frank Langley)

7-19-61—ANDREW F. JAMES, Prosecuting Attorney, Gooding, County.

Section 23-1016 of the **Idaho Code** authorizes municipalities to license beer retailers under the general police powers. Such municipalities may by ordinances regulate the sale of beer so long as the regulations are not inconsistent with Idaho laws. (Dwight F. Bickel)

7-24-61—MR. TOM UTTERBACK, Superintendent of Schools, Murtaugh.

(I) Section 33-714 (14) of the **Idaho Code** prohibits a trustee of a school district from voting to employ any of his relatives or of his immediate family to the position of superintendent, principal or teacher of any school within his district. The decision as to the employment of such relative must be determined by the remaining members of the board.

(II) Under Sec. 59-701 as amended by Chap. 26 of the 1959 Session Laws "Nepotism" is defined as the employment of a "person related to him (the official) or to any of his associates in office by affinity or consanguinity within the second degree"; and relatives of a trustee may not be employed by a school district in positions other than superintendent, principal or teacher. (Warren Felton)

8- 1-61—(1) VERNON E. DROWN, Acting Tax Collector, Boise.

A person appointed "acting" Tax Collector may not be paid a salary in excess of that fixed by the Legislature as the salary for the Tax Collector. (Frank L. Benson)

8- 1-61—(2) VERNON E. DROWN, Acting Tax Collector, Boise.

(I) The Tax Collector is required by Sec. 63-3039(c) of the **Idaho Code** to publish annually such statistics as are reasonably available with respect to the operation of the Department. (II) Article 4, Section 17 of the **Idaho Constitution** requires all state officials to make full and complete reports of their official transactions to the Governor at least twenty days preceding each regular session of the Legislature. (III) Sections 59-608, 9 and 10 of the **Idaho Code** require that all reports required by the laws of the State be delivered to the Secretary of State and that he in turn deliver a copy to the Governor. Thus, the Tax Collector, by delivering copies of his biennial report to the Secretary of State as provided by these Sections, would, in effect, be complying with Article IV, Section 17 of the Constitution. (Robert E. Bakes)

8- 3-61—F. BAYNE WEEKS, Director of Education, and WINSTON G. TAYLOR, Superintendent, Industrial Training School, Saint Anthony.

Only the Idaho Legislature may change the name of the Idaho Industrial Training School; and until such time as the name might be thus changed, diplomas issued by the school should continue to bear the name of the institution. (Warren Felton)

- 8- 4-61—HOWARD E. AHLKOG, Forest Supervisor, Boise National Forest.

Chapter 31 of the 1957 Idaho Session Laws provides that temporary road blocks may be set up by sheriffs, state policeman and policemen of cities only for the purpose of "apprehending persons reasonably believed by such officers to be wanted for violations of the laws" and makes no provision for stopping persons "to obtain names, planned destinations in the forest, etc. . ." and other pertinent information. In our opinion, however, Forest Service officials would have authority to stop persons entering the National Forests in order to obtain such information. (Frank L. Benson)

- 8- 7-61—HON. JOE R. WILLIAMS, State Auditor, Boise.

Section 63-2303 of the **Idaho Code** provides that the County Auditor must furnish printed forms for all licenses, the entire proceeds of which are paid into the county treasury; and Chapter 171 of the 1961 Idaho Session Laws, by amending Sec. 63-2310 to eliminate the provision that part of the license fees shall be paid to State, would relieve the State Auditor from furnishing such forms. (Frank L. Benson)

- 8- 8-61—J. L. MCCARTHY, Commissioner of Finance.

The word "bank" is defined by Section 26-102 of the **Idaho Code** to include any institution "transacting a trust business" as in the Bank Act defined; and there is no distinction as far as regulations and control by the Department of Finance between a **bank** and a **trust company**. (Dwight Bickel)

- 8-14-61—(1) ALVIN DENMAN, Attorney at Law, Idaho Falls.

Section 30-103, **Idaho Code**, requires that "Articles of Incorporation * * * (of a corporation) shall state in the English language: (a) Its purposes"; and this requirement is not met by reference to the provisions of a statute. (E. G. Elliott)

8-14-61—(2) J. L. McCARTHY, Commissioner of Finance.

Section 26-1001, **Idaho Code**, as amended, does not require the consent of existing bank facilities within a municipality in order to establish a branch bank outside the limits but adjacent to the municipality. (Frank L. Benson)

8-14-61—(3) HON. JOE R. WILLIAMS, State Auditor.

A special session of the Legislature should be considered as separate and independent of the regular session and each should make the necessary appropriation for its own expenses. Money remaining from an appropriation for the regular session should not be expended in payment of expenses incurred at the special session. (E. G. Elliott)

8-21-61—WARNER C. MILLS, Director, Liquor Law Enforcement Division, Department of Law Enforcement, Boise.

Sec. 23-903 of the **Idaho Code** provides that no license shall be issued for sale of liquor on premises outside the incorporated limits of a municipality excepting golf courses and resorts. Thus, the sale or dispensing of alcoholic beverages on commercial aircraft within the territorial limits of the State of Idaho, whether on the ground or in the air space above, would be prohibited. (Will S. Defenbach)

8-22-61—THE DEPUTY COMMISSIONER, U. S. DEPARTMENT OF LABOR, Bureau of Employees' Compensation, Seattle, Washington.

(I) Section 32-201 of the **Idaho Code** provides "Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making it is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization, or by a mutual assumption of marital right, duties or obligations." (II) Where there is an impediment to a marriage which is subsequently removed and the parties live together in Idaho as man and wife thereafter, the marital relationship is established. (Warren Felton)

8-24-61—JAMES L. SCHOENHUT, Prosecuting Attorney, Valley County.

Under Section 50-2502 of the **Idaho Code**, it is mandatory that the County Commissioners refuse approval of a plat of a subdivision outside the corporate limits of a city or village, which plat does not make a deed of donation of all streets and alleys shown on said plat. (Frank L. Benson)

8-25-61—EDWARD EMERINE, City Councilman, Boise.

Any plan to tax a newly annexed area at a lesser amount than the original area in the city would be in violation of Article 7, Section 5, of the **Idaho Constitution**, which provides:

"All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, . . ."

(Robert E. Bakes, Frank L. Benson)

9-5-61—MRS. LA MONTE BAUER, Clerk of the Board of County Commissioners, Fremont County.

The County Coroner may not appoint a deputy coroner to act in his absence, as Sec. 31-2003 of the **Idaho Code** specifically provides that every county official, **except** the Coroner, Probate Judge or County Commissioners, may appoint deputies. In the event of the absence of the Coroner from the County, however, the County Commissioners may designate a Justice-of-the-Peace to act in his stead. (Frank L. Benson)

Note: Section 31-2013 provides that no county officer may absent himself from the State for more than twenty days except as a member of the Armed Forces or on a call to service in civilian war work, unless with the consent of the Board of County Commissioners; and in the event an official is absent for more than twenty days in violation of this Statute, the County Commissioners may declare a vacancy in the office and fill the same by appointment. (Frank L. Benson)

9-13-61—J. L. McCARTHY, Commissioner of Finance, Boise.

Section 26-1001 of the **Idaho Code** provides that before an existing bank may establish a new branch or branch office the parent corporation must have a paid-in and unimpaired capital stock of \$250,000.00 and there must be \$25,000.00 of paid-in and unimpaired capital stock in each branch bank or office. (Warren Felton)

9-14-61—MRS. MARY J. WHITE, Clark Fork.

Sections 31-1301 - 31-1306 of the **Idaho Code** provide that every peddler shall, before commencing to do business in this State, obtain a license from the County Treasurer of the County in which he proposes to make sales. (Frank Langley)

9-21-61—MRS. IDA SCHNYDER, American Conference of Real Estate Investment Trusts, Inc., Washington, D. C.

The Idaho "Blue Sky Law" (Chapter 18, Title 26 of the **Idaho Code**) might possibly apply to real estate trusts. The Commissioner of Finance is vested with its administration. (Frank Langley)

9-22-61—(1) HON. JOE R. WILLIAMS, State Auditor.

(I) Under the provisions of Section 14-116 of the **Idaho Code** a non-resident foreigner must appear and claim succession within two years after the death of the decedent to whom he claims succession. (II) Under Sec. 14-117 of the **Idaho Code** when succession is claimed as provided in Sec. 14-116 a non-resident foreigner must claim the benefit of the Escheat Suspense Fund within 18 months after the property or the proceeds therefrom have been deposited therein by order of the District Court. (III) Sec. 14-118 of the **Idaho Code** provides that if no one succeeds to the estate or the proceeds thereof the property of the decedent is placed by the State Treasurer to the credit of the school fund. (Warren Felton)

9-22-61—(2) MRS. FRANCIS J. NUXOLL, Greencreek.

In the case of **Cameron vs. Lakeland Class A. School District No. 272, 82 Idaho 375**, the Idaho Supreme Court held that a school attendance unit is not discontinued when any grades are taught in any particular attendance unit. Section 33-522 of the **Idaho Code** provides that discontinuing an attendance unit means no longer maintaining a school at the location where one was previously maintained. (Warren Felton)

9-24-61—W. D. STEARNS, Director, Unfair Sales Act and J. J. NEWBERRY COMPANY, New York.

Under the Idaho Unfair Sales Law a retailer may lower his price if " * * * in good faith to meet the price of a competitor * * * " selling substantially the same article or product in the same locality or trade area in the same channels of trade. (Warren Felton)

10-4-61—MR. THOMAS C. MORRIS, St. Maries.

In the case of **United States vs. Louie**, a federal court held that where a offense was committed on patented land, the Federal Government would not have jurisdiction of the offense. Federal jurisdiction insofar as Indians are concerned is confined to unpatented land within the exterior boundaries of the reservation. (William E. Swope)

Note: In the case of **Seymour vs. Superintendent of Washington State Penitentiary**, decided January 15, 1962, the U. S. Supreme Court took the position that the State did not have jurisdiction of a crime committed by an Indian on patented land which was a part of the reservation when patented. (Frank L. Benson)

- 10- 5-61—(1) MR. MARK R. ANDERSON, Superintendent Class A School District No. 262, Eden - Hazelton.

(I) Sec. 33-714 of the **Idaho Code** provides that the board of trustees of school districts have power "to invest surplus monēys" exclusive of the bond moneys, in United States bonds, state bonds, state warrants, or county warrants. (II) Sec. 33-905A, I.C. provides " * * * school plant facilities reserve funds may be invested at the discretion of the board of trustees, in United States bonds, state bonds, state warrants or county warrants * * *"
(Warren Felton)

- 10- 5-61—(2) HON. JOHN J. O'CONNELL, Attorney General, Spokane, Washington.

The pardoning power in the State of Idaho is provided for by the Constitution of the State under Article IV, Section 7. The Governor has power to grant respites or reprieves in all cases of convictions for offenses against the State, except treason or conviction on impeachment.
(William E. Swope)

- 10- 9-61—MR. A. E. HESLOP, Idaho Falls.

Article XX of the **Idaho Constitution** provides two ways for amendment: Section 1 provides it may be proposed by either branch of the Legislature, and if agreed to by two-thirds of all the members of each of the two houses it shall be submitted to the electors of the State at the next general election, and if a majority of electors shall ratify the same, such amendment shall become a part of this Constitution. Sections 3 and 4 provide that two-thirds of each house of the Legislature may submit to the people the question of calling of a convention to revise or amend the Constitution, and if a majority of the electors vote in favor, the Legislature shall call the same and the Constitution proposed must then be submitted to and adopted by the people. (E. G. Elliott)

10-10-61—(1) MR. FRED C. DODGE, Oakland, California.

(I) Section 26-1817 of the **Idaho Code** requires all corporations and associations engaged in mining to make a report of their operations to the State Mine Inspector during the month of June of each year. (II) Section 26-1819, **Idaho Code** "provides that any person may obtain a copy of any such report on file in his office by paying fees in such cases made or provided by law." (Frank Langley)

10-10-61—(2) MR. WILLIAM L. FOSTER, Emida.

Sec. 33-1901 of the **Idaho Code** provides that in all school districts of this State every parent or guardian of any child between the ages of seven and sixteen shall cause such child to be instructed in reading, writing, spelling, English grammar, geography and arithmetic and shall cause such child to attend a public or parochial school during a period equal to a portion of each year during which the public schools are in session in such districts. (Warren Felton)

10-17-61—(1) MR. ROBERT SCHMITZ, Pullman, Washington.

Sec. 18-4004, **Idaho Code** provides that every person guilty of murder in the first degree shall suffer death or be punished by imprisonment in the State Prison for life, and the jury may decide which punishment shall be inflicted. Every person guilty of murder in the second degree is punishable by imprisonment in the State Prison not less than ten years and the imprisonment may extend to life. (Frank Langley)

10-17-61—(2) MR. CHARLES J. McNEILL, Lansing, Michigan.

Sec. 18-1502 of the **Idaho Code** makes it a misdemeanor for a minor person to accept or have in his possession tobacco in any form, and upon conviction thereof shall be punished by a fine of not more than \$100.00; and every person who shall give, sell or furnish directly or indirectly any cigarette, cigars or tobacco or shall permit such minor person to frequent any premises owned or managed by or for the purpose of indulging in the use of cigarettes, cigars or tobacco shall be guilty of a misdemeanor, and upon conviction shall be punished for the first offense by a fine of not less than \$50.00 nor more than \$100.00, and for the second offense by a fine of not less than \$100.00 nor more than \$300.00, or by imprisonment in the county jail for a period not to exceed six months. Sec. 32-101 of the **Idaho Code** defines minors as males under twenty-one years of age and females under eighteen years of age. (Frank Langley)

10-17-61—(3) HON. ARNOLD WILLIAMS, Secretary of State.

Changing of the name of "Benewah Soil Conservation District" to the "Benewah Soil and Water Conservation District" would not be in accordance with Sec. 22-2717(1) nor with Sec. 22-2719 of the **Idaho Code**. (E. G. Elliott)

10-19-61—(1) MR. CLYDE BURCH, Jefferson City, Missouri.

There are no Idaho statutes which authorize physicians to incorporate for the practice of medicine. (Frank Langley)

10-19-61—(2) MR. K. J. FOREMAN, JR., Presbyterian Mission, A.P.O. 301, San Francisco, California.

Since Section I, Article 4 of the **United States Constitution** provides that full faith and credit shall be given by each state to the public acts records and judicial proceedings of every other state, Idaho Courts would recognize the legality of adoption performed in other jurisdictions. (Frank Langley)

10-19-61—(3) MR. KENNETH E. BUZZELL, Pullman, Washington.

Sections 19-2513 and 19-2514 of the **Idaho Code** provide that whenever any person is convicted of a felony, the court, unless it suspends judgment and sentence and paroles offenders, shall sentence the offender to imprisonment in the Penitentiary for an indeterminate period of time, stating and fixing in such judgment or sentence the maximum term of imprisonment provided by law, and judgment and sentence shall be known as "an indeterminate sentence." (Frank Langley)

10-20-61—MRS. LE ROY NELSON, Logan, Utah.

Section 36-410 of the **Idaho Code** requires an applicant over fourteen in applying for a resident fish-and-game license to produce his Idaho driver's license as proof of residence. (Frank L. Benson)

10-26-61—HON. JOE R. WILLIAMS, State Auditor.

(I) Article IX, Sec. 3 of the **Idaho Constitution** provides that: No part of the public school fund shall be transferred to any other fund, or used or appropriated except as therein provided, and that the interest thereon **only** shall be expended in the maintenance of the schools of the state. (II) Sec. 5 of the Idaho Admission Bill provides that the interest of the permanent school fund **only** shall be expended in support of schools. (III) Chapter 308 of the 1961 Idaho Session Laws, by pledging the Public School Endowment Fund to the payment of the State's obligation to contribute to the Teacher's Retirement Fund System is in effect attempting a transfer of moneys from the income of the "Endowment Fund" contrary to the Constitution and the Admission Bill and therefore is void, invalid and unconstitutional. (Frank L. Benson)

10-30-61—MR. A. J. SCHURTLEFF, Pocatello.

There are no Idaho statutes requiring Communists in Idaho to register; but the Congress of the United States requires card-carrying Communists to register in each State. (Frank Langley)

11- 1-61—MR. CLIFFORD A. WILCOX, Salmon.

Section 33-1309 of the **Idaho Code** states these as reasons for revocation of a teacher's certificate: neglect of duty, incompetency to instruct, breach of contract, immorality, making a false statement in an application for a certificate, having a certificate revoked in another state or being refused a certificate in another state, or having been convicted of a crime involving moral turpitude. (Warren Felton)

11- 8-61—(1) MR. ELGAR E. MORROW, Priest River.

Section 40-704 of the **Idaho Code** provides: "* * * If, in laying out, widening, changing or straightening of any road, it shall become necessary to take private property, the board of commissioners or the road supervisor, if there be a road supervisor in the county, with the consent and in order of the board, shall cause a survey of such proposed road to be made, together with an accurate description of the lands required therefor. Thereupon such board of commissioners shall endeavor to agree with each owner, resident of said county, for the purchase of a right of way over his land included within such description. If they are able to agree with the owner thereof, the board of county commissioners may purchase the same and pay therefor out of the road fund of the county under their control, and such land shall then be conveyed to the county for the use and purpose of roads." (E. G. Elliott)

11- 8-61—(2) MR. LEAL E. STOKER, San Diego 20, California.

When a person rents a safe deposit box he ordinarily executes a written contract setting forth the names of persons having access to the box. Sec. 14-417 of the **Idaho Code** requires such a contract, which shall provide that the safe deposit company be notified immediately of the death of anyone having access to the box and permit the lessor of the box to have access thereto in the presence of one or more of the other persons having right of access. (Frank Langley)

- 11- 8-61—(3) MR. CHET MOULTON, Director, Idaho Department of Aeronautics.

The Department of Aeronautics has no authority to waive or suspend the increase in registration fees for pilots and airplanes from \$1.00 to \$2.00 per year authorized by Chapter 32 of the 1961 Idaho Session Laws. (Frank Langley)

- 11- 8-61—(4) HON. ARNOLD WILLIAMS, Secretary of State.

Chapter 287 of the 1961 Idaho Session Laws, in creating the Children's Commission which is to be comprised of four members of the Legislature and seven other members, is in direct conflict with the provisions of Article 2, Sec. 1 of the **Idaho Constitution**, which divides the powers of the government into three distinct departments; **legislative, executive and judicial**; and then provides that no person or collection of persons charged with the exercise of powers belonging to one of these departments shall exercise any power properly belonging to either of the others, except as expressly directed or permitted in the Constitution. (E. G. Elliott, Frank L. Benson)

- 11- 9-61—MR. W. B. KENNEDY, Rexburg.

Regulations under 39-101 (13) of the **Idaho Code** prohibits expansion of existing sewer systems which will contaminate the water table. (Warren Felton)

- 11-15-61— MR. JOE N. PENISKA, Priest River.

The Idaho Supreme Court in the case of State v. Arthur, volume 74 of the Idaho Reports pp. 251-265 held " * * the rights reserved by the Nez Perce Indians in 1855, which have never passed from them, to hunt upon open and unclaimed land still exist unimpaired, and that they are entitled to hunt at any time of the year in any of the lands ceded to the Federal Government, though such lands are outside the boundary of their reservation." (Frank Langley)

11-28-61—HON. ROBERT E. SMYLLIE, Governor, State of Idaho.

(I) The Attorney General and the various prosecuting attorneys are designated by Sec. 63-3066 of the **Idaho Code** as "the legal counselors and advisors of the Tax Collector." (II) Sec. 67-1401 of the **Idaho Code** provides that the Attorney General shall "* * * prosecute or defend all causes to which the State or any officer thereof, in his official capacity, is a party" * * * and "To exercise supervisory powers over prosecuting attorneys"; and therefore, any designation of attorneys to advise the office of Tax Collector should be made by the Attorney General. (III) The Governor may not assume to act as acting Tax Collector because Article 4, Sec. 6 of the **Idaho Constitution** provides that the Governor shall, with the consent of the Senate appoint officials whose appointment or election is not otherwise provided for, and Sec. 63-3402 of the **Idaho Code** specifically provides that the Tax Collector shall be appointed by the Governor with the approval of the Senate. (Frank L. Benson)

12-1-61—NINA M. EADON, Twin Falls.

Sec. 15-1139 of the **Idaho Code**, provides for maximum attorney's fees in probating an estate as follows: "* * * where the estate accounted for by the executor or administrator does not exceed \$1,000.00 at the rate of 7%, for all above that sum not exceeding \$5,000.00 at the rate of 5%, for all above that sum not exceeding \$10,000.00 at the rate of 4%, for all above that sum at the rate of 3%, provided the above fees shall not apply when the compensation is fixed by the will." (Warren Felton)

12-5-61—MR. NICK EHLL, Murphy.

There is no authority for holding a coroner's inquest in Nevada on the death of a person killed in Idaho nor for the payment of the costs thereof by the State of Idaho or Owyhee County in which the death occurred. (Frank L. Benson)

1-2-62—MRS. JAMES G. MARTIN, Boise.

The Idaho adoption laws would not preclude a person from following the Idaho procedure in again adopting a Korean orphan after a form of adoption by proxy has been previously followed elsewhere. (Warren Felton)

- 1-3-62—HON. SAM IRVINE, Probate Judge of Benewah County.

A Probate Judge may not personally retain the statutory fee of \$5.00 as provided by Sec. 31-3204 of the **Idaho Code** in performing marriages after or outside of regular office hours, but he may retain any sum given to him voluntarily above the statutory fee. (E. G. Elliott)

- 1-15-62—(1) TOM MORRIS, Prosecuting Attorney, Benewah County.

Sec. 59-701 of the **Idaho Code** prohibits any executive, legislative, judicial, or ministerial or other officer of this State or of its political or municipal subdivisions from appointing or voting for the appointment of any person related to him or to any of his associates in office by blood or marriage within the second degree by affinity or consanguinity to any position of employment when the compensation is paid from public funds. (William E. Swope)

- 1-15-62—(2) H. J. HULL & SONS, Attorneys at Law, Wallace.

The meaning of the word "contiguous" as used in Sec. 28-102 of the **Idaho Code** has not been construed but would probably be held to mean "adjacent" or "connected with." In the case of Hillman vs. City of Pocatello, found in Volume 70 of the Idaho Reports (pp. 69-72), Justice Keeton stated on page 71: "Under statutes authorizing a city or village * * * to annex adjacent or contiguous territory * * * have been generally construed to include only contiguous or conterminous territory * * *." In other words, "adjacent" as used in the statute means connected with and does not contemplate that a city or village should be divided into non-contiguous parts or separated areas." (E. G. Elliott)

- 1-22-62—MR. HAROLD LANCASTER, Filer Highway District, Route 2, Filer.

Although there is no specific authority, the provisions contained in Sec. 40-1615 of the **Idaho Code** provide that the grant of powers to highway boards shall be liberally construed as a broad general grant of powers; thus, in our opinion would permit Highway Districts to expend money for naming and numbering roads. (E. G. Elliott)

- 1-25-62—MR. JORDAN S. KANIKKEBERG, Superintendent Genesee Joint School District No. 282, Latah and Nez Perce Counties, Genesee.

(I) In the purchasing of transportation equipment Sec. 33-720 of the **Idaho Code** requires that school districts should accept the lowest responsible bid. (II) In a joint-school-district advertising for bids generally should be in a newspaper published in each county in which territory of the district is situated. If there is no newspaper in one or more of the the counties comprising the district, *notice should be published in the county (or counties) where there is a newspaper and posted in each county where there is none.* (Warren Felton)

- 1-30-62—EUGENE C. SMITH, Prosecuting Attorney, Ada County.

Article I, Section 6 of the **Idaho Constitution** provides that a person has a right to bail in a reasonable amount and by sufficient sureties, and a person arrested in one county on a warrant issued in another county should be given the opportunity to obtain bail in either the county where he is arrested or the county where he is charged with a crime. (Warren Felton)

Note: Sec. 19-514 of the **Idaho Code** provides that a person arrested and charged with a felony, other than murder, shall be taken before a magistrate who issued the warrant or one in the same county where the offense was committed, and Sec. 19-2913 provides for the giving of bail in either the county where the offense was committed or in the county where arrested. Since Sec. 19-514 makes no mention of bail, Sec. 19-2913 would be applicable, whenever the defendant requests bail.

- 2-2-62—(1) MRS. ALICE L. KRUEGEL, Justice of the Peace, Bonners Ferry.

There is no legal authority for a Justice of the Peace to post a minimum uniform bail-bond schedule in the Sheriff's Office for lesser offenses according to which violators would post the bond; the fixing of the amount of the **Bond** requires the exercise of the discretion of the Justice. (E. G. Elliott)

- 2-2-62—(2) L. E. CLAPP, Chairman Idaho State Board of Correction, Idaho State Penitentiary.

(I) The Western Interstate Corrections Compact enacted by the Idaho Legislature in 1959 provides authority to transfer prisoners from Idaho to those other States that have adopted the Compact for confinement. (II) There is no authority to transfer Idaho prisoners to a Federal institution. (William E. Swope)

- 2-2-62—(3) GARTH NELSON, Ashton.

(I) There appears to be no statutory law in Idaho either authorizing or prohibiting corporal punishment in schools, although Sec. 33-1203 of the **Idaho Code** requires the teacher to hold pupils to a strict account for disorderly conduct and improper language in and about school and going to and from school. (II) Any punishment should be reasonable and never cruel or excessive. (III) No precise rule can be laid down as to what punishment is excessive; each case should depend on its own circumstances.

(IV) Punishment should take into consideration the motive and disposition of the offender, the influence of his example and conduct on others and the gravity of the offense. (V) It is the opinion of the Attorney General that rather than inflict corporal punishment, it would be advisable to proceed under Sec. 33-1202 of the **Idaho Code** which provides for suspension. (Warren Felton)

Note: Probably prime consideration should be the mental, social and physiological maturity of the offender in dealing with a violation of Sec. 33-1203 **Idaho Code** in schools. (F. L. B.)

- 2-20-62—ALVA G. BORDERS, Horace Mann Insurance Company, Boise.

The fact that a teacher elects to have annuities purchased out of his or her earnings by the employer would not effect the compensation payments of the teacher under the Retirement System. (Warren Felton)

ATTORNEY GENERAL'S REPORT

65

2-28-62—(1) MRS. RICHARD SPOORAK, Mentor, Kansas.

(I) In order to establish residence to vote in Idaho one must actually have lived within the State for at least six months preceeding the day of election.

(II) Once a person has established residence in Idaho he may continue to claim Idaho as his residence although absent from the State in the armed forces for a period exceeding six months. (Warren Felton)

2-28-62—(2) TO ALL PROSECUTING ATTORNEYS.

A recent decision of the United States Supreme Court, (Seymour v The Superintendent of Washington State Penitentiary) decided January 15, 1962 that a state does not have jurisdiction to punish an emancipated Indian who commits a crime on patented land formerly a part of the Indian Reservation. Heretofore, states took the position that land ceased to be "Indian Country" when it was patented and that the State had jurisdiction over crimes committed thereon. (William E. Swope)

3- 6-62—(1) MR. AND MRS. JACK W. COOK, Priest River.

(I) Section 36-404 of the **Idaho Code** requires that a person must have been a bona fide resident of Idaho for a period of at least six months preceding the application for an Idaho fish-and-game license. (II) To establish a legal residence, one must live in a place with the intent of making such place his legal residence, which, once established, would continue to be his legal residence until he moved elsewhere. (III) The location of a person's home determines his residence, and one who owns and operates a farm in Idaho but lives across the state line in Washington would not be considered an Idaho resident until he also maintained a home in Idaho in which he lived. (Frank L. Benson)

- 3- 6-62—(2) HONORABLE JOE R. WILLIAMS, State Auditor,
Boise.

In our opinion Part II, Paragraph (b) of Section I Chapter 121 of the 1959 Idaho Session Laws, amending Sec. 40-405 of the **Idaho Code** providing for the apportionment of highway funds within the counties means that every county shall receive as its share of the forty-five per cent mentioned, such percentage of the total amount collected by the counties for motor vehicle registration as its particular collection for that purpose constitutes with relation to the total amount collected by all counties. (E. G. Elliott)

- 3- 7-62—RALPH H. HALEY, Prosecuting Attorney, Clearwater County.

There is no statutory authority which authorizes the payment by the county of a salary to the county director of civil defense, nor any authority enabling a county to levy a tax or use county money for such purposes. (E. G. Elliott)

- 3- 8-62—FAY R. NILSSON, Blackfoot.

(I) The use of punch boards in Idaho would be in violation of Article III, Section 20, of the **Idaho Constitution** which prohibits the Legislature from authorizing any lottery or gift enterprise. (II) A company located outside the State of Idaho which mails punch boards to persons in Idaho could be prosecuted under federal laws which make it unlawful to ship such devices into states where they are prohibited. (Frank L. Benson)

3-9-62—J. W. CROWTHER, Prosecuting Attorney, Oneida County

- (I) Section 31-3603 of the **Idaho Code** provides that no person on the County Hospital Board shall engage in partisan political activities or hold any office in any political party. Thus, a person who is a Precinct Committeeman would have to resign as such before he could become a member of the County Hospital Board. (II) City Councilmen would not be disqualified to hold office as a member of the County Hospital Board unless the office of City Councilman and members of the County Hospital Board are materially incompatible in their powers and duties. (E. G. Elliott)

3-16-62—ERNEST L. PERMANN, State Representative, American Falls.

The County Commissioners of a county may upon petition of at least thirty qualified electors, fill a vacancy occurring in the office of Probate Judge, if the office is vacant. However, if the Probate Judge is on leave there would be no vacancy. Offenders might be arraigned before a Justice of the Peace in the absence of the Probate Judge. (Warren Felton)

3-27-62—EMMETTE SPRAKER, Chairman, Board of Commissioners, Bannock County, Pocatello.

Sec. 31-1608 of the **Idaho Code** vests in the County Commissioners authority to make expenditures upon the happening of an emergency, such as a flood, or in the anticipation of an emergency. This statute would cover the payment of a salary to County Director in any county for a serious flood or other emergency calling for expeditious action. Mr. Elliott's opinion of March 7, 1962 to Ralph Haley refers to Sec. 46-1007 I.C. only. (Frank L. Benson)

3-28-62—HON. ROBERT E. SMYLLIE, Governor, State of Idaho.

The Governor's Emergency Fund appropriated by Chapter 195 of the 1961 Legislature for Disaster Relief and Civil Defense may be used to pay the salary of local Directors of Disaster Relief and Civil Defense. (Frank L. Benson)

- 4-2-62—(1) J. W. CROWTHER, Oneida County Prosecuting Attorney, Madrid.

County Civil Defense Directors or other employees designated by the County under the Disaster Relief and Civil Defense Act of 1955 should file a claim with the State Auditor for services rendered in order to be paid through "Governor's Emergency Fund" appropriated through Chapter 195 of the 1961 Session Laws. (Frank L. Benson)

- 4-2-62—(2) To All Prosecuting Attorneys.

Chapter 196 of the 1961 Session Laws, termed the "anti-political litter law" makes it unlawful for any person to place or paint or cause to be placed or painted, election posters or literature or other promotional or sales material upon public or private property, without first attaining written permission from the owner or owners. The granting of such permission by any public utility company on behalf of any candidate for public office shall constitute the granting of like permission to all other candidates for the same office. (Frank L. Benson)

- 4-17-62—GERALD A. BERLIN, Assistant Attorney General, Boston, Massachusetts.

The recent United States Supreme Court decision on Mapp vs. Ohio has no effect on Idaho law, since Idaho has always followed the federal rule on search and seizure. Idaho Courts have consistently ruled that evidence obtained by illegal search and seizure is inadmissible and that no prosecution can be maintained thereby (William E. Swope)

4-24-62—(1) HEBER KUNZ, Bern.

(I) Sec. 12-113, of the **Idaho Code** provides that a costs bill in a law suit must be filed with the Court and served upon the opposing party (or parties) or his attorney within five days after the final judgment has been rendered. (II) When a judge says he dismisses a case without prejudice, another action may be filed. (III) When a judge orders that defendants have the costs, the plaintiff is required to pay the defendant his costs if properly submitted on time. (IV) The particular type of action will determine whether or not attorney's fees may be collected in addition to the actual costs. (Warren Felton)

4-24-62—(2) MRS. HENRY HAYS, Stayton, Oregon.

Sec. 32-303 of the **Idaho Code** provides that marriages may be solemnized by either a Justice of the Supreme Court, District or Probate Judge, the Governor, a Justice of the Peace, Mayor, Priest or Minister of the Gospel of any denomination. (Warren Felton)

4-24-62—(3) MR. AND MRS. CLYDE J. COOK, Mountain Home.

Public school moneys may not be paid for the tuition of children in a private school. (Warren Felton)

4-24-62—(4) HON. G. H. S. JACKSON, H. B. M. Consul-General, British Consulate-General, Seattle, Washington.

Idaho law follows the general presumption that the domicile of the wife and husband coincide and is where the husband lives. Sec. 32-702 of the **Idaho Code** provides that in an action for divorce the above presumption does not apply. After separation, each may have a separate domicile, depending for proof upon actual residence. (Warren Felton)

5-9-62—HAROLD JOHNSON, Executive Secretary, State Tax Commission, Boise.

The exemption from taxation of mobile homes or trailer houses owned by military personnel under the "Soldiers and Sailor's Civil Relief Act", 50 USCA 574, (App.) does not apply if used as rental units. (J. N. Leggat)

5-10-62— THOMAS T. PIGGOTT, Bloomington.

Sec. 25-2118 of the **Idaho Code** provides that the owner or persons having the control of domestic animals running on the open range are not required to keep such animals off the highways in such range and are not liable for damage to any vehicle or for injury to any person riding therein, caused by a collision between the vehicle and the animal. Sec. 25-2119 of the **Idaho Code** provides that the owner or person in control or possession of any domestic animals lawfully on any highway shall not be guilty of negligence by reason of the animal's being on the highway. (Warren Felton)

5-14-62— ELI RAPAICH, Attorney at Law, Lewiston.

Sec. 49-913 of the **Idaho Code** which restricts the outside width of vehicles upon the highways makes an exception for implements of husbandry temporarily moved or transported upon the highway to or from the farm. The exception does not apply to a farm tractor as the statute specifically makes it applicable. (Will S. Defenbach)

5-17-62— OWEN L. COOMBE, Acting Chief, Real Estate Division, U.S. Army Engineer District, Walla Walla Corps of Engineers, Walla Walla, Washington.

(I) Sec. 36-104 of the **Idaho Code** gives the Fish and Game Commission power to acquire for the State by purchase, condemnation, lease, agreement, gift or devise, any lands or water suitable for farms in which to raise game, and to extend and consolidate such lands by exchange. Under paragraph (7) Sec. 36-104 of the **Idaho Code**, the Fish and Game Commission has the power to enter into cooperative agreements with Federal agencies for the development, rearing, propagating, and management of game and under Sec. 58-134, the State Land Board may cooperate with the Federal Government in the control of these lands. (II) Lands acquired by the Fish and Game Department are termed state lands. (III) The Fish and Game Department, in cooperation with the State Land Board, may act as a local sponsor and provide, without cost to the United States, all real estate interest for the construction of a Local Cooperative Flood Control project on Lapwai Creek for the protection of the State Game Site and to hold and save the Federal Government harmless from damage due to construction work and maintenance and operate the works pursuant to the rules and regulations of the Federal Government. (Warren Felton)

5-21-62— T. PAUL JOSEPH, Weiser.

Sec. 26-201 of the **Idaho Code** sets a minimum capital necessary to establish banks. Sec. 26-207 sets out the information the bank must file with the Commissioner of Finance for authority to transact the business of banking and requires a fee of \$150.00 to cover the cost of an examination; and provides that the Department of Finance shall withhold the certificate if there is reason to believe that the stockholders have formed the corporation for anything other than the legitimate business contemplated and may withhold issuance in a village, city or community which in its judgment does not warrant a new or additional bank. (Warren Felton)

5-25-62— HAROLD JOHNSON, Executive Secretary, State Tax Commission, Boise.

The University Racquet Club, Inc., of Pocatello, is not a "fraternal, benevolent, or charitable corporation or society" within the meaning of Section 63-105 C, **Idaho Code**, nor is its property used exclusively for schools or educational purposes, from which no profit is derived. Under Section 63-105 L in the lack of specific exemption from assessment and taxation its property must be assessed and taxed. (J. N. Leggat)

5-28-62— FRANCIS H. HICKS, Prosecuting Attorney, Elmore County, Mountain Home.

(I) Article 6 Section 5 of the **Idaho Constitution** provides that for the purpose of voting, no person gains or loses residence by his presence or absence while employed in the services of this state or of the United States. (II) Under said Article 6 Section 5 and Sec. 34-1021 of the **Idaho Code**, one's intent when he leaves a locality shall be the factor in determining whether he has another voting residence. (III) In the case of **Hawkins v. Winstead**, the Idaho Supreme Court held:

"A new domicile may be acquired if both fact and intent concur. An officer or private may acquire a domicile outside his military or naval station."

The later sentence implies that one does not establish a new residence if he lives on the military base and the courts in several other states have held that legal residence may not be acquired by residing upon a military base under United States jurisdiction. (IV) Persons in military service may establish a voting residence in Idaho by living off the military base for a six month period, and may retain it if they move back to the base, but may not establish voting residence while living on the base. (Warren Felton and Frank L. Benson)

6-5-62— OSCAR DIZMANG, Bursar, Lewis-Clark Normal School, Lewiston.

The right of succession of next of kin to a decedent's estate is determined by Section 14-103 and unless the person makes a valid will or conveys the property during his lifetime his next of kin become the owners. The community property, however, passes to the surviving spouse in the absence of the will. (Frank Langley)

6- 8-62—MISS CAROLINE OAKS, Redonda Beach, California.

The administration of the Idaho Inheritance Tax Act comes under the jurisdiction of the Tax Collector. (Frank Langley)

6-13-62— L. R. PUTMAN, Casework Supervisor, U. S. Department of Justice, McNeil Island, Washington.

Sec. 32-201 of the **Idaho Code** provides that "Marriage is a personal relation arising out of a single contract to which the consent of parties capable of making it is necessary. Consent alone will not by a solemnization, or mutual assumption of marital rights, duties, or obligations." Sec. 32-301 which follows reads: "Marriage must be solemnized, authenticated and recorded as provided in this chapter, but non-compliance with its provisions does not invalidate any lawful marriage." Common-law marriage is recognized by the Idaho courts. (Warren Felton)

6-20-62—MRS. JO ANN SWOPE, Clerk, Election Board, Boise.

(I) Under the provisions of Sec. 34-612, **Idaho Code**, the election clerk is required to keep in his (or her) possession the book containing the party choice of the electors until after the run-off election and until after the time for a re-count has expired, and then to destroy it. (II) At no time should the clerk disclose the party designation of any voter to anyone, except that the election judge may, upon request, disclose it to the proper officials conducting the official canvass or any official re-count. (III) The election clerk may count the number of ballots cast for either party and disclose this information to the county clerk for the purpose of determining the number of ballots to have printed for the "run-off" election without violating the provisions of the statute. (Frank L. Benson)

6-21-62—RAYMOND KLEEMAN, Deputy Attorney General,
Harrisburg, Pennsylvania.

Sec. 44-1006 of the **Idaho Code** provides that the specifications of every contract let by the State or any county, city or school district or other political subdivision for construction, repair or maintenance work on public buildings shall contain a provision that prevailing wage rates shall be maintained. (William E. Swope)

6-28-62—CHET MOULTON, Director Idaho Department of Aeronautics, Boise.

Counties and municipalities under the provisions contained in Sections 21-403, 404, 405 and 406, **Idaho Code**, may cooperate with each other and also with the Federal Government in purchasing, building, maintaining, and expanding airport facilities. (Warren Felton)

SUPREME COURT**Civil Appeals (Closed)**

- 2357—State ex rel P. G. Neill, State Tax Collector v. Silver Syndicate, Inc.
- 2365—Texas Company v. P. G. Neill, State Tax Collector.
- 2389—State of Idaho, ex rel Joe R. Williams, State Auditor v. Walter G. Musgrave, Manager of the State Insurance Fund, Glen A. Coughlan, Joseph M. Imhoff and Allen G. Shepard.
- 2410—State of Idaho ex rel Roscoe C. Rich, Leonard K. Floan and Wallace C. Burns, Highway Directors v. Bair, Wood, et al.
- 2424—State of Idaho, ex rel Frank L. Benson, Attorney General v. William R. Padgett.
- 2511—Paul B. Earle v. Joe R. Williams, State Auditor, and Robert E. Smylie, Frank L. Benson and Arnold Williams, Board of Examiners.
- 2529—George O. Ceasar v. Arnold Williams, Secretary of State.

SUPREME COURT**Special Proceedings (Closed)**

- 2454—Union Pacific Railroad Company v. State Tax Commission.
- 2535—Jewett, et al v. Joe R. Williams, State Auditor and State Board of Examiners.
- 2535A—Jewett et al v. Joe R. Williams, State Auditor and State Board of Examiners.

SUPREME COURT**(Criminal Appeals Closed)**

- 2348—State of Idaho v. Woodrow W. Wendler. (Negligent Homicide)
- 2366—State of Idaho v. Max J. Coburn. (Negligent Homicide)
- 2394—State of Idaho v. Dave Pappe. (Negligent Homicide)
- 2412—State of Idaho v. John Hopple. (Grand Larceny)
- 2418—State of Idaho v. James N. Thomas. (Perjury)
- 2419—State of Idaho v. Lavern Francis Whitlock. (Liquor Law Violation)

- 2422—State of Idaho v. Meridith L. Henry. (Reckless Driving)
2423—State of Idaho v. Charles Anderson. (Permitting dog to run at large)
2438—State of Idaho v. Robert Clokey. (Murder)
2447—State of Idaho v. Charlie Carringer. (Receiving Stolen Property)
2450—State of Idaho v. William Alvord Hansen. (Fraud)
2464—State of Idaho v. Donald Riley. (Felony)
2465—State of Idaho v. Bruce Ledbetter. (Felony)
2477—State of Idaho v. Kenneth G. Bell. (Misuse of Public Funds)
2516—State of Idaho v. V-1 Oil Co., a corporation. (Overloaded Vehicle)
2525—State of Idaho v. George Wesley Storms, alias George Wesley Hopper. (Robbery)
2527—State of Idaho v. Ruth M. Moline. (Appeal not Perfected)

SUPREME COURT**(Habeas Corpus (Closed))**

- 2411—In re Delbert Curl and Robert Silas Moore. (Burglary)
2415—In re Donald Wallace Shepard v. L. E. Clapp, Warden of Idaho State Penitentiary. (Burglary)
2416—In re Petition of James William Martz. (Failure to Provide)
2468—Gary L. Smith v. L. E. Clapp, Warden, Idaho State Penitentiary. (Forgery)
2488—In re Leland R. Morford. (Crime against Nature)
2503—In re Cecil Meldrum v. State of Idaho. (Forgery)
2603—In re Donald L. Ireland. (Violation of Parole)

SUPREME COURT**Civil Appeals (Pending)**

- 2191—Thomas L. Berry dba The Quality Repair Dental Lab., et al v. Commissioner of Law Enforcement, State of Idaho.
- 2401—Orville O. Mabe et al v. Roscoe C. Rich, Leonard K. Floan and David P. Jones, State Board of Highway Directors.
- 2413—State of Idaho v. Concrete Processors, Inc.
- 2435—Hansen et al v. First Security Bank and State Commissioner of Finance.
- 2446—In re Appeal of Mrs. R. C. Paisley, Sr., Mrs. F. M. Cole and Mrs. L. D. Blondel, from the Assessment of Property in Canyon County v. State Tax Commission, et al.
- 2509—Afton McBride v. E. R. Hopper, Commissioner of Law Enforcement, State of Idaho.

Special Proceedings (Pending)

- 2441—Aero Service Corporation (Western), v. Frank L. Benson, Arnold Williams, Robert E. Smylie and Joe R. Williams. (Writ of Mandate)
- 2596—Teachers' Retirement System of Idaho v. Joe R. Williams, State Auditor. (Writ of Mandate)

SUPREME COURT**Criminal Appeals (Pending)**

- 2309—State of Idaho v. Wilbur B. Cox. (Negligent Homicide)
- 2493—State of Idaho v. Gene Roderick, alias Gene Barnes. (Forgery)
- 2496—State of Idaho v. Harold Thurlow. (Felony)
- 2515—State of Idaho v. Wayne Thomas Eubanks. (Forgery)
- 2532—State of Idaho v. Emmett Spencer and Roger Hall. (Murder)
- 2534—State of Idaho v. Rufus William Freeman and Jerry McGuire. (Robbery)
- 2540—State of Idaho v. Gerald Max Goodmiller. (Robbery)
- 2553—State of Idaho v. Emerson W. Tope. (Felony)
- 2555—State of Idaho v. Earl William Booton. (Forgery)
- 2556—State of Idaho v. Buell Warner and Carlos Bassett. (Larceny-Cattle Rustling)

2558—State of Idaho v. David Kirk Rade and Ralph Richard Pehrson. (Burglary)

2560—State of Idaho v. Henry Cross. (Burglary)

2564—State of Idaho v. Max G. McGlochlin. (Negligent Homicide)

2565—State of Idaho v. Sherman Talmadge Peterson and Richard J. Rutten. (Burglary)

2600—Darole L. Carpenter v. State of Idaho. (Negligent Homicide)

2616—State of Idaho v. Joe Franklin Hart. (Driver's License Violation)

Habeas Corpus (Pending)

2554—State of Idaho v. Douglas C. Johnson. (Forgery)

2617—State of Idaho v. Raymond J. Conner. (Forgery)

DISTRICT COURT

Civil Cases (Closed)

2118—Ezra Whitla v. Kootenai County, et al.

2290—In re Application of Household Finance Corporation, City Finance Company, Consumer Finance Company and Beneficial Finance Company, for Small Loan Licenses under the Idaho Consumer Finance Act, for the City of Idaho Falls, Idaho.

2356—James R. Crawford and Minnie Mae Crawford v. Robert E. Smylie, et al, State Land Board, John G. Walters, Land Commissioner.

2364—Idaho Portland Cement Company, a corporation, v. State Tax Collector.

2365—The Texas Co., a corporation, v. P. G. Neill, Tax Collector. (Appealed)

2383—State Tax Commission v. County of Cassia, et al.

2398—Werner Brammer and Joyce Brammer v. State of Idaho, (Department of Highways).

2400—State of Idaho, ex rel Board of Highway Directors, v. Clarence R. Webb and Alta Webb, et al.

2402—State of Idaho (Board of Highway Directors), v. L. L. Burdick and Beda Mae Burdick, et al.

- 2408—Indian Creek Lumber Co., an Idaho corporation, v. E. R. Hopper, Commissioner of Law Enforcement.
- 2414—In re Disapproval of a new insurance policy by Gem State Mutual, etc. v. Leo O'Connell, Commissioner of Insurance.
- 2426—Irrigation Districts of Nampa and Meridian, Black Canyon, Pioneer and Wilder v. Canyon County.
- 2431—E. A. Johnsmeyer, Plaintiff, v. The Mid-Union Indemnity Co., a corporation and Joe Ince and Richard Murphy dba M&I Trucking Co., and Rulon A. Swenson, State Treasurer of the State of Idaho, Defendants, v. Ingolf H. E. Otto, Applicant for Intervention.
- 2434—In re Rehabilitation of National Life and Health Corporation of America, a Domestic Insurance Co.
- 2439—Chester W. Sellman, dba Chet's Pastime, Bruneau, Idaho, v. E. R. Hopper, Commissioner, Department of Law Enforcement.
- 2440—Boyd Moser and Roma Moser, who sues by and through her guardian ad litem, Boyd Moser, v. State of Idaho.
- 2442—Holland Construction Co. v. Roscoe C. Rich, et al (Board of Highway Directors) State of Idaho (Intervenor).
- 2449—Alexander et al v. State of Idaho, Board of Highway Directors. (Damages)
- 2463—Abigail G. Emigh v. John Garwood et al, State of Idaho.
- 2467—Frank L. Benson, ex rel, State of Idaho v. Idaho Board of Highway Directors, et al.
- 2473—Idaho West American Corporation and Lois McAdams v. Fred M. Johns, et al, and State of Idaho (Quiet Title Action).
- 2475—Anna Messerly v. Ralph A. Larson and the State of Idaho. (Quiet Title Action)
- 2478—Coral E. Ladiges v. James E. Graham, Marguerite Campbell et al, as Board of Trustees of Idaho State College.
- 2479—General Bankers Life Insurance Company v. Leo O'Connell, State Commissioner of Insurance.
- 2481—Old West Life Insurance Co. v. State of Idaho, Leo O'Connell, State Commissioner of Insurance.
- 2484—Neilson v. Dale Larson, et al, Idaho Fish and Game Department.

- 2485—In re National Farmers Union Life Insurance Company.
- 2486—Provident Federal Savings and Loan Association, a corporation v. Humphreys and the State of Idaho.
- 2498—Idaho Savings and Loan Association v. J. L. Kelly, Acting Finance Commissioner, State of Idaho.
- 2499—Goiri v. Schneider, Director of Bureau of Animal Industry, State of Idaho.
- 2500—Joint Class A. School District No. 2, Ada and Canyon Counties v. State of Idaho.
- 2502—Robert G. Templin v. State of Idaho.
- 2506—Air Mac, Inc. v. Greer Lumber Co., et al.
- 2518—Vollstedt Kerr Lumber Co. v. Triangle Lumber Co. et al, and State of Idaho.
- 2523—Tau Kappa Iota Fraternity, an Idaho Corporation, v. State of Idaho, Latah County, Idaho, et al.
- 2530—Provident Federal Savings and Loan Association v. McGlochlin's et al and the State of Idaho.
- 2531—G. H. Eckhart et al v. Kootenai Valley Farms Inc.
- 2533—Regina Thompson v. Edward S. Hill et al, Robert E. Smylie, State of Idaho.
- 2537—Edward F. Smith, dba Smith Distributors v. Commissioner of Law Enforcement, State of Idaho.
- 2538—Chester W. Sellman, dba Chet's Pastime v. Commissioner of Law Enforcement, State of Idaho.
- 2539—Uranga and Legarza, a partnership, dba Bar X Bar v. E. R. Hopper, Commissioner of Law Enforcement, State of Idaho.
- 2541—First Federal Savings & Loan Association of Twin Falls, a corporation v. Gillett's et al, and the State of Idaho.
- 2543—Robert L. Chauvin, dba Bob's Bar, v Commissioner of Law Enforcement, State of Idaho.
- 2544—Carl D. Mason, et al dba Benewah Distributing Co. vs. E. R. Hopper, Commissioner of Law Enforcement, State of Idaho.
- 2545—In re Revocation of Operator's License of Chester W. Beaudry.

- 2547—Orie Zaccardi and Robert Peyron, individually, and Orie Zaccardi and Robert Peyron, dba Intermountain Beverage Co., Pocatello, Idaho v. E. R. Hopper, Commissioner of Law Enforcement, State of Idaho.
- 2548—Loda M. Holmes v. E. R. Hopper, Commissioner of Law Enforcement, State of Idaho.
- 2549—Fred M. Wolf, dba The Down Beat, v. E. R. Hopper, Commissioner of Law Enforcement, State of Idaho.
- 2551—Dora M. Werry v. Marion R. Hulett and State of Idaho, Commissioner of Law Enforcement of the State of Idaho, Warner Mills, Director of Liquor Law Division.
- 2552—John J. Presher, d/b/a Maverick Cigar Store v. E. R. Hopper, Commissioner of Law Enforcement, State of Idaho.
- 2557—Pack River Lumber Company, Inc., an Idaho Corporation, v. Idaho Land and Mining Company, State of Idaho, et al.
- 2580—State of Idaho v. Edward W. Burke.
- 2604—In re Appeal of Elizabeth A. Speirs for the Alleged Refusal to take a Chemical Test to Determine Blood Alcohol Content.
- 2605—Jewell Peterson v. E. R. Hopper, Commissioner of Law Enforcement.
- 2607—Sam Valenty, dba Pinochle Club, v. E. R. Hopper, Commissioner of Law Enforcement of the State of Idaho.
- 2608—Peter L. Gabiola and Rita V. Adams v. E. R. Hopper, Commissioner of Law Enforcement of the State of Idaho.
- 2609—Pioneer Enterprises, Inc. dba Pioneer Bar, v. E. R. Hopper, Commissioner of Law Enforcement of the State of Idaho.

DISTRICT COURT**Civil Cases (Pending)**

- 2321—Stephen Sandmeyer and Eleanor Sandmeyer v. State Tax Commission and E. D. Baird, et al and P. G. Neill, Tax Collector.
- 2322—John B. Bonny and Marie W. Bonny v. State Tax Commission, et al.

- 2324—George J. Oswald and Catherine D. Oswald v. State Tax Commission, et al.
- 2325—Robert F. Smith and Dorothy J. Smith v. State Tax Commission, et al.
- 2326—Cecil E. Smallwood and Edna M. Smallwood v. State Tax Commission, et al.
- 2327—Marvin C. Lupton and Kathleen Lupton v. State Tax Commission, et al.
- 2328—James D. McClary and Mary J. McClary v. State Tax Commission, et al.
- 2329—Paul Nations and Grinnel Nations v. State Tax Commission, et al.
- 2330—Lee E. Knack and Virginia Knack v. State Tax Commission, et al.
- 2331—Truman Joiner and Anna C. Joiner v. State Tax Commission, et al.
- 2332—Carroll F. Zapp and Helen B. Zapp v. State Tax Commission, et al.
- 2333—Don T. Brady and Ellen Brady v. State Tax Commission, et al.
- 2334—Robert J. Brown and Betty Ann Brown v. State Tax Commission, et al.
- 2335—Harry W. Morrison v. State Tax Commission, et al.
- 2336—Harry W. Morrison, Executor of the Estate of Anna D. Morrison v. State Tax Commission, et al.
- 2344—Claude J. Greene and Loretta Greene v. State Tax Commission, et al.
- 2345—John W. Joseph and Kathryn C. Joseph v. State Tax Commission, et al.
- 2346—Mark A. Robinson and Mary M. Robinson v. State Tax Commission, et al.
- 2347—Jerome J. Williams et al v. State Tax Commission, et al.
- 2390—In re Order of the Gooding County Commissioners concerning the reorganization of Class A. School District No. 232, Gooding County, Idaho, and Common School District No. 13, Gooding County.

- 2395—Floyd H. Wheeler, S. L. Crowley and H. G. Fitz, constituting the Idaho State Board of Pharmacy v. Slusser Wholesale Co. Inc.
- 2399—David R. Rankin and Eva Rankin v. Idaho Board of Highway Directors, State of Idaho.
- 2403—In re Magic Valley Credit Bureau and Magic Valley Adjustment Bureau.
- 2432—Ingolf Y. E. Otto v. Mid-Union Indemnity Company, an Illinois Corporation, and Rulon A. Swensen in his official capacity as State Treasurer of the State of Idaho.
- 2443—White v. State of Idaho, the City of Twin Falls, Idaho, a municipal corporation, W. D. Stearns, Floyd O. Small and the Twin Falls Canal Company, a corporation.
- 2448—Jones et al v. State of Idaho, Department of Highways.
- 2452—William L. Fayle et ux, v. Max Beyeler, et al.
- 2459—F. H. Belts and E. Jean Belts, and George G. Denham and Eva H. Denham v. State of Idaho, Department of Highways and Roscoe C. Rich, et al.
- 2462—Dan W. McComb and Lottie P. McComb v. State of Idaho.
- 2466—Idaho Board of Highway Directors v. Oce W. Bunton and Frances M. Bunton, and Clyde Young and Vivian L. Young.
- 2469—State of Idaho in re Frank L. Benson v. Robert E. Smylie Governor, and Allan G. Shepard, Member of House of Representatives.
- 2476—Fred H. Osterloh et al v. State of Idaho.
- 2482—L. L. Hurst and Blanche Hurst v. State of Idaho, Idaho Board of Highway Directors.
- 2487—Sherman F. Furey, Sr. v. Department of Reclamation.
- 2491—Priest Lake Timber Protective Association, State of Idaho v. Idaho Veneer Company.
- 2494—Emil Wagner and Rachel Wagner v. Charles Dana and State Highway Department.

- 2497—In re Hearing on Proof of Application of Water to Beneficial Use (Permit 237010) William Hill, Leadore, Idaho.
- 2501—F. M. Bistline v. Fuentes Prof. Adjustment Bureau, et al.
- 250 —Ezra R. Whitla v. Roger L. Guernsey, State Forester, State of Idaho.
- 2507—Continental Oil Co., a corporation, v. P. G. Neill, Tax Collector, State of Idaho.
- 2512—State of Idaho ex rel Roger L. Guernsey, State Forester, v. Naomi Sweeney.
- 2513—County of Caribou, a sub-division of the State of Idaho, v. Ray Parkinson; (State of Idaho, Intervenor).
- 2514—State of Idaho, ex rel, State Board of Land Commissioners v. Newman Lumber Co., Inc., a corporation, and Hartford Accident and Indemnity Co., a corporation.
- 2517—Alwyn Nedrow v. State Board of Education, State of Idaho and Joint Class A School District No. 215, Fremont and Madison Counties, State of Idaho.
- 2519—Utah Power & Light Co., a corporation v. Ball, et al.
- 2521—Everett E. Cantlin v. George Carter, State Reclamation Engineer of the State of Idaho.
- 2522—Flamingo Services, Inc., a corporation, v. Commissioner of Department of Law Enforcement of the State of Idaho.
- 2526—State of Idaho, ex rel, J. L. McCarthy, Commissioner of Public Investments of the State of Idaho v. Mike Jimenez et al.
- 2536—V-1 Oil Co., a corporation v. E. R. Hopper, Commissioner of the Dept. of Law Enforcement of the State of Idaho.
- 2542—The American Oil Co., a Maryland corporation, v. Tax Collector of the State of Idaho.
- 2546—Grant, dba Grant Distributing Co. v. E. R. Hopper, Commissioner of Law Enforcement, State of Idaho.
- 2562—Reuben Schwartz and Emmagene Schwartz v. Charles Dana and Highway Department, State of Idaho.
- 2563—Robinett v. Cecil Rogers and State of Idaho.
- 2568—State of Idaho, ex rel W. D. Stearns, Director of Unfair Sales Act v. Sav-on Drugs, et al.

- 2597—Idaho Falls Junior College Committee, Inc. v. State Board of Education.
- 2598—American Surety Co., a corporation, v. Skok, et al.
- 2599—Theyer et al v. Darnell, City of Lewiston and State of Idaho.
- 2615—M.P.B. Realty Co., dba Post Discount Department Store v. Robert E. Smylie, Governor, W. D. Stearns, Director Fair Trade and Unfair Sales Act, and Frank L. Benson, Attorney General, State of Idaho.
- 2618—Stockdale et ux v. Taylor, Idaho Department of Public Assistance, et al.

PROBATE COURT**(Closed)**

- 2474—Henry William Arendt Estate. (Creditor's Claim)
- 2524—State ex rel, State Board of Land Commissioners v. Stephens and Fidelity and Guaranty Co., a corporation.
- 2550—In re Refusal to Take a Chemical Test by Walter I. Carlson.
- 2606—In re Revocation of Operator's License of Shayne Linderman.

PROBATE COURT**(Pending)**

- 2620—Allen, Business Administrator, State Hospital North, Philpot.

U. S. DISTRICT COURT (IDAHO)**Civil Cases (Closed)**

- 2510—United States of America v. 173.28 Acres of Land, more or less, situated in Bonner County, Idaho, State of Idaho et al.

U. S. DISTRICT COURT (IDAHO)**Civil Cases (Pending)**

- 2567—State of Idaho ex rel George N. Carter, State Reclamation Engineer v. Washington Public Power Supply System, a municipal corporation of the State of Washington.

BEFORE THE FEDERAL POWER COMMISSION

(Closed)

2272—In re Pacific Northwest Pipeline Corporation and El Paso Natural Gas Company.

(Pending)

2341—In re El Paso Natural Gas Company and Pacific Northwest Pipeline Corporation.

OFFICE OF TAX COLLECTOR — INHERITANCE TAX DIVISION

In the Matter of the Estate of:	Court	Status
Gina Asker	District	Closed
Clara Bannon	District	Closed
Howard Bodenhamer	District	Closed
Aaron Browell	District	Closed
Anna E. Cartwright	District	Closed
Tony Jensen	District	Closed
Nels A. Johnson	District	Closed
James G. Johnston	District	Closed
Ida Kackley	District	Closed
Mary E. Lee	District	Closed
George I. Lynn	District	Closed
Roy Painter	District	Closed
Hannah Swift	District	Closed
Walter W. Thompson	District	Closed
Agnes Baw	Probate	Closed
Ray H. Bennett	Probate	Closed
Jane George	Probate	Closed
State Elmer Gibson	Probate	Closed
Jesus Lopez	Probate	Closed
Claudia Merritt	Probate	Closed
Winnette Merwin	Probate	Closed
C. C. Anderson	District	Pending
John Arkoosh	District	Pending
Flora Kinghorn	District	Pending
William McBratney	District	Pending
Emily McMillan	District	Pending
Nellie Cotter Moore	District	Pending
A. H. Nygaard	District	Pending

OFFICE OF TAX COLLECTOR

(Closed)

Bruce and Anna Budge v. P. G. Neill, State Tax Collector.

Harry and Eva Emerson v. P. G. Neill, State Tax Collector.

2559—In re Estate of Lloyd R. Halverson, Deceased.

2570—In re Estate of Jay A. Redfield, Deceased.

(Pending)

Bank of Idaho, formerly Continental State Bank v. P. G. Neill, State Tax Collector.

Phillips Petroleum Co. v. P. G. Neill, State Tax Collector.

Utah Oil Refining Co., v. P. G. Neill, State Tax Collector.

2571—In re Estate of Bernice Ethel Olson, Deceased.

2572—In re Application of England, et ux v. Floyd West, Tax Collector, State of Idaho.

2573—In re Estate of S. R. Spencer, Deceased.

2574—Floyd West, Tax Collector of State of Idaho v. James B. Donart et ux.

2575—Floyd West, Tax Collector of State of Idaho v. George Donart et ux.

2578—Herndon v. Floyd West, Tax Collector of State of Idaho.

2614—Mechling's v. John Doe Jackson, et al and Tax Collector of the State of Idaho.

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

(Closed)

- 2300—In re Application of Citizens Utilities Company, a corporation, for a Certificate of Convenience and Necessity. In re the Application of Shoshone Natural Gas Company, an Idaho corporation, for a Certificate of Convenience and Necessity.

2406—In re Pacific Gas Transmission Co.

2421—In re Application of Teton Valley Power & Milling Company for authority to sell and transfer its electric properties located in Teton County, Idaho, to Fall River Rural Electric Co-operative, Inc.

2427—In re Investigation of the Motor Carrier Operations of: Louis C. Grover, Eby Brothers, Pack Truck Lines, Delbert Lott, Handy Truck Line, Shoemaker Trucking Co., May Trucking Company, Robert Collins and R. V. Estell.

Forde L. Johnson Oil Company, Inc. and Idaho Public Utilities Commission v. H. F. Johnson Oil Company, Inc. et al.

Washington Water Power Company v. Idaho Public Utilities Commission and Petrolane Gas Service, Inc.

Kootenai Gas Utilities Co. Inc. v. Idaho Public Utilities Commission and Petrolane Gas Service, Inc.

(Pending)

2373—In re Application of the Northern Pacific Railway Company for permission to permanently close its station at Clark Fork, Idaho.

O. G. Rocha Moving & Storage v. Idaho Public Utilities Commission.

Arrow Transportation Company v. Idaho Public Utilities Commission.

Star Motor Freight v. Idaho Public Utilities Commission.

BEFORE THE DEPARTMENT OF AGRICULTURE

STATE OF IDAHO

(Closed)

2425—Ralph T. Frazier v. Ray Melvin dba as a bonded and licensed warehouse under the name and style of Payless Feed and Fuel, Coeur d'Alene, Idaho.