Report

of the

Attorney General

of the

State of Idaho

for the

Years 1907 and 1908

J. J. Guheen
Attorney General

1908
The Pocatello Tribune

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TERRITORIAL ATTORNEYS GENERAL.

*D. B. P. Pride.....1885-1886
Richard Z. Johnson.....1887-1890

STATE'S ATTORNEYS GENERAL.

George H. Roberts.....1891-1892
*George M. Parsons.....1893-1896
Robert E. McFarland.....1897-1898
Samuel H. Hayes.....1899-1900
Frank Martin.....1901-1902
John A. Bagley.....1903-1904
J. J. Guheen.....1905-1908

* Deceased.

JUSTICES SUPREME COURT, 1907-1908.

James F. Ailshie, Chief Justice.....Grangeville
I. N. Sullivan, Associate Justice.....Hailey
George H. Stewart, Associate Justice.....Boise

JUSTICES' SUPREME COURT, 1909-1910.

I. N. Sullivan, Chief Justice.....Hailey
George H. Stewart, Associate Justice.....Boise
James F. Ailshie, Associate Justice.....Grangeville

IDAHO DISTRICT JUDGES.

District.	1907-1910.	Address.
First	W. W. Wood	Wallace.
Second	E. C. Steele	Moscow.
Third	Fremont Wood	Boise.
Fourth	E. A. Walters	Shoshone.
Fifth	Alfred Budge	Paris.
Sixth	J. M. Stevens	Blackfoot.
Seventh	Edwin L. Bryan	Payette.

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PROSECUTING ATTORNEYS OF THE VARIOUS COUNTIES OF IDAHO.

County.	1907-8.	1909-10.	Address.
Ada	Chas. F. Koelsch	Chas. P. McCarthy	Boise.
Bannock	Geo. E. Gray	Robert M. Terrell	Pocatello.
Bear Lake	DeMeade Austin	Chas. E. Harris	Paris.
Bingham	Wm. L. McConnell	Wm. L. McConnell	Blackfoot.
Blaine	Henry F. Ensign	Henry F. Ensign	Hailey.
Boise	W. A. Sample	O. R. Woods	Idaho City.
Bonner	Peter Johnson	Peter Johnson	Sand Point.
Canyon	Owen M. Van Duyn	Owen M. Van Duyn	Caldwell.
Cassia	B. P. Howells	T. Bailey Lee	Albion.
Custer	Wm. J. Lamme	Lawrence E. Glennon	Challis.
Elmore	Daniel McLaughlin	John M. Owen	Mountainhome.
Fremont	Douglas Hix	A. H. McConnell	St. Anthony.
Idaho	Edward M. Griffith	Jesse M. Gilmore	Grangeville.
Kootenai	C. H. Potts	C. H. Potts	Coeur d'Alene.
Latah	Wm. E. Stillinger	Geo. W. Suppiger	Moscow.
Lemhi	F. J. Cowen	Wm. H. O'Brien	Salmon.
Lincoln	Frank T. Disney	Frank T. Disney	Shoshone.
Nez Perce	Daniel Needham	Dwight E. Hodge	Lewiston.
Oneida	Joseph Davis	Thos. D. Jones	Malad.
Owyhee	Chas. M. Hays	Chas. M. Hays	Silver City.
Shoshone	Walter H. Hanson	Chas. R. Mowrey	Wallace.
Twin Falls	F. A. Hutto	Wm. P. Guthrie	Twin Falls.
Washington	Frank Harris	J. L. Richards	Weiser.

OFFICE OF THE ATTORNEY GENERAL,

STATE OF IDAHO,

BOISE, IDAHO, December 1, 1908.

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ATTORNEY GENERAL'S REPORT

To His Excellency,

FRANK R. GOODING, Governor:

As required by law, I have the honor to submit my official report, touching matters of public interest connected with the Attorney General's Department, and giving a brief synopsis of a portion of the work of the office from January 1, 1907, during the two years ending December 1, 1908.

In making general remarks with reference to the duties of this office, I shall adhere very closely to the language used in my former report, as I find that it practically covers conditions existing during my second term as well as my first term in office.

The work of this office is so varied and of such a character, that it is hard to describe, and the time that is occupied in the examination of statutes and decisions in order to advise upon the multitude of matters that are submitted to this office cannot be made a matter of record, so that the greatest part of the actual work of the department is not apparent. While, personally, I desire to make my remarks upon this phase of my report very brief, yet the importance of this department and the responsibility placed upon it with reference to so much of the State's business is so great and so little understood that I deem it imperative to make a few general statements.

A portion of the work of this department is the rendering of opinions to the various officers, boards, bureaus

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and institutions of the State. The time occupied in this manner is slight, however, compared with that devoted to informal discussions with the various State officers and heads of departments upon the construction of statutes and questions of law and procedure relative to their duties. The phenomenal growth of the State and general activity in all of the different State Departments is the greatest factor as the cause of the continual and urgent demands made upon this department; and it seems impossible for this office to confine its business and services to instances occurring within the legitimate scope of the authority of the office. The Attorney General is only authorized and empowered to give opinions to the Legislature, State officers, and heads of State departments when requested to do so in writing and then only in matters relating to their duties or matters in which the State is a party or is directly interested. I have, however, in a great many instances, given opinions and advice to numerous county and school district officers and private individuals upon many subjects, but have done it as a matter of courtesy and have generally called attention to the fact that such opinions and advice were unofficial. The custom seems to prevail (based upon a misunderstanding of the duties of the Attorney General, I presume) whereby hundreds of county and school district officers and private citizens write for opinions upon nearly every conceivable subject. Private citizens send in mortgages, notes, contracts and insurance policies, and the like, for us to advise them upon, all of such matter being of a personal and private nature. These communications must be answered in some way, and greatly adds to the work of the office. My predecessors, in their official reports, have heretofore called attention to the same state of affairs.

We have a large correspondence from all parts of the United States, from persons requesting information as to our laws, and much correspondence of that nature, directed to other State officials, is referred to us; all of which means extra work not within any duties imposed upon us by law and not provided for by the legislature in

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providing assistance for the office. Individuals, in writing a public officer for information, whether it is his duty to attend to it or not, expect a reply, and it is necessary to reply in the sense that much dissatisfaction results, particularly among residents and citizens of the State if communications are ignored. To undertake, however, to answer by opinions and advice all such communications would require twice the assistance, as many of the requests for opinions and advice would require several days each and if these were attended to as requested, but very little public business could be transacted. All communications from officers of other states, or of the United States, we have tried to answer in detail, but in some private inquiries we could not grant the information for want of time.

My whole time has been devoted to the duties of the position, but the demands upon the office have been so very heavy that it was impossible to perform the work within the usual office hours and myself and assistants have been compelled to work extra at least one-half of the Sundays and evenings of the past four years in order to obtain reasonably satisfactory results.

The criminal business before the Supreme Court has not been as heavy as during the years 1905-6. In these criminal cases, as in all others, we have been painstaking in preparing briefs and prosecuting such cases, with a view to having the judgments affirmed; and the results of our efforts are very gratifying in that few cases have been reversed, and none in which this department could in any manner be held responsible. The causes of such reversals have been enumerated in the statement of cases in another part of this report. As the reversal of a case means a new trial, with heavy expense, the importance of having judgments affirmed is apparent. In this connection, I desire to say that I have endeavored to keep in close communication with the various county attorneys with reference to the State business, and I have supplied each county attorney and the district judges with copies of all briefs prepared in this office, in cases before the

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Supreme Court, in order that they may have the advantage, in trying their cases in the District Court, of our research upon the many points of criminal law discussed in such briefs. I have received many acknowledgments that this has been of great assistance to them. While the compensation of the county attorneys is totally inadequate to the services required of them, I find them always willing to do their best as public officials and energetic in the performance of their duties. I have endeavored to secure an early hearing upon all criminal cases appealed from the District Courts, and no cases have gone beyond the first term of the Supreme Court after such appeal has been perfected.

In the preparing of briefs upon the many questions raised in criminal cases prosecuted in the Supreme Court, the searching for the decisions of our own Supreme Court was a laborious task, as they were scattered through many volumes of the Pacific Reporter and with no proper index as a guide. Numbers of cases have suffered reversal by reason of mistakes or rulings upon questions upon which our Supreme Court have passed. During the term of our office we have compiled, indexed and sub-headed and had printed a Digest of the Decisions of the Idaho Supreme Court upon all criminal cases decided by that court up to January, 1906, and have placed a copy with each District Judge and each county attorney, the same being marked State property and to be turned over to their successor in office. Such a digest has proven invaluable to the various county attorneys as well as to this office. The preparation of this Digest was accomplished through the special efforts of Mr. Edwin Snow, my assistant.

It has also been a part of the work of this office to assist in making, and also to examine and pass upon, many contracts of various kinds, also to examine the bonds given for the faithful performance of such contracts, also to examine many bonds given by officials and examine all bonds given by the different banks of the State who have applied to borrow state monies. This

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office has passed upon many applications made by the various counties upon the Governor for extradition papers and has also examined many applications and requests to the Governor of this State from sister states for warrants of arrest for fugitives from justice.

The duties of the Attorney General, when the office was first created, were primarily to attend to the legal business of the State. Certain special qualifications are necessary in order to be eligible to the office. Subsequent legislation and constitutional provisions have added to these duties matters which require the personal action of the Attorney General to the extent that the original objects and duties prescribed for the office are almost lost sight of. Since the passage of the Revised Statutes in 1887, and which contained the entire schedule of the duties of the Attorney General, which were practically all of a legal nature, more than a dozen acts have been passed adding to those duties; many new departments have been created, such as the State Board of Pharmacy, State Dental Board, State Medical Board, State Insurance Commissioner, State Bank Examiner, State Livestock Sanitary Board, State Horticultural and Pure Food Board, State Immigration Commissioner, State Mine Inspector, State Game Warden, State Engineer, State Wagon Road Commission, Militia Department, and many others, all of which provide work for this office. In addition, also, the Attorney General is a member of the following State Boards: State Land Board, Board of Trustees of Soldiers' Home, State Board of Education, State Board of Prison Commissioners, State Board of Pardons, State Board of Canvassers, State Board of Examiners, State Board of Health, and State Board of Equalization. Several of these boards have a great deal of business to attend to at all times, and much of it is detail matter and entirely out of the line of work for which this office was created and seriously interferes with the more important work of this office. Much of the matters before these Boards are referred to this office for investigation and report. The business transacted by this office in connection with the State Land Department has been enormous.

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Under the present circumstances, the head of this department should not be a member of the State Boards that take up the major portion of his time in the details of matters, many of them unimportant and entirely foreign to the duties for which the office was essentially created. I am calling attention to this phase of the matter now, but I desire to go more into detail with reference to the State Land Board in my recommendations in this report. No amount of labor can remedy a system so faulty as the present method of administering the affairs of some of the departments of the State government, and while the rapid growth of the State is responsible for some of the troubles, yet the whole system is entirely wrong when applied to the present conditions existing in the State, and particularly with reference to the constitutional provisions which govern the land office and this office.

The lack of sufficient office room has also greatly added to the difficulties in transacting the state's business.

I have kept the expenses of this office within the appropriation provided by law and there will be a considerable balance left in the appropriation. This appropriation is for stationery, fixtures and office supplies of various kinds, including the printing of briefs in all cases, also to pay the traveling expenses of myself and assistants when engaged in official business throughout the State. The business of the office requires the presence of the Attorney General and his assistants in all portions of the State. There are two regular terms of the Supreme Court each year at Lewiston, and there are also many land contest cases in North Idaho which require attention; and it is hardly necessary to call your attention to the geographical conditions existing in the State which renders such trips long and expensive. As a member of the Land Board the Attorney General is also compelled to make many trips with reference to Carey Act and other land matters throughout the State. During the past year I was compelled to make from eight to ten trips in connection with the State's business with one irrigation district alone.

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I have kept the expense of this office for assistance for the past two years within the appropriations as provided by the Legislature. Assistants to be of any value in this department must be persons who primarily have received a liberal legal education and who know how to apply it, besides other special qualifications. I take pleasure in acknowledging the reliable and competent services rendered by Edwin Snow, Joseph H. Peterson and B. S. Crow, who have been connected with the office during the past two years, and who have each taken a special and personal interest in all the business connected with the office, which has resulted in making their services invaluable to the State.

I desire to express my appreciation of the courtesy extended to this office by the members of the last Legislature, by the Supreme and District Courts and the various State officers and heads of departments, by which the transaction of the State's business was greatly facilitated.

RECOMMENDATIONS.

Under this subject I desire to call attention to a few matters which I consider of vital importance at this time, as I believe that the limit has about been reached in attempting to do the business of a sovereign State in the manner in which the officers of this State are compelled to do part of its business under our present law. Some matters I call attention to with a great deal of hesitancy, because I recognize that on account of constitutional restriction the Legislature is powerless to give relief. My own idea is that we are badly in need of a new constitutional convention, and until we have one I apprehend we will still continue to try to patch up our present constitution in the same unsatisfactory manner, and will be compelled to travel along in the same old crippled way. It is not at all pleasant to call attention to such matters as I am aware that plenty of opposition generally develops and criticism is engendered, and it would be much easier to say nothing, but it is the absolute duty of a pub-

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lic officer to call attention to all matters wherein the public can be benefited, and what I propose to say is only a faint echo of a four years' every-day experience. It is unnecessary to dwell upon our methods of amending the constitution. Aside from the heavy expense created, it seems almost impossible in the heat of a political campaign to get a proper expression of the voters upon the amendments submitted. Two years ago I prepared a constitutional amendment providing for a State Land Commissioner to have full charge of the land business of the State, such commissioner to be appointed by the Governor. The committee in charge of the bill in the Senate reported favorably, but the bill failed of passage. Two more years as a member of the Land Board has only strengthened my belief that this should be done, and that this department should be placed upon a basis where the business of the State and the people could be transacted in a manner commensurate with ordinary business methods, at least. The conditions demand it.

As now constituted the State Land Board is composed of the Governor, the Attorney General, the Secretary of State, and the Superintendent of Public Instruction. Each person is a member of from nine to thirteen other additional State Boards, besides having to attend to the duties for which their offices were primarily created. It takes three of the four members to make a quorum to transact business. A number of the members must of necessity be away from the capital a great deal in the transaction of the business of their offices. Even if in the city, they are so frequently engaged in other matters that it is impossible to secure a quorum to do business. The statute provides that the regular meetings of the Board shall be on the second Wednesday of each month. The actual facts are that the State Land Board should meet every day, and it does meet day after day when a quorum can be secured; but nearly always a lot of valuable time is wasted in trying to secure the attendance of members by reason of other pressing matters. The business of the office that should be taken up day by day and disposed of is delayed days and weeks, and

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through no fault of the members of the Board, who are compelled to give attention to other matters.

Communications and other matters are received daily in the Land Department which, by all the rules of common business sense, should be attended to immediately, but it is rendered impossible to do so under the present system, and much dissatisfaction results, both to the state and those having business before the land department. It is impossible to explain in the scope of a short report the overwhelming disadvantages of the present system. If the Land Board was composed of individuals who were not connected with the executive department and could meet daily there would be no particular difficulty; but on account of the great amount of land matters to be attended to by the board, and their complexity, and the fact that this board is composed of officers, some of whose primary executive duties demand the greater part of their attention, it makes the present system absolutely vicious in its weakness.

A great deal has been accomplished in the past four years by the State Land Board in reorganizing and adopting a system for the transaction of the land business, but what is needed now is that the business be taken care of just as it comes in, and that cannot be done while the great volume of the business must be transacted by the Board, as at present constituted. This condition, however, cannot be brought about without an amendment to the constitution, and then action by the legislature; but a commencement, in my opinion, should begin now. This condition of affairs could be temporarily relieved, however, by the legislature relieving the State Land Board of the duties imposed upon it by the law providing for the carrying out the provisions of the Carey Act; and in this connection I desire to offer a few suggestions.

There are now in this State twelve Carey Act projects in full operation and twelve in the process of getting to work. The total amount of land segregated and applied for is approximately 1,778,000 acres. Many of these

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individual projects are very large, and the amount to be expended in the building of reservoirs, dams, ditches, and reclamation of the land is many millions of dollars. But the expenditure of this money is as nothing compared to what the settlers under these projects will invest and spend. And the final success or failure of these projects means the happiness or misery of thousands upon thousands of settlers. The importance of this matter as applied to Idaho under present conditions can only be appreciated by those who are brought in daily contact with the men engaged in the enterprises and the settlers who are entering the land.

The time of this office has been taken up for weeks and weeks in succession, to the exclusion of almost all other duties, in an endeavor to keep up with the progress of this department; and inasmuch as practically all Board business must be attended to personally by the members of the Board and cannot be delegated to an assistant, the time has come when no one person can hope to do justice to the State in this capacity, in connection with his other duties, because it is a physical impossibility, and the days are not long enough for one person to transact the business required. I speak of this strongly for the reason that mistakes made now may not be felt for some time, but will prove disastrous in the future. These Carey Act projects should be in the hands of a commission whose whole time can be devoted to it and whose minds are not diverted by many other arduous duties. The protection of the interests of the settler for the future must be carefully attended to, and on account of the great development and increase in these projects, this can only be successfully done by having persons delegated to attend to such matters to the exclusion of all others. It is beyond the possibility of men situated as the members of the State Land Board are with reference to their numerous other official duties to be able to give these matters the close attention they deserve. These men should be so situated that they could make a personal inspection as often as necessary of every project in all its stages of development, and could visit the settlers with a view to

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becoming personally acquainted with all matters connected with the projects, so that quick decision and intelligent action could be taken at all times. While I have no excuses to offer for the methods and work of the Board of which I have been a member for the past four years, (for I consider they have done all that could be done), yet I believe that they will agree with me that these projects have reached such magnitude in the State that it is impossible to protect the interests of the settlers unless this department is placed in the hands of men whose sole duty is to attend to the State's interests. In this regard, I desire to also state that the people of the State have no interest in these lands such as in other State lands. The enterprise is purely a private one in so far as dollars and cents are concerned; and while the patent to these lands is given to the State by the United States yet the State only receives it in trust for the settler, and upon his compliance with the law, the State gives him a deed to it. The State only receives the incidental benefits by reason of the citizenship of the settler and the taxable property created. It hardly seems right that so much of the time of four executive officers of the State whose salaries are paid by the taxes of the State should be employed in transacting the business which results altogether in the acquisition of private property by private individuals. The United States law, as well as the State law, provides that the money received from the sale of the land—(50c. per acre)—should be used to pay the expenses of reclaiming these projects, and for nothing else. This money is not now, and cannot become any part of the State money except for this particular purpose, and the expense of a commission together with all expenses in connection with these enterprises should be paid from this fund and not a cent of the State's money derived from general taxation should be used for this purpose, while there is money in this fund. The present State Land Board has endeavored to carry out this provision as near as possible, but cannot do so in the case of the members of the State Land Board whose salary as executive officers are provided for in the general appro-

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priation bill, yet who are compelled to devote such a large portion of their time to this work, and this is the case also with reference to the State Engineer and the Register of the State Land Board.

I would recommend that a law be passed empowering the Governor to appoint a commission of three men to have complete charge of this department. The law governing Carey Act projects is inadequate under present conditions and needs a complete revision in order to make it satisfactorily effective, but if the legislature should see fit to carry out this recommendation a complete Act covering the entire subject should be drafted which would sharply define the duties and powers of the commission so that they would be in a position to encourage all legitimate enterprises of this character and could also take quick action in all matters pertaining to the protection of present and prospective settlers. While the operation of the Carey Act is yet in its infancy, still we have made such rapid strides during the past four years, and have threshed out so many of the details of the actual workings of the subject under many and various conditions, that a commission could take a firm hold and continue the work without having to resort to experiment, and without delay and interruption in the work as now carried on by the State Land Board.

In my previous report I recommended that changes be made in the law governing the State Board of Equalization, the principal recommendations being to give them power to tax the franchises and other property of express companies, sleeping car companies and independent freight car companies doing business in this State. As the matter now stands, these companies practically escape taxation, except probably, a slight tax upon the personal property of express companies levied by the county assessors. This legislature should remedy this matter without fail, and should also make the powers of the Board of Equalization more effective. This Board is created by the constitution, and while in existence should be given by legislation the most adequate powers to carry out the

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objects for which it was created. This can only be done in part because the system is radically wrong to begin with. This Board in order that its work be effective should be composed of not less than three persons whose whole time should be devoted to the work of ascertaining the values of classes of property in the various counties, with power to sit as an equalization Board for thirty or forty days at the capital. Utah has such a law and it works admirably. We cannot have it until our constitution is amended. No greater travesty upon business methods was ever created than the present manner of attempting to equalize taxes. Executive officers of the State are given two weeks in which to make assessments of all railroads, telegraph and telephone lines, within the State and to equalize all other property as between classes and between counties. They are prohibited from beginning until all the reports of abstracts are in from the various counties and the actual experience has always been that on account of delays in returning abstracts, the Board usually has five or six days in which to complete its work. They must of necessity also attend to the various other duties of their respective offices during this time. Unless the members of the Board have a personal knowleedge of existing conditions relative to property values in each county they are practically helpless, as the data before them is simply figures showing the aggregate total valuation of each class of property in each county, and does not show individual assessments. In the case of property divided into units, such as cattle, horses, sheep, hogs, etc., etc., in which the number and valuation is given by the assessor, the equalization is comparatively easy, but not so with all other classes of property. As an object lesson I would advise that every member of the legislature read the law relative to the duties of the State Board of Equalization, and then spend a few minutes in examining the abstracts of the county assessment rolls in the State Auditor's office with the view to equalize between classes of property in each county and as between all property between the counties.

There is always more or less criticism relative to our

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revenue laws. I have had prepared and have had printed for the use of the members of the legislature a synopsis of constitutional and legislative methods relative to the subject of raising revenue in this State at the present time. Our revenue law, in my opinion, under existing conditions in this State, are as good as any state in the Union. There is great difficulty in getting them properly enforced, but the same condition exists in every State. As long as the State levy is made upon the general property of the State, just so long will the assessors of the various counties be influenced in making low valuations to the end that their counties shall not pay too great a price for the honor of supporting the State government. Nearly all other states are afflicted the same way; but in states where there is a great deal of corporate property and franchises to assess, the legislatures are attempting to separate the county and state levies and to operate the State government upon taxes derived from corporations, franchises, inheritance taxes, etc. Under present conditions in this new State such a plan would hardly be feasible.

Since 1900 a great many of the legislatures of the various states have provided for a tax commission to investigate the entire subject of taxation and to report to the next legislature. I would recommend that this be done in this State. It is only by such methods that some uniform legislation can be secured. The reports of some of these tax commissioners would prove a revelation to the citizen who has given the subject only superficial consideration. An investigation of conditions in some of the older states, such as Ohio and Illinois, reveals a condition hardly believable. The average county levy in Ohio a few years ago was equal to the average county levy of this State and the standard of values as set up by the assessors of the various counties varied as greatly as they did in Idaho.

In commenting upon tax conditions in Ohio before the Ohio Bar Association of Ohio in 1906, the Honorable Wade H. Ellis, Attorney General, took occasion to remark that for one hundred years Ohio had adopted the "hit

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and miss'' plan, and they are still wrestling with the problem. It further appears that in that State they have not less than a dozen different ex-officio Boards whose duties deal with State taxation matters and a great deal of confusion is the result. The troubles of other states has no bearing upon conditions here, but I mention it merely to show that it is a subject that other states have legislated upon for more than a hundred years and are now in no better position than we are in Idaho, and it is a subject that must necessarily take time, patience and an intelligent investigation. In this State, as in all others, the general cry is that personal property does not share its burden of taxation; and it is undoubtedly true, and it is more than equally true that the small home owner bears more than his share.

I believe the appointment of a tax commission to report to the Governor and Legislature two years hence would result in great good, and would also result in securing a better understanding throughout the whole State as to taxation in general.

I would recommend that an amendment be submitted abolishing that provision of the constitution which makes five executive officers of the State the members of the State Board of Equalization, so that the matter can be left open to the legislature to act as they see fit in providing for the State Board of Equalization. I would recommend the following changes in the law regulating the duties of the State Board of Equalization, to-wit:

The powers of the State Board of Equalization in the assessment of property should be extended so as to include the franchises and other property of express companies, Pullman and other sleeping car companies and independent freight car companies operating in this state.

The statutes in relation to the Board of Equalization should also be amended so that the Board shall be subject to the call of the chairman at any time, so that if it is discovered after the adjournment of the Board, that any property has escaped assessment, the same can be assessed. There should also be a provision that the Board

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can doubly assess property that has escaped taxation the previous year.

Provision should be made for the collection of an adequate penalty for any company that fails to list with the State Equalization Board within the time prescribed by law, all their property as required by law.

Provision should be made that the County Assessor or some other county officer, should make a report to the State Equalization Board by the first day of their meeting, of all the property within his county belonging to the companies of the character that the State Board of Equalization is empowered to assess, and their failure to do so should involve a penalty.

Provision should be made that the mileage of all railroad, telegraph and other companies, through the various school districts of the counties, should be computed and credited to such districts in the county auditor's office.

Two years ago I advised the appointment of a Code Commission to revise and codify our laws, and in pursuance with that recommendation, spent a good deal of time assisting Senator McCutcheon in drafting a suitable bill and urging its passage, covering that subject. Our efforts were interfered with for some time by reason of a bill having been introduced in the House which was in the interests of a San Francisco publishing house. A bill providing for a Code Commission was passed, however, and the Honorable J. F. MacLane was appointed Commissioner, and an examination of his work convinces me that he has performed his duties conscientiously and well. It is to be hoped that the legislature will pass the codes at an early date.

The plates of the code of 1901 were destroyed in the San Francisco earthquake, and there are hundreds of people in Idaho desiring to purchase a copy of the State laws, but they cannot be procured.

The condition of our laws at the present time is deplorable and early action on this code would be commendable.

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In this connection I desire to call attention to the report of the Code Commissioner with reference to his recommendations as to new legislation. What he recommends is not new legislation in the sense that it covers new subjects, but is generally recommendations of changes and alterations in the present laws in order to remedy defects and strengthen the same. Mr. MacLane has gone into the subject quite thoroughly and it is something that needed attention badly and is presented in such a way that it will be a great aid to the legislature in attempting to strengthen our laws. As there are between forty and fifty pages of this matter in the Commissioner's report, it will be seen that there is sufficient to take up the attention of the legislature for many days, but the recommendations are too important to be disregarded at this session.

Lots 7 and 8 in Sec. 21 and the N. W.¼ of the N. W.¼, and lots 9 and 10 in Sec. 22, Township 9 S., Range 38 E., B. M., containing 166 acres, was specially reserved to the State of Idaho by the United States government a few years ago by reason of the medical properties of the hot springs on the lands. They are known as the Lava Hot Springs. There should be some specific legislation giving the State Land Board full power to take some action that will protect and improve these springs in order that benefit shall be derived from them to the people. While there is no doubt of the Land Board's authority over these lands, they are in a much different position relative to the management of the same; and our present laws are not specific enough. All other lands can be sold but those lands cannot, and it will require the expenditure of money to make them serve the purpose they were reserved for.

This office in my previous report made many other recommendations and drew the bills in conformity with such recommendations, and succeeded in getting quite a number enacted into law, but the additional demands upon the time of this office during the session of the legislature necessarily worked a hardship in trying to procure needed legislation. The danger in delays

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might be considered in the matter of my recommendation in my previous report that the legislature give the Land Board specific authority to control for public purposes the lands between low and ordinary high water mark upon the navigable streams and lakes of the State. This department maintained that the title was in the State by reason of its sovereignty as a State. I drew a bill covering this matter and secured the unanimous favorable report from the committee having it in charge in the Senate, but it failed of passage and no reasons were given by those opposing it. Since that time our Supreme Court in the case of Johnson vs. Johnson, 14 Idaho Reports, 561, has held that the title is in the riparian owner and the State is practically shut out. In this case the State was not a party and was not aware that a case involving this question was before the Court, and had no opportunity to present its claims. The question came up incidentally in the case and neither side seems to have given the matter a very thorough consideration; but inasmuch as a majority of the court passed upon and decided the question, the State can do nothing but acquiesce. The failure of the legislature to act when it had the opportunity is responsible for this state of affairs.

CRIMINAL CASES IN SUPREME COURT.

STATE v. PHINNEY, 13 Idaho, 307. Defendant was convicted in the District Court of the Second Judicial District, Nez Perce County, of the crime of manslaughter, and was sentenced to a term of eight years in the penitentiary. Affirmed April 11, 1907.

STATE v. FOWLER, et al., 13 Idaho, 317. Defendants were convicted in the District Court of the Fourth Judicial District, Blaine County, of the crime of rape, and were each sentenced to a term of five years in the penitentiary. Reversed, April 24, 1907.

STATE v. BARNARD, 13 Idaho, 439. Defendants were convicted of a misdemeanor in a justice's court, there-

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after appealed to the District Court of the Fourth Judicial District, Cassia County, which appeal was dismissed. From the order of dismissal an appeal was taken to the Supreme Court. Appeal dismissed, on motion in Supreme Court, May 20, 1907.

STATE v. NEIL, 13 Idaho, 539. Defendant was convicted in the District Court of the Fifth Judicial District, Bear Lake County, of the crime of assault with intent to commit rape, and was sentenced to a term of ten years in the penitentiary. Judgment modified by reducing sentence, and as modified affirmed, July 6, 1907.

STATE v. DOLAN, 13 Idaho, 693. Defendant was convicted in District Court of Third Judicial District, Ada County, of keeping his place of business open on Sunday, in violation of the Sunday Rest Law of Laws 1907. He appealed to Supreme Court, raising the question of the constitutionality of said law. Affirmed, December 10, 1907.

STATE v. SHERIDAN, 14 Idaho, 222. Defendant was informed against in the District Court of the Third Judicial District, Ada County, for the crime of libel. From an order sustaining a demurrer to the information the State appealed. Order reversed, February 5, 1908.

STATE v. ZERLINGA, 14 Idaho, 305. Defendant was informed against in District of Fourth Judicial District, Twin Falls County, for the crime of murder. Appeal was taken by the State from an order of the trial court refusing to admit in evidence a deposition conditionally taken. Order affirmed, February 14, 1908.

STATE v. JESSE SPOTTED EAGLE (not reported). Defendant was convicted in District Court of the Second Judicial District, Idaho County, of the crime of grand larceny. Appeal was briefed, and argued, but before decision of the Supreme Court the appellant died, whereupon on motion of the State, the appeal was dismissed.

STATE v. GALLAGHER, 14 Idaho, 656. Appeal from a conviction of the crime of grand larceny, and a sentence

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to a term of eight years in the penitentiary, from District Court of the Sixth Judicial District, Bingham County. Affirmed, March 25, 1908.

STATE v. PECK, 14 Idaho, 712. Defendant was convicted of the crime of grand larceny in the District Court of the Second Judicial District, Nez Perce County, and was sentenced to a term in the penitentiary. Affirmed, May 5, 1908.

STATE v. WEST, 15 Idaho...., 95 Pac., 949. Defendant was convicted of grand larceny in the District Court of the Fourth Judicial District, Elmore County. Appeal from judgment and order denying new trial. Reversed.

STATE v. J. M. NOYES, 15 Idaho...., 96 Pac., 435. Defendant was convicted in the justice's court of petit larceny, and appealed to District Court of Seventh Judicial District, Canyon County, where he was again convicted, and then appealed to the Supreme Court. Affirmed.

STATE v. L. CHURCHILL, pending. Defendant was convicted in the Probate Court of Washington County of the crime of malicious mischief. Appealed to District Court of Seventh Judicial District, where he was convicted and sentenced to pay a fine. Appealed to Supreme Court.

STATE v. SQUIRES, 15 Idaho...., 97 Pac., 411. Defendant was convicted of manslaughter in District Court of Second Judicial District, Latah County. Motion made and argued by State to dismiss appeal to Supreme Court. Motion sustained.

STATE v. SQUIRES, pending. A second appeal of the above case. Motion to dismiss appeal from order denying a new trial. Motion sustained. Appeal from judgment pending.

HABEAS CORPUS CASES IN SUPREME COURT.

IN RE SQUIRES, 13 Idaho, 624. Upon preliminary examination before a justice of the peace, defendant was

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bound over for trial to District Court of Second Judicial District, Latah County. He applied for release under a writ of habeas corpus in Supreme Court. Application for discharge of prisoner denied, and defendant remanded, November 22, 1907.

IN RE JACOBS, 13 Idaho, 720. Defendant was convicted in the Probate Court of Shoshone County of a violation of the Sunday closing law. Application for discharge on writ of habeas corpus by Supreme Court. Motion by State to quash writ. Motion sustained, and prisoner remanded, December 11, 1907.

IN RE HAZEL SHARP, 15 Idaho....., 96 Pac., 563. Hazel Sharp was committed to the Idaho Industrial Training School by the Probate Judge of Blaine County, under the act of 1905, providing for the care and custody of delinquent children. Petition for writ of habeas corpus filed in Supreme Court. Demurrer by State. Demurrer sustained, and petition dismissed, June 20, 1908. This case tested the constitutionality of the delinquent child act, Sess. Laws 1907, page 107.

CIVIL CASES IN SUPREME COURT.

STATE OF IDAHO V. QUARLES, 13 Idaho, 252. An original proceeding for a writ of mandate to compel the clerk of the District Court of the First Judicial District, Kootenai County, to file an information presented by the prosecuting attorney. Peremptory writ issued, and clerk enjoined to file the information. April 9, 1907.

WILLIAM OLIVER V. KOOTENAI COUNTY, 13 Idaho, 281. An appeal from an order of the District Court of the First Judicial District, Kootenai County dismissing the action of appellant in such court. Motion made to dismiss appeal. Motion sustained, April 15, 1907.

PARKS BROS. V. NEZ PERCE COUNTY, 13 Idaho, 298. An appeal from a judgment of the District Court of the Second Judicial District, Nez Perce County, affirming an

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order of the Board of County Commissioners of said county. Affirmed, April 18, 1908.

WOODS ET AL v. BRAGAW, State Auditor, 13 Idaho, 607. An original application for a writ of mandate to compel the State Auditor to draw warrants in favor of plaintiffs, who are judges of the District Court, under an increase provided in a legislative act. Writ denied, November 21, 1908.

PIERSON v. STATE BOARD OF LAND COMMISSIONERS, 14 Idaho, 159. Appellant applied to the District Court of the Fourth Judicial District, Twin Falls County, for a writ of mandate to compel the Register of the State Board of Land Commissioners to certify up to said court a transcript of testimony taken in a Carey Act land contest had before said board. From the denial of such writ appeal was taken to Supreme Court. Action of lower court affirmed, January 27, 1908.

BRAGAW, State Auditor, v. STATE BOARD OF EXAMINERS, 14 Idaho, 288. An original application for a writ of prohibition to restrain the State Board of Examiners from reducing the salary of certain ones of his clerks and assistants, and to compel such board to allow the claims of said clerks and assistants. Writ denied, February 11, 1908.

BOARD OF COUNTY COMMISSIONERS v. BASSETT, 14 Idaho, 325. An appeal from a judgment of the District Court of the Fourth Judicial District, Twin Falls County. Judgment affirmed, February 18, 1908.

GILBERT v. CANYON COUNTY, 14 Idaho, 429. Action was begun by appellant in District Court of the Seventh Judicial Court, Canyon County, to restrain the board of county commissioners from issuing bonds for the purpose of building a bridge. Judgment reversed, March 3, 1908.

RATHBUN, Trustee, v. STATE OF IDAHO, 97 Pac., 335. An original action in the Supreme Court, instituted by plaintiff, a trustee in bankruptcy, for the purpose of de-

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termining the liability of the state on account of certain building contracts on state buildings. Certain items disallowed in judgment and judgment given for remainder against State. Sept. 3, 1908.

EARNEST GRANT v. ROBERT LANSDON, Secretary of State. (Not reported.) An original application for a writ of mandate to compel the Secretary of State to file a certificate of nominations of the Independence Party. Writ granted.

* Not reported.

CIVIL CASES IN DISTRICT COURT.

IN RE HENRY MARTIN'S ESTATE. Before District Court of Seventh Judicial District, Washington County. Escheated estate reduced to possession.

RAWTON et al, as Directors of Northern Idaho Insane Asylum, Plaintiffs, vs. BENJAMIN HINES, et al, Defendants. Condemnation proceedings in the District Court of the Second Judicial District, Nez Perce County, to condemn a right of way for an irrigation ditch for use of the Asylum. Complaint and summons. Action settled.

BOARD OF TRUSTEES OF IDAHO INSANE ASYLUM, Plaintiff, vs. PIERCE, Guardian, Defendant. Appeal to District Court of Third Judicial District, Ada County, from Probate Court. Order of Probate Court reversed.

BACON, Plaintiff, v. CAPITAL STATE BANK, Defendant. Petition in District Court of Third Judicial District, Ada County, by State for preference among creditors. Petition granted in part. Appeal by State to Supreme Court, pending.

PIERSON v. STATE BOARD OF LAND COMMISSIONERS. Petition for writ of mandate against Board before District Court of Fourth Judicial District, Twin Falls County. Writ quashed.

MOORE v. HASTINGS, State Treasurer. Application

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for injunction before District Court of Third Judicial District, Ada County against State Treasurer. Injunction dissolved.

RATHBUN, Trustee, v. HASTINGS, State Treasurer. Application for injunction before District Court of Third Judicial District, Ada County. Pending.

IDAHO IRRIGATION COMPANY, LIMITED, Plaintiff, v. STATE OF IDAHO, Defendant. A condemnation proceeding before District Court of Fourth Judicial District, Blaine County. Pending.

CIVIL CASES IN FEDERAL COURTS.

THE UNITED STATES, Plaintiff, v. ISABELLA TOLMIE, et al, and the *State of Idaho*, Defendants. A condemnation proceedings instituted by the United States in the Circuit Court of the United States for the District of Idaho, Southern Division, to condemn certain lands in Bannock and Bingham counties for a reservoir site, to be used in an irrigation system for the Fort Hall Indian Reservation. The interest of the State consisted in its equity under certificates of sale for portions of the land to others of the parties defendant to the unpaid purchase price of said land. Demurrer and answer filed, hearing had, and judgment and decree entered awarding the State the full amount claimed; October, 1908.

STATE LAND CONTESTS.

Division 1.

CASES AGAINST NORTHERN PACIFIC RAILWAY COMPANY.

1. State of Idaho v. Northern Pacific Railway Co., involving lands selected by University List No. 3, filed at Coeur d'Alene Land Office, July 6, 1905 (720 acres).

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2. State of Idaho v. Northern Pacific Ry. Co., involving lands selected by University Territorial List No. 4, filed at Coeur d'Alene Land Office, July 6, 1905 (1520 acres).

3. State of Idaho v. Northern Pacific Ry. Co., involving lands selected by University Territorial List No. 5, filed at Coeur d'Alene Land Office July 6, 1905 (480 acres).

4. State of Idaho v. Northern Pacific Ry. Co., involving lands selected by University Territorial List No. 6, filed at Coeur d'Alene Land Office July 6, 1905 (520 acres).

5. State of Idaho v. Northern Pacific Ry. Co., involving lands selected by University Territorial List No. 7, filed at Coeur d'Alene Land Office July 6, 1905 (400 acres).

6. State of Idaho v. Northern Pacific Ry. Co., involving land selected by University Territorial List No. 8, filed at Coeur d'Alene Land Office July 6, 1905 (320 acres).

7. State of Idaho v. Northern Pacific Ry. Co., involving land selected by University Territorial List No. 9, filed at Coeur d'Alene Land Office July 6, 1905 (669.55 acres).

8. State of Idaho v. Northern Pacific Ry. Co., involving land embraced in Agricultural College List No. 2, filed at Coeur d'Alene Land Office July 6, 1905 (1760 acres).

9. State of Idaho v. Northern Pacific Ry. Co., involving land selected by Agricultural College List No. 4, filed at Coeur d'Alene Land Office July 6, 1905 (1229.85 acres).

10. State of Idaho v. Northern Pacific Ry. Co., involving land embraced in List No. 2, Penitentiary Grant, filed at Coeur d'Alene Land Office July 6, 1905 (1580.96 acres).

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11. State of Idaho v. Northern Pacific Ry. Co., involving lands in Common School Indemnity List No. 4, filed at Coeur d'Alene Land Office July 6, 1905 (4235.14 acres).

These cases were appealed by the State of Idaho from the order of the Register and Receiver, rejecting the State's application made on July 6, 1905, to file upon certain lands in Townships 44 N., 2 and 3 East. The State's applications were made with a view to satisfying principally the University land grants, but to some extent both Agricultural College and Penitentiary grants. One or two of the applications were for the purpose of satisfying common school indemnity grants. The basis of the Register and Receiver's rejection was the previous filing upon these lands of several lieu selections by the Northern Pacific Railway Company. These lieu selections had been filed at various times from the years 1900 to 1904 and covered the entire amount of land included within the several selections on the part of the State.

When this matter was turned over to this office by the land department it was decided, upon investigation, that the right of the State to the land in controversy was absolute. Both these townships had been withdrawn from settlement and entry several years before on the application of the State, and by the plain provisions of the act of Congress authorizing these withdrawals no rights of any kind, either by scrip or settlement, could attach to these lands as against the State. The scrip entries of the Northern Pacific Railway Company were in the same situation exactly as the entries of the individuals who claimed settlement there; and the decision of the Commissioner of the General Land Office in favor of the State in the cases of the entrymen, as set out in another part of this report, must necessarily be the decision of the Commissioner against the Northern Pacific Railway Company. When the appeals were prepared by this office, therefore, the principal ground upon which we relied was that all the lands included within the State's selections, and in conflict with the scrip entries of the Northern Pa-

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cific Railway Company, had been withdrawn from settlement and entry under the act of Congress of August 18, 1894, upon the application of Governor Steunenberg, dated March 15, 1899, and the application of Governor Hunt, dated July 5, 1901; and that from and after that date any selection of the same by scrip or by settlement and entry was unauthorized and void.

There was another point, however, involved in these cases of the Northern Pacific Railway Company which did not arise in the contests of those who claimed settlement upon the lands in these same townships. This point arose out of the fact that by the act of Congress passed February 26, 1895, it was provided that all of the lands within the Coeur d'Alene land district should be examined and classified by a Commission with reference to its mineral or non-mineral character. It was provided by that act that the Northern Pacific Railway Company could not get title to any land within this land district which had not been classified by the Commission as non-mineral land. It was found upon investigation that the land selected by the State had not been classified as non-mineral and, according to previous decisions rendered by the Department of the Interior, the scrip filings of the Northern Pacific Railway Company were invalid to carry title thereto. The State relied upon a third point in these appeals, namely, that the State's general right to sixty days priority after the filing of the plats of survey as given by the act of Congress of March 3, 1893, was superior to the rights of any scrip entry or any other entryman whatever.

Very full and exhaustive briefs were prepared upon these several points. Other matters of minor consequence were gone into, such as the invalidity of the Northern Pacific company's selection by reason of formal defects in their selection lists and by reason of the invalidity of some of their base.

The importance of these cases was very great. It was understood by the State's agents that a great deal of other land selected by the Northern Pacific Railroad Com-

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pany was held under title similar to that here attacked, and if it could be shown that the State could successfully contest these selections in these townships it was probable that it would make a considerable difference in the value of the lands that might be selected in other townships subsequently to be surveyed and opened to entry. Aside from the importance of the cases as settling the status of the various scrip entries as against the rights of the State the land itself in controversy in these cases (13,443 acres in amount) was some of the most valuable in the State and a part of the White Pine Area in what is known as the Marble Creek Basin on the St. Joe River.

The appeals were forwarded to the Commissioner of the General Land Office in December, 1906. After having been under advisement in the Railway Contest Division of that office for some months, the decisions of the Commissioner on the various contests were promulgated at various dates in the spring of 1907. In general the decisions were favorable to the State's contentions. It would take a somewhat extended analysis to segregate the results in the various contests, as in part of them the State's contentions were upheld with respect to a portion of the land and the railroad's contention with respect to a portion. The State gained something over two-thirds of the land in controversy. It was also clearly settled that the railroad company could get no rights against the State with respect to scrip selections made after the date of the Governor's application for the withdrawal of the land in satisfaction of the State's grants.

It was further decided that none of the land within the Coeur d'Alene Land District, classified as Mineral under the commission created by Act of Congress of February 26, 1895, could be selected by the railroad company under the Lieu Selection Act of July 1, 1898. It was decided, however, that a different condition prevailed with respect to scrip filings of the Railroad company under the Act of March 2, 1899. In such cases, by reason of the fact that the Act providing for the lieu selections by the railroad company described the land that might

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be selected as "Land classified as non-mineral at the time of the actual Government survey thereof." By virtue of this wording of the selection act, it was held that the classification of the land as mineral by the Commission created under the law passed February 26, 1895, would not bar its selection by the railroad company, provided it was not returned as mineral in the classification by the United States Deputy Surveyors at the time of the township surveys.

From these decisions of the Commissioner both the State and the railroad company appealed. This office spent a great deal of time and effort in preparing full and exhaustive briefs on the points in controversy, and in addition made several trips to Washington, D. C., upon this matter and upon request of the defendants an oral hearing was held before the Secretary of the Interior on June 7, 1907, in which the conflicting claims of the railroad company with the State and with the settlers who also asserted rights to the identical land in controversy, were finally heard. The cases were held under consideration in the Department of the Interior for a number of months, and during the past summer of 1908, the Department in a number of decisions covering all the cases, sustained in every respect the decisions of the Commissioner awarding these lands to the State.

It is the belief of this office that the Department's decisions with respect to the rights of the railroad company to file upon the land here involved by lieu selections under the Act of March 2, 1899, is erroneous; and that if the matter were carried into the courts after the land has been finally patented to the railroad company, as can be done, that the State's contentions would be sustained. This office has been informed that it is the intention of the railroad company to appeal their cases to the courts with respect to the large area of land lost to them under the Commissioner's and Secretary's decisions, and inasmuch as the land involved is worth several hundred thousand dollars, it would probably be advisable for the State to defend its contentions to the utmost.

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In general, the outcome at present has been decidedly satisfactory from the State's standpoint. And this office feels that it is a matter of congratulation that so large a part of this valuable area of land has been preserved for the benefit of the State institutions.

Division 2.

CONTESTS WITH ENTRYMEN.

Among the matters which have imposed upon this office great labor and perplexity have been the contests in Townships 44 N., Ranges 2 and 3 East, involving some 16,000 acres. These contests have been with the entrymen who claimed to have made settlement upon these lands after the State's rights had attached thereto.

This matter has been constantly before this office for the past three and one-half years, and aside from attending to the legal phases of the appeals, a great deal of time has been spent in answering correspondence of entrymen and their friends and attorneys and in consultation with the attorneys representing the different entrymen. Many things have been said and published relative to the action of the State in this matter which were absolutely without foundation whatever, and the matter was made a factor in the past two political campaigns and many reports derogatory to the State officials have been published. I shall not attempt to repeat matters of this kind, but desire to make a short statement of the position and action of this office after the matter was referred to it by the State Land Board.

These two townships, as had been ascertained by the State, contain a great deal of valuable timber land, and as early as the year 1899 Governor Steunenberg, under date of March 15th, had applied for the withdrawal of these townships from settlement and entry under the provisions of an Act of Congress passed in 1894, authorizing such withdrawal, with the view that the State's land grants might be partially satisfied therefrom. Under the provisions of this Act of Congress, no entry or settle-

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ment could be made upon the lands after the date when it was withdrawn from the public domain upon the application of the Governor. On July 5, 1901, Governor Hunt renewed his application to have these lands segregated for the benefit of the State. It was some time after that before the townships were surveyed and formally selected of record for the benefit of the State's land grants. Finally, however, in July, 1905, the plats of survey were filed at the local land office at Coeur d'Alene City, and the State, after satisfying itself that the lands were covered with valuable timber, made selections of large acreage in these townships. The State's applications were rejected, however, by the Register and Receiver for the reason that during the preceding two or three years, and subsequent to the granting of the State's application to have these lands set aside for the State's benefit, numerous individuals claimed to have settled on this land and had, after the filing of the plats, offered their homestead or timber and stone entries and the same had been accepted. Thereupon the papers were turned over to this office for action and appeal from this decision of the Register and Receiver. The State appealed, therefore, to the Commissioner of the General Land Office. The only ground set out in the appeal which was considered by the Commissioner was the bare fact that the State had applied for this land before the entrymen had made any attempt to acquire title to it.

It was urged upon this office strongly by the land department that unless some decision were obtained which would settle the State's rights under withdrawals such as this, that each new township as applied for would be covered by homestead and timber and stone entries by persons who thought that when the time came the State would withdraw and leave its lands for the benefit of individuals who claimed it subsequent to the attaching of the State's rights. There were on file in the local land office no affidavits showing the date when settlement had been made, but it was generally known that these persons all claimed residence on the land as of a later date than the State's application for withdrawal.

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The State, however, proceeded slowly, with a view that no injustice should be done. The appeals were filed on the very last date possible. We requested the local land office not to forward the appeals to the Commissioner until such action became necessary, and meanwhile the land department put special investigators in the field to examine the various pieces of land with the view to ascertaining the character and condition of the residence that had been made thereon and, so far as possible, the true facts regarding the date when this settlement began. The agents were instructed to use all possible diligence to make the fairest and fullest report possible consistent with the amount of such work there was to do. The agents took photographs of the improvements, measured the clearings, reported fully the character of the land, whether good for agricultural purposes or not, and sent in as far as possible the best information that could be obtained as to the date of settlement and the facts with reference to its bona fide character. It was found in almost every instance, as had indeed been previously ascertained by the State, that this land was distinctively timber land, and it was practically valueless for agricultural purposes and was not of the character of land upon which homestead proof could be made; and it was found, too, that the settlement had been made upon the land, in almost every case, after the withdrawal of the land upon the application of the State, and after due notice of such withdrawal had been published in the newspapers, as required by the Act of Congress.

Meanwhile, in December, 1905, the appeals had been forwarded from the local land office to the Commissioner of the General Land Office at Washington. This office was informed of that fact when, in response to a letter in which we asked for still further delay in the matter of the forwarding of these appeals. Upon the appeals we submitted the matter to the Commissioner on the records of his office alone, relying upon the absolute withdrawal of these lands previous to the date of practically all of the settlements made upon this tract.

On March 27, 1906, the Commissioner disposed of

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the appeal involving the State's common school indemnity list number 1. This was followed on June 16, 1906, by another decision of the Commissioner involving the State's Common School Indemnity List Number 2. By these decisions the contention of the State was upheld in all except a few of the tracts of land involved. The remaining decisions before the Commissioner followed the same general lines. The basis of all the decisions was the judgment of the General Land Office that application by the State for the survey of a township with a view to the satisfaction of the State's grants, followed by the proper publication of withdrawal by the State, was an absolute bar to the assertion of any claim to the land within such township initiated after the date of the State's application. In all these cases it was held that the State's application of July, 1901, fixed the period of the initiation of the State's rights, and no entryman whose claims were initiated subsequent to that date was entitled to any consideration as against the prior claims of the school grant.

These decisions were appealed by the entrymen whose claims were rejected, to the Department of the Interior. The State in no instance questioned the showing made by the entryman himself as to the date of his settlement, and in case the entryman showed that his claim was initiated prior to July, 1901, the State did not appeal from the Commissioner's decision. All these appeals were argued before the Secretary of the Interior by this office on June 7, 1907, in connection with the Northern Pacific Railroad cases referred to above. And as in the case of the railroad cases, the Departmental decisions followed in all respects the Commissioner's decisions previously rendered. Motions for review on the part of the unsuccessful litigants were denied by the Secretary, and the entries in conflict with the State's claims are being held for cancellation.

The cases decided in favor of the State are as follows:

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State vs. William M. Ralston.
State vs. Louis Vetting.
State vs. Daisy E. Spencer.
State vs. Charles E. Struthers.
State vs. George Brunn.
State vs. Alfred W. Marshall.
State vs. Ellen Maria Engstrom.
State vs. John Beaton.
State vs. Charles H. Thompson.
State vs. Andrew Bloom.
State vs. Gale Miles.
State vs. Edward P. Brennan.
State vs. George C. Morbeck.
State vs. Ulysses F. Early.
State vs. Lewis M. Squires.
State vs. Christ H. List.
State vs. Charles A. Dewey.
State vs. James Aris.
State vs. Mat Conway.
State vs. Lillian Pardee.
State vs. Albert S. Densmore.
State vs. Clarence E. Stoddard.
State vs. William C. Hendershott.
State vs. Cyrus O. Zinn.
State vs. John Brule.
State vs. George W. Moore.
State vs. Anna E. Balthes.
State vs. Frank C. Moore.
State vs. Edward E. Steele.
State vs. Henry W. Griffith.
State vs. Daniel Hewes.
State vs. Elmer Hewes.
State vs. William L. Zeigler.
State vs. Jerry Alcorn.
State vs. Clara B. Wethered.
State vs. George W. Kays.
State vs. Charles O. Portfors.
State vs. James R. Hall.
State vs. Charles N. Downie.
State vs. Peter G. Craig.

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State vs. Charles J. Topping.
State vs. James M. Brown.
St te vs. William Helmer.
State vs. Jennie Paulson.
State vs. Stephen A. Thorpe.
State vs. J. Emerson Williams.
State vs. John R. McDonald.
State vs. F. C. Donaldson.
State vs. Albert Anderson.
State vs. Howard A. Weld.
State vs. J. E. Oster.
State vs. Ike Myrick.
State vs. L. B. Fryer.
State vs. Ida M. Ferren.
State vs. William Clark.
State vs. James Russell.
State vs. Joseph J. Russell.
State vs. Ella M. Cavanaugh.
State vs. Alfred Anderson.
State vs. Mary A. Russell.
State vs. Antonio Scapuzzi.
State vs. Hal H. Essig.
State vs. Edward Kirsch.
State vs. Nellie Kildee.
State vs. Leon Demars.
State vs. Lyn Lundquist.
State vs. Alfred Anderson.
State vs. Charles R. Austin.
State vs. Joseph Bonchard.
State vs. Walter Bond.
State vs. E. P. Brennan.
State vs. James W. Calkins.
State vs. R. B. Canfield.
State vs. S. O. Chinn.
State vs. Thomas Coddington.
State vs. Louis Compo.
State vs. Elsie Curtis.
State vs. Homer David.
State vs. Louis P. Dallberg.
State vs. John Daviggeo.

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State vs. John J. Dodson.
State vs. J. C. Dwyer.
State vs. Olof Edeen.
State vs. Homer E. Estes.
State vs. Homer R. Estes.
State vs. Jesse G. Estes.
State vs. A. L. Ferrell.
State vs. Arthur J. Flint.
State vs. J. W. Foley.
State vs. William Frei.
State vs. Walter Gumm.
State vs. August Hanson.
State vs. William Hartman.
State vs. George W. Hayes.
State vs. Charles A. Hill.
State vs. H. H. Hoagland.
State vs. Arnold Hooper.
State vs. Charles F. Hubble.
State vs. John Johnson.
State vs. Peter Johnson.
State vs. J. P. Kleveno.
State vs. Erick O. Kullberg.
State vs. Joseph LaBelle.
State vs. Mick Lally.
State vs. Paul Leuschel.
State vs. Martin Lindwale.
State vs. E. Lines.
State vs. L. L. Logan.
State vs. Kip Calkins Miles.
State vs. Charles A. Miller.
State vs. Thomas O. Miller.
State vs. Louis Monson.
State vs. W. G. Moore.
State vs. William McCartor.
State vs. Joseph O. McComb.
State vs. James R. McGuire.
State vs. Ewen McIntosh.
State vs. Hill B. Norton.
State vs. A. W. Nystrom.
State vs. William Perkins.

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State vs. Zella Perkins.
State vs. Christina Playfair.
State vs. Ralph Plummer.
State vs. J. R. Raymond.
State vs. Paul J. Risley.
State vs. William C. Robinson.
State vs. Frank Rubedew.
State vs. William Rushing.
State vs. David Scheney.
State vs. Thomas O. Scott.
State vs. Peter Severson.
State vs. John Shanon.
State vs. John W. Shepperd.
State vs. Cavie Sherer.
State vs. J. A. Shoufler.
State vs. William Shoufler.
State vs. Mike Short.
State vs. Lulu Showalter.
State vs. L. J. Simpkins.
State vs. George W. Spencer.
State vs. John Stephenson.
State vs. Alva Strong.
State vs. Charles Strubble.
State vs. Erick Swanberg.
State vs. Charles Swanberg.
State vs. William J. Theriault.
State vs. D. D. Thomas.
State vs. Irving Thomas.
State vs. William H. Thomas.
State vs. Mary C. E. Thompson.
State vs. Ada L. Toles.
State vs. Walter Tyson.
State vs. Patrick Wall.
State vs. Charles H. Weihn.
State vs. W. W. Walsh.
State vs. Andrew West.
State vs. Alda Wethered.
State vs. Dorothy Wethered.
State vs. James P. White.
State vs. F. W. Winship.

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State vs. Lawson U. Dewey.
State vs. Theophile Delisle.

The following cases have been decided in favor of the entrymen, the State not having questioned the allegations as to settlement made in the applications for entry:

State vs. Henry W. Thamke.
State vs. Samuel Obrecht.
State vs. William Lasage.
State vs. William Dewar.
State vs. Philip Landry.
State vs. Oliver Lines.
State vs. John J. Morrison.
State vs. Alva M. Mason.
State vs. James Able.
State vs. Simon D. Brady.
State vs. Thomas Davis.
State vs. Andrew F. Engstrom.
State vs. J. B. Foreman.
State vs. Newton J. Glover.
State vs. Andrew Leland.
State vs. Mary Lippert.
State vs. Walter C. Mandall.
State vs. John McCoffrey.
State vs. James G. Nevins.
State vs. George H. Root.
State vs. William F. Root.
State vs. William Scheave.
State vs. William Stoddard.
State vs. William J. Theriault.

Division 3.

MISCELLANEOUS LAND CASES.

State of Idaho vs. Fred Engstrom, decided by local Land Office in favor of the State.

State of Idaho vs. George Esch, decided by local Land Office in favor of the State; pending on appeal before the Commissioner.

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Daniel Morgan vs. The State of Idaho. Protest against a portion of Boise School Indemnity List No. 7 on ground of its mineral character. Protest sustained by Local Land Office; affirmed on appeal to Commissioner.

Blake, Gorman, et al., vs. State of Idaho. Contest involving land embraced in Lewiston University List No. 4. Decided by Commissioner in favor of the State.

Ex parte Coeur d'Alene Indemnity Lists Nos. 8, 9, 12 and 13. Pending on motion for review.

Ex parte Lewiston Penitentiary List No. 1. Pending on appeal before Secretary of the Interior.

Ex parte University List No. 5. Pending on appeal before Secretary of the Interior.

Ex parte Blackfoot School Indemnity List No. 7. Pending before Commissioner on motion for review.

Ex parte Blackfoot School Indemnity Lists Nos. 90, 95, 98, 99, 100, 105 and 106. Pending on appeal before Secretary of the Interior.

Ex parte Blackfoot Indemnity List No. 2. Appealed to Secretary of the Interior. State's selection list canceled and case closed.

Ex parte Hailey School Indemnity Lists 14, 18 and 19. Appealed to Secretary of the Interior. State's selection lists canceled and case closed.

Ex parte Hailey Indemnity List No. 12. Pending on appeal before Secretary of the Interior.

Ex parte Blackfoot Indemnity List No. 76. List held for cancellation. Pending on motion for review before Commissioner.

Ex parte Penitentiary List No. 1. Held for cancellation by Commissioner. Pending on appeal before Secretary of Interior.

Ex parte Coeur d'Alene Indemnity Lists Nos. 8, 9,

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12 and 13. Held for cancellation by Commissioner. Pending on motions for review.

Ex parte Coeur d'Alene Indemnity Lists Nos. 7 to 27 and 38 to 41. Hearing ordered by Commissioner on account of apparent mineral character of land.
Division 4.

CASES IN WHICH HEARINGS WERE HAD IN THE LOCAL LAND OFFICE (COEUR D'ALENE.)

State vs. Kent.
State vs. Wallace.
State vs. George Reed.
State vs. Burgess.
State vs. Dunn.
State vs. Routhier.

These cases related to land in Township 62 North, Range 1 W. B. M., the plat of survey of which township was filed in the local land office on April 12, 1905.

Under the provisions of the Act of Congress of March 3, 1903, the state was given sixty days prior right after the filing of township plats within which to make selections to satisfy its rights. The land involved in the above contests was selected by the State on the 10th day of June, 1905, to satisfy the grant to the State for charitable and educational purposes. Thereafter contestants in the above cases filed their applications for homestead entry which were rejected by reason of the prior selections of the State. From these decisions they appealed and asked that a hearing be had to determine their rights by reason of their settlement upon the land previous to the survey. In accordance with their application for hearing the cases were tried in August, 1905, before the Register and Receiver. The State won in each instance, the Register and Receiver holding that none of these contestants were shown by the evidence to be bona fide settlers upon the land prior to the survey. Cases are now pending on appeal before the Commissioner and briefs have been prepared in support of the State's contention.
Division 5.

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CONTESTS INVOLVING INDEMNITY SELECTIONS FOR FOREST RESERVE LOSSES.

There are a number of contests pending wherein the State's land selections for common school purposes has been attacked on the ground of invalidity of the base. In other words, that the land in lieu of which these selections were made had never really been lost to the State. The selections attacked were made by reason of the fact that many sections numbered sixteen and thirty-six, but as yet unsurveyed, had been lost to the State by inclusion within the Bitter Root Forest Reserve. To make good these losses the State selected certain timber land in Township 52 North, R. 1 East, B. M. After the State's filings had been made, certain individuals offered timber entries thereon, and appealed to the Commissioner of the General Land Office from the action of the Register and Receiver in rejecting the same. The following are cases of this character now pending on appeal:

William W. Webb vs. State of Idaho.
Noah R. Palmerter vs. State of Idaho.
Donna Potter vs. State of Idaho.
Alexander Main vs. State of Idaho.
Harry A. Kunz vs. State of Idaho.
Rodney H. Olney vs. State of Idaho.
Calvin McDorman vs. State of Idaho.
August Reid vs. State of Idaho.
Josephine McIntosh vs. State of Idaho.

Respectfully submitted,

J. J. GUHEEN,
Attorney-General.

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