

REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF IDAHO
FOR THE
YEARS 1919-1920



ROY L. BLACK
ATTORNEY GENERAL

DEAN DRISCOLL
JAMES L. BOONE
SAM E. BLAINE
RAYMOND L. GIVENS
Assistants

FLORENCE LA SALLE
ZILLA SHEPHERD
Stenographers

TERRITORIAL ATTORNEYS GENERAL

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

STATE ATTORNEYS GENERAL

George H. Roberts	1891-1892
*George M. Parsons	1893-1896
Robert E. McFarland	1897-1898
Samuel H. Hays	1899-1900
Frank Martin	1901-1902
John A. Bagley	1903-1904
*J. J. Guheen	1905-1908
D. C. McDougall	1909-1912
Joseph H. Peterson	1913-1916
T. A. Walters	1917-1918
Roy L. Black	1919-1922

JUSTICES OF THE SUPREME COURT, 1919-1920

William M. Morgan, Chief Justice.....	Moscow
John C. Rice, Associate Justice.....	Caldwell
Alfred Budge, Associate Justice.....	Pocatello

JUSTICES OF THE SUPREME COURT, 1921-1922

John C. Rice, Chief Justice.....	Caldwell
Alfred Budge, Associate Justice.....	Pocatello
Robert N. Dunn, Associate Justice	Coeur d'Alene
Charles P. McCarthy, Associate Justice	Boise
William A. Lee, Associate Justice.....	Blackfoot
Clerk of the Supreme Court—I. W. Hart	

UNITED STATES JUDGE

Frank S. Dietrich.....	Boise
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* Deceased.

IDAHO DISTRICT JUDGES

District	1919-1920	1921-1922	Address
First	*W. W. Woods.....	A. H. Featherstone.....	Wallace
Second	E. C. Steele.....	E. C. Steele.....	Moscow
Third	Chas. F. Reddoch	Chas. F. Reddoch.....	Boise
	Chas. P. McCarthy.....	Vacancy	Boise
Fourth	William A. Babcock.....	William A. Babcock.....	Twin Falls
	Henry F. Ensign.....	Henry F. Ensign.....	Hailey
	*John J. Guheen.....		
Fifth	O. R. Baum	O. R. Baum.....	Pocatello
	Robert N. Terrell.....	Robert M. Terrell.....	Pocatello
Sixth	Frederick J. Cowen.....	Frederick J. Cowen.....	Blackfoot
Seventh	Ed. L. Bryan.....	Ed. L. Bryan.....	Caldwell
	*Isaac F. Smith.....	B. S. Varian.....	Weiser
Eighth	R. N. Dunn.....	W. F. McNaughton.....	Coeur d'Alene
	John M. Flynn.....	John M. Flynn.....	Sandpoint
Ninth	James G. Gwinn.....	James G. Gwinn.....	St. Anthony
Tenth	Wallace N. Scales.....	Wallace N. Scales.....	Grangeville

* Deceased

PROSECUTING ATTORNEYS OF THE VARIOUS COUNTIES IN IDAHO

	1919-1920	1921-1922	
County	Name	Name	Residence
Ada	E. S. Delana	E. S. Delana	Boise
Adams	L. L. Burtenshaw	B. F. Dillon	Council
Bannock	Isaac McDougall	Isaac McDougall	Pocatello
Bear Lake	D. C. Kunz	D. C. Kunz	Paris
Benewah	William D. Keeton	Robt. E. McFarland	St. Maries
Bingham	R. W. Adair	Hamilton Wright	Blackfoot
Blaine	John M. Boyle	John M. Boyle	Hailey
Boise	John H. Meyer	John H. Meyer	Idaho City
Bonner	Peter Johnson	Allen P. Asher	Sandpoint
Bonneville	E. A. Owen	C. E. Crowley	Idaho Falls
Boundary	O. C. Wilson	O. C. Wilson	Bonnors Ferry
Butte	W. J. Lamme	J. G. Martin	Arco
Camas	J. W. Edgerton	Frank M. Davis	Fairfield
Canyon	H. E. Wallace	Clarence S. Hill	Caldwell
Caribou	N. E. Snell	N. E. Snell	Soda Springs
Cassia	T. Bailey Lee	T. M. Morris	Burley
Clark	Grant W. Soule	Robert R. Wedekind	Dubois
Clearwater	Frank E. Smith	Frank E. Smith	Orofino
Custer	M. A. Brown	M. A. Brown	Challis
Elmore	J. G. Watts	V. L. Taylor	Mt. Home
Franklin	P. M. Condie	P. M. Condie	Preston
Fremont	H. W. Soule	H. W. Soule	St. Anthony
Gem	J. P. Reed	J. P. Reed	Emmett
Gooding	A. F. James	H. A. Padgham	Gooding
Idaho	B. Auger	B. Auger	Grangeville
Jefferson	A. C. Cordon	A. E. Later	Rigby
Jerome	A. B. Barclay	Keith Ferguson	Jerome
Kootnai	Bert A. Reed	Roger G. Wearne	Coeur d'Alene
Latah	John Nisbet	John Nisbet	Moscow
Lemhi	Erle H. Casterlin	H. J. Burleigh	Salmon City
Lewis	G. C. Pennell	G. C. Pennell	Nez Perce
Lincoln	Harlan D. Heist	Paul S. Haddock	Shoshone
Madison	C. W. Poole	C. J. Taylor	Rexburg
Minidoka	Hugh A. Baker	Hugh A. Baker	Rupert
Nez Perce	Leo McCarty	Leo McCarty	Lewiston
Oneida	T. E. Ray	T. E. Ray	Malad
Owyhee	Wright A. Stacy	Wright A. Stacy	Silver City
Payette	R. E. Haynes	R. E. Haynes	Payette
Power	C. T. Cotant	Charles T. Cotant	Amer. Falls
Shoshone	H. J. Hull	John M. McEvers	Wallace
Teton	R. S. Wilkie	R. S. Wilkie	Driggs
Twin Falls	Frank L. Stephan	Frank L. Stephan	Twin Falls
Valley	R. B. Ayers	F. M. Kerby	Cascade
Washington	Harrison McAdams	Harrison McAdams	Weiser

Report of the Attorney General

December 1, 1920.

Honorable D. W. Davis,
Governor of the State of Idaho.
Dear Sir:

I have the honor to submit to you a report and summary of the official acts of the Attorney General's Office for the years 1919 and 1920.

As the legal advisor of the State, the Attorney General is required to give counsel to all state officials, and state departments, when inquiries are made through the proper channels. He is required to conduct all litigation of every kind to which the state is a party or is interested, and all causes to which any county may be a party, in the supreme court and federal courts, unless the interest of the county is adverse to the state or officer thereof. Whenever any criminal case is appealed to the Supreme Court, the Attorney General has charge of the State's side of the case, from the time of the conviction until the case is passed upon by the Supreme Court.

In addition to those duties he is a member of the following state boards: State Land Board; State Board of Pardons; State Board of Paroles; State Prison Board; State Library Commission; State Board of Examiners, and State Board of Equalization.

The work of this department, therefore, can hardly be set forth in a report, limited as this one must necessarily be, as so much of the work is detail. The following pages, however, will convey a good idea of the purely legal work carried on by the department.

Our work for this biennium has greatly increased over that of any previous two-year period. This is accounted for partly by the fact that the state's business becomes larger each year from natural growth, but more particularly from the fact that during the period of the war all state, county, school district and other public activities were kept at a standstill, while all energies were directed to war work. Immediately following the close of the war, which was at the very beginning of the

present biennium, the restraint was taken from these public activities and they all launched forth, not only to make up for time lost, but with the idea of extension and enlargement to meet the new demands and conditions.

CAREY ACT BUSINESS.

During former administrations the Carey Act business of the State was handled by the State Land Board. Under that system all hearings were held before the State Land Board at Boise. Upon our advent to office the Land Board, under its rules, held its meetings on Monday and Friday of each week. During the first four months of 1919, which was prior to the taking effect of the cabinet form of government, our Land Board was required to be in session nearly three days out of every week to hold hearings, generally, on Carey Act matters, many of which had been pending for a number of years. Under the cabinet form of government the Carey Act business was transferred to the State Engineer, who was called the Commissioner of Reclamation. The Land Board now transacts its business in less than one hour per week. The members of the Board thus devote all the time formerly spent on Carey Act matters to their regular official duties.

Immediately on taking over the Carey Act business, the State Commissioner of Reclamation set all pending Carey Act matters for hearing on the projects themselves, giving due notice to all parties interested. As a result the facts were quickly and accurately gathered and in the short space of ninety days all such matters pending, which were not involved in court proceedings, were decided. The settlers and all parties concerned in these projects have been highly pleased with this handling of their business. My work in caring for the legal part of this business has been very much more satisfactory under this new system, and great sums of money have been saved to those interested in the projects for the reason that the hearings are held on the projects instead of at Boise, which relieves persons interested of much expense.

THE CABINET SYSTEM.

My work necessarily brings me in close touch with the work of all State executive and administrative officers and I

have had the opportunity that perhaps no other state official has had, of observing the workings of the new cabinet system of state government. From such observations and experiences let me say that the handling of the state's administrative business under the new system by individual directors is far superior to the old board method in accomplishing efficiency, economy and rapid handling of business. No one troubling to inform himself on the matter, I believe, would ever advocate the return to the old board system. Where questions of a judicial nature are to be decided, like those presented to the Public Utilities Commission and the Industrial Accident Board, I believe there is an advantage in retaining the board. However the advantages in abolishing or consolidating the administrative boards and departments, under this cabinet system, has been thoroughly demonstrated. Allow me to congratulate you and the people of the State for having had the opportunity of adopting this business method of handling state administrative business. In the future it will no doubt be regarded as one of the most important progressive measures in the history of the state.

RECOMMENDATIONS.

In our State Asylums we have many patients who are able financially to contribute to the State at least a portion of the cost of their keep. Our law is very inadequate in this respect and I recommend that amendments be made so that, where patients have the means, they may be required to pay to the State at least a part of the expense of keeping and caring for them.

Two of our asylums, the one at Blackfoot and that at Orofino, are especially crowded and lack the proper facilities to care for the great number of patients received. I recommend that some measure be taken for the relief of such conditions at those institutions.

During our two-year term we have requested the Court to advance, ahead of other cases, for immediate hearing, practically every criminal case on appeal in the Supreme Court. We found many cases pending on appeal in which the offenses had been committed as far back as the year 1913. The reason for this delay was that owing to the crowded condition of its calendar,

the supreme court adopted the view that the criminal cases should come in the order of their filing, along with civil cases, since otherwise the civil litigants would have to wait much longer for the disposition of their questions. The Supreme Court has, however, in a number of instances advanced criminal cases out of their order on request of defendant and disposed of them, and this report will show that more criminal cases that had been pending on appeal have been decided by the court during this biennium than during any preceding two-year period. With the advent of an increase in the membership of our Supreme Court from three to five members, after the first of the year, I recommend that appropriate legislation be passed by the legislature compelling the hearing by the supreme court of every criminal case that is appealed, at the term of court held in the district from which the appeal arises, immediately following the filing of such appeal, where notice of appeal was filed thirty-five days or more prior to the date of the convening of such term of court.

The inheritance tax law of the State of Idaho has heretofore been practically a dead letter, that is, there has been no real attempt made to enforce it. For that reason it has not been known that the law was inadequate from a practical standpoint. During these two years we have attempted to enforce the provisions of this law but it was at once apparent that its many defects rendered its enforcement next to impossible. I am preparing, for submission to the legislature, a new inheritance tax law, taken from several of the states which have thoroughly tried out their inheritance tax laws and found them successful.

There are many recommendations that I could make if space permitted. However, experience shows that where state officials have included numerous recommendations in their reports they have seldom been enacted into laws for the reason that no bills having been prepared embodying the suggestions, the legislature did not act upon the recommendations. Instead of reciting our recommendations in this report we are preparing bills which will carry into effect the changes that our department believes are especially necessary, both in the form of amendments to present laws and as new laws. These and all bills suggested by state officials and departments, or by counties, will be prepared by this office and be ready for submission

to the legislature at the opening of the session, so that they may be carefully considered by the legislature at a time when it is not too rushed to handle the business. All appropriation bills are being prepared and will be ready for introduction on the first day of the session.

The legislature saw fit at its last session to provide for an additional assistant attorney general to give his entire time to the legal matters pending before the Public Utilities Commission. The appropriation for this assistant was included in the appropriation for the attorney general's office. Previous to this the members of the Utilities Commission had to be lawyers, judges and juries in the hearings held before them and much of their time was taken up in the handling of purely legal matters, such as actions in court by or against the Commission or on appeals taken to the Supreme Court from the Commission's rulings. The addition, therefore, of a special assistant attorney general to handle legal matters for them has permitted the Commission to devote its entire time to the study of the facts before it for determination. This service has been especially helpful when every utility in the state has been asking for changes in rates and service conditions, due to economic unrest, and the fluctuation of prices, and this condition will doubtless continue during the next two years. Mr. Raymond L. Givens of Boise was appointed as my assistant to handle this work. He has devoted his entire time to it and has been eminently successful and satisfactory in the position.

The other assisting attorneys in my office during the biennium have been Mr. Dean Driscoll, of Boise, first assistant, who has been such assistant during the entire period; and two others, who have changed from time to time. Mr. Alfred F. Stone of Caldwell served until September 1, 1919, when he resigned and was succeeded by Mr. Clarence S. Hill of Caldwell, who in turn resigned, and was succeeded on February 1, 1920, by Mr. James L. Boone of Caldwell. Mr. Laurel Elam of Boise acted as an assistant for the first six months of 1919, and on his resignation was succeeded by Mr. S. E. Blaine of Boise. The work of the office has been conducted by myself and these three regular assistants, and much of our department's success is directly attributable to the capable, efficient, careful and painstaking work of these attorneys. In these capacities they have

at all times given the best there is in them to the service of the state, and I consider myself and the state exceedingly fortunate in having their services.

Our stenographic force has consisted of two stenographers, Miss Florence La Salle of Boise, who has served during the entire period; and Miss Flora J. Millsaps, who resigned in January, 1920, and was succeeded by Miss Zilla Sheperd of Weiser. In addition to the stenographic duties, Miss La Salle has performed the duties of chief clerk, keeping all office records. Much of our success in being able to handle our work expeditiously has been due to their efficient and earnest co-operation.

In conclusion allow me to remark that since the entire set of state officials are now experienced in the execution of their various duties, and will no doubt retain their present employees, that the next two-year period may be expected to be even more successful than the last two years. The experimental stage in the conduct of the state's important business has passed and departmental organizations are perfected and in excellent working order, and familiar with their duties and the laws under which they operate. From my personal contact with them I believe that no more faithful or hard-working set of officials and employees has ever been in office or official position in the State of Idaho and I bespeak for the State the best administration of affairs in the next two years that it has ever had.

Respectfully submitted,

ROY L. BLACK,
Attorney General.

Digest of Opinions Rendered

NOTE: No attempt has been made to include in the following digest all opinions rendered by the Attorney General's office during the biennium. Only opinions of general importance have been digested.

ANTI-NEPOTISM

County Road Overseers.

Query: Does the anti-nepotism law apply to county road overseers?

Held: It does, by express provision.

Robert Gilcrist, May 13, 1920.

County Commissioners—Son-in-law.

Query: Is the son-in-law of a county commissioner barred from appointment under the nepotism laws of the state?

Held: He is not. See Barton vs. Alexander, 27 Idaho 286, page 298.

R. R. Duke, January 21, 1920.

Sheriff—Brother-in-law.

Query: Can the county sheriff employ his brother-in-law as auto driver?

Held: No. See Barton vs. Alexander, 27 Idaho 298.

Stenographer—(County)

Query: Can the son of a prosecuting attorney be appointed to the office of county stenographer?

Held: He cannot.

James A. Berry, October 13, 1919.

School Districts.

Query: Do appointments made by a board of trustees of a school district come within the anti-nepotism laws of the state?

Held: No.

Supt. of Public Instruction, Sept. 2, 1919.

Road Supervisor.

Query: May the brother of the son-in-law of one of the county commissioners be appointed as road supervisor of a district?

Held: Yes.

Frank W. Clarkson, January 15, 1919.

APPROPRIATIONS

Federal Funds—Soldiers Home.

Query: Should the moneys received from the Federal Government

on account of the Idaho Soldiers' Home be credited to the general fund of the state or to the credit of the home?

Held: It should be placed in the general fund.

Hon. J. K. White, Commissioner Public Welfare, December 30, 1919.

Law Enforcement—Athletic Commission.

Query: Do the moneys accruing under Sections 1821 to 1839 Compiled Statutes, revert to the general fund on January 1, 1920?

Held: They do not. They are placed in a special fund and are the subject of continuing appropriations and under Section 162 and 163 Compiled Statutes, it is only surplus or unexpended balances remaining after the purposes have been accomplished which revert to the general fund. The same is true of the funds accruing under Sections 337, 338 and 339, Compiled Statutes.

Paul Davis, Director Licenses, November 19, 1920.

State Seed Show.

Query: Are the moneys made available for the maintenance of State Seed Show by Chapter 93, Session Laws of 1919, available after the first Monday of January, 1921?

Held: It is our opinion that the appropriation made is available for all bills that are actually contracted and actually due prior to the close of the biennium, not otherwise.

Hon. Miles Cannon, May 28, 1920.

Stock—Glanders.

Query: Is there any provision made for the payment for glandered horses killed by the state?

Held: No provision has been made for the appropriation of money for such purpose.

J. Wilson Moore, Jr., Oct. 29, 1920.

ATHLETICS.

Boxing Matches—Private Clubs—License.

Query: Must the Elks at their initiation ceremonies where they contemplate putting on a boxing bout with no admission charge for the amusement of the members, secure a license from the commission?

Held: The answer is not free from doubt, but it is our opinion that such an exhibition does not have to be held under the supervision of the commission.

Leo McCarty, April 14, 1920.

Commission—Authority.

Query: Does the Athletic Commission have authority to stop a wrestling or boxing match if not conducted under the sanction of the Commission as provided by Chapter 127 of the 1919 Session laws?

Held: It does.

Secretary of State, August 19, 1919.

Department of Law Enforcement—Fees.

Query: In what way, if any, is the Department of Law Enforcement concerned with the activities of the State Athletic Commission?

Held: It is our opinion that the Department of Law Enforcement is at the head of the Commission for the purpose of approving, or verifying, or certifying any claims to be presented for the withdrawal or use of any funds to be used by the State Athletic Commission. Further, to see that all rules and regulations of the Commission and requirements of the Act are strictly complied with.

Secretary of State, May 27, 1919.

Jurisdiction—Individuals.

Query: Do the provisions of Section 1828 to 1839 C. S. inclusive, extend to individuals who conduct boxing contests?

Held: It is our opinion that they do.

J. W. Taylor, September 24, 1920.

BANKS AND BANKING.

Query: Has a national bank of Idaho, authorized under federal law to act as administrator etc., power to so act in this state?

Held: In the absence of a special statute empowering them so to do, it is our opinion that they do not have this power.

Karl Payne, June 19, 1919.

National Banks—Village License Tax.

Query: Is a national bank exempt from paying village license tax under provision of Section 5219, Revised Statutes of U. S.?

Held: It is.

John J. Evans, April 30, 1920.

Publication of Notice—Where Made.

Query: May publication required under Section 5302 C. S. be made in any legal newspaper within the county, or must notice be published in newspaper in the city, town or village in which the bank is located if such legal newspaper is there published?

Held: Under said section such publication can be made in any legal newspaper published in the county.

Query: Is failure by a bank to comply with the time provided by section 5302 Comp. Stat., a criminal offense?

Held: It is. The only penalty is a \$10.00 a day forfeiture.

Hon. Jay Gibson, Com. Commerce & Ind. Sept. 15, 1919.

Savings Banks.

Query: May a banking in trust company operate, in addition to their usual business, the business of a savings bank?

Held: It is our opinion that it is within the discretion of the commissioner of Commerce and Industry to authorize such business.

Hon. Jay Gibson, March 22, 1920.

Sureties.

Query: Does the Idaho law permit the acceptance of surety companies as guarantors on the bonds of banks covering the deposits of state funds?

Held: The law not only permits it, but requires it.

Query: In case of insolvency, would a surety company have an equal lien with any other depositor?

Held: Under Section 5285 Compiled Statutes, depositors are preferred creditors.

Query: Is there an additional liability on stock holders of said bank other than their stock holdings?

Held: Stock holders are liable to the amount of their stock at par value in addition to the stock held by them.

American Indemnity Co. April 9, 1919.

Taxation—Capital Stock in Domestic Building and Loan Association.

Query: Are the shares of capital stock in a domestic building and loan association exempt from taxation?

Held: Under Sec. 3297 C. S., there is no exemption.

Empire National Bank, October 28, 1919.

BONDED WAREHOUSES.

Agricultural Produce—Canned Goods.

Query: Does a warehouse storing canned goods, presumably fruit and vegetables, come within the bonded warehouse act?

Held: It is our opinion that it does not.

H. A. Lyons, October 11, 1920.

Agricultural Produce—Dried Prunes.

Query: Do dried prunes come under the bonded warehouse act?

Held: They do not.

H. A. Lyons, March 2, 1920.

BLUE SKY.

Application—Buying and Selling Commercial Paper.

Query: Is a corporation organized to handle real estate, etc., and which has for an additional purpose the buying and selling of local commercial paper required to comply with the provisions of the blue sky law?

Held: Such corporation which contemplates the buying and selling of commercial paper must comply with the provisions of the "Blue Sky" law. The term "securities" has been held to include promissory notes.

Ostrom, Green & Shank, March 3, 1919.

CITIES AND VILLAGES.

Query: Have the people of the city of Pocatello the right to compel the people of north Pocatello and Fairview to annex with them?

Held: In case North Pocatello and Fairview are organized municipal corporations under the laws of the state, they cannot be forced to consolidate with the city of Pocatello unless under Section 4075 Compiled Statutes, their Mayor and City Council pass a resolution expressing their desire to so consolidate, and the necessary procedure thereafter effected. In case Fairview and North Pocatello are not or-

ganized municipal corporations then under the provisions of 3850 Comp. Statutes, they are subject to annexation.

Governor Davis, October 13, 1919.

City Lots—Sale.

Query: Could the City of Payette hold a special election at the coming city election to submit the question of selling this lot?

Held: We can see no objection to such a procedure.

Query: How should the question submitted be worded?

Held: There is no special statutory provision, hence any wording is sufficient which actually places before the voters the essential matter they are to pass upon.

Query: If an offer is put up prior to the giving of a notice and holding of the election accompanied by deposit, would the city be bound to sell to the person putting up such deposit?

Held: It would not.

John H. Norris, April 1, 1919.

Estrays—Ordinances.

Query: Does a City of the second class have a right to make its own law with regard to the keeping and caring of stray stock?

Held: It is our opinion that it has.

B. M. Mallory, April 17, 1920.

Municipal Bond Election—Voters—Qualifications.

Query: Who are qualified to vote at municipal bond elections?

Held: (1) Qualified voters under the general election laws of the state. (2) Tax payers. Some difficulty arises under the second requirement. It is our opinion that anyone paying a general state and county tax upon any real or personal property comes within the term. One paying a poll tax would no doubt be considered a taxpayer but it is very questionable whether a license tax on an automobile brings one within the term "taxpayer."

T. A. Bell, January 5, 1920.

Ordinances—Publication.

Query: Is it necessary to make ordinances legal for the city to have them published, or would it not be sufficient to have them posted or notices thereof sent through the mail with other city notices?

Held: It is our opinion that a city ordinance must be published in a newspaper published in a city or village, if any there is, and if not, then in some paper in the county of a general circulation therein.

W. F. Emigh, October 13, 1919.

Peddlers—License.

Query: Where solicitors call at a house, obtain an order and five or ten minutes later deliver the goods solicited, are they immune to a city ordinance making provision for a license for peddlers and solicitors?

Held: This question is always one largely of fact but it is our opinion that if a man comes into town, stays at a hotel, and there has his goods, and after taking orders, comes back to the hotel and fills

the order and delivers the same, that he is not immune from the city ordinance.

J. W. Stocker, December 30, 1919.

COUNTY OFFICERS, SALARIES AND DUTIES, ETC.

Administrator—Public—Commission.

Query: Is a public administrator entitled to commission of 7 per cent on money escheating to the state, or is he entitled to any commission whatever?

Held: The public administrator is not entitled to any commission whatever on such estates.

G. W. Cronkrite, May 24, 1919.

County Offices—Hours.

Query: During what hours must county offices keep open?

Held: It is necessary for the sheriff, recorder, treasurer and prosecuting attorneys to keep their offices open for the transaction of business from 9 a. m. until 5 p. m. every day in the year except holidays.

Moses Smith, November 12, 1919.

Electors—Qualification—County Bond Election.

Query: Is there any property or tax qualification for electors at a county bond election?

Held: There is no legal requirement that such an elector be a taxpayer.

Thomas S. Jones, April 23, 1919.

Exchange of Work—Payment.

Query: Can a county officer hire another county official to do clerical work in his office and receive pay from the county?

Held: He can not.

Lucile McLean, December 15, 1919.

Removal—Appointment—Qualifications.

Query: Where under the provisions of Section 8684 Comp. Stat., a sheriff and probate judge are removed from office, may these two officials or either one of them, be reappointed by the board of county commissioners to serve out the unexpired portion of the terms for which they were originally elected?

Held: It is our opinion that neither the probate judge or the sheriff are eligible for re-appointment by the county commissioners to serve out the unexpired portions of the current terms for which they were originally elected. See Section 8684 Comp. Stat.; State of Tenn. vs. Crump, L. R. A. Ann. 1916D page 951.

Roy R. Duke, September 21, 1920.

Salary—Payment.

Query: Does the law permit the payment of county officials monthly instead of quarterly?

Held: It does not.

Arthur B. Mink, April 21, 1920.

Salaries—Warrants.

Query: Is it necessary for county officers to present a bill and have the same acted upon by commissioners before they can draw their salaries, or does the auditor have the authority to issue same after the salary has been fixed?

Held: It is our opinion that Section 3694 Comp. Stat. requires that a claim must be made to the county commissioners and acted upon by them before warrant may issue.

County Auditor, July 27, 1920.

Warrants—Illegal.

Query: Where claims are passed upon by the board of county commissioners and the auditor is authorized to draw warrants against the specified fund for the amount stated on the claim and the auditor knows that the claim is illegal by reason of not being in proper form, or carrying a vital defect, has the auditor power to refuse to write the warrant?

Held: Where warrants which are illegally examined, illegally allowed, or illegally ordered, it is the duty of the county auditor to refuse to draw the warrant.

Query: Has the county auditor power to refuse to write a warrant or warrants for claims passed and allowed by the board of county commissioners when he knows the board could obtain better terms for the goods for which the claim is allowed?

Held: He has no such authority.

Query: Can a county auditor refuse to write a warrant for a claim allowed for goods furnished by a member of the board of county commissioners?

Held: He can, for such claim is illegal.

Hon. F. M. Fisher, June 17, 1919.

County Assessors.

Query: Are government lands in the state of Idaho subject to taxation for state and county purposes upon the issuance of final certificate?

Held: They are subject to state and county taxation on the second Monday in January following the date of the issuance of final certificate. See *Bothwell vs. Bingham county*, 237 U. S. 642; 59 L. Ed. 1157; *Armstrong vs. Jarron*, 21 Idaho 747; *Cheney vs. Minidoka County*, 26 Idaho 471.

Query: May Carey Act lands be assessed for state and county purposes after final proof by the entryman?

Held: They may in all cases where patent at said time has issued to the state by the United States Government for such lands. *Bothwell vs. Bingham County*, 24 Idaho 125; 237 U. S. 642; 59 L. Ed. 1157.

Query: How shall assessments be made on improvements on Government homesteads where no final receipt issues?

Held: This question is expressly covered by the provisions of Section 3283 C. S.

Query: Are liberty bonds or other government bonds held by banks or individuals exempt from taxation?

Held: Liberty bonds and other government obligations are always exempt from all taxation for all general state and county taxes. See Home Savings Bank vs. Des Moines 205 U. S. 503, 51 L. Ed. 901.

Query: Are liberty bonds or other government obligations held by banks to be deducted in arriving at the valuation of the share of the bank for purposes of state and county taxation?

Held: No.

Query: Shall assessment of that portion of the bank's property represented by banking house and fixtures, which is deducted from the capital stock, under our statute be assessed as other similar property?

Held: The property which has been excluded from the bank assessment is to be assessed as any other property belonging to any other corporation and at like valuation irrespective of what amount was deducted from the bank assessments. In other words, the assessor is to treat it as if it were not owned by a bank at all.

County Assessors, February 26, 1919.

County Assessor—Duties—Fire Insurance Agent.

Query: Is it lawful for a county clerk to represent a fire insurance or life insurance company as their agent?

Held: It is, so long as he gives proper attention to his official duties.

Query: Is it lawful for a clerk to write fire insurance policies for the county which he represents as county clerk, such policies being written by authority of the county commissioners?

Held: It is not.

F. M. Fisher, May 27, 1920.

County Assessors—Duties.

Query: May one fill the position of school teacher and county assessor at the same time?

Held: We see no legal objections in the way thereof, yet in view of Section 3551 we do not see how the same would be possible.

Mrs. A. A. Thomson, September 3, 1920.

County Clerk—Fees.

Query: Where a defendant in addition to appearance files a cross complaint, does it require the payment of a \$3.00 fee for his appearance and an additional \$3.00 fee for the cross complaint?

Held: It is our opinion that it requires a \$3.00 fee for the appearance and an additional \$3.00 fee for the cross complaint.

L. C. Knowlton, November 3, 1919.

County Clerk—Attachment Bond—Check.

Query: May a clerk of a court accept a personal check in lieu of a bond for attachment?

Held: Yes. We suggest, however, that the clerk should not hold the check but should immediately cash the same and hold the money as a cash bond.

John Nesbit, April 5, 1919.

County Clerk—Appointment—Tenure.

Query: Does a successor appointed for a clerk of the district court

who has resigned within two years after his election, hold under his appointment until the next general biennial election, or does he hold over until the 1922 general election?

Held: While there is considerable question of doubt as to the exact interpretation which our supreme court would place upon the laws governing such appointment, it is our opinion that he will hold over until the 1922 general election.

C. G. Cromwell, April 27, 1920.

Clerk—Naturalization Fees, Accounting.

Query: Can the clerk of the district court of any county retain the naturalization fees as provided for under Section 4372 U. S. Compiled Statutes?

Held: It is our opinion that he can not.

Department of Finance, August 5, 1920.

Peace Officers—Constabulary.

Query: What is the relation between peace officers, such as county sheriffs, and peace officers of municipalities, to the state constabulary?

Held: Under the provisions of sections 362, 363 and 364, there can be little question but that sheriffs and other peace officers of the state, including cities, are members of the state constabulary.

Secretary of State, February 4, 1920.

County Commissioners, Salaries—County Superintendents.

Query: May the county commissioners change the salary of the superintendent of public instruction from \$95 to \$125 per month, to be paid during the balance of the term?

Held: No salary may be changed subsequent to the April meeting of the county commissioners. See Section 3699 Comp. Stat.

Wm. D. Keeton, December 1, 1919.

County Commissioners—Salaries—Probation Officer.

Query: Can a Probate Judge be allowed additional compensation as probation officer?

Held: He can not.

Fred Orr, December 3, 1919.

County Commissioners—Compensation—Bids.

Query: Does the law require county commissioners to advertise for bids upon the construction or repair of a bridge where the cost of such work will exceed \$100, which work the county has determined to do by its own agents and employees?

Held: Where the county has determined to do its own work by its agents and employees it is not necessary to advertise for bids.

William A. Woodland, March 6, 1919.

County Commissioners—Mileage Allowance.

Query: May county commissioners authorize and pay county officers a fixed charge per mile for the use of the officials' own automobiles in traveling on county business?

Held: No.

Warren T. Shepherd, April 9, 1919.

County Commissioners—Change of Residence.

Query: Is it necessary for a county commissioner of a county desiring to move from one district to another within his county, to resign his office?

Held: No, the removal creates a vacancy.

James A. Cathcart, March 20, 1919.

County Commissioners—Road Bonds—Sale, Par.

Query: Under the laws of Idaho, can a board of county commissioners sell or negotiate county road bonds for less than par or the face value?

Held: No.

L. L. Burtenshaw, Sept. 15, 1920.

Justice of the Peace—Legislator.

Query: May a Justice of the Peace serve as legislator?

Held: Yes.

D. M. Gough, April 19, 1919.

Justice of Peace—Deputy Sheriff.

Query: Can a person lawfully hold the office of Justice of the Peace and deputy sheriff?

Held: No. The two offices are incompatible.

County nurse—qualifications.

Query: May a nurse other than a graduate from some hospital be appointed as a county nurse?

Held: No.

Rudolph Hollenbeck, August 23, 1919.

Probate Judge—U. S. Commissioner.

Query: Is a person disqualified from holding the office of U. S. Commissioner and Probate Judge at the same time?

Held: No.

Grant Soule, April 5, 1919.

Prosecuting Attorney—Duty.

Query: Must a prosecuting attorney in all cases sign the complaint?

Held: It is our opinion that a prosecuting attorney is not compelled in all cases to sign a complaint, neither can he be compelled to prosecute an action, where, after an examination of the facts in the case he is satisfied no prosecution should be commenced.

Grant W. Soule, August 14, 1919.

Prosecuting Attorney—Duty—Prohibition.

Query: Does the law of Idaho make it the duty of the prosecuting attorney to be the advisor or attorney for highway district commissioners?

Held: It does not.

Query: Is there any law that prohibits the prosecuting attorney from doing legal work for highway districts and receiving compensation therefor in addition to his salary as county attorney?

Held: There is not.

R. E. Haynes, April 15, 1920.

Prosecuting Attorney—Salary.

Query: Is there any relief from a situation where only \$1500 can be paid to county attorneys?

Held: None, except by amendment to the constitution.

Ole Ellingson, June 14, 1920.

Prosecuting Attorney—Office.

Query: Is it legal for the county to pay the office rent for the private office of its prosecuting attorney, which office he uses for the performance of his official duties?

Held: This custom is universally followed throughout the State and we believe a proper expense where necessary.

Matilda Moser, May 10, 1919.

Recorder—Conditional Sales.

Query: Is it necessary for conditional sale contracts to be registered or recorded in this State?

Held: It is our opinion that it is not.

Remington Typewriter Company, October 27, 1919.

Sheriff's Fees.

Query: Where a sheriff has several summons in several individual suits to be served at the same time and in the same direction, shall the sheriff charge for mileage in each suit?

Held: It is our opinion that the sheriff shall charge fees which include mileage for each individual suit as he is entitled to the same. Section 3718 C. S. is in point where more than one process is served in the same suit.

Query: Where the sheriff makes an unsuccessful trip in an endeavor to get service, is he entitled to charge for each trip or can he charge for one trip regardless of the number of efforts he puts forth?

Held: It is our opinion that he is entitled to charge for one trip only.

Grant W. Soule, December 4, 1920.

Sheriff—Removal—Coroner—Salary.

Query: Where a sheriff is removed from office and the coroner under section 3680 Comp. Stat. assumes his duties until the appointment has been made, is the coroner entitled to the salary of sheriff during the time he has served?

Held: It is our opinion that he is not.

R. R. Duke, September 6, 1920.

Sheriff—Automobile—Liquor—Seizure.

Query: Who has jurisdiction of a car taken from a bootlegger during the time between arrest and trial?

Held: The sheriff.

Query: In case the bootlegger fails to appear and the car is left in the county's charge who is directly responsible for the car?

Held: The sheriff.

Query: In case the car is used for the county or the sheriff, are the commissioners liable for damages?

Held: It is very doubtful.

R. R. Duke, September 6, 1920.

County Stenographer—Qualifications.

Query: Can the son of the prosecuting attorney be appointed to office of county stenographer in view of the anti-nepotism laws of the State?

Held: It is our opinion that such a person is not eligible for this this office.

James A. Berry, October 13, 1919.

County Superintendent—Qualifications.

Query: What are the qualifications to entitle one to hold the office of county superintendent of public instruction?

Held: He must be 25 years of age, qualified elector in the county from which he is nominated or appointed, the holder of a state life certificate, a teacher of not less than two years of actual experience and service as a teacher in the schools of Idaho, one of which years of experience must have been while holding a valid certificate of a grade not lower than a State certificate, all of which aforesaid qualifications must have been in force at the time of nomination or appointment. State vs. Kadletz, 30 Idaho 698. The Supreme Court in this case stated that among the other qualifications required of a candidate for the office, said candidate must be the holder of a state or a state life certificate; a certificate is intended which at least was valid for eight years and valid in all schools and grades in the State. It is our opinion that the "years" referred to mean school years.

E. E. Redfield, Superintendent of Public Instruction,
October 22, 1919.

County Treasurer—Warrants—Payment.

Query: May I, as country treasurer, refuse payment of warrants allowed by the commissioners if I consider the procedure illegal?

Held: If the warrant is illegal you have the right to refuse payment thereof.

Pearl Wylder, May 11, 1920.

County Treasurer—Qualifications.

Query: Is a person of the age of 21 years eligible to hold the office of county treasurer?

Held: He is not.

Minnie Carson, June 3, 1920.

EIGHT HOUR DAY.

Subcontractors.

Query: Do subcontractors on public works fall within the pro-

visions of Sections 2324 to 2326, Comp. Stat. commonly known as the 8 hour law?

Held: They do.

Boise Trades & Labor Council, April 9, 1920.

ELECTIONS.

Ballots—Independents—Straight Ticket.

Query: Under the 1919 Session Laws, is it possible to vote a straight independent ticket?

Held: The 1919 Session Laws seemingly do not contemplate voting a straight Independent ticket, and there should not appear at the top of the Independent column anything other than the word "Independent."

A. C. Hindman, October 22, 1920.

Candidates—Writing In Names.

Query: Where a party has failed to nominate a candidate for an office prior to the primary election, can names be written in at the primary election to fill such office?

Held: Such names can be written in.

Arthur B. Mink, October 8, 1920.

Independent Tickets—Vacancy.

Query: Where Independent candidates have been nominated by petition, under the provision of Section 541 Comp. Stat. and after the closing of the time for filing such petition, to-wit: August 24, some candidate so nominated resigns thus creating a vacancy, is there any method in the law for filling such vacancies?

Held: There is. Under the provisions of Section 541 Comp. Stat. the vacancy on such ticket may be filled in the same manner as the original nomination was made, that is by filing a certificate and petition signed by the requisite number of signers required in the first instance to make the nomination.

Editor, The Idaho Leader, September 1, 1920.

Independent Candidates—Filing Fees.

Query: Is the county auditor authorized to charge a fee for filing certificate of nomination for Independent candidates?

Held: He is.

Query: Can the county auditor charge a fee for filing certificates of nomination to fill a vacancy?

Held: He can not.

George F. Church, October 13, 1920.

Nomination Papers—Justice Of The Peace—Constable.

Query: Do nomination papers have to be filed for precinct officers, that is for Justice of the Peace and constable?

Held: Yes.

Attorney General's opinion, June 25, 1920.

Nomination—Person Nominated On Both Tickets.

Query: Is it necessary for a party nominated on both tickets to elect party under which he desires his name to appear on the general election ballot?

Held: If he has filed his nomination papers as provided by Section 543 Comp. Stat. then that fact is held to be an election on his part. In case his name is written in on both ballots then he must elect, for under the provisions of Sec. 573 Comp. Stat. his name cannot appear on the general election ballot more than once.

F. M. Hobbs, August 17, 1920.

Proxies—County And State Convention.

Query: Is it possible for proxies to legally act at both a county and State convention?

Held: It is our opinion that the use of the same is not legal.

Frank W. Brown, June 26, 1920.

Registration—Absent.

Query: Can one register by mail?

Held: He cannot.

Lettie J. McFadden, October 1, 1920.

Registration—Last Day.

Query: What is the last day on which voters may register for for general election?

Held: The Saturday next preceding the general election.

J. M. Parish, April 18, 1920.

Registration—Primary—General Election.

Query: If registered for recent primary, is further registration necessary for general election?

Held: Department ruling, further registration unnecessary.

J. Ward Arney, October 25, 1920.

Residence—Qualifications.

Query: What is the test to be applied in determining a residence under the election laws of the State?

Held: The laws contemplate that the intention of the voter shall control. If he has lived in the State of Idaho for six months prior to a general election and departs then from the State, the question immediately resolves itself to what his intentions are. If he intended at the time of departure, a temporary absence from the State with the ultimate object in view of returning to the State, then he has not lost his residence. It must be kept in mind that there must always be a concurrence of intent and act.

S. L. Carmen, September 15, 1920.

Registration—Transfer.

Query: A voter who has registered in one county before election moves to another county. Is he eligible to have his registration transferred to the latter county?

Held: Under the provisions of Section 567 Comp. Stat. the same

is not contemplated. The only transfer which can be made is from one precinct to another in the same county.

J. M. Boyle, October 13, 1920.

Straight Ticket—Scratching.

Query: In voting a straight ticket by marking an X in the circle at the top of the column, is it sufficient to vote for a person in another column to place an X after his name without drawing a line through the corresponding name on the column he has already voted straight?

Held: It is sufficient under the 1919 election laws.

Dave Burrell, October 30, 1920.

FISH AND GAME.

Enforcement—Indians On Reservations.

Query: May the State game department enforce the provisions of the game law as to open and closed season, etc., against Indians on Indian Reservations within the state of Idaho?

Held: It is our opinion that the game department cannot enforce these laws against Indians living in tribal relations within Indian Reservations. See in re Blackbird, 109 Federal 139; U. S. vs. Hamilton, 233 Federal 685.

State Game Warden, May 19, 1920.

Exemptions—"Tagging" Big Game.

Query: Are females, children under 12 years and veterans of the Civil war required to tag big game upon killing the same?

Held: The shipment or transportation of untagged game, no matter by whom killed, is forbidden.

Otto M. Jones, October 31, 1919.

Fish Ladder—Expense Of Construction.

Query: Is it the duty of the State to pay one-half the costs of repairing a fish ladder on a dam?

Held: There is no provision whatever authorizing the State to do such work. Moreover, under the provision of Section 2751 C. S. it is made the duty of the owner to construct and maintain the ladder.

Otto M. Jones, February 5, 1919.

Hunters—Navigable Streams.

Query: Do hunters have a right on and along navigable streams through deeded land?

Held: It is our opinion that hunters have a right on and along navigable streams, but not beyond the highwater mark.

L. D. Idle, November 10, 1920.

Licenses—Federal Employees—Residents.

Query: Are employees in the U. S. Forest Service entitled to resident fish and game licenses, irrespective of residence requirements?

Held: Unless such persons referred to are actually residents of the State of Idaho for six months as the term resident is construed by our courts, they must obtain non-resident licenses.

Otto M. Jones, June 23, 1919.

License—Exemptions.

Query: Is a game license required of resident women and children under the age of 12 years?

Held: It is our opinion it is not.

T. C. Barringer, August 25, 1919.

Navigable Streams—Fishing.

Query: May the owner of lands bordering a navigable stream exclude the public from fishing therein within his property lines?

Held: It is our opinion that the owners of land bordering navigable streams cannot exclude fisherman from streams between meander lines thereof if it be meandered; if not meandered between ordinary lines of high water. See *Latting vs. Scott*, 17 Idaho 506; 11 R. C. L. page 1032; 19 Cyc. 991.

Otto M. Jones, June 12, 1919.

Pheasants—Unlawful Possession.

Query: Is possession of pheasants lawfully killed in open season in one county unlawful in another county where no open season exists?

Held: It is our opinion that it is not.

Otto M. Jones, October 31, 1919.

Trappers—Trespassing.

Query: What protection has a trapper under the State law in going on private property to trap beaver under a permit issued by the State Fish and Game Warden?

Held: Such a permit protects the trapper only against the State game laws. A trapper entering private property does so at his own risk.

E. A. Cummings, October 1, 1919.

Trapping—Muskrats.

Query: Is it necessary to procure a license to trap muskrats?

Held: A muskrat is a fur bearing animal, made so by the statutes of this State and it is necessary to have a trapper's license.

Mrs. Ed. Stockton, November 26, 1919.

Trapping—Coyotes.

Query: Does the law require one to have a license to trap coyotes in Power county?

Held: A coyote is defined in this State as a predatory animal and no license is required to trap predatory animals.

W. F. Jasmann, October 29, 1919.

Trapping—Fur Bearing Animals—Exemptions.

Query: Must Civil war veterans obtain a license for trapping fur bearing animals?

Held: No.

Otto M. Jones, October 31, 1919.

Trapping—Predatory Animals—License.

Query: Is it necessary for a trapper of predatory animals to have a trappers license?

Held: It is not.

Willard Nelson, October 24, 1919.

Violation—Enforcement.

Query: Under Section 2757, Compiled Statutes, does it require the hitting of the bird?

Held: In our opinion for the complete offense under this section, it will be necessary that the bird be actually shot, however, we call your attention to Section 8607, Compiled Statutes which is in point. The deputy should be instructed when he finds persons shooting at birds which they do not succeed in knocking down, that a complaint should be drawn for attempt.

Otto M. Jones, October 25, 1920.

HIGHWAYS AND HIGHWAY AND GOOD ROADS DISTRICTS.

Board Commissioners—Personnel.

Query: Where a village is included within the limits of a highway district may a man living within the village act on the highway district board?

Held: He may.

M. A. Pierce, October 28, 1919.

Board Of Commissioners—Vacancy.

Query: Does the removal of a highway commissioner from a highway district vacate his office?

Held: It does.

Query: Where commissioners of a highway district all remove from a highway district are their acts in the capacity of highway commissioners subsequent to their removal from the district, valid?

Held: As defacto officers, yes. See Shoshone Highway District vs. Anderson, 22 Idaho 126.

Query: In case there are vacancies in all the offices of highway commissioners within the district except one, who has the power to fill the vacancy?

Held: It is our opinion that the governor should make the appointments upon petition signed by 15 or more qualified electors of the district setting forth the facts.

N. B. Carpenter, October 28, 1919.

Boards—Incompatible—Duties.

Query: May a county commissioner with propriety fill the office of commissioner of a highway district within his county?

Held: It is our opinion that such offices are incompatible.

Governor Davis, August 28, 1919.

Bond Elections—Qualifications—Electors.

Query: In brief, what are the qualifications of electors at bond elections in highway districts?

Held: (1) The same qualifications as voters at general elections.
(2) Residents of the district.

Mrs. G. A. Bashaw, April 16, 1920.

Commissioner—Employment.

Query: Is it illegal for a member of the highway board to run a rock crusher for the district for daily wages?

Held: It is.

Yale Highway District, May 20, 1919.

Contracts—Bids—"Cost Plus A Percent."

Query: Do the Idaho laws contemplate a "cost plus" a percent contract?

Held: They do not.

W. J. Hall, June 11, 1920.

County Road And Bridge Tax.

Query: Is it necessary for the county commissioners to levy a road and bridge tax when the county is completely divided into highway districts?

Held: If the highway districts all make levies we see no particular necessity for this.

C. C. Siggins, August 18, 1919.

Good Roads District—Conversion Into Highway Districts.

Query: Can a good roads district be bonded and then converted into a highway district?

Held: It can; however we advise it is better to convert a good roads district into a highway district and then issue the bonds.

W. J. Hall, September 16, 1919.

Good Roads District—Petition—Who May Sign.

Query: Can all citizens of any good roads district sign a petition calling for a good roads district?

Held: Only freeholders residing in the proposed good road district may sign the petition.

Query: May all citizens of a good roads district vote at any and all elections held in said district?

Held: Freeholders.

Query: Can all citizens vote at a bond election in said district?

Held: Freeholders.

N. E. Ware, February 10, 1919.

Good Roads District—Treasurer.

Query: Who acts as treasurer of a good roads district?

Held: Section 1482 C. S. makes provision for a special treasurer of a good roads district.

I. D. Ward, September 30, 1920.

Highway Commissioners—Contracts.

Query: May a highway commissioner be interested in the performance of labor upon roads or highways?

Held: It is our opinion that commissioners are prohibited from contracting with or employing themselves to do work in their highway

districts other than the duties of commissioner which are provided for in the statute.

A. G. Hooper, February 15, 1919.

Highway Districts—Bond Election—Registration.

Query: Is registration required in order to be a qualified elector at a highway district bond election?

Held: No. Shoshone Highway District vs. Anderson, 22 Idaho 109.
J. A. Barron, January 21, 1920.

Highway Districts—Bonding.

Query: Has the board of county commissioners the right or power to bond the entire county including the highway district for road purposes?

Held: Yes. See Reinhart vs. Canyon County, 22 Idaho 348; Nampa Highway District vs. Canyon County, 30 Idaho 446.

I. W. Stoddard, March 26, 1920.

Highway Districts—Contract—State Highways.

Query: May a highway district through its commissioners contract with the State to construct State highways wholly within the boundaries of their district, bidding in the same manner as others bid and otherwise comply with the requirements of the statute?

Held: No. Such a contract is not one contemplated by the statutes to be made by a highway board.

R. W. Katerndahl, January 16, 1920.

Highway Districts—County Surveyors.

Query: Does the law contemplate that the county surveyor shall work for an independent highway district without receiving additional remuneration therefor?

Held: It does not. However it is possible that the county may require a county surveyor to do work for the county within a highway district.

Peter Johnson, February 1, 1919.

Highway Districts, Municipality and Poll Tax.

Query: Shall a highway district account to the city for any portion of the road poll tax levied by the county commissioners and collected by the highway district?

Held: For all poll taxes collected within a municipality, the municipality shall receive 75 per cent thereof.

Sutphen & Sutphen, March 3, 1919.

Highway District, Telephone Polls.

Query: What rights, if any, has the Bureau of Highways in the matter of granting permission to place telephone poles on state highways; also is it within the power of the bureau to deny such permission?

Held: Your bureau has control and discretion in the matter and has the right to say whether or not the location of a pole at a certain point incommodes the public use of the highway. It is very doubtful if your department can deny the company absolutely the right to use the

highway unless your department can show an absolute incommodity of the public use of the highway.

D. P. Olson, August 13, 1920.

Highway—Width.

Query: What is the width of highways in this state?

Held: (1) Where the right of way for highway is obtained by deed or condemnation proceedings, its width will be that specifically granted. (2) As to all other classes, section 1350 Comp. Stat., is in point. However we call your attention to those highways established by prescription and the width obtained thereby. See *Meservey vs. Gulliford*, 14 Idaho 148.

D. P. Olson, May 24, 1920.

Municipality—Assessment.

Query: Is a municipality included within a highway district liable for assessment to retire bonds voted by such district?

Held: Such included municipality is liable.

Query: Is such included municipality entitled to the use of any specified portion of a bond issue floated by the highway district?

Held: Such included municipality is entitled to only such moneys derived from the sale of the bonds as the highway board sees fit to spend within such municipality.

J. R. Keenan, May 16, 1919.

Rights of Way—State Lands.

Query: Can right of way for public road be obtained by user of state school lands?

Held: It can not.

I. H. Nash, April 10, 1919.

Surplus Funds—Investment.

Query: May the treasurer of a highway district invest the surplus funds of the district in his hands in registered state warrants?

Held: He can not.

R. E. Haynes, October 25, 1920.

Workmen—Eight Hours.

Query: Can workmen in the employ of a highway district be employed more than 8 hours per day?

Held: The answer to this question is problematical and depends on the interpretation the Supreme Court would place upon the term "other municipality." It is our opinion, however, that such term may and properly does include a highway district within the contemplation of the eight hour act of the state.

Scott Ogden, May 8, 1920.

INSURANCE.

Banks—Insurance Agent.

Query: Is there any provision in the Idaho statutes which pro-

hibits a bank from acting as insurance agent or which permits them so to act assuming that their articles are drawn to permit the same?

Held: It is our opinion that our laws contemplate that only individuals shall act as insurance agents.

Union Securities Company, June 21, 1920.

Fire Insurance Company—Certificate of Deposit—Foreign Countries.

Query: Is it necessary for fire insurance companies organized in some state other than Idaho, to furnish annually a certificate of deposit to this department?

Held: Under the provisions of Section 4971 and Section 2973, Comp. Stat., relating to insurance companies that are "organized under the laws of foreign countries" does not include insurance companies organized in some state of the United States, hence certificates of deposit must be filed only by insurance companies organized under the laws of a foreign country.

H. J. Brace, Director of Insurance, May 11, 1920.

Foreign Insurance, Statutory Agent.

Query: Where new insurance companies are admitted to do business in the state of Idaho who should be designated as the statutory agent for the service of process?

Held: The Commissioner of Commerce and Industry is the proper person to be so designated.

Query: Upon what person should service of process be made?

Held: The Commissioner of Commerce and Industry.

Query: Will it be necessary to require new designation from companies doing business in the state who have heretofore designated the insurance commissioner as such statutory agent?

Held: We think it would be much better for such companies to file a new designation of agency.

W. R. Hyatt, Insurance Dept., April 17, 1919.

Insurance Company—Agent—Certificate of Authority.

Query: Is the payment of brokerage by an insurance company authorized to do business in this state to a person or corporation referring risk to it, a contravention or evasion of the laws of this state relating to insurance?

Held: It is in direct violation of Section 5013 Comp. Stat.

H. J. Brace, Director of Insurance, June 2, 1920.

Insurance—Fraternal Insurance Societies.

Query: Are fraternal insurance societies required to file articles of incorporation and amendments thereto with the Secretary of State and to pay the fees incident thereto?

Held: If such a society is not an incorporated society, the filing of its constitution and by-laws with your office and paying the fees provided in Section 5184 Comp. Stat., is sufficient. However, if a corporation, then it is obliged to comply with the law relative to corporations and file its articles with the Secretary of State and pay the fee provided therefor.

Query: Does the law requiring fraternal insurance societies to file

their articles of incorporation and constitution and by-laws with the Department of Commerce and Industry apply only to domestic societies?

Held: Section 5160 Comp. Stat., defines the procedure relative to foreign societies.

Query: Should the Bureau of Insurance require fraternal benefit societies to pay the fees for filing articles of incorporation with the Secretary of State?

Held: If the benefit society is in fact a corporation the Secretary of State will collect the fees for filing the articles.

Query: Is the mere filing of the articles of incorporation and the constitution and by-laws of a fraternal benefit society in the office of the Bureau of Insurance sufficient?

Held: We advise that before a society is a corporation it must file its articles with the Secretary of State and in case they have overlooked this matter it would no doubt be well for you to call it to their attention. However, as far as your office is concerned the filing of articles of incorporation and their constitution and by-laws would seem to be sufficient, provided they comply with the law relative thereto.

H. J. Brace, Director of Insurance, December 2, 1919.

Insurance, Riot.

Query: Can a foreign corporation writing fire insurance be authorized to write riot, explosion, riot and civil commotion insurance in the state of Idaho?

Held: A fire insurance company in this state can not be authorized to transact the claims of business specified.

H. J. Brace, Director of Ins., Nov. 3, 1919.

Jurisdiction—Corporations Guaranteeing Real Estate Titles.

Query: Must companies, domestic and foreign, doing business of guaranteeing real estate titles in this state be required to qualify under the laws relating to insurance companies?

Held: It is our opinion that it is not the intention of the legislature that it should come under the insurance laws.

Howard J. Brace, Director of Insurance, May 24, 1920.

JURIES.

Fees.

Query: Are jurors who are subpoenaed and attend but who do not sit, allowed fees and mileage?

Held: They are not.

F. B. Dotson, June 18, 1920.

Women.

Query: Are women eligible to serve as jurors in the State of Idaho?

Held: It is our opinion that they are.

Mrs. G. W. Manning, April 25, 1920.

MARRIAGE AND DIVORCE.**Eligibility—First Cousins.**

Query: May first cousins marry in the State of Idaho?

Held: We regret that there is no law in the state forbidding such a marriage.

Secretary of State, February 19, 1919.

Eligibility—Epileptics.

Query: Is there any law prohibiting the marriage of epileptics?

Held: There is none.

Query: Is epilepsy grounds for a divorce in Idaho?

Held: It is not.

Query: Would a marriage contract by an epileptic in Washington where such marriage is invalid, be valid in Idaho?

Held: No.

Thomas W. Mason, June 21, 1919.

MINORS.**Industrial School—Jurisdiction—Probate Court.**

Query: Does a probate court lose its jurisdiction after it has committed a child to the institution or does it still have the power to modify or withdraw such an order of commitment and discharge the child committed thereunder?

Held: Once the child has been committed the court loses its control and the power over the child is exclusive in the board, the court being unable to act only upon recommendation of the board.

Arthur A. Holden, December 19, 1919.

Industrial School—Marriage—Parole.

Query: May the superintendent of the industrial school consent to the marriage of minor inmates of your institution who are on parole?

Held: It is our opinion, if there is no parent or other guardian capable of consenting to the marriage, you have authority to do so. However, we do advise that if the consent of the parent or other guardian can be obtained, that it be done.

Fred J. Williams, March 24, 1919.

Tobacco.

Query: What is the law of Idaho relative to boys being forbidden to use tobacco and what can be done with persons who sell or give tobacco to minors?

Held: Section 8363 Compiled Statutes makes provision for such a situation. The punishment of minors violating this statute is now handled under the provisions of Section 1010 to 1023 Compiled Stat.

O. W. James, March 13, 1920.

MISCELLANEOUS.**Aliens—Lands.**

Query: May Japanese who are not citizens of the U. S. hold property in this state?

Held: There is no law against it.

G. C. Painter, August 11, 1919.

Municipal Board of Health.

Query: May a municipal corporation be compelled to organize a local board of health.

Held: No.

E. E. Laubaugh, October 28, 1919.

Personal Property of State—Sale.

Query: May personal property owned by the state and pertaining to the use of certain departments, be sold?

Held: In the absence of special statutory authority, no.

H. C. Allen, April 16, 1919.

MOTOR VEHICLES.

Licenses—Dealers—Transfer.

Query: Where a dealer sells his business can he transfer his dealer's license?

Held: He cannot.

Clinton Wilson, February 27, 1919.

License—Dealers.

Query: Are dealers required to pay the full price of license instead of half price of license after August 1?

Held: They are required to pay the full license.

Robert O. Jones, August 19, 1919.

License—Dealers.

Query: Can a Utah automobile dealer be required to take out a dealer's license in your county.

Held: Unless the Utah dealer maintains an establishment in your county he need not take out a dealer's license.

Query: Can a dealer at Idaho Falls who has taken out a dealer's license be required to take out a dealer's license in another county?

Held: Where the Idaho Falls dealer maintains no establishment in your county, he need not take out a dealer's license.

C. D. Goasland, May 10, 1919.

License—Dealers.

Query: How many vehicles may an automobile dealer operate on a dealer's license?

Held: There is no limitation so long as they are used for the purpose of testing, demonstrating or selling.

Query: In how many localities may a dealer operate on a single license?

Held: Such a license covers only a place of business in one city, town or village, and an additional license must be obtained for every separate establishment in any other city, town or village.

R. O. Jones, Secretary of State, May 16, 1919.

License—Dealers.

Query: Is it necessary for an automobile dealer to procure a license for each make of car sold by him?

Held: It is.

Robert O. Jones, January 22, 1920.

License—Dealers.

Query: Is an automobile dealer permitted to use a dealer's license on second hand cars of a different make than that for which the license was procured, such license to be used on second hand cars for demonstration and sales purposes only?

Held: The license cannot be so used.

Wright Auto Company, July 9, 1919.

Licenses—Dealers.

Query: Where a dealer is handling two or more makes of cars and takes out a license and orders six or more duplicates, can he go to other parts of the county and start up and still use these duplicates for his license?

Held: Such a dealer must take out a separate license for each place of business.

Query: May a license for a Ford be transferred to a Dodge or any other make of machine?

Held: An individual has no right to transfer a license to any machine other than the one for which it was originally purchased.

Query: Where a dealer has four duplicate plates for a Ford and drives them on all the different makes he handles, can he be compelled to take out a proper license?

Held: A dealer shall procure but one license but the price of that license is based upon the number of machines which he handles. There are two methods of enforcing this law, one being set out in Section 1595 C. S., and the other in 1619 C. S.

H. I. Adams, February 27, 1919.

Licenses—Failure to Pay.

Query: What recourse can be had against owners of motor vehicles who failed to pay the license tax in past years?

Held: Your inquiry contains the suggestion that where the vehicles escaped license tax perhaps they could be taxed as personal property, and like other personal property taxed this year at treble valuation for the years that escaped taxation. In this we think you are correct. See Sec. 1595 Comp. Stat., and Sec. 1602 C. S. See Sec. 3099 Subd. 20 C. S. 3115 C. S.

Wm. A. Kincaid, March 7, 1919.

License—Foreign Operators—Plates.

Query: Is there any legal reason why the prosecution of Wyoming operators of motor vehicles who drive upon our highways with only one plate attached to the car, should not be instituted?

Held: There is. See Section 1612 Comp. Stat.

Robert O. Jones, June 3, 1920.

License—Foreign.

Query: How long is a California motor vehicle license good for running in Idaho after the return of a party to this state who left Idaho last fall?

Held: If the party mentioned is a resident of Idaho he must obtain an Idaho license immediately.

H. I. Adams, June 29, 1920.

License Plate—Duplicate.

Query: Where automobile license plate has been lost and duplicate thereof procured, may price of duplicate be refunded upon return thereof?

Held: It may not.

Robert O. Jones, Secretary of State, August 19, 1919.

License—Reduction.

Query: Where one becomes the owner of a car before August 1 but takes possession after August 1, shall he pay the full year or one-half year's license?

Held: He shall pay the one-half year's license.

Moses Smith, October 27, 1920.

License Reduction:

Query: If an automobile is purchased by a party and he comes into possession on the 25th day of October, is he required to pay the six months license or is he required only to pay the last quarter?

Held: He shall pay one-half of the annual license tax, and is only excused therefrom if he becomes owner and receives possession after November 1.

O. E. Bossen, November 6, 1919.

License—Reduction.

Query: Where a car bearing an Oregon license is sold to a resident of Idaho before the first of August, is the owner entitled to a reduction when he purchases his Idaho license?

Held: He is not.

B. Dick Hartley, October 1, 1919.

Licenses—Refund.

Query: Where a party moves to California and takes out a license on his automobile after having previously purchased one in Idaho, is he entitled to a refund upon his Idaho license?

Held: He is not.

C. B. Ross, October 15, 1919.

License—Transfer—Sales.

Query: Where a person has paid a license tax and received the license plates on a motor vehicle and afterwards sells the same can he be compelled to transfer the plates for the car?

Held: It is the intent of the law that the license plate is issued only for the particular car but there is no provision made for enforcing its delivery with the car but that is a matter that should cause

little practical difficulty as it is useless in the hands of the vendor and its use by him strictly prohibited.

R. O. Jones, Secretary of State, September 30, 1919.

License—Weight.

Query: May a license be procured for the chassis or must it include all equipment?

Held: It is our opinion that the intention of the legislature is that the car should pay a license on the basis of weight with all equipment.

E. O. Bossen. October 4, 1919.

NOTARIES.

Indian Agent—Authority.

Query: Has an Indian Agent authority to take acknowledgements the same as a Notary Public under the state laws which govern transfers?

Held: He has not.

E. L. Schnell, June 16, 1920.

Jurisdiction—Residence.

Query: Where a Notary secures his commission in one county and files his commission in that county and removes to another, is it necessary for him to secure another copy of his commission and file the same in the latter county?

Held: Such procedure is not necessary.

Secretary of State, May 1, 1920.

Notaries Public—Jurisdiction.

Query: Will you inform me as to jurisdiction of a Notary Public in your state, are his powers state wide or confined to one county or may they operate in contiguous counties?

Held: His powers are state wide.

James R. Nolan, August 20, 1920.

Notaries Public—Marriage.

Query: In case I get married would my Notary Public commission expire?

Held: It would not, but if you continue to exercise the powers of notary public you would have to sign your name as it appears on the seal and under your commission.

Maud Elison, January 20, 1920.

PROHIBITION AND GAMBLING.

Alcohol—Transportation.

Query: Can hospitals and educational institutions be permitted to transport pure grain alcohol under the laws of the state of Idaho?

Held: They can not.

Louis Williams, Internal Revenue Collector, May 13, 1920.

Beverages—Alcoholic Content.

Query: Is it lawful to have in stock liquors other than non-beverage alcohol to fill certain prescriptions?

Held: It is not permissible in the state of Idaho, to have intoxicating liquors in one's possession for any purpose whatever.

Arthur J. Harwood, February 25, 1920.

Extracts—Beverage Purposes.

Query: What is the law with reference to extracts and fruit flavors being sold in quantities of several bottles per day for beverage purposes?

Held: Any article which contains alcohol and which produces intoxication is within the provisions of the statute, the use of any such article as a beverage being the criterion to go by.

P. M. Condie, September 25, 1919.

Jamaica Ginger—Alcoholic Content.

Query: Can Jamaica Ginger and similar compounds be sold in this state?

Held: If for beverage purposes, no.

J. N. Adams, December 2, 1919.

Picnise—Pharmacist, Permit.

Query: Is a probate Judge licensed or authorized to issue a permit to anyone other than a licensed pharmacist?

Held: He is not; and this irrespective of his qualifications as a pharmacist, or a physician, or a surgeon.

Nesbit & Evans, April 25, 1919.

Prohibition—Gambling.

Query: Has a village power to prohibit the operation of a pool hall therein?

Held: It is our opinion it has not. See State vs. Frederic, 28 Idaho 709.

G. C. Pennell, March 17, 1919.

Punch Boards—Prohibition.

Query: Are punch boards prohibited in the state of Idaho?

Held: Expressly so; under the provisions of Section 8316 Comp. Stat.

Sam K. Humphrey, March 4, 1920.

Sacramental Purposes—Permitting.

Query: Is it necessary for a Catholic Priest to secure a permit before he can ship a supply of wine to Idaho for sacramental purposes?

Held: It is.

Rev. Edward O. D. Hines, July 15, 1919.

Syrups—Alcoholic Content, Prohibition.

Query: Is it lawful in Idaho to sell or make fruit syrups flavored with extracts where the completed article contains less than 1 per cent or $\frac{1}{2}$ per cent alcohol?

Held: If used for a beverage, no.

Harry Marcovitch, April 21, 1920.

SCHOOLS

Annual Meeting—Board of Trustees—Duty.

Query: Has the board of trustees of a common school district authority to disregard or overrule any action taken at the annual school meeting?

Held: They have not.

Edward Steiner, August 15, 1918.

Attendance Compulsory.

Query: May the school district trustees compel a girl of school age to attend school?

Held: It is our opinion that unless the girl is physically unable to attend school, she must attend some school either in her home district or some other district.

John Tiede, November 10, 1920.

Attendance—Home District—Elsewhere.

Query: Is there any way to force the parents of a child to send him to school in his home district?

Held: Section 828 Comp. Laws, is controlling in this situation, and unless the county superintendent for the causes set forth in that section grants permission to go to school elsewhere the child must attend in its home district.

Query: In case the child is permitted to attend school in another district, is there any way that the money for this pupil can be retained by the home district?

Held: No. The district in which he attends is entitled to such an amount as such pupil would be accredited in his own district.

Query: Where the father resides in one district and maintains a home there and sends his wife and their child to another district where they remain five days during the week, which place of residence governs for school purposes?

Held: The residence of the father is controlling.

Howard Williamson, October 29, 1919.

Bonds—Levy.

Query: May the county commissioners make a levy to pay interest on bond indebtedness which exceeds the 10 mill levy?

Held: In common school districts there is no limitation on the amounts which may be raised to pay the interest and principal on school bonds.

Commissioner of Education, December 11, 1919.

Bonds—Payment.

Query: May excess maintenance and operation moneys be applied on the payment of bonds?

Held: No.

A. C. Price, April 17, 1919.

Bonds—Water System.

Query: Do school districts have power to issue bonds for installation of water system?

Held: No.

A. G. Cosgrove, October 25, 1919.

Bond Election—Votes.

Query: To carry a bond election, does it require that two-thirds of the votes cast at the election be in favor of the proposal, or two-thirds of the voters in the district?

Held: Two-thirds of the votes cast at the election.

Ben Daniel, March 6, 1920.

School Buildings—Purchase.

Query: Can a board of trustees purchase a building for school purposes?

Held: Common school districts can not.

F. A. Niel, March 6, 1920.

Bond Proceeds—Construction—Insufficiency.

Query: May deficiency warrants or other indebtedness be issued to complete construction of school buildings where the proceeds raised by bond election are insufficient?

Held: It cannot.

D. W. Moffat, March 19, 1920.

Bonds—Independent Districts—Levy.

Query: May the board of trustees of independent districts levy, in addition to the 10 mills provided in Section 847, for such moneys to provide funds to pay the interest and principal on outstanding bonded indebtedness?

Held: That the provisions of of 847 subdivision 3 are controlling and that the board of trustees cannot levy in addition to the 10 mills for the purposes mentioned in your query, but that the 10 mills must include maintenance and bond purposes.

W. D. Chadwick, Gooding, Ida., October 14, 1920.

Bonds—Interest.

Query: Shall the interest derived from proceeds of bond funds be placed to the credit of the current expense fund?

Held: No, it shall be placed to the credit of the bond fund.
State Superintendent of Public Instruction, January 29, 1920.

Bonded Indebtedness—Consolidation.

Query: Where two districts are consolidated, how is the indebtedness apportioned?

Held: The entire territory of the consolidated school district becomes liable for the bond indebtedness of one of the common school districts comprising the same, which indebtedness was incurred prior to the consolidation of the district.

W. T. James, September 10, 1919.

Bond—Construction.

Query: Must a board of school trustees obtain a contractor's bond?

Held: It is the duty of the board to see that such a bond is furnished.

Commissioner of Education, March 20, 1920.

Bonds—School District—Borrowing.

Query: What power has a school district to borrow money?

Held: None, except on a regularly voted bond issue.

Arthur Leonardson, September 3, 1919.

Common School—Consolidation—Effect.

Query: Do common school districts become independent school districts on consolidation?

Held: They do not.

Frances L. Mills, July 28, 1919.

Common School—Consolidation—Election.

Query: Must an election be held for the consolidation of common school districts?

Held: No.

Frances L. Mills, July 28, 1919.

Common School Districts,—Attorneys—Employment.

Query: May a school district employ attorneys?

Held: Yes, under the provisions of Section 834 C. S. It is not a part of either the county attorney's or the attorney general's duties to act as attorney for a school district. The great number of inquiries answered by this office are answered as a matter of courtesy and not as an official duty.

F. R. Neil, April 6, 1920.

Common School District—Rural High School District.

Query: Can a common school district and rural high school district unite for the purpose of maintaining rural high school?

Held: Such districts can unite for the sole purposes of maintaining a rural high school district upon proper procedure being followed.

George W. Gould June 18, 1920.

Common School Districts—Teachers—Discharge.

Query: Can the board of trustees of a common school district discharge a teacher without a hearing?

Held: They can not.

State Superintendent Public Instruction, March 29, 1920.

Common School Districts—Teacher's Salary—Epidemic.

Where schools are closed either temporarily or permanently by district authority, the district remains liable for the teacher's salary, as this is no suspension by reason of operation of law but only a

suspension by the action of one of the parties to the contract, however it may be.

In case of temporary suspension by law, order of any of the agencies of the Government, other than district trustees that is by operation of law, the district remains liable for the teacher's salary during such temporary suspension. However, where there is a permanent suspension by law, order of Government agency, that is other than the board of trustees, then the contract is absolutely discharged and both teacher and district are relieved from obligations to perform according to the terms of the contract.

Opinion of the Attorney General.

Community Centers—School Houses.

Query: For what purposes may a school house be used as community center?

Held: The words "community center" are very broad and leave great discretion in the board of trustees as to the purposes for which the school building may be used.

Query: Who pays the expenses of community gatherings in the school house?

Held: Such expenses of gatherings authorized by the board of school trustees to be held are proper charges against the district.

E. C. Richard, April 21, 1920.

Compulsory Education—Exemption.

Query: Can any child of school age under 15 years of age be exempt from attending school for any causes other than disability on account of the child's bodily or mental condition, as set forth in Section 1018 Comp. Stat.?

Held: It is our opinion that under the provisions of Section 1018 C. S., a child's bodily and mental condition is the sole cause of exemption from attendance at school where the age of such child is under 15 years.

Query: If a child under the age of 15 years not exempted from school attendance under the provisions of Section 1018 C. S., does not attend school, may he be committed to the Idaho Industrial Training school?

Held: It is our opinion that under the provisions of Section 1019 he can.

Commissioner of Education, November 13, 1920.

Contracts—Competitive Bids—Failure.

Query: Is the county superintendent authorized to counter-sign an order for a warrant for payment of bills in connection with a contract which was not let by competitive bid?

Held: She is not.

Alice Melton, March 1, 1920.

Condemnation.

Query: May private property be condemned for school purposes?

Held: Under the provisions of Section 7404, Comp. Stat., it may.

H. C. Barlow, December 10, 1919.

County Superintendent—Duties.

Query: May a county superintendent hold at the same time the office of county superintendent and the position of teacher in one of the districts in which she holds office?

Held: The two positions are conflicting, inconsistent and incompatible with each other.

State Superintendent Public Instruction, August 22, 1919.

County Superintendent—Construction—Warrants.

Query: What is the duty of a county superintendent in the construction of school buildings?

Held: It is not the duty of a county superintendent to personally supervise the construction of school buildings; she becomes interested because she is required to sign all legally drawn warrants. If she has reasonable notice of an illegal contract she should of course refuse to countersign the warrant.

Anna Hale, March 22, 1920.

County Division—School Census.

Query: Is it proper where a district has been divided by county division to credit one county with the children formerly enumerated in their school census but who since the county division reside in another county?

Held: It is not.

Myrtle Journey, February 28, 1919.

General Fund—Sinking Fund.

Query: Is it legal to divert a part of the general fund to the sinking fund of independent school district?

Held: It is not.

J. M. Leigh, March 1, 1920.

High Schools—Tuition.

Query: May a high school charge additional tuition?

Held: Yes, if the same is authorized by the county superintendent subject to review of the state board.

Commissioner of Education, March 1, 1920.

High School Tuition—Amount.

Query: Can a school district pay more than \$4.00 per month for tuition of a pupil belonging to the district who is in attendance upon a high school which charges more than that amount?

Held: No. (See Sections 998 to 1001 C. S.)

Commissioner of Education, September 13, 1920.

High School Tuition.

Query: Can a district high school charge non-resident students a tuition fee in addition to that provided by law to be paid by the home district?

Held: It can under the provisions of Section 1001 Comp. Stat. Under this latter section if a hardship is worked upon a high school district by the receipt of pupils, we can see no reason why the district cannot exclude the pupils except on condition that they

pay an additional tuition provided that such requirement be authorized by the county superintendent subject to review by state board of education.

Commissioner of Education, March 1, 1920.

Independent School Districts—Cost Plus Method—Contracts.

Query: Can independent school districts improve their buildings by the cost plus method?

Held: Where the expenditure is \$100 or more, competitive bids must be received. This applies to all school districts.

Query: Can an independent school district improve their buildings by hiring men with a foreman over them with an architect as superintendent of the work? In this case can a member of the board of trustees act as a foreman?

Held: No.

State Superintendent of Public Instruction, November 26, 1920.

Independent Districts—Teacher's Salary—Epidemic.

It is our opinion that so far as independent districts are concerned, if the board of trustees chooses to terminate teachers' contracts and discharge them permanently for the term by reason of epidemic, that they may do so. But on the other hand until such time as the contracts are finally terminated and discharged, the district remains liable for the teacher's agreed compensation in accordance with the contract, as until that time, the teacher would hold herself in readiness to perform her undischarged contract if called upon.—Opinion attorney general.

Independent District—Amortization Bonds.

Query: May an independent school district issue amortization bonds?

Held: Not under the present laws.

E. A. Bryan, December 12, 1919.

Independent District—Site.

Query: Can the board of trustees of an independent school district select a site for a school building?

Held: They can.

H. J. Barton, October 13, 1919.

Chairman Independent Board—Vote.

Query: Is a chairman of the board of trustees entitled to vote on all questions coming before the board?

Held: He is.

E. R. Lenz, March 4, 1920.

Independent School District—Levy—Teachers.

Query: May independent school district make levy to meet salaries of teachers?

Held: Independent school districts are confined to the statutory levy. See Section 847.

Nella M. Weaver, March 29, 1920.

Independent Districts—Levy—Rural Routes.

Query: Are independent districts authorized to expend an amount exceeding four mills for the support of rural routes?

Held: No.

O. E. Borden, February 17, 1919.

Independent Districts—Bonds—Levy.

Query: Does the 10 mills provided in Section 847 cover the levy for the purposes of payment of principal and interest on bonds?

Held: It does.

Stella M. Rogers, April 13, 1920.

Independent Districts—Trustees—Vacancy.

Query: How long does a person appointed to a vacancy on an independent school district board, serve?

Held: Under provisions of Section 843 Comp. Stat., such a person serves only until the next school election.

G. Orr McMinimy, January 21, 1920.

Independent District—Acquisition—New Territory.

Query: Does the fact that an independent school district is bonded prevent the acquisition of new territory?

Held: It does not.

Myrtle Journey, May 27, 1919.

Independent District—Division.

Query: Can an independent school district which is bonded be divided under the provisions of 836 Comp Stat.?

Held: It can not.

E. A. Bryan, April 7, 1919.

Independent School District—Organization—County Commissioners.

Query: What is the duty of the county commissioners upon filing of the petition for organization of independent school district?

Held: It is mandatory upon the county commissioners to act on such petition immediately.

E. A. Williams, November 1, 1919.

Independent District—Absorbition Common School District—Effect.

Query: Does an independent school district assume indebtedness of a common school district which the former embraces?

Held: When an independent school district is organized embracing territory which theretofore had been organized as a common school district, the independent school district is subject to the statutory obligation to assume and discharge all debts, obligations and duties belonging to, or devolving upon, the former district. Boise City National Bank vs. Independent School District Number 40, Gooding County, 33 Idaho —. 189 Pac. 47-

Gym. Levy.

Query: What mill levy can an independent district make for Gym purposes?

Held: Section 847 subdivision 13, Comp. Stat., makes provision for a one mill levy.

G. E. Pennell, January 22, 1920.

High School—Year.

Query: What is a high school year?

Held: A high school year consists of the full term of nine months.

A. Meyer, August 20, 1919.

Joint School Districts—Accounts.

Query: Is it necessary that the accounts in joint school districts be kept apart and separate?

Held: It is.

B. M. Coolidge, April 12, 1920.

Lapsed District—Sale Property.

Query: What authority must county superintendents have to sell property in lapsed districts?

Held: No other authority than the fact that such district has lapsed.

Frances L. Mills, July 28, 1919.

Lapsation—Petition.

Query: What is the proper procedure to follow when a district lapses?

Held: Where a district lapses the better practice is to file a petition with the board of county commissioners for attachment of property of such lapsed district to another district.

Frances L. Mills, July 28, 1919.

Mandamus—Construction.

Query: Will mandamus lie to compel the board of school trustees to proceed with the erection of a school building when funds for the construction thereof have been lawfully voted?

Held: It will.

Commissioner of Education, June 23, 1919.

Marriage—Industrial School—Release.

Query: Does marriage after commitment to the industrial school operate as a release and discharge of a minor committed to that school?

Held: No.

Commissioner of Education, September 2, 1919.

Nepotism Laws—School Districts Application.

Query: Does the anti-nepotism law apply to school districts?

Held: No, but Section 893 Comp. Stat., is in force just as it reads.

State Superintendent of Public Instruction, April 10, 1919.

Private School.

Query: What constitutes a private school?

Held: It is necessary that the usual course of study and subjects taught in public schools be taught in the private schools by a proper and competent person each school day and that such course of instruction shall be given regularly.

Lela B. Clifford, January 20, 1920.

Reorganization—Time Taking Effect.

Query: Where change of boundaries or organization of a new school district is made when does the district take effect?

Held: Under the provisions of Section 826 C. S., where change of boundaries or organization of new district is made the district shall not take effect until the opening of the next school year.

E. E. Redfield, State Superintendent, March 29, 1920.

Residence—Parents.

Query: Is a child who resides with some other taxpayer in the district but whose parents live outside the district, entitled to be enrolled without paying regular tuition?

Held: No. The residence of the parents controls.

Jesse F. Ford, March 17, 1920.

Rural High School—Trustees—Vacancy.

Query: How is a vacancy in the board of trustees in a rural high school filled?

Held: In the absence of statutory authority making specific provision for appointment to fill vacancies under the rural high school of trustees the county superintendent may make the same.

R. S. Wilkie, March 8, 1920.

Rural High School—Petition.

Query: By whom should a petition be signed for organization of rural high school district?

Held: It is sufficient that a petition be signed by the parents or guardians of fifteen or more children of school age who are residents of the proposed new district.

F. E. Smith, May 19, 1919.

Rural High School Districts—Withdrawal.

Query: Where rural high school districts consist of but two common school districts may one of these two withdraw?

Held: Neither one can withdraw, nor can the two withdraw and dissolve the district.

E. E. Redfield, April 10, 1920.

Rural High School—Village—City.

Query: Does the term "incorporated city" include incorporated village?

Held: It does not.

Ralph W. Adair, November 5, 1919.

Rural Routes—Attendance—Liability.

Query: Are school districts financially responsible for the safety of children?

Held: It is our opinion that a school district hauling children to school, is not.

T. Turnbull, April 9, 1920.

Rural High School District—Common School District.

Query: Where common school district and rural high school district unite for the purposes of conducting a rural high school district under the provisions of Section 855, is a new district formed and must new trustees be appointed?

Held: A new district is formed and new trustees must be appointed.

George W. Gould, June 18, 1920.

Finances—Rural High School.

Query: What laws govern the finances of rural high school districts?

Held: The laws pertaining to common school districts.

C. B. Walker, March 18, 1920.

School Building—Unauthorized Site.

Query: May school district trustees erect building on a site which has not been designated as provided by law?

Held: They should not.

John M. Boyle, March 17, 1920.

School Districts—Promissory Notes.

Query: May a school district issue promissory notes?

Held: A promissory note executed by the trustees of a school district is not a legal obligation of the district.

Arthur Leonardson, September 3, 1919.

School House.

Query: Where an old school house has been condemned and the district wishes to establish new site for new school house, what procedure is necessary?

Held: An election must be held and new site cannot be established except by two-thirds vote of the electors voting at said election in favor of the same.

Geo. L. Ambrose, September 27, 1919.

School House—Additional.

Query: May trustees of a common school district erect an additional school house?

Held: Yes, provided they favor the same and bonds are voted for its construction.

Ray Blanchard, October 30, 1919.

School Houses—Single District.

Query: Where there is more than one school house in the district may the annual meeting provide for a longer term of school in one school house than in another?

Held: They cannot. The minimum term fixed by statute is mandatory and cannot be indirectly evaded by maintaining part of the school for the minimum term and part for less than the minimum term. Pupils are entitled to benefit of at least the minimum term.

Ralph W. Adair, July 29, 1915.

Surplus Money—Bond Fund.

Query: May school board authorize county superintendent of public instruction to transfer surplus money to its bond fund?

Held: No.

John M. Boyle, March 17, 1920.

Taxes—Reimbursement.

Query: Have trustees of a school district authority to order a taxpayer reimbursed for taxes paid by mistake?

Held: They have not.

Louisa Pratt, September 20, 1918.

Tax—Levy.

Query: Where the annual meeting fails to levy a special tax, may the school trustees under the provisions of Section 880 C. S., levy more than 10 mills?

Held: They cannot.

M. H. Sebern, April 21, 1920.

Taxation—Assessed Valuation—Computation.

Query: How is the assessed valuation of school property to be determined for bond purposes?

Held: The assessed valuation of the property of a school district should be the assessed valuation which exists at the time of the authorization of the bond issue. For example the assessed valuation for the year 1919 should be used on and after January 1, 1920, etc.

John M. Boyle, March 17, 1920.

Special Tax Levy—County Commissioners.

Query: Do the county commissioners have power to call a special election for the purpose of levying a special tax to take care of existing school indebtedness?

Held: They do not.

Oles & Wedekind, January 30, 1920.

Teachers Examination—Place.

Query: Is it not a violation of Section 947 C. S., to hold teachers' examinations in different parts of the county for convenience of applicants?

Held: Not necessarily so.

Seth McAllister, February 20, 1920.

Teachers Examination—Place—Supervision.

Query: May teachers' examinations be held at any other place than the county seat?

Held: Teachers' examinations should be held at the county seat. However, they may be held in other parts of the county without violating the provisions of Section 818.

Query: Must teachers' examinations be held under the personal supervision of county superintendents?

Held: They can be held under the duly authorized representative of the county superintendent.

Seth McAllister, February 20, 1920.

Warrants—School Buildings.

Query: Can deficiency warrants be issued for school construction purposes?

Held: No. Section 912 is limited to ordinary school and institutional expenses and not extraordinary expenses such as building.

Roy W. Carlton, May 24, 1920.

Warrants—Issuance.

Query: Can a school district issue warrants against moneys which have been levied but not collected?

Held: Yes.

Blanche Skipper, August 18, 1919.

Workmen's Compensation—School Districts.

Query: Do employees of school districts come under the provisions of the Workmen's Compensation act?

Held: They do.

Olive Petrashek, November 3, 1919.

SOLDIERS AND SAILORS

Retired Soldiers—Fees—Exemptions.

Query: Is there any law which would relieve world war veterans from paying the usual recording fees to the county recorder for the recording of their discharges from service?

Held: There is not.

G. E. Bowerman, Commissioner of Finance, October 13, 1919.

Soldiers—Carey Act Entries.

Query: Can the resident requirements on Carey Act entries held by soldiers or sailors be waived?

Held: They can not.

W. G. Swendsen, June 24, 1919.

Soldiers—Legislation.

Query: Is there at the present time in your state any legis-

lation providing for a bonus or other recognition of your service men?

Held: Chapter 24 of the 1919 Session Laws, page 90, known as the Soldiers' Settlement Act, appropriated one million dollars to be used in co-operation with the federal government to provide useful employment and rural homes for soldiers and sailors. This act, however, is conditional on the passage by Congress of the United States of what is known as the Soldiers Settlement Act.

Chapter 71 of the 1919 Session Laws, page 248, authorizes municipal corporations to expend not to exceed in the aggregate 10 per cent of the assessed full cash value of the real estate and personal property in a municipality for the purchase, erection, construction and furnishing of soldiers' memorials consisting of such buildings, or monuments, or building sites for the use of the municipal corporation and for the entertainment of soldiers in the late European war.

Section 67, 1919 Session Laws, page 42, makes provision for the creation of a uniform memorial commission to determine the kind, character, design and style of a memorial to be erected in the county seat of each county in the State of Idaho.

American Red Cross, November 1, 1919.

Soldiers Memorial—Design.

Query: Must the bronze statue provided for by Chapter 67, 1919 Session Laws be of uniform style and design for each county?

Held: It must.

Calvin Kellar, April 9, 1920.

Soldiers—Poll Tax.

Query: Are honorably discharged soldiers and sailors of the late war with Germany required to pay road poll tax?

Held: They are not.

Jerome D. McColl, May 29, 1919.

STATE LANDS

Carey Act—Patent—Decree of Distribution.

Query: Where a final certificate issues in the name of one who dies before the issuance of patent to whom should the patent be issued?

Held: It is our understanding that a Carey Act entry is probated the same as any other piece of real estate and on entry of the final decree in a probate matter the heirs named in the decree would stand in place of the deceased and patent would issue to them.

W. G. Swendsen, January 6, 1920.

Deeds—Fees—Collection.

Query: What officer shall collect and account for fees for deeds issued for state lands?

Held: The State Land Commissioner has this duty.

Land Commissioner, December 15, 1919.

Deeds—Signing.

Query: What official should sign deeds to state lands?

Held: Such state deeds shall be signed by the Governor, countersigned by the Secretary of State with the Great Seal of the state affixed and countersigned by the Land Commissioner with the seal of his department affixed.

Land Commissioner, April 1, 1920.

Irrigation District—Included.

Query: Can the state lands which are included in an irrigation district be assessed for maintenance or other charges for assessments assessed against said lands and such assessments be enforced?

Held: Such assessments cannot be enforced against state lands.

Charles Stout, November 5, 1919.

Lava Hot Springs—Sale of Land.

Query: Has the state any authority to plat and sell the land set aside by the Government at Lava Hot Springs for a state institution or public use?

Held: It has not.

Land Commissioner, June 21, 1919.

Leasing—Auctioning.

Query: Can the board lease school lands without auctioning the same off where there is more than one applicant?

Held: It must auction same under the provisions of Section 2910 C. S.

Query: Can the board refuse to lease lands to an alien who has made application to become a citizen?

Held: It can not.

State Board of Land Commissioners, May 26, 1920.

Mortgage Foreclosure—Disposition.

Query: What disposition is authorized to be made of lands acquired by the state through foreclosures of mortgages securing payment of funds loaned from the school fund?

Held: Lands acquired in the above manner may be sold the same as other school lands.

I. H. Nash, Land Commissioner, June 5, 1919.

Stock Grazing—Non-residents.

Query: What are the rights of non-residents in bringing stock from other states to Idaho for the purpose of ranging the same upon the public domain?

Held: Such non-residents have the same rights to the use of the public domain in the State of Idaho as do residents of the state.

Query: What is the right of non-residents to use of the state lands?

Held: Section 4, Rules of the state land board, makes certain provisions applicable to leases of such nature.

Frank Breshears, May 31, 1919.

Unfenced Land—Grazing.

Query: Can sheep be kept off from all unfenced land within two miles of your place, even though such lands are patented and leased by the sheep men?

Held: They can not; sheep men have the same right as any one else to graze lands leased by them.

Query: Do you have authority to herd a neighbor's stock off unfenced land leased by you?

Held: You have such authority.

A. G. Nettleton, May 15, 1919.

TAXATION**Back Taxes—Commissioner of Finance—Authority.**

Query: What authority does the Commissioner of Finance have to insist that the collection of these taxes be made through the proper county officers?

Held: He has full authority to insist upon a collection of all these taxes.

Query: In the collection of taxes of this character is the procedure similar to the collection of delinquent taxes on real estate, or are they collectible as personal property taxes?

Held: It is our opinion that the taxes upon the operating property of public utilities must be collected the same as taxes upon real property.

Hon. G. E. Bowerman, October 25, 1919.

Charitable Organizations.

Query: Is a hospital conducted by a local church organization which is not expected to be a money-making concern, liable to taxation in this state?

Held: Where no profit is derived such hospital is not subject to taxation.

O. A. Johaneson, April 5, 1919.

Delinquent Tax Certificates 1918—Sale.

Query: Are county officers compelled to sell delinquent tax certificates in the hands of the county to persons who wish to purchase them, the inquiry applying alike to 1918 taxes and those of former years?

Held: Delinquent tax certificates based on taxes for 1917 and first half 1918 and now held by the county may be sold if the county auditor desires to sell them.

Minnie Carson, June 30, 1919.

Delinquent Taxes—Computation.

Query: How should interest upon delinquent certificates be computed—should fractional months be considered as a full month?

Held: It is our opinion that in computing such interest on delinquent certificates fractional months should be figured as whole months.

Hon. G. E. Bowerman, July 28, 1919.

Delinquencies—Foreclosure.

Query: Is there a conflict between certain provisions of Chapter 151, 1917 Session Laws, and Chapter 36, 1917 Session Laws?

Held: There is, and in case of conflict, the provisions of Chapter 151, 1917 Session Laws, shall govern.

Commissioner of Finance, April 3, 1920.

Delinquent Taxes—Interest.

Query: May a tax collector in the the State of Idaho legally collect interest on delinquent accounts for the year 1919?

Held: Yes.

Fern R. Hart, Treasurer Canyon County, May 25, 1920.

Exemption.

Query: May an assessor omit from his assessment rolls certain goods which, in his judgment, are entitled to exemption from taxation, upon a claim by the owner thereof?

Held: It is improper for an assessor to omit from his assessment roll household goods, farm machinery, etc., where the same is in his judgment, entitled to exemption from taxation upon a claim of the owner thereof; and upon failure of the assessor to assess such farm implements he would be liable on his bond, if the result is that a widow, orphan or veteran would receive a greater exemption than he is entitled to by law.

S. H. Smith, February 10, 1919.

Query: Is the state auditor not mistaken in including, for the purpose of apportionment of state taxes, the exempt property?

Held: Sec. 3163 C. S. expressly requires the including, in a separate column, of the exempt property in the county in the abstract which the county furnishes the state.

Ralph L. Thompson, September 13, 1919.

Federal Inheritance Tax—State Inheritance Tax.

Query: May federal inheritance taxes be deducted in computing the amount of state inheritance tax?

Held: While the statutes are silent on this point, it is our opinion that it should be deducted.

Shanbacher's Inheritance Tax Research, June 16, 1920.

Federal Reserve Stock—Taxation.

Query: Is the amount of stock held by local banks in federal reserve banks taxable in making return of their capital stock for taxation?

Held: It is not.

W. P. Kennedy, June 26, 1919.

Foreign Bonds.

Query: Are foreign bonds assessable in the State of Idaho, and if so, how can they be assessed?

Held: Foreign bonds are assessable just the same as any personal property and are assessable in the same manner.

Calvin Hazelbaker, June 12, 1920.

Highway District Taxes.

Query: Is the county entitled to 1½ per cent of all highway district taxes? Are not road and bridge taxes exempt from the payment of this commission?

Held: The county is not entitled to retain 1½ per cent of the road and bridge taxes which are levied and collected by the county commissioners and apportioned among certain taxing districts.

Andrew Christensen, August 7, 1920.

Personal Property Taxes—Collection.

Query: Whose duty is it to collect personal property taxes?

Held: The assessor is now charged with the duty of collecting not only personal property taxes upon property assessed by him, but also delinquent taxes for prior years.

J. J. Quinn, June 9, 1919.

Poll Taxes—Payment.

Query: Must poll taxes be collected in cash though parties desire to work the same out upon the road?

Held: Yes.

Query: What aged persons must pay the tax?

Held: All able-bodied, adult, male persons between the ages of 21 and 50 years except veterans of the Civil War, the late war with Germany and the Spanish-American War.

K. A. Thayer, July 11, 1919.

Protest Fees—Special Fund.

Query: Is there any provision of the Idaho statutes providing for a protest fund?

Held: There is no provision permitting you to withhold any taxes paid under protest from apportionment into their proper funds.

W. T. James, February 7, 1919.

Time of Delinquency.

Query: When does the last instalment of the 1918 taxes become delinquent if not paid?

Held: As of the first Monday in January, regardless of whether the first instalment of taxes is paid or not.

W. A. Thomas, May 28, 1919.

WATERS AND WATER RIGHTS**Application—Discretion.**

Query: Has the department of reclamation discretion in the matter of granting or refusing to grant permit to appropriate the public waters of the state?

Held: It has not, where the applicant has complied with the constitutional and statutory provisions of the State of Idaho in preparation and filing of applications for permit.

W. G. Swendsen, May 11, 1920.

Applications—Priority.

Query: Where an application is received in your office on Sunday and then is unopened, and on Monday another application is received covering the same waters covered in the application received on Sunday, which one is prior in point of time?

Held: The one received on Sunday, for it appears that the application was actually received in the office for filing at a time prior to the time of receiving the one on Monday.

W. G. Swendsen, November 5, 1919.

Lake and Wharfage Privilege.

Query: Does the title to town lots bordering on lake shore carry with it the sole privilege of said bit of shore line for wharfage, boat house and boat lining, etc.?

Held: For all practical purposes the owners of the shore line may maintain wharfs or docks or other such things in front of their property and joining it.

Duke Robins, January 22, 1920.

WORKMEN'S COMPENSATION**Casual Employment—Definition.**

Query: What constitutes casual employment in the meaning of sub-division (c) of Section 3 of the Workmen's Compensation Law?

Held: The term "casual employment" is not capable of any hard and fast definition but on the contrary, the question of whether or not the employment is casual must be determined on the facts and circumstances of the particular case. The Industrial Accident Board has called all employment casual which is not within the course of the employer's usual and regular business and on the other hand has said that the employment was not casual if it came within the usual and ordinary course of business.

R. C. Turner, March 13, 1919.

Compensation—Refusal to Submit to Operation—Results.

Query: Where injuries to a workman result in an inguinal hernia and it is the opinion of the board that a radical operation will cure the hernia, but in the absence of such operation the injuries will result in a permanent partial disability, does a refusal to submit to such an operation result in a decrease or stoppage of compensation?

Held: No law will require merely for the purpose of relieving an employer from pecuniary obligations, that any workman shall be forced against his wishes to undergo any serious operation or one involving risk of life, and on the other hand a workman should not be allowed to capitalize an injury by becoming a pensioner on industry or society when a safe and simple operation will restore his usefulness to society. As to what will be considered a reasonable refusal and what unreasonable refusal to undergo an operation, is a pure question of fact that will have to be determined by each specific case. If an operation be required for cure and is reasonable the workman must submit or else his compensation will be forfeited. If unreasonable in view of what is before quoted, the

board will have no authority whatever to forfeit his compensation or decrease the same.

Dr. Edward T. Biwer, March 12, 1919.

Employers—Authority to Enforce Carrying of Insurance Under Act.

Query: Is it the duty of the Industrial Accident Board or the State Insurance Manager to enforce upon employers the requirements of law as to carrying insurance under the Workmen's Compensation Act?

Held: It is the duty of the State Insurance Manager to compel the taking of insurance to secure compensation and the Industrial Accident Board has nothing whatever to do with that particular feature of the matter.

Industrial Accident Board, January 31, 1919.

Hospital Contract—Further Liability.

Query: When an employer complies with the provisions of Section 17 of the Workmen's Compensation Act relative to making a hospital contract, is he relieved from further liability?

Held: It is our opinion that he is relieved from further liability so far as medical, hospital or surgical attendance for such employee is concerned and for sickness contracted during employment (outside of the acts enumerated) as well as for injuries received out of and in course of employment.

C. O. Leaf, March 1, 1919.

Independent Contract—Applicability of Law.

Query: Is the doctrine of the independent contractors as recognized at common law, applicable to the workmen's compensation act?

Held: It is our opinion that so far as the relation of the parties is in good faith that all independent contractors as defined by common law, the doctrine of independent contractor will be applicable under the workmen's compensation act. In all cases between the contracting parties and also between the persons for whom the work is ultimately done or intended and the employees of the independent contractor, **except in so far as limited to its application to the employee by Section 110-a of the Compensation Act defining the word "Employer."**

State Industrial Accident Board, May 5, 1919.

Jurisdiction—Co-operative Ditch Companies.

Query: What distinction is there in the law that includes irrigation districts and excludes co-operative ditch companies?

Held: Sec. 2, Chapter 256 of the Act expressly includes irrigation districts and under Section 1, Chapter 256, Compiled Laws, it is the opinion of this office that where a co-operative ditch company is not operated for the purpose of pecuniary gain, it does not come within the terms of the Act.

Fred Mitchell, November 4, 1919.

Jurisdiction—Co-operative Irrigation Corporation.

Query: Is the Oakley Canal company, a co-operative irrigation corporation, included in the workmen's compensation act?

Held: If the company is carrying on its occupation for sake

of pecuniary gain, it does. If not, the provisions of the Act do not apply.

C. A. Bauer, Oakley Canal Company, February 27, 1919.

Jurisdiction—Corporation Employees Drawing Large Salaries.

Query: Are bank cashiers and officers of other corporations drawing a large salary exempt under provisions of workmen's compensation act?

Held: Section 2, Section 110-b Compensation Laws, exempts all persons whose remuneration exceeds \$2400 a year, hence such employees as you mention will be guided by that provision.
Hon. D. W. Church, Manager of Insurance, February 25, 1919.

Jurisdiction—Highway Districts.

Query: Is a highway district liable for accidents occurring to workmen in their employ?

Held: A highway district is undoubtedly under the provisions of the workmen's compensation act. The only safe course for a municipality of any kind is to take out insurance in the state insurance fund.

A. G. Hooper, February 28, 1919.

Jurisdiction—School Teachers.

Query: Does the workmen's compensation act apply to teachers?

Held: Under Section 2 of the Act, in our opinion, it does.
Olive M. Petrashek, November 3, 1919.

Jurisdiction—Sheep Men.

Query: Do sheep men come under the provisions of the Compensation Act?

Held: It has been the ruling of a former administration at the time this law was enacted that sheep men come under the terms of this Act. This ruling has never been modified and it is the rule of the Industrial Accident Board in the administration of the law that sheep men are within its terms.

Fall Creek Sheep Company, Ltd., July 6, 1920.

Docket 1919-1920

STATEMENT OF CASES ARGUED IN THE SUPREME COURT OF THE STATE

CRIMINAL APPEALS

State vs. George Askew, (32 Ida. 456; 184 Pac. 473.)—Defendant convicted in the District Court of the Ninth Judicial District for Jefferson County, Hon. Edward A. Walters, Judge, of the crime of voluntary manslaughter. Judgment of conviction affirmed October 11, 1919.

State vs. Charles Crawford, (32 Ida. 165; 179 Pac. 511.)—Defendant convicted in the District Court of the Seventh Judicial District for Canyon County, Hon. Ed. L. Bryan, Judge, of the crime of battery. Judgment of conviction reversed March 19, 1919.

State vs. George Mantis, (32 Ida. 724; 187 Pac. 268.)—Defendant was convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. J. J. Guheen, Judge, of the crime of attempting to induce a female to reside with him for immoral purposes. Judgment of conviction reversed February 13, 1920.

State vs. David McLoy and Ralph Zufelt, (32 Ida. 450; 184 Pac. 470.)—Defendants were convicted in the District Court of the Ninth Judicial District for Fremont County, Hon. James G. Gwinn, Judge, of the crime of conspiracy to commit extortion. Judgment of conviction reversed October 8, 1919.

State vs. Jim Montana, (32 Ida. 374; 182 Pac. 857.)—Defendant was convicted in the District Court of the Second Judicial District for Latah County, Hon. Edgar C. Steele, Judge, of the crime of having possession of intoxicating liquors. Judgment of conviction was affirmed July 8, 1919.

State vs. Martin Mushrow, (32 Ida. 562; 185 Pac. 1075.)—Defendant was convicted in the District Court of the Eighth Judicial District for Bonner County, Hon. John M. Flynn, Judge, of the crime of selling intoxicating liquors. The judgment was affirmed December 22, 1919.

State vs. Tony Raponi, (32 Ida. 368; 182 Pac. 855.)—Defendant was convicted in the District Court of the Second Judicial District for Latah County, Hon. Edgar C. Steele, Judge, of the crime of having possession of intoxicating liquor. Judgment of conviction was affirmed July 8, 1919.

State vs. John T. Ray, (32 Ida. 363; 182 Pac. 857.)—Defendant was convicted in the District Court of the Tenth Judicial District for Nez Perce County, Hon. Wallace N. Scales, Judge, of the crime of unlawful possession of intoxicating liquors. The judgment was affirmed July 8, 1919.

State vs. Henry Ricks and Edward Levine, (32 Ida. 232; 180 Pac. 257.)—The defendants were convicted in the District Court of the Ninth Judicial District for Madison County, Hon. James G. Gwinn, Judge, of the crime of rape. From a judgment of crime de-

fendants appealed. Motion made in the Supreme Court for a new trial. Motion was denied April 1, 1919.

State vs. P. A. Whisler, (32 Ida. 520; 185 Pac. 845).—Defendant was convicted in the District Court of the Seventh Judicial District for Washington County, Hon. Isaac F. Smith, Judge, of the crime of arson in the second degree. Judgment of conviction affirmed March 29, 1919.

State vs. Lavon Williams and Dewey Arnold, (32 Ida. 239; 180 Pac. 259).—Defendants were convicted in the District Court of the Ninth Judicial District for Madison County, Hon. James G. Gwinn, Judge, of the crime of rape. From a judgment of crime defendants appealed. Motion made in the Supreme Court for a new trial. Motion was denied April 1, 1919.

State vs. Merle Bowman, (Not reported).—Defendant convicted in the District Court of the Third Judicial District for Ada County, Hon. C. P. McCarthy, Judge, of the crime of unlawfully transporting intoxicating liquors. Appeal dismissed, judgment affirmed July 31, 1920.

State vs. Vicente Bilboa and R. B. Howard, (33 Ida. —; 190 Pac. 248).—Defendants convicted in the Third Judicial District Court for Ada County, Hon. C. P. McCarthy, Judge, of the crime of unlawfully transporting intoxicating liquors. Judgment reversed July 9, 1920.

State vs. Peter Bidegain, (33 Ida. —; 189 Pac. 242).—Defendant convicted in the Fourth Judicial District for Blaine County, Hon. James R. Bothwell, Judge, of violation of Sec. 8333 Compiled Statutes, (trespass law). The conviction was reversed May 13, 1920.

State vs. Charles Mocton, et al., (Not reported).—The defendants were acquitted in the District Court of the Tenth Judicial District for the County of Nez Perce, Hon. Wallace N. Scales, Judge, of the crime of gambling. Appeal dismissed, judgment affirmed June 23, 1920.

State vs. E. E. Marcoe, (33 Ida. —; — Pac. —).—Defendant was convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. Robert M. Terrell, Judge, of the crime of unlawful possession of intoxicating liquors. Judgment reversed November 29, 1920.

State vs. William N. Nelson, (Not reported).—Defendant was convicted in the District Court of the Eighth Judicial District for Kootenai County, of violation of the Syndicalism Laws of the State of Idaho. Appeal dismissed, judgment affirmed November 8, 1920.

State vs. Henry Poynter, (Not reported).—Defendant was convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. Robert M. Terrell, Judge, of the crime of unlawful possession of intoxicating liquors. Appeal dismissed, judgment affirmed September 10, 1920.

State vs. Jack Coble, (Not reported).—Defendant was convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. Robert M. Terrell, Judge, of the crime of unlawful possession of intoxicating liquors. Appeal dismissed, judgment affirmed September 10, 1920.

State vs. Claude H. Roberts, (33 Ida. —; 188 Pac. 895).—Defendant was convicted in the District Court of the Third Judicial District for Ada County, Hon. Carl A. Davis, Judge, of the crime of

obtaining money under false pretenses. Judgment reversed April 20, 1920.

State vs. J. A. Shoeahan, 33 Ida. —; 190 Pac. 71).—Defendant was convicted in the District Court of the Third Judicial District for Ada County, Hon. Chas. P. McCarthy, Judge, of the crime of unlawfully transporting intoxicating liquors. Judgment affirmed June 9, 1920.

State vs. William Dwyer, (33 Ida. —; 191 Pac. 203).—Defendant was convicted in the District Court of the Eighth Judicial District for the County of Benewah, Hon. Robert N. Dunn, Judge, of the crime of burglary in the second degree. Judgment affirmed July 24, 1920.

State vs. W. J. Grimmer, (33 Ida. —; — Pac. —).—Defendant was convicted in the District Court of the Seventh Judicial District for Washington County, Hon. I. N. Smith, Judge, of the crime of grand larceny. Judgment reversed November 17, 1920.

State vs. W. S. Hopson, (Not reported).—Defendant was convicted in the District Court of the Fifth Judicial District for the County of Bannock, Hon. Robert M. Terrell, Judge, of the crime of unlawful possession of intoxicating liquors. Appeal dismissed; judgment affirmed September 10, 1920.

State vs. Stephen Mallea, (33 Ida. —; — Pac. —).—Defendant was convicted in the District Court of the Fourth Judicial District for Blaine County, Hon. James R. Bothwell, Judge, of the crime of trespassing sheep range. Judgment reversed May 6, 1920.

State vs. Harry P. Hunter, (Not reported).—Defendant was convicted in the District Court of the Sixth Judicial District for Custer County, of violation of the liquor laws in possessing intoxicating liquors. Judgment affirmed. Appeal dismissed September 2, 1919.

State vs. J. N. McBride,—Defendant was convicted in the District Court of the Seventh Judicial District for Canyon County, Hon. Ed. L. Bryan, Judge, of violation of liquor laws. Judgment affirmed May 29, 1920.

MATTERS OF ORIGINAL JURISDICTION OF A CIVIL NATURE, IN THE SUPREME COURT.

State of Idaho, ex rel., Attorney General, plaintiff, vs. John W. Eagleson, Treasurer, State of Idaho, defendant, (32 Ida. 276; 181 Pac. 934).—Application for writ of mandate; alternative writ issued and demurrer to answer sustained, June 11, 1919.

State of Idaho, ex rel., W. J. Hall, Commissioner of Public Works, and Roy L. Black, Attorney General, plaintiff, vs. John W. Eagleson, Treasurer of the State of Idaho, defendant, (32 Ida. 280; 181 Pac. 935).—Application for writ of mandate; alternative writ issued and demurrer to answer sustained, June 12, 1919.

CASES ARGUED AND SUBMITTED BUT NOT DECIDED

State vs. Ramirez.—Defendant convicted in the District Court of the Ninth Judicial District for Madison County, Hon. J. G. Gwinn, Judge, of the crime of murder in the first degree. Sentenced to hang.

State vs. Melvin Pettit.—Defendant convicted in the District Court of the Fourth Judicial District for Twin Falls County, Hon. W. A. Babcock, Judge, of the crime of rape.

State vs. Henry C. Voss.—Defendant convicted in the District Court of the Eighth Judicial District for Kootenai County, Hon. R. N. Dunn, Judge, of involuntary manslaughter.

State vs. Peter Bidegain.—Defendant convicted in the District Court of the Sixth Judicial District for Custer County, Hon. C. P. McCarthy, Judge, of violation of Section 8333, Compiled Statutes (grazing sheep on cattle range).

State vs. Henry Ricks and Edward Levine.—Defendants convicted in the District Court of the Ninth Judicial District for Madison County, Hon. J. G. Gwinn, Judge, of the crime of rape. Motion made by Attorney General to dismiss appeal.

State vs. Lavon Williams and Dewey Arnold.—Defendants convicted in the District Court of the Ninth Judicial District for Madison County, Hon. J. G. Gwinn, Judge, of the crime of rape. Motion made by Attorney General to dismiss appeal.

CASES READY FOR ARGUMENT

State vs. A. E. Blank.—Defendant convicted of grand larceny, Seventh Judicial District, Washington County.

State vs. Jerry Becker, Jr., and Harrison Becker.—Defendants convicted of violation of cattle range law, Sixth Judicial District, Lemhi County.

State vs. Joseph H. Moodie.—Defendant convicted of violation of cattle range law, Sixth Judicial District, Lemhi County.

State vs. William Boyles.—Defendant convicted of grand larceny, Seventh Judicial District, Washington County.

State vs. Frank Brassfield.—Defendant convicted of grand larceny, Third Judicial District, Ada County.

State vs. Roscoe A. Colvard.—Defendant convicted of violation of liquor laws, Seventh Judicial District, Canyon County.

State vs. T. C. Catlin.—Defendant convicted of running cattle at large in herd district, Third Judicial District, Ada County.

State vs. Spiro Fellis and Geo. Georgantopoulos.—Defendants convicted of violation of liquor laws, Fifth Judicial District, Bannock County.

State vs. A. M. Farmer.—Defendant convicted of the crime of rape, Sixth Judicial District, Bingham County.

State vs. Oscar Ford.—Defendant convicted of the crime of adultery, Seventh Judicial District, Canyon County.

State vs. E. M. Goodrich.—Defendant convicted of violation of liquor laws, Third Judicial District, Ada County.

State vs. Mike Petrogalli.—Defendant convicted of violation of liquor laws, Second Judicial District, Latah County.

State vs. Henry Poynter.—Defendant convicted of violation of liquor laws, Fifth Judicial District, Bannock County.

State vs. T. A. Sterrett.—Defendant convicted of violation of liquor laws, Fifth Judicial District, Bannock County.

State vs. Otis Syster and Mollie Syster.—Appeal taken from bond to keep the peace, Fourth Judicial District, Gooding County.

State vs. Charles W. Snook.—Defendant convicted of grazing sheep on cattle range, Sixth Judicial District, Lemhi County.

State vs. J. A. Sheehan, alias W. T. Watson.—Defendant convicted of obtaining money under false pretenses, Third Judicial District, Ada County.

State vs. Fermin Subisaretta.—Defendant convicted of violation of cattle range law, Third Judicial District, Boise County.

State vs. John White.—Defendant convicted of violation of liquor laws, Seventh Judicial District, Canyon County.

OTHER APPEALS PENDING

State vs. W. D. Grover, Jr.—Defendant convicted of involuntary manslaughter.

State vs. Lenard Hurst.—Defendant convicted of grand larceny.

State vs. T. E. Hawkins, et al.—Defendant convicted of violation of liquor laws.

State vs. Albert Jutila and Matt Kohkonen.—Defendants convicted of simple assault.

State vs. Frank A. Miller.—Defendant convicted of grand larceny.

State vs. Nick Mitchell and Clyde H. Smith.—Defendants convicted of robbery.

State vs. Dennis McCarthy.—Defendant convicted under Syndicalism Laws.

State vs. Leo Noonan.—Defendant convicted of violation of liquor laws.

State vs. Gust Poulos.—Defendant convicted of adultery.

State vs. Fred Root.—Defendant convicted of violation of liquor laws.

State vs. Harold M. Sims.—Defendant convicted of adultery.

State vs. Frank Sullivan, et al.—Defendants convicted of burglary.

State vs. A. J. Steensland.—Defendant convicted of violation of liquor laws.

State vs. C. H. Williams.—Defendant convicted of violation of liquor laws.

State vs. Thomas Athens.—Defendant convicted of violation of liquor laws.

State vs. Tom Athens.—Defendant convicted of violation of liquor laws.

State vs. Charles L. Anderson.—Defendant convicted under Syndicalism Laws.

State vs. Miles Anthony.—Defendant convicted under Syndicalism Laws.

State vs. Hamp Cooper.—Defendant convicted of violation of liquor laws.

State vs. Edward W. Douglass.—Defendant convicted of crime of burning hay.

State vs. Dong Sing and Lo Ming.—Defendants convicted of murder.

State vs. William Dingman.—Defendant convicted under Syndicalism Law.

State vs. Charles Ernst.—Defendant convicted of murder.

State vs. John Otis Ellis.—Defendant convicted under Syndicalism Law.

State vs. J. J. McMurphy.—Defendant convicted under Syndicalism Law.

CIVIL CASES IN THE DISTRICT COURTS

State of Idaho, ex rel, Charles E. Folsom and Henry Childhauer, plaintiffs, vs. W. J. Hall, Commissioner of Public Works.—For alternative writ of mandate in the District Court of the Third Judicial District of the State of Idaho for Ada County, to compel defendant to permit inspection of certain books and records in his office; petition for writ granted.

E. Ralph Evans vs. Warren G. Swendsen, Commissioner of Reclamation, State of Idaho.—In the District Court of the Third Judicial District of the State of Idaho for Ada County; petition for writ of mandate; writ granted.

Wm. H. Evans vs. J. E. Ellis, Federal Inspector of Livestock and John Adams, as Director of Animal Industry of the State of Idaho.—Action in the District Court of the Third Judicial District of the State of Idaho for Ada County for injunction to restrain defendants from slaughtering cow; granted.

Samuel Stillman, et al., vs. The Idaho Citizens Grazing Association, a corporation, et al.—Action in the District Court of the Fifth Judicial District of the State of Idaho for Bannock County, transferred on motion for change of venue to Ada County to compel cancellation of lease of certain grazing lands and to compel board of land commissioners to offer the lease at auction; issue joined; judgment for defendant.

CASES PENDING

State of Idaho vs. A. C. Hindman.—Action in the District Court of the Third Judicial District of the State of Idaho for Ada County for collection of moneys paid by state in excess of salary allowed.

State of Idaho vs. S. F. Hartman.—Action in the Third Judicial District of the State of Idaho for Ada County for the collection of excess moneys paid by the state as salary for chief clerk in the office of secretary of state.

State of Idaho vs. Fred Herrick and the Export Lumber Company.—Suit in the Eighth Judicial District of the State of Idaho for Benewah County; injunction to prevent timber cutting in Heyburn park.

State of Idaho, ex rel., Roy L. Black, Attorney General, State of Idaho, and W. J. Hall, Commissioner of Public Works of said State vs. Fred Herrick and Milwaukee Lumber Company, a corporation.—Suit in the District Court of the Eighth Judicial District of

the State of Idaho for Benewah County; suit for injunction to restrain timber cutting in Heyburn park.

Ada Harrison vs. W. G. Swendsen, Commissioner of Reclamation.—In the District Court of the Fourth Judicial District of the State of Idaho for Camas County, for decree to waters of Cow creek.

Emil Hendrickson vs. Wm. C. Griffin, Rolla Griffin, and the State of Idaho.—Suit in the District Court of the Second Judicial District of the State of Idaho, County of Latah; to quiet title.

B. B. Harger, et al., vs. Warren G. Swendsen, Commissioner of Reclamation.—Injunction proceedings to govern distribution of waters of Mackay dam in the District Court of the Sixth Judicial District of the State of Idaho for Butte County.

State of Idaho vs. Charles S. Moody.—Action in the Third Judicial District of the State of Idaho for Ada County for recovery of moneys unlawfully held.

A. W. Warr vs. W. G. Swendsen, Commissioner of Reclamation.—Action in District Court of the Fourth Judicial District of the State of Idaho for Blaine County; summary adjudication of water rights.

Fred H. Brincken vs. Melton M. Adamson.—Suit in the District Court of the Second Judicial District of the State of Idaho for Latah County to quiet title.

State of Idaho, ex rel., Milton A. Brown on complaint of Jennie E. Kelleher vs. Margaret Burnham.—Action ouster proceedings in the District Court of the Sixth Judicial District of the State of Idaho, for Custer County.

S. J. Boone vs. State of Idaho, et al.—Suit in District Court of the Second Judicial District of the State of Idaho for Latah County to quiet title.

Mildred Bain by Fred Bain, her guardian ad litem vs. Stanley I. Robinson and O. E. Bossen.—Suit in District Court of the Seventh Judicial District of the State of Idaho for Payette County, to recover damages for unlawful arrest.

Ira R. Chaney vs. W. G. Swendsen.—Summary adjudication of water rights in the District Court of the Fourth Judicial District of the State of Idaho for Blaine County.

Thomas M. Carlisle vs. W. G. Swendsen, Commissioner of Reclamation, et al.—Water adjudication; in the District Court of the Sixth Judicial District for Butte County.

In the Matter of Drainage District No. 4, Benewah County; State of Idaho.—Remonstrance State of Idaho, in the District Court of the Eighth Judicial District of the State of Idaho for Benewah County.

Maurice Falk and Leon Falk vs. State of Idaho.—Action in the District Court of the Ninth Judicial District for Bonneville County; to quiet title.

Fall River Irrigation Company, a corporation, vs. W. G. Swendsen, Commissioner of Reclamation.—Suit to correct error in water decree in the District Court of the Ninth Judicial District of the State of Idaho for Fremont County.

State of Idaho vs. Leroy C. Jones and the American Surety Company of New York, a corporation.—Action to recover shortages of

moneys in office of Fish and Game Warden, in the District Court of the Third Judicial District of the State of Idaho for Ada County.

Habeas Corpus Proceedings; in re Nick Mecheals.—Petition made for writ of habeas corpus for release from State Penitentiary; writ granted.

John G. Fralick, Commissioner of Commerce and Industry, State of Idaho, vs. Coeur d'Alene Bank and Trust Company, a corporation.—Action in the District Court of the Eighth Judicial District of the State of Idaho for Kootenai County for the appointment of special deputy for insolvent bank.

State of Idaho and John G. Fralick, Commissioner of Commerce and Industry, State of Idaho, vs. Stock Growers Bank and Trust Company, a corporation.—Action in the District Court of the Fifth Judicial District of the State of Idaho, for Bannock County, appointment of a special deputy for insolvent bank.

State of Idaho and John G. Fralick, Commissioner of Commerce and Industry vs. Grangeville Savings and Trust Company, a corporation.—Action in the District Court of the Fifth Judicial District of the State of Idaho, for Bannock County, for the appointment of special deputy for insolvent bank.

PROBATE PROCEEDINGS

Estate of Frank E. Howard, Soldier; Ada County.

Estate of Charles Winant, Soldier; Ada County.

UNITED STATES SUPREME COURT

State vs. J. N. McBride.—Criminal prosecution for violation of the liquor laws of the State of Idaho; judgment of conviction affirmed by the State Supreme Court May 29, 1920; appeal to the United States Supreme Court filed August 18, 1920.

FORECLOSURE PROCEEDINGS

SUITS CLOSED

State of Idaho vs. A. A. Wolfe.

State of Idaho vs. Ross et al.

State of Idaho vs. Rogers et al.

State of Idaho vs. Rankin et al.

State of Idaho vs. Hale et al.

State of Idaho vs. Garver et al.

State of Idaho vs. Andrew et al.

State of Idaho vs. Bowman et al

State of Idaho vs. Atkinson et ux.

State of Idaho vs. Bowman et al.

State of Idaho vs. George et al.

State of Idaho vs. Graham et al.

State of Idaho vs. Cramer et al.

State of Idaho vs. Ayers et al.
State of Idaho vs. Watkins et al.
State of Idaho vs. Cook, Ira H.
State of Idaho vs. Hall et al.
State of Idaho vs. McJilton et al.
State of Idaho vs. Buster et al.
State of Idaho vs. Harrington et al.
State of Idaho vs. Wolfe et al.
State of Idaho vs. Widings et al.
State of Idaho vs. Curtis et ux.
State of Idaho vs. Bradbury et al.
State of Idaho vs. Siepert et al.
State of Idaho vs. Haws et al.
State of Idaho vs. Wardell et al.
State of Idaho vs. Commons et al.
State of Idaho vs. Morris et al.
State of Idaho vs. Bolz et al.
State of Idaho vs. Post et al.
State of Idaho vs. McFall et al.
State of Idaho vs. Trenam et al. 33

SUITS PENDING

State of Idaho vs. Morrison et al.
State of Idaho vs. Neves et al.
State of Idaho vs. Foulks et al.
State of Idaho vs. Black, William
State of Idaho vs. Drennan et al.
State of Idaho vs. Smith et al.
State of Idaho vs. Norton et al.
State of Idaho vs. Rettig et al.
State of Idaho vs. Muir et al.
State of Idaho vs. Land et al.
State of Idaho vs. Hartley et al.
State of Idaho vs. Field et al.
State of Idaho vs. Colburn et al.
State of Idaho vs. Coate et al.
State of Idaho vs. Beede et al.
State of Idaho vs. Johnson et al.
State of Idaho vs. McTaggart et al.
State of Idaho vs. Altschul et al.

State of Idaho vs. Peters et al.

State of Idaho vs. Cruse, Josiah A. et al.

State of Idaho vs. Cruse, Caroline E. et al.

State of Idaho vs. Schmelzel et al.

State of Idaho vs. Shuck et al.

State of Idaho vs. Post et al.

State of Idaho vs. McKinney et al.

PUBLIC UTILITY HEARINGS

In the Fourth Judicial District of the State of Idaho, for Minidoka County, J. T. Wiseman vs Rupert Electric Company. Involves the rates and rules and practices of the defendant operating an electric system at Rupert, Idaho.

In the Eighth Judicial District of the State of Idaho for Bonner County, Sandpoint Water and Light Co. vs Humbird Lumber Co. Involves the question of whether or not the lumber company in rendering water service to the Northern Pacific Railway Company at Sandpoint is a public utility. The commission held it was. District Court sustained the order of the commission.

State of Idaho vs Utah Power and Light Company. Involves the question of requiring the defendant to extend its lines to and render the village of Ririe, Jefferson County, Idaho, and its inhabitants with electric service. Order entered on September 5, 1919, requiring the defendant to extend its lines and render electric service to Ririe and its inhabitants.

State vs Alder Creek Ry. Co. Brought by Attorney General on behalf of various owners of timber claims along the line of Alder Creek Railway Company in the vicinity of St. Maries, Idaho, it being alleged that the Alder Creek Railway Company was not rendering the service to the public as a public utility. On January 28, 1920, the Commission issued an order holding the defendant to be a public utility and requiring it to maintain facilities to render service to the public.

In the matter of the application of the Boise Railway Company for an order of authority to increase passenger fares, to temporarily suspend operation of its Soldiers Home line and operate its passenger cars with one employee. Hearing held on April 21, 1919. An order was issued permitting the applicant to increase its fares from 5 to 7c and denying permission to suspend operation of Soldiers Home line and dismissing the application in so far as it asked for permission to operate passenger cars with one employee.

State of Idaho vs Walker D. Hines, Director General of Railroads, etc. Action brought by the state of Idaho to require the Oregon Short Line Railroad Company, the Director General of Railroads and Caldwell Traction Company to install and maintain proper sidetrack facilities at Caldwell. An order was entered on November 26, 1919, requiring side track and facilities to be installed.

State of Idaho vs Smith Telephone Company. The complaint in this case alleges that the Smith Telephone is operating a telephone system in the vicinity of Cleveland, Idaho, and not rendering adequate service to its patrons. Order entered by Commission September

5, 1919 directing the defendant to improve its system so as to render adequate service to its patrons.

Mackay Light & Power Company vs Ashton & St. Anthony Power Co. The complaint in this action seeks to enjoin the Ashton & St. Anthony Power Company from rendering service to the village of Arco, Idaho, or to enter into contract with said village covering electric service. Commission issued an order January 8, 1920, in which the complaint was dismissed. Complainant obtained a writ of review from the District Court of Butte County, Idaho. In October 1920, the District Court rendered its decree upholding the order of the Commission.

In re Mountain States Tel. & Tel. Company. An application of the Mt. States Tel & Tel. Co. for permission to continue in effect the rates, rules and charges made effective by the Post Master General when the lines were under Federal control. The applicant filed an inventory and valuation of its physical property as required by an act passed by the last session of legislature. Hearing commenced on November 22, 1920 and included November 29, 1920. Decision not yet rendered.

In re Moscow Tel. & Tel. Co. Limited. Application of Moscow Tel. & Tel. Company Limited for an increase in rates for telephone service. Hearing held at Moscow, September, 1919, and on April 5, 1920 Commission issued an order permitting the applicant to increase its rates and establish certain rates.

In the matter of the application of Boise Street Car Company for an order of authority to operate passenger cars of one employee to a car. Hearing held in September 1919. An order was entered December 12, 1919, permitting the applicant to operate its passenger cars with one employee to a car, with the provision that the cars be made over into one-man cars.

In the matter of the application of Idaho Power Company to put into effect on less than statutory notice, general rules and regulations applicable to all classes of electric service. A number of hearings and informal conferences were held and on January 28, an order was issued approving certain rules proposed by applicant and holding certain rules proposed by applicant and holding certain other rules open for investigation.

In the matter of the application of Idaho Power Company for the approval of irrigation rates. In this case the applicant asked for an increase of approximately 60% in its rates for irrigation pumping. Hearing lasted 3 weeks. An order was entered on June 2, 1920. Commission granted the applicant a general percentage increase for all classes of service and declined to allow the 60% increase in rates for electric energy for irrigation pumping purposes.

In re the construction of Enaville-Paragon branch of the O. W. R. & N. Ry. Co. Upon petition received from persons and companies having property interests in the vicinity of Murray, Idaho, on February 14, 1920 the Commission issued an order to the O. W. R. & N. Co. to show cause why it should not be required to rehabilitate its line between Enaville and Paragon, Idaho, and resume service thereon, this line having been destroyed by flood in January, 1918 and since that time no service has been rendered by the railroad Company over such line. Hearing held at Wallace, April, 1920. The persons desiring resumption of service on this branch line were granted six months additional time to submit evidence in support of their con-

tention. The case was dismissed on November 12, 1920, on advice from the persons at whose instance the case was substituted that they did not desire to prosecute the case further.

Standard time zone investigation for the Interstate Commerce Commission. Their Docket No. 10122. We received a number of petitions from commercial business and other organizations asking that the commission take action to have southern Idaho restored to Mountain time. Acting on these petitions the Commission filed a petition with the Interstate Commerce Commission in which it was prayed that the boundary line between Pacific time zone and the Mountain time zone be changed so as to have the O. S. L. R. Co. change its time at Huntington, Oregon, instead of Pocatello, Idaho, was held at Boise late last summer, and decision was rendered by the Interstate Commerce Commission declining to change the boundary lines of the time zones and dismissing the petition of the Commission. The petition for rehearing has been prepared and will be filed shortly.

State of Idaho ex rel. Public Utilities Commission vs Oregon Short Line Railroad Company and others. Interstate Docket No. 10858. This is an action brought by the Public Utilities Commission against the O. S. L. R. Co. and connecting lines in which it was sought to have through routing and joint rates from the Wilder branch of the defendant established. Mr. Givens conducted the hearing held before the Examiner of the Interstate Commerce Commission at Boise. The tentative report of the Examiner who heard the case was favorable to the commission. The O. S. L. R. Co. filed objections to this report and the case has been set for argument before the Interstate Commerce Commission at Washington, December 17, 1920.

State of Idaho ex rel. Public Utilities Commission vs O. S. L. R. Co. and others. Interstate Commerce Commission Docket No. 386. This case involves rates on the Murphy branch of the O. S. L. R. Co. and the Commission, by its complaint filed with the interstate Commerce Commission, seeks to have the same rates established on this branch line as obtain on the main line of the defendant, O. S. L. R. Co. Mr. Givens conducted case on behalf of Commission before the Examiner in Boise. The tentative report of the Examiner is favorable to the Commission. Defendant O. S. L. R. Co. filed objections to this report and the matter has been set for argument before the Interstate Commerce Commission on December 17, 1920.

State of Idaho ex rel. Public Utilities Commission vs O. S. L. R. Co. and others. Interstate Commerce Docket No 10679. This is an action filed by the commission before the Interstate Commerce Commission in which the rates on fruit from Idaho to eastern points is attacked. Hearing was held before the Examiner in Boise, Mr. Givens conducting the case on behalf of the commission. The decision of the Interstate Commerce Commission dismissed the complaint.

INDEX

	Page
Administrator, Public—See County Officers.	
Aliens—See Lands.	
Anti-nepotism	11
Appropriations	11
Assessors—See County Officers—See Taxation.	
Athletics	12
Athletic Commission—See Athletics.	
Attorneys General	2
Attorneys General, Territorial	2
Automobiles—See Sheriffs—Motor Vehicles—License.	
 Banks and Banking—(See Insurance)	 13
Blue Sky Law	14
Bonded Warehouses	14
Bond Elections—See Highway Districts—Schools.	
 Cities and Villages	 14
Clerk, County—See County Officers.	
Commissioners—See County Officers, Highway Districts.	
Compulsory Education—See Schools.	
Constabulary—See County Officers.	
County Attorneys	4
County Clerk—See County Officers.	
County Nurse—See County Officers.	
County Officers	16
County Offices—See County Officers.	
County Recorder—See County Officers.	
County Stenographer—See County Officers.	
 Day, Eight Hour	 22
District Judges	3
Divorce—See Marriage.	
Docket	59
 Eight Hour Day—See Highway Districts, See Day.	
Elections—(See Bonds)	23
Electors—See County Officers, Elections.	
 Fish and Game	 25
Foreclosures, pending	67
Foreclosures, closed	66
 Gambling—See Prohibition.	
Grazing—See State Lands.	

INDEX—(Continued.)

	Page
Highways and Highway Districts and Good Roads Districts.....	27
Insurance	30
Irrigation Districts—See State Lands, Water.	
Juries	32
Justice of the Peace—See County Officers.	
Lands—See State Lands—Miscellaneous Opinions.	
Licenses—See City and Villages—Fish and Game—Motor Vehicles —Prohibition.	
Marriage and Divorce.....	33
Minors—(See Schools)	33
Miscellaneous Opinions	33
Motor Vehicles	34
Notaries	37
Ordinances—See Cities and Villages.	
Probate Judge—See County Officers.	
Prohibition and Gambling	37
Prosecuting Attorneys	4
Public Utility Hearings.....	68
Recorder, County—See County Officers.	
Sailors—See Soldiers.	
Salaries—See County Officers, School Districts.	
Schools—(See Minors)	39
Sheriffs—See County Officers.	
Soldiers and Sailors	50
State Lands	51
Supreme Court, Justices	2
Supreme Court, Clerk	2
Taxation—(See Banks and Banking)	53
Teachers—See Schools.	
Time—See Elections.	
Trapping—See Fish and Game.	
Treasurers—See County Officers, School Districts, Highway Districts	
United States District Court, Judge.....	2
Voting—See Elections.	
Warrants—See Salaries, See County Officers, Treasurers, Schools.	
Water and Water Rights	55
Workmen's Compensation	56