

REPORT  
OF THE  
ATTORNEY GENERAL

OF THE  
STATE OF IDAHO.

FOR YEARS 1891 AND 1892.



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# REPORT OF ATTORNEY GENERAL.

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OFFICE OF THE ATTORNEY-GENERAL,  
BOISE CITY, IDAHO, Dec. 31st, 1892.)

TO HON. NORMAN B. WILLEY,  
*Governor of Idaho.*

In obedience to the requirements of law and the Constitution of this State, I have the honor to submit the following report:

Schedule A, hereto annexed, contains the list of cases which in the last two years have been submitted to the Supreme Court upon brief and argument. The schedule shows the nature of each case and the manner in which it has been disposed of.

In addition to cases pending in the Supreme Court, I have appeared in person in cases involving the rights of the State in the several District Courts of the State.

It is by law made the duty of the Attorney-General "to attend the Supreme Court and prosecute or defend all causes in which the State or any officer thereof in his official capacity is a party, and all causes to which any county may be a party, unless the interest of the county is adverse to the State or some officer thereof acting in his official capacity."

The Attorney-General is also directed "to exer

cise supervisory power over District Attorneys in all matters pertaining to the duties of their offices and from time to time require reports as to the condition of public business intrusted to their care.”

The Attorney-General is required, “when the public service demands it, to repair to any county and assist the District Attorney thereof in the discharge of his duties.”

It is especially recommended that the act defining the duties and powers of the Attorney-General be radically amended.

In the first place, all official connection between the District Attorneys of the State and the Attorney-General’s office ought to be severed, or the “supervisory powers” which the law speaks of, which sounds well but in reality means nothing, should be amplified and defined. Instead of the Attorney-General requiring “from time to time a report of the condition of public business intrusted to their charge,” the law should require them to make annual or semi-annual reports of the condition of the public business confided to their care.

An act should be passed by the provisions of which it should be made the duty of the District Attorneys of the State to assist the Attorney-General in the preparation of criminal cases from their respective districts pending in the Supreme Court whenever he may deem it proper or necessary to invoke their assistance.

As the practice now is and has been during my incumbency of this office but one District Attorney

in the State (Mr. Forney) has ever had the courtesy to inform this office of the taking of or the pendency of an appeal in criminal cases from the District Court of their District to the Supreme Court.

As the law now stands it is not the duty of the District Attorney to attend preliminary examinations in cases of felony. The consequence is that much important and really vital testimony is lost to the State in the trial in the District Court.

I requested one of the District Attorneys in this State to attend the preliminary examination of a person charged with a peculiarly aggravated and brutal assault upon a woman with a deadly weapon. He replied by challenging me to show him the section of the law which made it his duty so to do. I admitted that the law did not compel him to, but that a sense of public duty should impel him to do so, and ventured the prediction that if he failed so to do he would be unable to secure a conviction in the District Court. The result of the trial in the District Court was as I had anticipated. The most important witnesses were gone. The pretended trial was a travesty on justice. I recommend that mileage be paid District Attorneys for the number of miles necessarily and actually traveled by such officers in attending such preliminary examinations for felony. I cannot, however, forbear in this connection, from expressing the conviction that a return to the system of County Attorneys prevailing in Idaho before the adoption of the Constitution would result in a marked improvement in the public service, both in the matter of economy and the per-

formance of the public duty; and this is said without the slightest intent to disparage or reflect in the least upon the gentlemen who now fill the very responsible positions of District Attorneys. Nearly every County in the State has been obliged to employ counsel. The District Attorney, if at the place of his domicile, could only attend the meeting of one Board of County Commissioners of his District. And if, as often happens, he is attending Court in some County of his District, his court duties engross his time; and no Board of County Commissioners can have the benefit of his professional advice.

As a consequence this office has been perpetually harrassed by questions affecting the performance of public duty, not only by Boards of County Commissioners, but also by Precinct and County officers, and School District officers as well. As an illustration, almost the last official acts performed by me as Attorney-General were to reply to numerous letters, telephone messages and telegrams as to the time of the qualification of County and Precinct officers under the law.

Between seven and eight thousand letters have been answered during my term of office upon every question almost affecting public right or private duty, until unable to keep pace with the increasing demand for gratuitous advice, I have very reluctantly been obliged in the last hours of my official life to refer one class to some good attorney of the vicinity and municipal officers to their legally constituted adviser, the District Attorney of their respective Districts.

The number of cases taken to the Supreme Court involving the proper construction of different sections of the Revenue law point with emphasis to the necessity of an entirely new enactment upon this subject. As the law now stands upon the Statute book, consisting as it does of enactments passed at various sessions of the Legislature representing the needs and ideas of various epochs in the history of Idaho, present a devious mass of legislation, which would worthily challenge the best efforts of the greatest Philadelphia lawyer to determine what is or what is not the law. I challenge the attention of the law-making department of the Government to one peculiar and anomalous feature of said law: The Board of County Commissioners of the various Counties levy the tax, fix the rate before it can be known from the Assessor of the County the amount of taxable property there is within the boundaries of the County. So that what should be a matter of strictest mathematical calculation is, under the law as it now stands a matter of conjecture and guesswork.

The question of inter-State and inter-County taxation is a matter that should be thoroughly examined by the Legislature, as these questions are finding their way into the courts, and the intention of the State in regard to these matters should be made clear and certain.

The chaotic condition of our laws is a subject that demands the best attention of the Legislature for the "clearing of the legal skies."

The law should be clear, certain, unambiguous,

so that "he who runs may read, and a wayfaring man though a fool, shall not err therein."

Many provisions of the Statutes conflict with the Constitution. Some of the provisions of the Statute are in harmony with the Territorial Organic Act; they do not consist with the provisions of the Constitution.

In order that the uncertainty and doubt now prevailing in regard to the proper interpretation to be given to the laws of this State—among layman as well as lawyers—I most earnestly recommend that "a Commission be created to revise the general laws of the State. The scope of their powers and duties can be thus briefly stated. They shall consider the Revised Statutes and subsequent legislation section by section whether it be constitutional, repealed, amended, clearly expressed, properly arranged, adequate to the evident legislative intent, or for the best interests of the people of the State, and make a report thereof showing, section by section, the character of the laws as aforesaid and what amendments and further legislation they deem necessary. Said Commission should make the report aforesaid to the Governor ninety days before the convening of the next regular session of the Legislature. Two hundred and fifty copies should be delivered to the Secretary of State, whose duty it should be to send one copy thereof to each member-elect of the next Legislature and each member of the Executive and Judicial Departments of the State, and preserve the balance for the use of the Legislature.

No ideas of false economy should prevent the Legislature from taking all necessary steps to place the law so that its provisions may be understood by all the people. It would prevent numberless and expensive cases of litigation and infractions of the law. It is perhaps not always necessary to define one's own rights; they are generally fairly understood. It is the other person's right that should be clearly and sharply defined, the foundation of all law being that "one man's rights end where another's begin." Some provision should be made for publishing the decisions of the Supreme Court. It is understood that material for the publishing of two, if not three, volumes of these reports are now on hand. The bar can find these decisions published in the Reporters, but Probate Judges, Justices of the Peace and other officers of the various municipal subdivisions of the State cannot afford to purchase a dozen, or even half dozen, volumes of these Reporters in order that they may know the law as announced by the Supreme Court of the State.

The copyright should be secured to the State, and a contract made for the publishing of these Reports at the lowest possible cost. Again I repeat that money is always well expended that places within the reach of the people the law and the decisions thereunder which declare and interpret the rules of conduct affecting private right and public duty. In this connection it is suggested that the Constitution may be amended, if this be deemed the proper way, so that "the Supreme Court shall give its opinion upon important questions upon solemn

occasions when required by the Governor, the Senate or the House of Representatives, and all such opinions shall be published in connection with the reported decisions of said Court.” The members of the State Board of Equalization, of which the Governor is chairman, respectfully asked the Supreme Court in the year 1891 to define their powers and duties under the act defining the powers and duties of this Board. The Court very properly, perhaps, declined to give an opinion on this “solemn occasion” (and I know of no more solemn occasion, to the taxpayer, at least, than the collection of taxes), although humbly requested so to do by the five State officers composing that Board.

Provision should be made by the Legislature for the employment and payment of proper clerical assistance in this office. (The suggestion is that an appropriation be made for the employment of a stenographer and typewriter, that is of a person who is both a stenographer and typewriter.) It has taken the major part of the working hours of the day in this office to answer the large number of letters received. In addition to his regular duties as Attorney-General, that officer is also member of the Board of Examiners, Board of Equalization, Board of Prison Commissioners, Board of Education, Board of Pardons and Board of Canvassers, and Secretary of State Board of Land Commissioners. The labor and time consumed in the proper performance of the duties of this last named and most important office, daily make most serious inroads upon the time of the Attorney-General. If, when his mail arrives, he

could call a stenographer to his assistance, dictate his replies and have them run through the typewriter, much valuable time would be saved to the officer in the performance of mere clerical labor, the performance of which might be well shifted to other hands.

I cannot close this report without again emphasizing the suggestions made by me in the report of the Land Commissioners in reference to provision being made for the employment of a State Agent to represent the many interests of the state in its landed rights before the various officers of the Interior Department. In the matter of appeals taken from what has been considered erroneous decisions of the local Land Officers of the State, in the approval of selections of land made by the State in the passing of selections of indemnity land, in the early payment of the five per centum arising from the sale of public lands. These and many other duties necessary to be performed and guarded that the best interests of the State should be conserved, have led most of the newer states to view the necessity of such appointment as a real necessity for the reason that if a competent, conscientious, able man is appointed to look after all the landed interests of the State at Washington, the expense is very much less than would be the case if employment were made in each individual case.

The executive officers cannot husband and care for the magnificent heritage of the State without the assistance of the representatives of the people in Legislature assembled. It is their land and the land

of their children and every dollar righteously needed to preserve, protect and defend the heritage of the whole people should be given with discriminating liberality.

Appropriations for these purposes are but taking, so to speak, one dollar out of one pocket in order that five may be placed in the other. I am

Your obedient servant,

GEO. H. ROBERTS,  
*Attorney-General.*

## SCHEDULE A.

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Cases in which the Attorney-General has appeared in the Supreme Court:

I.

Territory of Idaho }  
vs. } Criminal. Appeal from  
Staples. } District Court.  
February term, 1891. Judgment affirmed.

II.

Territory of Idaho }  
vs. } Criminal. Appeal from  
McKern. } District Court.  
February term, 1891. Judgment reversed.

III.

Gilbert }  
vs. } Mandamus.  
Moody. }  
February term, 1891. Writ granted.

IV.

Goodnight }  
vs. } Mandamus.  
Moody. }  
February term, 1891. Writ granted.

V.

State ex rel. Logan Co. }  
vs. } Civil. Appeal from Dis-  
George. } trict Court.  
April term, 1891. Dismissed.



XII.

State of Idaho  
vs.  
Galbraith & Dilley. } Civil. Appeal from Dis-  
trict Court.  
January term, 1892. Judgment affirmed.

XIII.

State of Idaho  
vs.  
Doherty et al. } Civil. Appeal from Dis-  
trict Court.  
March term, 1892. Judgment affirmed.

XIV.

Wiley  
vs.  
R. S. Brown,  
Co. Treas., et al. } Civil. Appeal from Dis-  
trict Court.  
October term, 1892. Dismissed.

XV.

State of Idaho  
vs.  
Collins. } Criminal. Appeal from  
District Court.  
November term, 1892. Judgment affirmed.

XVI.

Guheen  
vs.  
Curtis, Co. Treas. } Civil. Appeal from Dis-  
trict Court.  
November term, 1892. Judgment affirmed.