REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF IDAHO

FOR THE

YEARS 1921-1922

ROY L. BLACK, ATTORNEY GENERAL

A. H. CONNER, DEAN DRISCOLL, JAMES L. BOONE,
SAM E. BLAINE, ASSISTANTS

FLORENCE LA SALLE and ZILLA F. 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
A. H. Conner	1923-

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

JUSTICES OF THE SUPREME COURT, 1923-1924

Alfred Budge, Chief Justice	Pocatello
Robert N. Dunn, Associate Justice	Coeur d'Alene
Charles P. McCarthy, Associate Justice	Boise
William A. Lee, Associate Justice	Blackfoot
William E. Lee, Associate Justice	Moscow

Clerk of the Supreme Court—I. W. Hart

UNITED STATES DISTRICT JUDGE

Frank S. Dietrich	Boise

*Deceased.

IDAHO DISTRICT JUDGES

District	1921-1922	1923-1924	Address
First	A. H. Featherstone	A. H. Featherstone	Wallace
Second	E. C. Steele	E. C. Steele	Moscow
Third	Charles F. Reddoch	M. I. Church	Boise
	Raymond L. Givens	Raymond L. Givens	Boise
Fourth	Henry F. Ensign	Henry F. Ensign	Hailey
Fifth	O. R. Baum	O. R. Baum	Pocatello
	Robert M. Terrell	Robert M. Terrell	Pocatello
Sixth	Ralph W. Adair	Ralph W. Adair	Blackfoot
Seventh	Ed L. Bryan	Ed L. Bryan	Caldwell
	B. S. Varian	B. S. Varian	Weiser
Eighth	W. F. McNaughton	W. F. McNaughton	Coeur d'Alene
	John M. Flynn	John M. Flynn	Sandpoint
Ninth	James G. Gwinn	Geo. N. Edgington	St. Anthony
Tenth	Wallace N. Scales	Wallace N. Scales	Grangeville
Eleventh	T. Bailey Lee	T. Bailey Lee	Burley
	Wm. A. Babcock	Wm. A. Babcock	Twin Falls

PROSECUTING ATTORNEYS FOR THE VARIOUS COUNTIES IN IDAHO

County	1921-1922 Name	1923-1924 Name	Residence
Ada	E. S. Delana	Laurel E. Elam	Boise
Adams	B. F. Dillon	W. R. McClure	Council
Bannock	Isaac McDougall	Walter H. Anderson	Pocatello
Bear Lake	D. C. Kunz	D. C. Kunz	Paris
Benewah	Robt. E. McFarland	Robt. E. McFarland	St. Maries
Bingham	Hamilton Wright	Hamilton Wright	Blackfoot
Blaine	John M. Boyle	Wm. A. Brodhead	Hailey
Boise	John H. Myer	John H. Myer	Idaho City
Bonner	Allen P. Asher	Allen P. Asher	Sandpoint
Bonneville	C. E. Crowley	Lewis A. Lee	Idaho Falls
Boundary	O. C. Wilson	S. E. Henry	Bonners Ferry
Butte	J. G. Martin	J. G. Martin	Arco
Camas	Frank M. Davis	R. M. Angel	Fairfield
Canyon	Clarence S. Hill	Logan Hyslop	Caldwell
Caribou	N. E. Snell	A. A. Mattson	Soda Springs
Cassia	T. M. Morris	C. W. Thomas	Burley
Clark	Robert E. Wedekind	Grant W. Soule	Dubois
Clearwater	Frank E. Smith	Frank F. Kimble	Orofino
Custer	M. A. Brown	M. A. Brown	Challis
Elmore	V. L. Taylor	P. W. Beckwith	Mt. Home
Franklin	P. M. Condie	John A. Carver	Preston
Fremont	H. W. Soule	N. D. Jackson	St. Anthony
Gem	J. P. Reed	J. P. Reed	Emmett
Gooding	H. A. Padgham	M. F. Ryan	Gooding
Idaho	B. Auger	Frank E. Fogg	Grangeville
Jefferson	A. E. Later	F. A. McCall	Rigby
Jerome	*Keith Ferguson E. D. Reynolds	Henry M. Hall	Jerome
Kootenai	Roger G. Wearne	Roger G. Wearne	Coeur d'Alene
Latah	John Nisbet	Frank L. Moore	Moscow
Lemhi	H. J. Burleigh	Francis R. Hall, Jr.	Salmon City
Lewis	G. C. Penneli	G. C. Pennell	Nez Perce
Lincoln	Paul S. Haddock	Paul S. Haddock	Shoshone
Madison	C. J. Taylor	C. J. Taylor	Rexburg
Minidoka	Hugh A. Baker	Cecil M. Adam	Rupert
Nez Perce	Leo McCarty	John L. Phillips	Lewiston
Oneida	T. E. Ray	T. E. Ray	Malad
Owyhee	Wright A. Stacy	B. R. Riordan	Silver City
Payette	R. E. Haynes	R. E. Haynes	Payette
Power	Charles T. Cotant	R. S. Anderson	Amer. Falls
Shoshone	*John H. McEvers John L. Fitzgerald	S. S. Gundlach	Wallace
Teton	R. S. Wilkie	B. W. Driggs	Driggs
Twin Falls	Frank L. Stephan	J. W. Taylor	Twin Falls
Valley	F. M. Kirby	F. M. Kirby	Cascade
Washington	Harrison McAdams	Fred C. Erb	Weiser

*Resigned.

REPORT OF ATTORNEY GENERAL

December 1, 1922.

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

I have the honor to submit to you, pursuant to the requirements of law, the biennial report of the Attorney General's Department covering the affairs of this Department between the first day of December, 1920, and the first day of December, 1922.

The volume of business going through this office has shown a remarkable increase over that of any previous biennium. This is accounted for no doubt by the fact that the State's business becomes greater and more important each year due to the natural growth of the State.

As the legal advisor of the State, the Attorney General is required, by law, to give his opinion in writing to the Legislature, or either House thereof, to the Governor, the Secretary of State, the Treasurer, the Auditor and the Trustees or Commissioners of State institutions when required, upon any question of law relating to their respective offices. The Attorney General is also required to attend Supreme Court and prosecute or defend all causes to which the State, or any officer thereof in his official capacity, is a party; and all cases to which any county may be a party, unless the interest of the county is adverse to the State or some officer thereof acting in his official capacity; also to prosecute and defend all the above mentioned cases in the United States Courts.

Whenever any criminal case is appealed to the Supreme Court of the State, the Attorney General must prepare such appeal on behalf of the State and has everything to do with the presentation of said case from the time the Court renders its judgment until the case is presented in the Supreme Court. In other words, when the judgment of the Court is rendered and the case is appealed, the County Attorney has nothing whatever to do with the appeal, requiring the Attorney General's office to handle all such appeals.

The Attorney General is also a member of the following State Executive Boards, to-wit: The State Land Board, which handles all State land and loan matters; the State Board of Pardons, State Board of Paroles, and State Prison Board, which have to do with all prisoners in the State Penitentiary; State Library Commission, which has to do

with the regular State library; State Board of Examiners, which is required to pass upon all claims for the expenditure of State money; State Board of Equalization, which equalizes all assessments made by county assessors and also directly assesses all public utilities in the State; and Reclamation District Bond Commission, which commission passes upon and either certifies or rejects certification on bonds issued by irrigation districts.

The public school and institutional endowment funds of the State now amount to approximately $14,000,000. The moneys in these funds come from the sale of public school lands or institutional lands or timber. The amount in these funds was increased from $10,000,000 on January 1, 1919, to $14,000,000 in 1922. These funds are loaned to farmers on farm loans and to school districts for their bonds through the Department of Public Investments. The Attorney General is required to examine the abstracts and bond issue transcripts for all of these loans and in the aggregate these abstracts and transcripts run up into hundreds, and after examination and errors are pointed out, if any, the Attorney General must see that the errors are corrected and must finally pass upon each one before any money is paid out by the State thereon.

OTHER QUESTIONS

There has grown up a custom extending over a number of years, of people representing school boards, cities, counties, highway districts, drainage districts, and some representing private matters, of writing to the Attorney General for his construction of various statutes and matters pertaining thereto. They look upon the office as a public one to which they have the right to appeal for interpretations, and it is somewhat natural for them to take that view. However, the answers to such questions involve extended search through the statutes and interpretations by the Courts, and in many cases involve as much work as would be for a Court to decide the matter, were it presented to the Court. Owing to the Attorney General's position in the matter he must necessarily be extremely careful in giving these opinions, because the public could easily be misguided and great injustice done to people if his opinion was carelessly and erroneously given. Necessarily then the Attorney General must give these questions very careful consideration, which requires a great deal of time. Under the law, all of these public bodies, such as school districts, drainage districts, irrigation districts, and counties, have the right to employ their own attorneys, and it would seem that since this por-

tion of the Attorney General's work has grown to the proportions it now has, that one of two things must result, viz.: either enlarge the Attorney General's force, or eliminate by express statute the practice which has grown up both on the part of the enquirer and on the part of the Attorney General in rendering such assistance.

It will be readily seen from the foregoing that the Attorney General, together with his assistants, must necessarily be very busy handling the details of all of said work.

CRIMINAL APPEALS

It is my pleasure to call your especial attention to the prosecution of criminal appeals in the Supreme Court and the status of the appellate criminal calendar. Up to four years ago when I first took office the Supreme Court, being very far behind with its work, was only hearing the criminal cases on appeal in the order in which they were filed, taking their order along with civil cases. This resulted in criminal cases pending in the Supreme Court for many years. For example, during our term in office we have presented cases to the Supreme Court where the criminal offense was committed as far back as 1914 and 1915.

Believing that the long delays in the final disposition of criminal appeals were detrimental to the proper enforcement of the law and tended to encourage both the commission of offenses and the taking of appeals, we have persistently moved to advance for hearing all cases on the criminal calendar. During the past two years the Court has been very generous in advancing and hearing said cases, and as a result we have been able to dispose of more than twice as many criminal appeals before the Supreme Court than have been disposed of in any previous biennium. With three exceptions, no criminal cases are now pending before the Court where the appeals were filed prior to May 3, 1921, and there is no reason why all the remaining cases cannot be disposed of in the Supreme Court at the respective terms of Court in 1923. It is with a great deal of satisfaction that we make this statement, for we believe there is no better means of enforcing the law than speedy trial and disposition of all appeals that may be taken from the judgments of the lower court.

CIVIL APPEALS

You will also note from the report that the work in the Supreme Court in civil appeals and matters of original jurisdiction, is heavier than usual. While there are a number of civil cases pending in the lower courts, yet in a great

number of these the State is only a nominal party. All cases, excepting mortgage foreclosures, where the State is a real party in interest have been disposed of.

INHERITANCE TAX LAW

Two years ago I recommended the passage of a new inheritance tax law. The recommendation was not acted upon by the Legislature. This is an extremely important matter to the State, and failure to have a proper inheritance tax law deprives the State of a vast amount of money. Nearly all States have up-to-date, workable inheritance tax laws, and I recommend that the Legislature, either by the amendment of our present law or by the enactment of a new law, provide proper legislation on this subject.

UNCLAIMED AND ESCHEATED ESTATES

Our existing laws governing unclaimed and escheated estates—that is, those estates left by persons who have not left known heirs, are very weak and should be entirely revised. These escheated estates, which belong to the State, are lost to the State through lack of proper laws relative to the handling of them, and the State every year loses many thousands of dollars in this way, which should be saved. If the inheritance law is amended, as recommended, and if the law pertaining to escheated and unclaimed estates is properly amended, power should be placed in some individual to especially keep track of and enforce these two laws, and the money which the State would make thereby would be many thousands of dollars. In this connection I am not proposing the creation of a new officer; that is, as a new individual, but I believe the laws can be so amended that our present officers would be required to handle the business to the great advantage of the State.

PUBLIC HEALTH

We are called upon very frequently to advise with the Department of Public Welfare of the State and also with local health officers and boards relative to the enforcement of the health laws of the State. I regret to say that our present laws on these matters are practically unenforceable. The duties of the various health officers are extremely conflicting.

I recommend the amendment or repeal of certain of our present health laws with the main idea in view of incorporating proper and adequate enforcement features. This does not mean the adding of many new features to our present laws so far as the substantive part of these laws are

concerned or so far as new activities are concerned, but it means the revising of these laws so as to clearly define the duties and powers of the various boards of health, both local and State, and the adding to the laws the necessary powers for their enforcement. In compiling such laws, geographical features of the State as the same relate to isolated communities should be taken into consideration. Some provision should be made where school houses and other public places which are unsafe and unsanitary could be made sanitary or condemned, and the order of condemnation properly carried out.

CRIMINAL PROCEDURE

From our experience here we are impressed with the fact that the criminal code of the State with reference to appeals should probably be amended. Under the present laws the procedure on appeals in criminal cases is somewhat different than the procedure on appeals in civil cases, and many lawyers become confused over the two lines of procedure and the result is very often disastrous in preventing appeals from being heard upon their merits, for in many cases appeals are dismissed because of failure of attorneys to follow the correct procedure.

Lawyers will differ as to how these laws should be amended, but I am suggesting that it may be practical to make the procedure on appeals in civil cases and criminal cases practically identical, or as nearly so as possible, in order to eliminate the confusion and take out of the law what the public thinks are technicalities. I believe this matter is worthy of serious attention.

NATIONAL GUARD.

Since the United States Government has passed certain Federal Defense Acts under and by the terms of which the National Guard of the State is somewhat affected, it is necessary, in our opinion, to amend our present laws to clarify those provisions which will permit the State to co-operate under such Federal Defense Acts. This may be done by making several amendments to our existing statutes.

SOLDIERS' AND SAILORS' RELIEF

Our State legislation with reference to soldiers' and sailors' relief should be modified and amended to co-ordinate with the Federal legislation, especially on the matter of relief of soldiers and sailors in our charitable institutions.

BLUE SKY LAW

The Blue Sky Law was adopted with the idea of requiring corporations and associations selling stock in the State to comply with certain requirements as to plan of operation and feasibility, before being permitted to offer their stock for sale in Idaho. This law was passed for the sole and only purpose of protecting innocent purchasers of stock, who might otherwise buy much worthless stock. The law has not been a complete protection, though it has been some protection against the sale of worthless stocks in Idaho. Up to this time the law has never had a chance to operate properly because of lack of the necessary appropriations to really enforce it. From my experience with this law I recommend that it either be entirely repealed or that sufficient appropriation be made and machinery provided for its real enforcement.

RECLAMATION DISTRICT BOND COMMISSION

This commission, in my opinion, has been one of the best pieces of legislation passed by our State in a number of years. Before the existence of this Bond Commission, irrigation district bonds went begging in the State for purchasers and were looked upon with disfavor by the purchasing public. Many of such bonds were sold at a great discount below par because of their unfavorable standing.

The Reclamation District Bond Commission has been in operation now two years and under it any irrigation district which has issued bonds or desires to issue bonds, may present their records and papers to the Bond Commission and ask for certification of their bonds. The Commission thereupon makes a complete examination of the irrigation district and system and determines its feasibility or infeasibility and, if the record and the district appear to be proper and the debt by the bonds less than half the value of the property in the district against which it is assessed, then the commission certifies the bonds. This certificate is taken by bond buyers as a very valuable thing in connection with the bonds and as a result irrigation districts have been very active in asking for the certification, and those bonds that have been certified have brought in the market par and in some instances a premium, which means that the irrigation district has been able to get a dollar for each dollar of its obligation.

Some minor amendments may be made to this law, but I heartily recommend the law as having been worth a great deal of money to the farmers owning lands in irrigation districts.

JUVENILE DELINQUENTS

The law with reference to juvenile delinquents, as it has been construed by our Supreme Court in the case of In re Dean Martin, is very inadequate. Under the law, as so construed, any parent or guardian may apply for and obtain a writ of habeas corpus for any boy or girl committed to the industrial training school, either in the District Courts or direct in the Supreme Court. This is true even though the parent or guardian was notified of the hearing before the commitment, and even though they were present, testified, or otherwise participated in the hearing. The Court adopts the view that our statutes provide no method or manner of cutting off or determining parent's or guardian's rights in the original hearing of the juvenile case.

I recommend, therefore, that our juvenile laws be so amended as to provide for the bringing in of the parent or guardian at the original hearing for the purpose of cutting off the further actions in other Courts by the parent or guardian on writ of habeas corpus applications and making the commitment final on those conditions, and if the Supreme Court would sustain such laws as constitutional, it would aid greatly in the administration of the juvenile delinquency laws.

STATE LANDS IN IRRIGATION DISTRICTS.

The State owns State school lands in many irrigation districts. The State may either hold said lands or offer them for sale. Under our present law irrigation districts cannot purchase the State land, neither can they purchase the rights of a holder of sale certificate from the State, and the result is that where the State land is not owned or occupied by private parties the irrigation district cannot assess the land and collect their assessments for water maintenance, drainage, or improvements, and the rest of the people in the district are compelled to pay the amount that should be collected against this land, as an additional burden to them.

I recommend that the irrigation district laws be amended so that irrigation districts are empowered to buy in their name and hold for the district, State lands in irrigation districts which may be offered for sale by the State, and also empowered to reinstate by paying the State the amount due it, any cancelled sale certificate where the State cancels any purchaser's certificate on school lands within the irrigation district. By this method all lands within the district can be made to bear their just proportion of all assessments and maintenance charges, and the districts can be made prosperous, where otherwise they cannot be, especially

where the State holds a large amount of land in any one irrigation district.

ASSESSMENTS IN IRRIGATION DISTRICTS

I recommend that the irrigation district laws be further amended to provide that the county officers collect all assessments and charges and interest which it may be necessary for the district to have collected and which are assessed as charges against the lands in the district. Said assessments to be collected by the county in the same way that the county now collects on similar assessments for cities, and that the district be required to pay the county whatever expense the county has in making these collections. The reason for this proposal being that the county has all the machinery for the collection of these assessments and the bookkeeping in connection therewith, and it will be a great aid to the district in the handling of its financial affairs, also in the sale of its lands, if the county instead of the district is required to do this work.

CONCLUSION

The work of the office has been conducted by myself and four regular assistants. Those assistants were Dean Driscoll of Boise, James L. Boone of Caldwell, S. E. Blaine of Boise, and A. H. Conner, special assistant attorney to the Public Utilities Commission, of Sandpoint. It gives me pleasure to state that much of our department's success is directly attributable to the capable, efficient and painstaking work of these attorneys.

My stenographic force has consisted of Florence LaSalle of Boise and Zillah Shepherd of Weiser, both of whom have recently resigned and their places have been taken by Edna L. Hice of Boise and Edna L. Kyle of Boise. I have greatly appreciated the splendid service of this stenographic force and its efficiency has greatly added to the success of the department.

I cannot close without especially mentioning the very pleasant and cordial relations between your office and mine during the entire four years we have been together, both as officials and as members of the various executive boards. I have always found you anxious and willing at all times to work for the best interests of the State and always anxious to secure all the co-operation possible from every other officer and appointee in State office.

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.

AGRICULTURE

Farm Products: Definition: Cream.

Query: Is cream to be classified as a farm product under provisions of Section 2032 Compiled Statutes, and subject to the rules and regulations for grades and classification of farm products?

Held: The Legislature has used a very loose term in using the term "farm products," which in our opinion is capable of no exact definition. However, it is our opinion that the term does not include cream. It would seem to be more accurately classified as a dairy product. Our opinion is that the Legislature intended by this section to include only the products of the soil itself, rather than the numerous other things such as livestock, poultry, eggs, butter and milk which might very well be produced on a farm or elsewhere.

Miles Cannon, Com. of Agriculture, April 24, 1922.

Flour Sack Weight.

Query: Our company has on hand about 4000 sacks of flour, each containing 48 pounds; will it be necessary after Senate Bill 102 goes into effect to make them 49 pounds and so stamp them?

Held: It is our opinion that under the law, as to those sacks which you have on hand containing 48 pounds, that they may be sold by special contract or agreement without any change. They must, however, be stamped as 48 lbs. and cannot be stamped as quarter barrel sacks.

Shelley Mill & Elevator Co., Ltd., Shelley, Idaho. Mar. 29, 1921.

State Inspection: Necessity.

Query: May a shipper, under the law, grade his own products, mark and invoice them as State standards, without the necessity of obtaining inspection by duly qualified inspectors? This question has reference to shipments both in and out of the state and applies to all farm products upon which standards are established.

If the above is answered in the affirmative, the second question is: Has the Commissioner of Agriculture authority to promulgate rules and regulations forbidding products being invoiced as standard grades without inspection?

Reference is made to Section 2031-2037, inclusive, Chapter 86, Compiled Statutes.

Held: We have given each of the matters referred to close consideration and as to your first question it is our opinion that under Chapter 86, Compiled Statutes, a shipper may grade his own products, mark and invoice them at state standards without the necessity of obtaining such inspection as is authorized by Section 2034, C. S. It is our opinion that the same holds good both as to shipments in and out of the state and refers to all farm products upon which standards are established by authority of Section 2032, C. S.

Section 2034, C. S., which relates to the appointment of inspectors, reads as follows:

"Upon application of any owner or person, firm, corporation or association in charge of farm products, the Department of Agriculture is authorized to appoint, license or designate persons to inspect and classify such farm products and to certify as to the grade and other qualifications thereof, in accordance with the standards made effective under this article."

Hence, giving that particular portion of the statute, which is the only portion in point, a literal interpretation, it is our opinion that it is entirely optional with the owner or person, firm, corporation or association in charge of farm products to have inspection of such products made by the Department of Agriculture. The inspection feature of the law, as is stated in Section 2034, is more for the convenience and accommodation of the shipper in enabling him to make a better and more ready sale of his products, than for any other reason. It may be and no doubt is the reason that many buyers require for their own protection a certificate of inspection by state authorities as to the quality, standardization, etc., of farm products, but under Chapter 86, Compiled Statutes, we see no reason why the shipper may not make his own certification and invoice his farm products as standard without inspection by the department or its agents.

We have considered Sections 2035 and 2036, Compiled Statutes, in connection with the first question, but are of the opinion that those sections are not in point. The only purpose of the sections seems to be that should a shipper demand inspection he would not be subject to the whims of incompetency of an inspector, but that he might have protection against the same.

In answer to your second inquiry it is our opinion that the commissioner does not have authority to promulgate rules and regulations forbidding products being invoiced as standard grades without inspection by the Department of Agriculture or its duly authorized agents. Section 2034 is in point as to rules and regulations which the department may make in reference to farm products and that portion of the section in point is as follows:

" . . . The Department of Agriculture may . . . as far as practicable, establish and promulgate standards for open and closed receptacles for farm products and standards for the grade and other classification of farm products by which their quality, quantity, or value may be determined, and prescribe and promulgate rules and regulations concerning the marks, brands and labels which may be required upon receptacles for farm products for the purpose of showing the name and address of the producer or packer, the quantity, nature and quality of the product, or any of them, and for the purpose of preventing deception in reference thereto."

To recapitulate, the intent of Article 1, Chapter 86, Compiled Statutes, seems to be that so long as the shipper conforms to the standards as set by the department, as promulgated by its rules and regulations, he is within the law, and the fact that he certifies and invoices his products as being standard when the same are not State inspected is not in violation of the law or any rules or regulations which the department may promulgate under Chapter 86.

Hon. Miles Cannon, Commissioner of Agriculture, April 11, 1921.

ALCOHOL

Physicians Prescriptions: Alcoholic Liquors.

Query: May alcoholic liquors be sold in the State of Idaho for medicinal purposes on a physician's prescription?

Held: No.

Bernheim Distilling Co., Louisville, Ky., June 7, 1921.

Transportation Alcohol: Fees.

Query: Is there any fee that the Probate Judge is required to collect for the filing of applications for permits to transport alcohol into the State under Chapter 50, 1921 Session Laws?

Held: No.

Adrian Nelson, Moscow, Idaho, May 14, 1921.

Wood Alcohol: License.

Query: Is there any law by which one may obtain a license to sell wood alcohol where it otherwise could not be sold under the provisions of Section 2173, Compiled Statutes?

Held: No. Chapter 50, passed by the 1921 Session Laws, relates only to the licensing or giving of permits for the sale of pure alcohol. Denatured alcohol comes in the list of poisons described in Section 2173 and it has been the uniform holding of this office that it cannot be sold except in compliance with said section.

Geo. W. Edgington, Idaho Falls, Idaho, December 29, 1921.

Wood Alcohol: License.

Query: We are today in receipt of a telegram from our Idaho Falls branch, reading as follows:

"Our customers not including drug stores to whom we sold alcohol have received notice from State Attorney General prohibiting them to sell denatured alcohol. Can you give us information on this? Advise fully at once."

Assuming that federal regulations have been complied with by our dealer customers, we take it for granted that the order is based on some State law or regulation.

Will you kindly advise us full reasons for the order issued by you and inform us requirements necessary to enable dealers to retail denatured alcohol in the State of Idaho?

Held: The opinion of this office with regard to the sale of denatured alcohol by garages for use in automobiles is one of long standing in this office. It is based solely on the provisions of Section 2173, Compiled Statutes, regulating the practice of pharmacy. That section says in part:

"It shall be unlawful for any person not a registered pharmacist, within the meaning of this chapter, to conduct or manage any pharmacy, drug or chemical store, apothecary shop, or other place of business for the retailing, compounding or dispensing of any drugs, chemicals or poisons, except as hereinafter provided, . . or to keep exposed for sale at retail any drugs, chemicals or poisons; or for any person not licensed as a pharmacist or assistant pharmacist within the meaning of this chapter, to compound, dispense or sell at retail any drug, chemical, poison or pharmaceutical preparation, upon the prescription of a physician or otherwise. . . ."

The only exception specified in the statute which would come any place near having application in the present case is the statement that the act shall not interfere with "the sale of poisonous substances which are sold exclusively for use in the arts or for use as insecticides, when such substances are sold in unbroken packages bearing a label having plainly printed upon it the name of the contents, the word 'poison' and the names of at least two readily obtained antidotes."

The opinion is based entirely upon the construction of the Idaho statute, so decisions or opinions construing opinions or statutes of other states would have no application unless the statute under consideration in them was substantially identical with this statute. It

might have been better had our statute contained a provision which would permit the sale of such things as denatured alcohol for scientific, industrial or mechanical purposes, but it does not, our exception being confined to use in the arts and as insecticides, which is obviously not the purpose in sales made by garages. The wisdom of the statute is not for this office to pass upon and while many of the suggestions offered us might be very well called to the attention of the Legislature it is our opinion that the statute is binding upon us until such time as the Legislature chooses to alter it.

The Pure Oil Company, Minneapolis, Minn., December 5, 1921.

APPROPRIATIONS

Athletic Commission: Licenses.

Replying to yours of the 8th, moneys accruing in Sections 1821 to 1839 which are put in a special fund do not revert to the general fund on January 1, 1921.

Neither do funds accruing from Sections 337, 338 and 339, Compiled Statutes, so revert.

In fact, none of the moneys referred to in either question revert to the general fund at any time until the Legislature takes further action in the matter. Both are the subject of continuing appropriations and under Sections 162 and 163, Compiled Statutes, it is only surplus or unexpended balances remaining after the purposes have been accomplished that revert to the general fund.

Paul Davis, Director Bureau of License, November 18, 1920.

Audit Commission.

Query: Are the funds provided by Chapter 82, Laws of 1919, available after the expiration of the years 1919 and 1920, or are they cut off as other appropriations?

Held: An examination of said chapter discloses that there is no limitation as to the time within which said moneys may be used so long as used for the purposes provided in the statute.

Senator M. B. Yeaman, January 21, 1921.

Appropriation: What Constitutes.

Query: In yours of recent date you stated that a claim has been presented to and approved by the Board of Examiners in the matter of William H. Evans, for $96.05 for costs, taxed against the State, under authority of Section 7223, Compiled Statutes. You ask whether or not that statute is in conflict with the provisions of Section 13, Article 7 of the Constitution, the particular point being whether or not the words used in said Section 7223 constitute an appropriation of money from the general fund for said purpose.

Held: We have looked this matter up very carefully and we believe the language used in said section is sufficient to constitute an appropriation and that the claim filed and approved on the basis of such statute should be paid as directed in said section.

Hon. E. G. Gallet, State Auditor, August 25, 1921.

Idaho Insane Asylum: Directors: Traveling Expense.

Query: Replying to your inquiry of March 24, under Section 1163 of the Compiled Statutes, the directors of the Idaho Insane Asylum are allowed both a per diem and traveling expenses. By the 1921 Act, Session Law 152, an appropriation is made for "directors' per diem, $500."

Held: Your inquiry as to whether or not you are authorized to draw warrants for traveling expenses against the per diem appropriation should, in my opinion, be answered, no.

E. G. Gallet, State Auditor, March 27, 1922.

Rodents.

Query: Under the provisions of Section 9, Chapter 22, 1919 Session Laws, is the University of Idaho Extension Division authorized to pay salaries, travel and office expense of its agent engaged in the extermination of ground squirrels, pocket gophers and other injurious rodents?

Held: Section 8 of said chapter of the 1919 Session Laws repeals Section 1204 g of Chapter 66, Compiled Laws of Idaho, the original act being found as Chapter 102, 1917 Session Laws. The fund which was provided by the original law was created by Section 1204 i of Chapter 66, Compiled Laws (1917 S. L. Chap. 102).

When the 1919 Legislature was in session it repealed the statute Section 1204 g, Compiled Laws, which provided for the payment of 2c per head on each of the animals killed, naming them. In lieu thereof it appropriated the balance of said fund by the language in Section 9 of Chapter 22, 1919 Session Laws, as follows:

"The unexpended balance of the fund collected by tax levies for the years 1917 and 1918, under the provisions of Section 1204 g of Chapter 66 of the Compiled Laws of the State of Idaho, is hereby appropriated to be expended in the extermination of ground squirrels, pocket gophers and other injurious rodents in the State of Idaho under the direction of the Extension Division of the University of Idaho, in cooperation with the Bureau of Biological Survey of the United States Department of Agriculture."

It will be seen that under the express provisions of the foregoing section the money is appropriated "to be expended in the extermination of ground squirrels, pocket gophers and other injurious rodents." There is no express provision as to how such money shall be used in the work and therefore the language used is to be given the usual and ordinary construction. Therefore, if necessary in carrying on the work of extermination of such animals, the salaries, travel and office expenses of persons engaged in such work would be a proper charge against such fund, the same as the purchasing of poisons. If the salaries, travel and office expenses mentioned in your question were those of persons engaged in the extermination of such animals, they would be proper charges against said fund.

L. W. Fluharty, Director of Extension, February 2, 1921.

Salaries: General Appropriation Act.

Query: Replying to your letter of the 25th, suggesting that inasmuch as you have an appropriation in the general appropriation bill (Chap. 94, pages 178-188) for chief clerk and general clerk, neither of which have been used, and you desire to raise the salaries of certain men who are now holding positions and being paid from the highway fund, you would like to designate these men as general and chief clerk, respectively, paying the additional salary from the unused appropriation.

Held: We regret to advise that this cannot be done in view of Section 2 of the appropriation act, providing:

"That the compensation and salaries for all State officials, deputies and employees appropriated by Section 1 of this Act shall be in full for services to be rendered by such officials, deputies or employees to the State during the period for which such appropriations are made."

T. L. Jennings, Department Public Works, May 27, 1921.

Soldiers' Memorials.

Query: Your letter to E. G. Gallet with reference to Chapter 219, Session Laws, 1921, has been referred to me for reply. In this letter you submit the following facts and question:

You have a Y. M. C. A. building worth some $30,000 and you are considering the wisdom of turning it over to the American Legion Post as a memorial. The Legion Post will be incorporated and empowered to hold and own real estate and the building would be turned over free of debt; you have some idea of making it a community building. The question you desire answered is that if it should finally be decided to do this, would the State and county appropriations made available under the provisions of the said Chapter 219 be available for payment on this building as a part of the purchase price?

Held: Answering the same, will say that it is our opinion the State and county appropriations cannot be used in this manner. You will notice throughout the act that it is provided for a memorial to be erected and this is carried out in the title of the bill as well. Where this same question has heretofore arisen with reference to the power of using bond money in school districts where the law provided that they could bond for the erection of a school building, it has uniformly been held that they could not use the money to buy buildings which were already erected. The general rule has been laid down that where money is appropriated for a specific purpose it cannot be used for any other purpose.

Calvin Keller, Payette, Idaho, June 27, 1921.

Soldiers and Sailors: Federal Moneys.

I have before me your letter of June 2nd enclosing a memorandum from Lemuel Bolles and also a copy of a letter from F. W. Galbraith with reference to the direct use of the federal moneys appropriated for boys confined in our insane asylums.

Held: Answering the same will say that any money which is received from outside sources to be used by an institution such as our insane asylum and soldiers' home reduces the appropriation made to the amount of such moneys so received and credited to the institution. See Chap. 79, 1921 Session Laws, page 150, Sec. 1 of said Chapter.

The matter spoken of in these letters would have to be taken care of specially by an exception made in the appropriation bills and of course cannot be done now until the next Legislature meets.

Lester F. Albert, Adjutant American Legion, June 25, 1921.

Special Counsel: Appropriation.

Query: Is there any appropriation made by the State any part of which could be used for the payment of expenses or employment of special counsel in the trial of the I. W. W. cases in Shoshone County?

Held: There is not.

D. W. Davis, Governor, March 25, 1921.

Veterans' Welfare: Secretary: Traveling Expenses.

This will acknowledge receipt of your letter of March 9 inquiring whether or not it will be legal for the Commission to pay the travel expenses of the Secretary to attend a meeting of the Welfare Workers at Seattle.

Held: We regret to say that it is not. We have no doubt that the money would be well spent and doubtless would have been appropriated for that purpose had it been called to the legislators' attention. However, as the matter stands it will have to be governed by the statutes as they exist. Section 7, Chapter 46, 1921 Session Laws, is the

only appropriation for any purposes of this character, and under it the appropriation is expressly limited to travel for regularly called meetings of the Commission. The law has to be strictly followed in these matters because the statutes make the auditor liable on his bond for issuing warrants in any case outside the express terms of the appropriation.

Lester Albert, Vet. Welfare Com., March 16, 1922.

Veterans' Welfare Commission: Biennium.

Query: Chapter 46, 1921 Session Laws of Idaho, creates a Veterans' Welfare Commission and also makes an appropriation of the sum of $100,000 to carry out the purpose of the act; your Commission has used during 1921 and 1922 the sum of $60,000, leaving $40,000 unused appropriation. The question now is, does this $40,000 remaining revert to the general fund or is it held intact for the continuance of the said Commission?

Held: An examination of the provisions of Chapter 46, 1921 Session Laws, which creates the Veterans' Welfare Commission, discloses that the law provides for the Commission being in existence until such time as the United States shall have made adequate provision for the care and assistance of discharged, disabled and destitute soldiers, sailors, nurses and marines, which shall have been found by the Governor of the State of Idaho to be reasonably adequate, and that then the Governor shall have the power to discontinue the Commission by proclamation.

There are no other words in the bill which limit the existence of the Commission to the biennial period, neither are there any words in the appropriating clause which limit the appropriation to the biennium, but in other words the law expressly provides in the appropriating clause as follows:

"That there is hereby appropriated out of the moneys not otherwise appropriated in the general fund of the State treasury of the State of Idaho the sum of $100,000 to carry out the purposes of this act."

It is obvious, therefore, that the purposes of this act would not be carried out until such time as the Governor made his proclamation discontinuing the work of the Welfare Commission, and it is, therefore, our opinion that the remaining unexpended balance of the appropriation will be available for the use of the Commission as long as the Commission is kept in existence, or in other words until such time as either the Legislature repeals or amends the law or the Governor proclaims the Commission ended.

Lester F. Albert, Sec'y Veterans' Welfare Commission, Boise, Idaho, November 13, 1922.

ATHLETICS

Query: Do the provisions of Sections 1828 to 1839, inclusive, extend to individuals who conduct boxing contests?

Held: We beg to advise that it is our opinion that individuals are amenable to the foregoing provisions. While it is true that there is no mention made of "individuals" who conduct such contests, yet we call your attention to Section 1828, which reads:

"The State Athletic Commission shall have, and it is hereby vested with, the sole direction, management, control and jurisdiction over all boxing, sparring and wrestling matches and exhibitions to be conducted, held or given within the State by any club, corporation or association and no boxing, wrestling or sparring matches or exhibition shall be conducted, held or given within the State for admission charges except pursuant to authority therefor granted by the commission and in accordance with the provisions of this chapter and the rules and regulations of the commission."

It is our opinion that the portion of the section quoted covers "individuals."

J. W. Taylor, Buhl, Idaho, September 24, 1920.

AUTOMOBILES AND OTHER MOTOR VEHICLES

Automobile: Non-Usage: Taxation.

Query: An automobile which is not licensed but is kept in a garage or shed and not operated during all the year, we desire to know what steps to take to collect taxes thereon.

Held: In the case of Kootenai County vs. Seven-Seven Co., 182 Pac. 529, the Court held that where the automobile was not operated upon the highways it was to be considered the same as other personal property and the assessor should assess and collect taxes thereon.

John L. Woody, Sheriff, Moscow, Idaho, March 29, 1921.

Automobiles: Assessment: License.

Query: Where there are cars which have not yet been driven upon the highways and for which no 1921 licenses were obtained, you have assessed them and placed the assessment against the real estate. You now desire to know whether or not, since these cars have been assessed in this manner, they can be operated upon the highways without obtaining a license.

Query: It is our opinion that they cannot be operated upon the highways without obtaining a license.

O. W. Shillington, Rupert, Idaho, June 27, 1921.

Dealers' Licenses: Second-Hand Cars.

Query: Are automobile dealers permitted to use their dealers' licenses on second-hand cars of a different make than that for which their dealers' licences were procured, such license to be used on second-hand cars for demonstration and sales purposes only?

Held: Under Section 1604, Compiled Statutes, the law requires that each make of car handled by a dealer shall be registered, and for such additional make, a license fee must be paid.

R. O. Jones, Secretary of State, April 7, 1921.

Dealers' Licenses: Section 1604, Compiled Statutes.

Query: Two men operate an auto selling agency for a make of car for which they have taken out a dealers' license. Each of the parties has a car of the same make, several years older, these being used principally in selling cars. They may, however, as occasion arises, use these older cars in any other business or they may wish to use them in connection with the business or outside of it. Under Section 1604, Compiled Statutes, must individual registration be required for these two older cars? Is a service truck used by the agency mentioned in the above question which is used for the purpose of pulling in crippled cars, in making calls for repair work and in other such cases in connection with the repair shop of the agency, subject to carry an individual auto license?

Held: In answer to both questions it is our opinion that individual registration is required by the cars specified in each question. That portion of Section 1604, Compiled Statutes, which is the only statute in point, relating to the exemption from individual registration, reads as follows:

"Motor vehicles operated by manufacturers or dealers for the purpose of testing, demonstrating or selling shall be exempt from the necessity of individual registration."

It is our opinion that it was the intention of the Legislature to require the individual licenses from service trucks used as above stated, and from the other cars used in the manner specified in your question. We do not think the mere incidental use of the car for demonstration purposes makes it exempt. This has been our uniform holding on this matter, but owing to the importance just at this time we have given the same unusual attention.

R. O. Jones, Secretary of State.

Highway District: License Moneys: Cities.

Query: Can a highway district receive its pro rata share of motor vehicle license money collected within a city where the city is geographically located within the boundary of the district but is not incorporated within the highway district?

Held: The mere fact that a city is located geographically within the boundaries of the district does not give the district the right to claim license fees. Such license fees are only pro rated to the highway district where the city is actually part of the highway district.

D. P. Olson, Director of Highways, May 20, 1921.

Highway District: Commissioner: Use of Machine.

Query: Is it legal for a commissioner of a highway district to charge for the use of his own automobile, operated by himself, while inspecting highways of the district?

Held: We have come to the conclusion that it is not a proper charge against the district.

Karl M. Hansen, Rose Lake, Idaho, January 6, 1922.

Note: See Sanborn v. Pentland (Ida.) 208 Pac. 401.

License: Section 1592: Amount.

Query: You state that you bought an automobile on the first of May, 1916, and paid for that year the full license fee and have paid for every year since. On February 15, 1921, you applied for license for the sixth year, having paid five full years on this car, but at the same time you will not have actually owned or used this car five years until the first of May next. Are you entitled to the deduction provided in Section 1592, Compiled Statutes, which says: "That after any motor vehicle shall have been owned or used for a period of five years, the license fee therefor shall be two thirds of the fee hereinbefore established for a new motor vehicle of the same make, model and class."

Held: It might have been better had the law provided for the deduction after five licenses had been paid, but we see no escape under the statute as it stands, that the car must be owned or used for five years.

Chas. E. Harris, Blackfoot, Idaho, February 28, 1921.

Lights: Regulation: Cities or Villages.

Query: May a municipal corporation of the State of Idaho regulate by ordinance the carrying of lights upon motor vehicles run within the corporate limits?

Held: Any regulation made by a city would necessarily fall within the police powers delegated to the city by general act of the Legislature or authority granted by special charter. Section 3948, Compiled Statutes, provides that any municipality may:

"make all such ordinances, by-laws, rules, regulations, resolutions, not inconsistent with the laws of the State, as may be expedient, in

addition to the special powers in this title granted, in maintaining the peace, good government and welfare of the corporation and its trade, commerce, manufacture, and to enforce all the ordinances by inflicting fines or penalties for the breach thereof not exceeding $100 for any one offense, recoverable with costs, and in default of payment, to provide for confinement in prison or jail and at hard labor upon the streets or elsewhere, for the benefit of the city or village."

Section 1617, Compiled Statutes, more specifically provides, among other things:

". . . nor shall this chapter be construed as to prevent cities and incorporated villages of this State from enacting and enforcing general ordinances, prescribing additional rules and regulations as to . . . the carrying of lights on . . . motor vehicles . . ."

The only question then, in determining whether or not an ordinance prescribing rules and regulations for the carrying of lights upon motor vehicles within the city limits is valid, is whether or not the ordinance conflicts with the State law. As is well stated in the case of Ex Parte Snowden (Cal.) 107 Pac. 724:

"It is well settled that the mere fact that the State in the exercise of the police power, has made certain regulations, does not prohibit a municipality from exacting additional requirements. So long as there is no conflict between the two and so long as the requirements of the municipal by-law are not in themselves pernicious as being unreasonable, or discriminatory, both will stand."

That a city may and should, in the absence of express statutory restriction, prescribe additional rules and regulations for traffic, is self-evident for, as the Court states in Ex Parte Snowden:

"The State in its laws deals with all of its territory and all of its people. The exactions which it prescribes operate (except in municipal affairs) upon the people of the city, urban and rural, but it may often, and does often, happen that the requirements which the State sees fit to impose may not be adequate to meet the demands of densely populated municipalities, so that it becomes proper and even necessary for municipalities to add to State regulations provisions adapted to their special requirements."

Hence, it is our conclusion that a city or village in this State may regulate the carrying of lights on motor vehicles subject to the rule of law hereinbefore stated.

It is well to conclude by saying that this opinion does not deal with any other question than the carrying of lights on motor vehicles nor does it deal with any special ordinance of any city in particular, but states what we believe to be the general law on the subject in this state.

Secretary of State, July 13, 1921.

Non-Residents: Licenses.

Query: We have in Clark County a few residents who have all their land holdings in Clark County but receive their mail at Monida, Montana, which is their nearest trading point. These people insist on purchasing their motor vehicle licenses in Montana and refuse to purchase Idaho licenses.

Held: It is our opinion that such people living in Idaho but getting their mail in Montana must not operate their cars in Idaho on Montana licenses.

Carl F. Leonardson, Dubois, Idaho, April 1, 1922.

Rural Mail Carrier: License.

Query: Will you please inform me if a person who is in the government service, viz.: rural mail carrier, is exempt from automobile license tax?

Held: If the machine is owned by the U. S. Government it no doubt is exempt, but if it is owned by the mail carrier it is not exempt.

H. D. Bowker, Nampa, Idaho, March 1, 1921.

Receivership: Licenses.

Query: A receiver holds a number of second-hand automobiles and it is desired that these be sold and he wishes to know what kind of license will be necessary.

Held: If these cars be moved upon the highways they must have regular licenses. If not moved upon the highways, under the ruling in the case of Wonacott vs. Seven-Seven Co., 32 Idaho 301, the cars would be subject to assessment and taxation, as any other property.

Service Trucks: Licenses.

Query: You also ask with reference to service trucks which are used only for the purpose of bringing or hauling in crippled automobiles, or other service work around the garage.

Held: It is our opinion that such cars must have a license for the reason that there is no special exception made for such cars and all cars are required to be registered and bear a license tag except where specially excepted by statute.

Guy Flenner, Boise, Idaho, April 11, 1921.

BANKS AND BANKING

Bank Stock: Assessment: Transfer to Real Property.

Query: An assessment was made on bank stock. Can this assessment be transferred to real property belonging to the bank by authority or order of any county officer or anyone else?

Held: It is our opinion that it cannot be so transferred. In Section 3297 and following sections the assessment is against the bank stock itself in the hands of individual holders. The tax is not against the bank or its property.

Query: If it is contended that bank stock had no value on the second Monday of January, 1921, can the taxes now be changed?

Held: It is our opinion that this assessment cannot be changed at this time by any board or officer. The assessment was made, we assume, in the regular way and passed by the board of equalization at the time of the meeting in December.

Mr. Rising, Hailey, Idaho, January 6, 1922.

Co-operating Societies: Deposits.

Query: Is it possible under the laws of this State for a co-operative society organized on the basis of a common law partnership to accept voluntary deposits from its members only and grant loans to each other according to mutual agreement?

Held: We do not believe that such an arrangement is legal. See Sections 5212 and 5280, Compiled Statutes.

J. G. Fralick, Commissioner of Finance, April 29, 1921.

Delinquency Certificates: Security.

Query: Would delinquency certificates for irrigation district taxes and maintenance charges for the years 1919 and 1921 be a legal security for a bank to give for a deposit of county money?

Held: It is our opinion that they would not. See Chapter 256, 1921 Session Laws, Section 12, Subdivision 5.

W. A. Brodhead, Hailey, Idaho, May 5, 1922.

Defunct Banks: Compensation Act.

Query: Should the finance department carry protection in the State insurance fund for employees of defunct banks in its charge?

Held: No. It would appear to us that after these employees are appointed by the Court, that the workmen's compensation insurance should be paid for by the funds of the bank or on order obtained from the Court to make such expense.

J. G. Fralick, Commissioner of Finance, February 1, 1922.

Defunct Banks: Taxation: Reports.

Query: We have your inquiry of April 29th saying you have two closed banks in your county, one of which closed before the first Monday in January, and one afterwards, asking whether the usual process of assessment for taxes on the stock of these banks shall be made.

Held: We see no reason why the usual return to you should not be made, but the return will show, of course, that there was no value for the stock on the first Monday of January, so there will be no taxes to pay. Real estate, however, will be assessed as usual.
Calvin Hazelbaker, County Assessor, Grangeville, Ida., May 9, 1921.

Defunct Bank: Fees: District Court.

Query: When a Commissioner of Finance sues on behalf of a closed bank under the control of the commissioner, shall the fees as provided in Section 3713, Compiled Statute, be paid?

Held: It is our opinion that the provisions of Section 3713, Compiled Statutes, are applicable only when the fees will be paid out of the public treasury and that the section has no application in case where the fees will be paid from the assets of the closed bank.

J. G. Fralick, Commissioner of Finance, March 24, 1922.

Defunct Banks: Federal Government: Priority.

Query: In the case of an insolvent State bank which is in your hands for liquidation, is the United States Government entitled to priority of payment over other creditors?

Held: We beg to advise that not only is the government, in our opinion, entitled to such priority, but that the sureties on the depository bond who have paid the government would have the same right. On the other hand, no such priority exists in favor of the government with reference to deposits in national banks under the same circumstances, strange as this may seem. But there seems to be little doubt about this being the exact status of the law. The following are the authorities on which we base the matter: Section 3466, Revised Statutes of the United States, also Sections 3467 and 3468, which read as follows:

2 Fed. Stat. Ann., page 216.

"Sec. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed."

"Sec. 3467. Every executor, administrator, or assignee or other person, who pays any debt due by the person or estate from whom or for which he acts, before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate for the debts so due to the United States, or for so much thereof as may remain due and unpaid."

"Sec. 3468. Whenever the principal in any bond given to the United States is insolvent, or whenever, such principal being deceased, his estate and effects which come to the hands of his executor, administrator, or assignee, are insufficient for the payment of his debts, and, in either of such cases, any surety on the bond, or the executor, administrator, or assignee of such surety pays to the United States the money due upon such bond, such surety, his executor, administrator, or assignee, shall have the like priority for the recovery and receipt of the moneys out of the estate and effects of such insolvent or deceased principal as is secured to the United States; and may bring and maintain a suit upon the bond, in law or equity, in his own name, for the recovery of all moneys paid thereon."

These statutes, however, are not applicable to national banks for the reason that the National Banking Act provides for a ratable payment of creditors and is held to be controlling over these statutes.

Cook C. National Bank vs. U. S. (U. S.) 27 L. Ed. 537;
Davis vs. Almira (U. S.) 40 L. Ed. 700;
111 Michie on Banks and Banking, Sec. 286, page 2159.

The National Bank Act, however, has no application to State banks and no act of Congress has ever made a similar exception as to State banks. It is not within the power of the State Legislatures to modify this act of Congress so State statutes to the contrary are not controlling, and the statutes quoted would seem to be in full force and effect as to State banks. There is no case that has passed expressly on the question of the State banks, but there are several where it has been said that these Federal statutes as to the priority given the United States, are controlling over any State statutes to the contrary. In American Surety Company vs. Carbon Timber Company, 263 Fed. 300 (8 C. C. A.), it is said:

"The provisions of these statutes of the United States supersede the State laws upon a distribution of assets coming within them and effected by its provisions. It has been uniformly held that whether in case of insolvency, death or assignment, the property of the debtor passes to the assignee, executor or administrator, subject to the priority of the United States. . . ."

In re Casualty Company of America, 187 N. Y. Sup't, 849, it is said:

"The right of the United States Government to preference cannot be defeated by any State statute nor by any rule adopted by the State Court. . . ."

Field vs. U. S. (U. S.) 9 L. Ed. 94;
United States vs. Fisher, (U. S.) 3 L. Ed. 204.

On the general subject of priority given the United States, see 39 Cyc. 750.

J. G. Fralick, Commissioner of Finance, February 15, 1922.

Financial Statement: Legal Newspaper.

Query: May a financial statement of a bank be legally published in a paper which has been established only nine months?

Held: We have held that the publication in newspapers of a bank statement should be made in a paper having the qualifications set forth in Section 2340, Compiled Statutes of Idaho.

Idaho Enterprise, Malad, Idaho, May 17, 1921.

National Banks: City Licenses.

Query: Are national banks subject to the payment of city licenses in incorporated cities?

Held. No. See Sec. 5219, Revised Statutes of the United States. Also see Weiser Nat. Bank vs. Jeffreys, 14 Idaho, 569.

John E. Dalley, City Clerk, Preston, Idaho, August 2, 1922.

Bank Officers: Insurance: Chap. 41, 1921 Session Laws.

Query: A bank officer is an agent for a fire insurance company, or, possibly, a life insurance company. Jones desires to borrow some money. The bank officer thinks it would not be good policy to loan Jones unless his property or life is covered by insurance in favor of the bank. In some cases part of the proceeds of the loan might be used to pay the insurance premiums. Can the bank officer write the insurance the fact being that the officer individually receives the usual agent's commission for writing the policy, for his personal benefit?

Held: The statute referred to provides, Chapter 41, 1921 Session Laws:

"No officer, director or employee of any bank or trust company organized under the laws of this State, shall demand, accept or receive, directly or indirectly, any commission or other consideration on account of the making, extension or renewal by said banking corporation or trust company, of any loan or extension of credit to any person, firm or corporation."

The whole question is one of whether or not the bank officer by getting his commission on insurance premiums is receiving any consideration on account of making the loan "directly or indirectly." In fact, the question may be narrowed even more. There would be no doubt that the payment of the premium would amount to a consideration, leaving the only point to be decided, whether or not it was received "directly or indirectly" "on account of the making, extension or renewal of the loan." It would seem to us that whether or not the premium is paid purely on account of the insurance or in part at least on account of making the loan, is a question in fact and one which would have to be passed upon by a jury. It is conceivable that there would be cases where bank officers having but little interest in the bank and a chance to obtain a large premium, would make an undesirable loan for the purpose largely of obtaining the insurance premium. Such case is conceivable but not very probable, but in that kind of a case the statute would undoubtedly apply. On the other hand, where the premium was paid to the officer making the loan and was no part of the moving consideration for making the loan, it does not seem to us that the statute would apply.

George W. Wedgwood, Gooding, Idaho, August 16, 1921.

Quorum: Meeting of Shareholders.

Query: What is required under the laws of Idaho to constitute a quorum at the annual meeting of shareholders for the election of directors of corporations organized under the laws of your State?

Held: The banking law of this State makes no special provision as to the number of shares of stock required to constitute a quorum at a bank meeting, but by Section 5220 Compiled Statutes of Idaho, the general corporation laws are made applicable. Section 4709, Compiled Statutes, provides that a corporation may by its by-laws prescribe the number of stockholders constituting a quorum. Section 4718 provides, and it would be applicable where the by-laws make no provision that "at all elections or votes had for any purpose there must be a majority of the subscribed capital stock, or of the members where there is no

capital stock, represented either in person, or by proxy, in writing." Also see Section 4713.

Comptroller of Currency, Treasury Dept., Washington, D. C., Feb. 21, 1921.

State Banks: Taxation: Sec. 5224, C. S.

We have your letter setting out that a State bank built a new bank building which it is now occupying and is carrying the old bank building in its "other real estate" account. This bank is organized as a bank and trust company and claims the right to so carry the old bank building under subdivision 4 of Section 5224, Compiled Statutes, saying that such companies shall have power "to lease, hold, purchase and convey any and all real property necessary to the transaction of its business or which it shall acquire in satisfaction or partial satisfaction of debts due the corporation by any of its debtors; which shall be alienated in good faith within five years from the date of its acquisition."

You state it is urged that the five-year clause applies to all real property and not alone to that acquired in satisfaction of debts.

This contention is not in our opinion correct. Section 5251, Compiled Statutes, which is another, and the only other statute on the same subject, must be read in this connection. Considering the two together, our opinion is that the trust company has no legal right to carry a bank building at all after it has ceased to be used for the transaction of the bank business, and that the five-year clause is permission granted only as to real estate acquired in satisfaction of debts, as is expressly stated in Section 5251.

J. G. Fralick, Commissioner of Finance, January 26, 1922.

State Banks: Taxation: Realty.

Replying to your letter of March 27, stating that one of the State banks, in order to create revenue from the upstairs of its building, has made it into a public hall for lodges and otherwise, equipment for which has cost about $1,000, and wherein you ask if this is lawful. I think it comes within Section 5251, Subdivision 1, Compiled Statutes, saying that a bank or trust company can acquire real estate for the purpose, among others:

"Such as shall be necessary for the convenient transaction of its business, including with its banking offices, other apartments to rent as a source of income provided, however, that no bank or trust company shall invest in a bank building and lot and furniture and fixtures an amount greater than fifty per cent of the capital and surplus of such bank or trust company."

We think this expenditure is lawful under the terms of this section if it does not exceed the 50 per cent referred to.

J. G. Fralick, Commissioner of Finance, April 1, 1922.

State Banks: Investments: Stocks, etc.

Query: Is is within the power of the Commissioner of Finance to prevent State banks from investing funds in stocks and bonds—for example, such as are listed on the stock market?

Held: In our opinion it is not. Your department exercises with respect to banks only such powers as are given to it by law or by necessary implication. There is no statute which gives you power in this particular instance. On the other hand there are statutes which, to our mind, implied at least, place it in the power of banks to make such investments. We refer to Sections 5212, Compiled Statutes, Sec. 5224, Subdivision 10, 5228; Subdivision 8, 5256. Section 5254 is also considered. While it is true you have the power to require a bank to

charge out assets of bad or doubtful character, this must be determined as a matter of fact on a particular asset in question and is not broad enough to give you the power to regulate against all assets of a particular class simply because they are of character such as stocks, bonds or otherwise.

J. G. Fralick, Commissioner of Finance, January 23, 1922.

Safe Deposit Boxes: Burglary: Liability.

Query: The Valley State Bank at Post Falls suffered burglary of safe deposit boxes and it appears from the bank's statement that the bank is not legally liable for the loss, but feels morally bound, and desires to know whether or not an assessment can be levied on the stock of the bank to discharge this moral obligation in whole or in part.

Held: Commendable as may be the attitude of the bank in this matter, we are satisfied that no assessment can be levied on the stock of any corporation to discharge a moral obligation as distinguished from a legal obligation. Of course, by unanimous consent the stockholders could make whatever contribution or assessment they saw fit.

J. G. Fralick, Commissioner of Finance, May 27, 1921.

Time Notes: Payable on Saturday.

Query: May banks in Idaho demand payment of time notes on Saturday?

Held: On demand note, yes; time note, no. Section 5952, Compiled Statutes of Idaho, is clearly in point on the question.

Bankers Maturity Calculator Co., 3336 Pleasant Ave., S., Minneapolis, Minn., June 27, 1921.

Taxation: Capital Stock: Other Property.

Query. Under the proviso of Section 3297, where a bank claims exemption, must the property stand in the name of the bank upon the records of the county wherein the shares of capital stock of said bank are assessed?

Held: It is our opinion that Section 3297, Compiled Statutes, makes it a condition precedent in order to claim exemption that the "other property" owned by and standing upon the records of the county wherein such shares of capital stock are assessed, be in the name of such bank.

Chairman, Board of County Commissioners, Teton County, Driggs, Idaho, December 14, 1920.

State Banks: Defunct: District Courts.

Query: I have your inquiry calling attention to that portion of Section 6, Chapter 42, 1921 Session Laws, saying as to banks which the commissioner has taken possession of, that he "by making application to the District Court of the county in which such bank is located or to the judge thereof in chambers, may procure an order to sell, compromise, or compound any bad or doubtful debt or claim and to sell or dispose of any or all other assets, which sale may be made to stockholders, officers, directors or others interested in such bank or trust company on consent of the Court . . ."; the remainder of the section providing for making the bank or trust company a party by notice issued on order of the Court.

The purport of your inquiry seems to be as to whether or not the Court can, by order, govern the sale to be made, whether public or private, and whether with or without notice, or whether it must be made in a manner similar to execution sales.

Held: The Court may control it. Any other interpretation would utterly defeat the purpose of the whole statute, which, as we conceive it to be, is a speedy and economical liquidation of the assets of these banks. In fact, it would have been preferable to have given the commissioner charge of the matter, but in some cases, of course, a safeguard might be needed, and in addition, the sale of assets without some Court proceeding is of very doubtful constitutionality.

Nevertheless, we do not think the statute should be construed so as to require notice and other expensive and lengthy formalities gone through in connection with execution sales, thereby practically wiping out all hope of realizing anything substantial on the assets of these banks.

Section 5234, Revised Statutes of the United States, with reference to powers of receivers of national banks, provides, among other things, that the receiver "upon order of a Court of record of competent jurisdiction may sell or compound all bad or doubtful debts and with a like order may sell all real and personal property of such association upon such terms as the Court shall direct . . ."; also to the former provision of our own law, which was Section 5294, Compiled Statutes, which provided that the Department of Commerce and Industry might proceed "to sell all real and personal property, on such terms as the Court shall direct". Similar provisions are contained in all of the bank laws I have examined.

The provision that the sale shall be made under order of the Court after notice to the bank adequately protects as to the constitutionality of the act and that much, to our mind, is necessary for that reason. Aside from this, however, we think the proceedings should be as simple, inexpensive and expeditious as possible and have no doubt therefore that the Court will in the absence of any provision whatever calling for notice of the proceedings ordinarily taken on execution sale, see that the matter is entirely within the control of the District Judge.

The case of Becker vs. Schofield, decided by the Ninth Circuit Court of Appeals, 221 Fed. 322 (see also 212 Fed. 304), is instructive as to the procedure in these cases. The order in that case, which was not questioned so far as the point you make is concerned, was evidently a general order and also an order for private sale.

J. G. Fralick, Commissioner of Finance, July 13, 1921.

Trust Companies: Act of 1901: Powers, etc.

Query: We have your letter setting out that a trust company organized on October 23, 1905, under the provisions of an act of the 1901 Session of the Legislature, 1901 Session Laws, page 26, entitled, "An Act to provide for the incorporation and regulation of trust companies, guaranty, title, abstract and safe deposit companies, etc.," claims a right to invest unlimited amounts in real estate and banking house contrary to the provisions of the present banking act. The trust company claims this power under the provisions of the act under which it was organized. Has it this power?

Held: The answer requires considerable investigation into the history of banking and trust company legislation in this State. I find that an act, entitled "An act to regulate the compiling of abstracts of title in the State of Idaho and to provide for the introduction of the same in civil action," enacted by the legislature in 1899, effective February 18, 1899 (1899 Session Laws, page 314). This act merely provided for filing of bond by all abstractors of title with the Probate Judge, the issuance of a certificate by the Judge and for the admission of evidence in court action of abstracts certified by bonded abstractors. It had nothing whatever to do with the subject of banking or trust companies.

However, the 1901 Legislature, by an act effective May 12, 1901, 1901 Session Laws, page 26, and entitled "An act to provide for the incorporation and regulation of trust companies, guaranty, title, abstract and safe deposit companies, adding Chapter 12 to Title IV of the Civil Code of Idaho and amending an act entitled 'An act to regulate the compiling of abstracts of title in the State of Idaho and to provide for the introduction of the same in civil actions, approved February 18, 1899,'" purported to amend the 1899 act first above mentioned. This 1901 act, however, so far as I can determine, has nothing whatever to do with the 1899 act and makes no mention of it whatever, except in the title. In short, it is not an amendment of the 1899 act. The title reference is a mistake. I mention the 1899 act merely because it is mentioned in the 1901 act.

The 1901 act is, however, the act under which the claim in question here is made. It provides, in substance, that companies which may thereafter be organized under its provisions should have certain rights and powers designated in the 12 paragraphs, among others, to furnish abstracts of title to real estate, and in subdivision 3 "to receive deposits of moneys and other personal property and to issue their obligations therefor, to invest their funds in and to purchase real and personal securities and loan money on real and personal securities." This, it will be noted, amounts in substance to authority to transact the banking business. It should also be noted that there was no banking statute in the State of Idaho at the time, and in fact at any time prior to 1905, as hereinafter mentioned.

In subdivision 6, these trust companies under this 1901 act were given power "to purchase and sell real estate and take charge of the same." The act was amended in 1907, Session Laws, page 545, effective March 16, 1907. The amendment went to the powers of these companies and as required by the Constitution the Legislature reprinted the entire section on Power; but so far as the question we are examining is concerned the amendment was not material and the power with respect to real estate was no different than that in the 1901 act.

As thus amended in 1907, the act was carried unchanged into the Revised Codes, appearing therein as Sections 2961 to 2967, inclusive, and without amendment was carried forward into the present Compiled Statutes, Sections 4858 to 4864.

In summary, the law with respect to the trust companies organized under the 1901 act was in effect in the same language as it now stands in the Compiled Statutes in 1905, the time of the adoption of our first banking law.

It might also be added that while the same constitutes no part of the act, with reference to these companies, Chapter 187, 1913 Session Laws, page 619, effective May, 1913, as amended Chapter 10, 1917 Session Laws, page 12, effective February 28, 1917, now Section 5235, Compiled Statutes, contains special provisions relating to savings departments of those trust companies organized prior to 1911, specifically say that they shall be subject to the banking law with respect to said savings departments and limiting the investments of its savings deposits, especially those in real estate, in the same manner as the savings banks are managed under the State banking law. In fact, subdivision 6 of the 1917 amendment, now subdivision 6 of Section 5236, Compiled Statutes, expressly provides: "But no such trust company or corporation shall have more than 50 per cent of its capital invested in the title plant, abstract books and lot and building in which the business of trust company may be carried on."

Turning next to the banking legislation itself, as stated, the first law on the subject is contained in 1905 Session Laws, page 175, effective May 4, 1905. The act provides for the appointment of a commissioner

and a system of inspection and reports. Section 7 defines banking substantially the same as it is defined in all later acts and at the present time. See Section 9:

"No person or corporation, except national banks and banks and trust companies organized in this State, established prior to the taking effect of this act, shall carry on a banking business except on compliance with the provisions of this act, provided that the provisions of Sections 32 to 42, inclusive, of this act so far as applicable shall govern and apply to State banks, private banks and foreign banks receiving deposits."

Sections 32 to 42 referred to are those on examinations and reports. Section 30 says in part:

"That the banking department of such trust companies shall be subject to such regulations, examinations and reports as are required under this act, of other corporations doing a banking business."

This act was carried into the Revised Codes, Sections 2968 to 3010, without amendment. Some argument could be made as to the meaning of the provisions of Section 30 with reference to the powers of trust companies, but I do not consider it material at this time for the 1911 Legislature adopted an entirely new act, Chapter 124, page 386, 1911 Session Laws, effective May 4, 1911. In no place does this act specially refer to the former one, but it does expressly repeal all acts or parts of acts in conflict with it, and being itself an entirely new and complete code, there is no question but what it constituted a complete substitution and repeal of the former act. The only amendments after this are as follows: 1913 Session Laws, Chapter 172, page 544, effective May 8, 1913; Chapter 81, page 194, 1915 Session Laws, effective May 8, 1915; Chapter 34, page 77, 1917 Session Laws; Chapter 51, page 111, 1917 Session Laws; Chapter 231, page 519, 1921 Session Laws; Chapter 42, page 53, 1921 Session Laws. 1921 Session Laws also contain other acts affecting banks, but not of an amendatory character.

None of the amendments since 1911, however, affect the question we are discussing, and with the exceptions of the 1921 acts, the law is embodied today in Sections 5205 to 5304, Compiled Statutes. In fact, so far as our question is concerned, the 1911 act is still the only statute to be considered. It, as I say, is to my mind a complete repeal of the former 1905 act and on the provisions of the 1911 act alone your question will have to be determined. Section 1 says:

"There is hereby established in the State Department a separate and distinct bureau, which shall have charge of the execution of the laws relating to banks, trust companies doing a banking business, and the banking business in this state. Such department shall be designated as the State Banking Department."

The act then makes general provisions for the appointment of the Commissioner and for the reports and inspection of banks and the regulation of the banking business. The definition of banking is substantially the same as under the old act. See Section 77:

"The provisions of this act shall, as far as applicable, govern all private banks now organized and existing within this State, as well as any private bank which may hereafter engage in business, and shall govern all incorporated State banks and trust companies, doing a banking business, now existing within the State. And the powers, privileges, duties and restrictions conferred and imposed upon any bank or trust company existing and doing business under the laws of this State are hereby abridged, enlarged or modified, as each particular case may require, to conform with the provisions of this act, providing all such existing banks shall immediately conform with the provisions hereof, excepting as to those provisions contained in Section 44 of this act, which later provisions must be conformed to within one (1) year from the passage and approval of this act."

Section 44 is the section limiting the loans of banks, in other words, the excess loan statute. This Section 77 is now Section 5304, Compiled Statutes.

From the foregoing it is clear than the 1911 act entirely repealed and superceded the 1905 act, which seems to hold out some exemptions to the kind of trust companies under consideration. Neither can there be any doubt under the definitions given in the 1905 act, in fact under any of the acts we have, that trust companies organized under the 1901 act are doing the banking business. This being established I see no escape from the conclusion that Section 77 of the act expressly modifies and abridges the powers of these trust companies to conform to the provisions of the State banking act, and such is the opinion of this office.

J. G. Fralick, Commissioner of Finance, January 26, 1922.

BLUE SKY LAWS

Common Law Trusts: Compliance.

Query: Are common law trust companies required to comply with the Idaho Blue Sky law?

Held: It has been the uniform ruling of this office that common law trust companies do come under the Idaho Blue Sky law. One District Court in this State has held that they do not, but the case has been appealed and is now pending in the Supreme Court. We are anxiously awaiting the decision as there is a wide difference of opinion among attorneys in this State as to this question.

J. Fanshier, Spokane, Wash., July 14, 1922.

Note: A late case, State of Idaho vs. T. B. Cosgrove (unreported) holds that a common law trust company is an "association" as the term is used in Compiled Statutes, Section 5305.

Domestic Mining Corporation: Compliance.

Query: Where a corporation is formed in Idaho and owns and operates mines in Idaho, is it necessary for such corporation to comply in any manner with the Idaho Blue Sky law?

Held: The provision of Chapter 117, 1913 Session Laws, seems to be in point and under the foregoing provision we hold that it is not necessary.

F. B. Smith, Castle Creek Mining Co., Nampa, Idaho, October 23, 1922.

Private Individuals: Compliance.

Query: Where a stock company has sold all its stock which is then owned by private individuals, may a broker sell such stock without the company having to comply with the Blue Sky law?

Held: In our opinion, no.

Elmer L. Brock, 300 White Bldg., Denver, Colo., April 4, 1922.

Private Individuals: Compliance.

Query: May an individual engage in the selling of securities in Idaho without complying with the Blue Sky law?

Held: In examination of the statutes we conclude that the individual selling stock would have to have an agent's permit from the company and the Department of Finance.

J. G. Fralick, Department of Finance, March 4, 1922.

Reports: Chapter 206, Compiled Statutes.

Query: Under the Blue Sky law of Idaho, Chapter 206, Compiled Statutes, is it necessary for corporations organized under our law to

file with the Department of Commerce and Industry the report mentioned in said Chapter, before such corporation can sell its own stock to subscribers?

Held: Yes.

J. W. Taylor, Buhl, Idaho, April 1, 1921.

BONDED WAREHOUSES

Insurance: Incompleted Deliveries.

Query: Under the rules and regulations concerning the bonded warehouse act, could the warehouse be held liable in case of loss for grain where it is being delivered by the load and where it is not insured during the time of delivery?

Held: This matter no doubt will have to be threshed out by the courts. It is our opinion, however, that the warehouseman could be held liable for the loss. The law provides that the Department of Agriculture may make certain reasonable rules and regulations. Your department has seen fit to require the warehouse to carry insurance upon incompleted deliveries for which negotiable warehouse receipts have not been issued. If the warehouseman fails to carry this insurance liability may arise.

Miles Cannon, Commissioner of Agriculture, July 6, 1921.

Leased Space: Bond: Necessity.

Query: We control space at several different points in this State where growers wish to store potatoes. We intend simply to lease the growers a stipulated space for them to use and to charge them a certain sum per square foot. In this event would it be compulsory to bond such storages? Our representative would have the care of such places.

Held: In our opinion it is necessary for you to bond. You say your representative would have the care of the warehouse and in such case you would be running a warehouse. The distinction between leased property which is not a warehouse and a warehouse is founded on who has charge and responsibility for the goods therein. If the growers themselves take their own risk and have charge of their own property and you do not have the custody of it, this is a lease and not a warehouse. If, on the other hand, the property is delivered into your custody and the responsibility is yours, you are running a warehouse.

Albert Miller & Co., Burley, Idaho, September 30, 1922.

Lien: Sale.

Query: Where potatoes have been stored in a bonded warehouse under a negotiable receipt and the owner of the same is three months behind on the payment of storage charges, has the warehouseman the right to sell the product for storage, and if so, how long after the owner of the receipt is in default?

Held: The bonded warehouse act itself contains nothing on this subject. It does state that the warehouse shall issue receipts for products stored and that such receipt shall embody in its terms "all the requirements of a receipt under the uniform warehouse receipts law."

The uniform warehouse receipts law, Sections 6119 to 6177, Compiled Statutes, inclusive, provides that every receipt must embody among other things the rate of storage charges and a statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. We note that the receipt in question conforms to the statute.

Section 6120 provides that the warehouseman is bound to deliver only on an offer to satisfy his lien. See also Sections 6145, 6148, 6146 and 6149. Sections 6151, 52 and 54 provide in detail for a method of sale for the satisfaction of these liens.

It is our opinion that these provisions of the uniform warehouse receipt law which we have referred to are applicable to receipts issued by bonded warehouses, and the sections referred to expressly answer your question.

There is one word of caution we should give, however, in the matter of complying with these sections which are technical and exact; your correspondent should take the matter up with his private attorney and proceed in this matter only on such advice.

Miles Cannon, Commissioner of Agriculture, January 24, 1922.

Mortgage: Third Parties.

Query: What is the liability of a bonded warehouseman in delivering stored products to an assignee of a warehouse receipt where the products, prior to their reception in the warehouse, are covered by a duly recorded mortgage?

Held: It is impossible for us to cover your question with any degree of exactness. Each case will undoubtedly be decided upon the status of the particular facts which surround it. We can only attempt to cite a few general principles of law which may or may not be followed by the courts of this State.

It has been held that where defendant warehousemen had stored grain in their warehouse and at the time of the reception of the grain it was mortgaged to the plaintiff, and that mortgage duly recorded, and subsequently thereto the defendant warehousemen delivered the grain to a third party who became the holder of the warehouse receipt therefor, that the mortgage, being recorded, was constructive notice to the defendants of the interests of the plaintiffs and the delivery of the grain to the holder of the receipt was a conversion of the grain for which the defendant was liable.

Hudman and Bros. v. DuBose, 85 Ala. 446.

Pippin v. Farmers Whse. Co., 51 So. 882.

Further, although the warehouse receipt is by statute made negotiable, the warehouseman who issues it can acquire no greater rights in the property represented by it than the one had to whom it was issued.

Decker v. Milwaukee Cold Stge. Co. 180 N. W. 256.

Com. Nat. Bank v. Canal Louisian Bank Co. 239 U. S. 520.

Further, the rights of the mortgagee of personal property are not removed because the mortgagor has placed the goods in a warehouse and transferred the receipt to a third person for value. Under the uniform warehouse receipts law, the mortgagor of the property who negotiates a receipt under such circumstances for value with intent to deceive and without disclosing the existence of the mortgage, is guilty of a crime; but the rights of the transferee are subject to the mortgage if it was properly filed or recorded at the time of the transfer.

Ann. Cases, 1917 E. 31.

MilesCannon, Commissioner of Agriculture, December 1, 1922.

Stored Products: Shipping.

Query: May a warehouseman, after issuing warehouse receipts, ship grain or stored products, placed there for storage, so that he will not have the amount on hand for which the warehouse receipts call?

Held: No. See Vol. 27, R. C. L. 980, Sec. 6172, Compiled Statutes.

Miles Cannon, Commissioner of Agriculture, August 25, 1921.

State License: Necessity.

Query: Is is necessary for any public warehouse in this State before it can perform the duties of a public warehouse to obtain a State license in addition to any other license which may be or may have been granted to it?

Held: Yes. See Sec. 8747-¾nn, U. S. Compiled Statutes.

Miles Cannon, Commissioner of Agriculture, July 19, 1921.

Storage: Nominal Charge.

Query: Where you are not a bonded warehouse would it be within the law for you to receive wheat and store it for farmers where you do not charge for such storage or even if you did charge a trifle for labor taking care of the same?

Held: In our opinion it would not be lawful for you to do so. The only kind of a company who can store grain and make any charge therefor is a bonded warehouse.

Preston Milling Co., Preston, Idaho, March 4, 1922.

CITIES AND VILLAGES

Claims: Presentation: Necessity.

Query: Is there any legal way by which the city can pay bills such as freight, express, etc., without claims therefor being presented and acted upon by the council?

Held: No.

H. B. Colwell, Clerk, Rupert, Idaho, July 2, 1921.

Clerk: Appointment: Villages.

Query: In villages, should the village clerk be appointed or elected?

Held: Section 3097, Compiled Statutes, provides for the appointment of village clerks.

J. A. McCune, Wilder, Idaho, May 20, 1921.

Election: Ballots: Writing in Names.

Query: After nominations are made for city boards of trustees at conventions, etc., can their names be written in on the ballot?

Held: Yes. See Chapter 90, Section 9, 1921 Session Laws.

J. W. Ash, Lava Hot Springs, Idaho, April 22, 1921.

Engineer: License: City Engineer.

Query: Can a party who is a duly licensed surveyor of the State but who holds no license for a civil engineer, hold the office of city engineer of a city in Idaho?

Held: After considering Section 3879, Compiled Statutes, Section 2249, as amended by Chapter 159, 1921 Session Laws, Section 2248, Compiled Statutes, as amended by Chapter 159, 1921 Session Laws, we do not see how it is possible or practicable for a party to hold the office of city engineer without the license of civil engineer.

Robert O. Jones, Commissioner of Law Enforcement, July 29, 1921.

First Class. Changed Salaries.

Query: Chapter 64, 1921 Session Laws, being Senate Bill 77, amends Section 3796, Idaho Compiled Statutes. In this section as amended, it provides that the city council may "fix the compensation of all officers; provided, that the compensation of the mayor shall not exceed the sum of $3600 per annum and the compensation of each

member of the city council shall not exceed the sum of $600 per annum." The question you desire to have answered is whether or not the new council and mayor that are elected at the coming city election will have the power, either by repeal of the present ordinance fixing the compensation of mayor or councilmen, or by the amendment thereof, to change the salaries of the new city officials who are to be elected at this spring election.

Held: Answering same will say that it is our opinion the salaries cannot be changed by the new council and mayor at any time during their term either by the repeal of the old ordinance or amendment or adoption of a new ordinance.

In support of this we direct your attention to Section 3810, Compiled Statutes, which reads as follows: "All general laws of the State applicable to cities of the second class and villages and not inconsistent with the provisions of this chapter, shall be applicable to cities of the first class." Also to Section 4067, which is the section relating to the salaries of officials of cities and villages of the second class, which said section reads as follows:

"Salaries are not to be changed during term. The emoluments of no officer whose election or appointment is required by this title shall increase or diminish during the term for which he shall have been elected or appointed; and no person who shall have resigned or vacated any office shall be eligible to the same during the time for which he was elected or appointed, when during the same time, the emoluments have been increased."

It seems to us that the above statutes are conclusive upon the point. We find nothing in the Constitution controlling. Had the new statute, Senate Bill 77, fixed the salaries at $3600 per annum and $600 per annum, respectively, then there would be no question but that the statute would supersede any city ordinance, but the new law says "not to exceed $3600," leaving it for the mayor and councilmen to fix the salaries. Therefore in view of Section 4067, it seems to us conclusive that the salaries would have to be fixed by the outgoing mayor and councilmen for the biennium.

Jonathan Bourne, Pocatello, Idaho, March 31, 1921.

Financial Report: Mandatory.

Query: Is it mandatory for a city or village to publish its report every three months, setting forth a full statement of the receipts and expenditures of the municipality?

Held: It is mandatory. See Section 4082 to 4045, Compiled Statutes. We also call your attention to the case of Walton vs. Channel, Idaho, 204 Pac. 663, which discusses a point quite similar to the one herein involved.

Joe Adams, Shelley, Idaho, May 3, 1922.

National Banks: Municipal Licenses.

Query: Are national banks subject to the payment of municipal licenses in incorporated cities?

Held: We presume you have reference to business or occupational taxes as a city may impose. It is our opinion that national banks would not be subject to the payment of such taxes.

John E. Dalley, Preston, Idaho, August 2, 1922.

Officer: Taxpayer.

Query: Is it necessary for a city officer to be a taxpayer?

Held: Section 3867, Compiled Statutes, provides: "All officers shall be qualified electors and taxpayers . . ." However, we call

your attention to Article 1, Section 2, of the Constitution of the State of Idaho, which provides: "No property qualifications shall ever be required for any person to vote or hold office except in school elections or elections creating indebtedness." Hence we doubt the constitutionality of Section 3867, Compiled Statutes.

O. F. Crowley, Assessor, American Falls, Idaho, April 21, 1921.

Ordinance: Legal Newspaper.

Query: Is it lawful for city ordinances to be published in a paper which has been in operation in the county but nine months?

Held: No. The law requires the publication of legal notices in newspapers which have been published for seventy-eight consecutive weeks, if a weekly, and for twelve consecutive months, if a daily. See Section 2340, Compiled Statutes.

Watkin L. Roe, Preston, Idaho, May 19, 1921.

Private Corporation: Purchase of Stock.

Query: May a village buy stock in a private corporation for the purpose of obtaining light and power?

Held: No. See Section 4, Article 12 of the Constitution of the State of Idaho.

N. C. Hovey, Challis, Idaho, September 13, 1920.

Policeman: Ratification: Tie vote.

Query: In the appointment of night police by the mayor of Rexburg the vote of the council stood three to three for ratification, the mayor casting the deciding vote in favor of the ratification. Is the appointment legal?

Held: It is our opinion that it is. Section 3864, Compiled Statutes, among other things, provides:

". . . The mayor, by and with the consent of the council, shall appoint such a number of regular policemen as may be necessary and may also appoint special policemen from time to time as the exigencies arise . . ."

Section 3868, Compiled Statutes, provides:

"The mayor shall preside at all meetings of the city council, and shall have a casting vote when the council is equally divided and none other . . ."

H. H. Halstrom, Rexburg, Idaho, May 1, 1922.

Sinking Fund: County Warrants.

Query: Is it legal to invest a village sinking fund in county warrants bearing 7½ per cent interest?

Held: No. See Section 4046, Compiled Statutes, as amended in Chapter 128, 1921 Session laws.

Stanley Logue, Treasurer, Cascade, Idaho, May 17, 1922.

Street Lighting: Levy.

Query: Can the City of Payette make a levy in excess of fifteen mills to cover the cost of street lighting in the city?

Held: In the absence of the formation of a special improvement district, we doubt the city's power to levy in excess of fifteen mills. See Section 3940 to 3943, Compiled Statutes.

Martin V. Luther, Payette, Idaho, Septetmber 21, 1921.

Water: Sale Outside City Limits.

Query: Has the city the power to sell its surplus water to people or persons outside the city?

Held: Yes, under the provisions of Section 3179, Compiled Statutes.

A. E. McClymonds, Aberdeen, Idaho, November 10, 1921.

COUNTY OFFICERS

Assessor: Auditor: Personal Property Tax.

Query: Is there any legal way in which the County Assessor could deposit with the Auditor the personal property tax daily as collected?

Held: The law provides no such method. Section 3273, Compiled Statutes, was amended to read in its present form in 1917. See Chapter 55, Section 150, Article 9, 1917 Idaho Session Laws. Prior to that amendment the law expressly provided for daily deposits. While there is no law authorizing or requiring the County Assessor to make daily deposits, should the Auditor and Treasurer be willing to accept daily deposits, we think such action would be legal. However, without their acquiescence they could not be compelled to accept daily deposits.

W. A. Kincaid, County Assessor, Boise, Idaho, January 17, 1922.

Auditor: Illegal Claims: Allowance: Liability.

We are in receipt of your favor of the 14th instant relative to the liability of a County Auditor for drawing warrants upon illegal claims examined and allowed by the Board of County Commissioners. So far as we have been able to ascertain from the records of this office, your exact question has never before been answered by this department.

It has, however, been decided by the office that a County Auditor has a discretion in this matter, which must be exercised by him in the drawing of warrants. Under date of June 17, 1919, in answer to the following inquiry from F. M. Fisher, Auditor of Bingham County:

"After the claims are passed upon by the Board of County Commissioners and the Auditor is authorized to draw warrants against a specified fund for the amount stated on the claim and the Auditor knows that the claim is illegal for not being in proper form or carrying a fatal defect, has the Auditor power to refuse to write the warrant?"

It was held:

"We call your attention to the provisions of Section 2052, Compiled Laws, (now Sec. 3624, C. S.) . . . It is our opinion that the Auditor is not authorized to draw warrants for claims which have been illegally examined, illegally allowed or illegally ordered paid; that under such circumstances it is the duty of the County Auditor to refuse to draw the warrant."

(Words in parenthesis are author's.)

Also the following question was put in the same letter:

"Can the County Auditor refuse to write a warrant for a claim allowed by the Board of County Commissioners for goods furnished when he knows that a member of the Board of County Commissioners is interested in such claim?"

It was held:

"County Commissioners are prohibited from being interested in any contrtact with the county by the provisions of Section 255, Compiled Laws (now Sec. 386, C. S.) and Sec. 1956, Compiled Laws (now Sec. 3515, C. S.), and Section 260, Compiled Laws (now Sec. 391, C. S.) prohibits the disbursing officers from paying any warrant received contrary to the above provisions. We are of the opinion, therefore, that the County Auditor is authorized, and it is his duty, to refuse to draw a warrant ordered drawn in violation of the provisions of Section

255 and Section 1956, Compiled Laws (now Secs. 386 and 3515, C. S.) We call your attention, further, to the provisions of Section 1915, Compiled Laws (now Sec. 3509, C. S.) authorizing appeals from orders of the Board of County Commissioners, and suggest that an appeal might be the proper way to handle such a question."

(Words in parenthesis author's).

However, as the question has come up again, we deem it of such importance as to give the matter more thorough consideration. Section 3624, Compiled Statutes, provides:

"The Auditor must draw warrants on the County Treasurer in favor of all persons entitled thereto, in payment of all claims and demands chargeable against the county, which have been legally examined, (legally) allowed and (legally) ordered paid by the Board of Commissioners; also for all debts and demands against the county when the amounts are fixed by law and which are not directed to be audited by some other person or tribunal."

(Words in parenthesis author's.)

You will especially note the use of the words "chargeable" and "legally" in the statutes quoted. These words, in our opinion, have a meaning which must be given consideration in the interpretation of this statute. Our attention has been called to two cases decided by the Supreme Court of this State, which, it is urged, are controlling in the matter under consideration. In the case of Rice v. Gwinn, 5 Ida. 394, it was held in no uncertain language that where the council of a city has passed upon and allowed a claim against the city and ordered the warrant drawn upon the city treasurer to issue for the amount thereof, it is the duty of the mayor, on the presentation of such warrant, to sign the same. And in the case of Wycoff v. Strong, 26 Ida. 502, the Rice case hereinbefore referred to, was cited with favor, and it was held by the Court that where a city council allows a claim and directs a city clerk to draw a warrant in payment thereof and he refuses to do so, he may be compelled to issue and countersign such warrant by writ of mandate, as his duty is purely ministerial and requires no exercise of discretion on the part of the clerk.

There can be little question but that the Court was right in the cases cited. We quote for your information the statute (Sec. 4047, C. S.) which was involved in the two cases quoted:

"All warrants drawn upon the treasurer must be signed by the mayor or chairman and countersigned by the clerk, stating the particular fund or appropriation to which the same is chargeable and the person to whom payable, and for what particular object. No money shall be otherwise paid them upon such warrant so drawn. Each warrant shall specify the amount levied and appropriated to the fund upon which it is drawn and the amount already expended to such fund."

You will note the difference between Section 4047, just quoted, and Section 3624, Compiled Statutes, which latter section involves the duty of the County Auditor. In Section 4047, there is no discretion whatever vested in the city clerk or the mayor, but in Section 3624, by the language used, it was no doubt the intention of the Legislature to vest discretion in the County Auditor, and it is the duty of the County Auditor, by virtue of the language used, to exercise that discretion where the officer has good reason to believe or knows that certain warrants are illegal or otherwise non-chargeable against the county.

Section 3624 was undoubtedly taken from the California laws, for we find that California has a similar statute, and quote the same for your information: Section 4215, Political Code of California, as follows:

"The Auditor must draw warrants on the County Treasurer in favor of all persons entitled thereto in payment of all claims and demands

chargeable against the county which have been legally examined, allowed and ordered paid by the board of supervisors; also for all debts and demands against the county when the amounts are fixed by law and which are not directed to be audited by some other person or tribunal."

This section has been interpreted by the Supreme Court of California on various occasions, the first case being Linden v. Case, 46 Cal. 171, wherein it was stated by the Court:

"No claim against the county can be allowed unless it be legally chargeable to the county; and if claims not legally chargeable to the county are allowed, neither the allowance nor the warrants drawn therefor, create any legal liability."

And further quoting from the same case:

"If illegal claims are allowed by the board against the county, it will be the duty of the Auditor to refuse to draw warrants therefor; and if warrants are drawn it will then be the duty of the Treasurer to refuse to pay them. The presumption is that these officers will faithfully discharge their duty in the premises."

In the case of Merriam v. Board of Supervisors of Yuba County (Cal.) 14 Pac. 137, the case of Lincoln v. Case, 46 Ca. 171, hereinbefore quoted, was cited with favor, wherein it was held:

"The Auditor ought not to draw his warrant for an illegal demand, although allowed by the board, and if he does so knowingly and wilfully, he is personally responsible and may be made to refund the money thus illegally paid. The same rule applies to the Treasurer. A warrant drawn by the Auditor would be no excuse for the payment of a claim known to be not a lawful charge. Then the District Attorney is required to look after the affairs of the county and it is the duty of his own motion to commence suits to recover moneys illegally paid out. . . ."

"The members of the board would themselves be individually responsible for moneys wilfully paid out without authority of law. They are trustees of the funds for certain specified purposes and cannot, except by violating their oaths, allow them to be applied to other purposes."

In Walton v. McPhetridge (Cal.) 52 Pac. 731, it was held, citing with favor the case of Linden v. Case, 46 Cal. 171:

"The Auditor ought not to draw his warrant for an illegal demand, even though allowed by the board; and if he does so knowingly and wilfully, he is personally responsible and may be made to refund the money thus illegally paid. Merriam v. Board, 72 Cal. 519, 14 Pac. 134."

However, before concluding the citing of authorities on this question, it is well to call your specific attention to a distinction which must be made between the line of cases just cited, and a line of cases which is cited in support of a contention which might be confused with the one made herein, that is: You have no discretion in a case which involves the question of the value of certain services rendered by a claimant, where there is no contention that the amount due him for whatever services he might render was a legal charge against the county. In that instance the board of supervisors or county commissioners are the final arbiters in question of fact. For a case in point, see McFarland v. McCowen, (Cal.) 33 Pac. 113. You no doubt will easily draw the distinction.

You will note in the California cases cited, there is not directly involved the question of liability of the County Auditor for signing warrants for claims not chargeable against the county. That point is not directly decided, yet the language of the Court is so clear and explicit that we have no doubt that the Court, if the precise question of liability were put to them, would decide that the County Auditor was

liable upon his bond for signing warrants which he had good reason to know, or did know, were not issued for claims legally chargeable against the county.

We see no good reason why a County Auditor, in the performance of his duties, should not be responsible for an abuse of discretion, where discretion is vested in him, as is vested by the terms of Section 3624, Compiled Statutes; therefore we hold, based upon the authorities hereinbefore cited and by the plain reading of Section 3624, Compiled Statutes, that the County Auditor would be liable for the signing of warrants for illegal claim or claims not chargeable against the county.

Miss Rose Edwards, County Auditor, Caldwell, Idaho, July 18, 1921.

County Auditors: Salaries: Change.

Query: Can the salary of County Auditors elected two years ago be changed at any time during the term?

Held: It is our opinion that they cannot be so changed.

C. L. Toyer, County Treasurer, Rupert, Idaho, February 1, 1921.

County Office: Two Offices Held by One Man.

Query: May the same man hold the office of Coroner and Deputy County Treasurer at the same time? May such man hold both offices if he waives the salary to one? May such man hold both offices and receive his expenses and salary in one office and his expenses in the other if he waives the salary in the one?

Held: It is our opinion that one man cannot hold two county offices at the same time regardless of whether he attempts to waive the emoluments of one of the offices. This is because of the public policy involved, and the courts laid down the rule that public policy would not warrant one man holding two offices from the same governing body. There are certain city offices or school district offices that one could hold and also hold county office, these being offices from different governing bodies and the duties thereof not in any way being incompatible with each other, but public policy as laid down by the courts forbids one man holding two offices from the same governing body.

V. L. Taylor, Mountain Home, Idaho, November 15, 1922.

County Superintendent: Expenses N. E. A.

Query: Can the Board of County Commissioners legally pay a County Superintendent's expenses to the N. E. A. meeting?

Held: We know of no authority for their action in allowing such expense.

Miss Pearl Barber, Superintendent of Public Instruction, Mountain Home, Idaho, June 21, 1921.

County Superintendent: Qualification and When.

Query: Can a person of sufficient qualifications, which are not now held, but would be by January first, qualify and act as County Superintendent of Schools?

Held: It is our opinion that if the person is not qualified at primary election time, the person could not qualify for office on January 1st.

Roy R. Duke, Auditor, Arco, Idaho, July 1, 1922.

County Superintendent: Transfer of Funds: High School.

Query: Is it the duty of the County Superintendent to transfer funds of various districts for the payment of tuition of high school pupils?

Held: The duty is made very clear in the provisions of Section 998, Compiled Statutes.

Miss Madge E. Fohl, Clerk, Orofino, Idaho, August 12, 1922.

County Superintendent: Insurance: School Buildings.

Query: Does the County Superintendent have the power to insure a school house and make the payment of the premiums on the insurance policies a legal charge against the district?

Held: No.

H. B. Robbins, Stone, Idaho, February 2, 1921.

Commissioners: Clerk: Purchasing Agent.

Query: Is there any provision of law for a county purchasing agent, the clerk of the board having heretofore acted as such for the county?

Held: There is no statute on this subject. The clerk may have been acting for the board under their direction or at their suggestion, but there is no statute authorizing any county officer to act as purchasing agent for any county office or department.

B. F. Wilson, Burley, Idaho, March 11, 1921.

Commissioners: Clerk: Custodian Courthouse: Salary.

Query: Would it be legal for the County Commissioners to employ the County Clerk as custodian of the court house and pay him a salary as such in addition to his official salary?

Held: Upon the authority of McRoberts vs. Hoar, 28 Idaho 173, it is our opinion that the commissioners cannot enter into such a contract.

Isaac McDougall, Pocatello, Idaho, April 30, 1921.

Commissioners: Counties: Reclassification: Salaries.

Query: Where counties were re-classified by the last Legislature, by which act the salaries of the officers were changed, do such changes take effect with the present County Commissioner or will they not take effect until two years from this date?

Held: In the case of Blaine County vs. Pyrah, 32 Idaho 111, it is held that the Legislative enactment changing the salaries of the County Commissioners takes effect at once upon the taking effect of the act.

John Nisbet, Prosecuting Attorney, Moscow, Idaho, May 17, 1921.

Commissioners: Building: State and County.

Query: Is the Department of Highways authorized to purchase jointly with the county, real estate to be used for housing State and county road construction maintenance equipment?

Held: We find no statutory authority and in the absence of the same give it as our opinion that such construction is prohibited.

D. P. Olson, Department of Highways, Boise, Idaho, August 3, 1921.

Commissioners: Report: Sec. 3629, C. S.

Query: Is the report provided for by Section 3629, Compiled Statutes, mandatory or optional on the part of the officials?

Held: It is mandatory.

Wood River Times News Miner, Hailey, Idaho, March 27, 1922

Commissioners: Equalization: Sections 3152 and 3153, Compiled Statutes.

Query: Is the Board of County Commissioners vested with authority to equalize property at any other time than that specified in Sections 3152 and 3153, Compiled Statutes?

Held: No.

F. M. Fisher, Blackfoot, Idaho, April 12, 1922.

Commissioners: County Printing: Bids.

Query: Can a County Commissioner let contracts for county printing without asking for bids for the same?

Held: We find no statute in this State requiring County Commissioners to advertise for bids for this work.

Homedale Empire Press, C. L. Ford, Editor, Homedale, Idaho, February 22, 1921.

Commissioners: Irrigation Districts: Election Expenses.

Query: Should the county allow bills for printing notices of election and ballots for formation of irrigation districts?

Held: Yes.

Carl C. Kitchen, Cascade, Idaho, January 10, 1921.

Commissioners: Irrigation Districts: Appropriation.

Query: We have your inquiry of March 15 as to whether or not County Commissioners can authorize an appropriation to assist in the formation of an irrigation district with the American Falls Project under Section 3442, Compiled Statutes, which reads:

"To expend not to exceed the sum of $1000 in procuring data, surveys, estimates, measurements, maps, plats, and all other matter which may be necessary to the promotion of any irrigation scheme or system for which it is sought by said county, or the citizens thereof, to secure aid from the United States Government; Provided, however, that a petition shall first be filed with the board signed by at least 100 taxpayers of said county praying for such expenditure."

Held: We beg to advise that in our opinion they cannot. If we understand you correctly, what is proposed is to make a donation for this purpose. You will note the reading of this statute authorizes the commission to "expend." This would not in our opinion include either an appropriation or a donation to be given over to third persons for expenditure. I understand the statute to mean that the county itself is to expend the sum for the purposes indicated in the statute. Secondly, the purposes for which the money is to be expended are named in the statute as follows: "In procuring data, surveys, estimates, measurements, maps, plats, and all other matter which may be necessary to the promotion of any irrigation scheme or system."

Under the ordinary rules of statutory construction this language would not include the expenses of organizing an irrigation district.

Taking the view that we do of the meaning of the statute, we have not gone into the question of constitutionality, but we would have a serious doubt in our minds as to its constitutionality if it were construed to mean that the county might make direct appropriation or donation for this purpose. We refer to Article VIII, Section 4 of the Constitution, providing "no county . . . shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to, or in aid of, any individual, association or corporation for any amount or for any purpose whatever or become responsible for any debt, contract or liability of any individual, association or corporation in, or out, of the State." Article XII, Section 4, says: "No county . . . shall

ever become a stockholder in any joint stock company, corporation or association whatever or raise money for or make donation or loan its credit to or in aid of any such company or association . . . "

H. A. Lawson, Boise, Idaho, March 16, 1922.

Commissioners: National Guard: Cancellation Taxes.

Query: Have the County Commissioners authority to cancel taxes on property which has been purchased by the National Guard? Is it lawful for the County Commissioners to cancel back taxes on property purchased by a church organization which is leased or rented from time to time for various forms of entertainment and admission charged, and which was only recently purchased by such church organization?

Held: Answering both questions, it is our opinion that the County Commissioners could not make such cancellations. The statutes do not make property of the National Guard exempt from taxes even though owned by the association at the time the taxes were levied.

As to the church property, the exemption would not take effect until actual ownership of the property by the church, and therefore the back taxes could not be canceled.

Wayne Thompson, Gooding, Idaho, May 8, 1922.

Commissioners: Bridge Work: Bids.

Query: May the County Commissioners do bridge work themselves, and if so, in ordering steel in quantities, do they have to advertise for bids for furnishing the same?

Held: As to the first part of your query, our answer is in the affirmative. We call your attention to Section 1314, Compiled Statutes of Idaho, wherein it provides:

"The Board of County Commissioners in each county shall have . . . full power to construct, maintain, repair and improve all highways within the county, whether directly by their agents and employees or by contract."

We also call your attention to Section 1360, Compiled Statutes, which provides that:

"No bridge, the cost of the construction or repair of which will exceed the sum of $100 must be constructed or repaired except on order of the Board of County Commissioners. When ordered to be constructed or repaired, the contract therefor must be let out to the lowest bidder. . . ."

This statute, which is an earlier statute than Section 1314, is not necessarily in conflict with the latter section for if the county does not do its own work through its agents and employees, it must, under the provisions of Section 1360, Compiled Statutes, whenever the cost of such work will exceed the amount of $100, advertise for bids, and let the contract to the lowest bidder.

As to the second part of the query, we answer in the negative, it being our opinion that it is not necessary to advertise for bids for the furnishing of the steel. We find no general statute which requires a county to advertise for bids for the furnishing of supplies for the county and we think furnishing of steel for bridge work is in the nature of a county supply.

We also call your attention to Chapter 178, 1921 Session Laws, as the law in point. We think if the Board of County Commissioners will declare an emergency to exist for any one of the reasons mentioned in that act, that they may execute the work themselves, or in any other manner, to meet the emergency, as specified in that act, without advertising for bids.

Clarence Hill, Caldwell, Idaho, November 23, 1921.

Commissioners: Levy: University Extension.

Query: We have your inquiry as to whether or not Boards of County Commissioners may make special levy of taxes for university extension work.

Held: The answer depends entirely upon the provisions of the statutes of the State. There are only three sections of statute that bear on the question: Section 3441, which provides that County Commissioners have power to appropriate funds for such work, but makes no mention of how they are to be raised; Section 3446, which makes provision for the same thing; and Section 3447, saying:

"The salary and expenses of such extension agents shall be fixed by the director of the University of Idaho Extension Division, acting in cooperation with the executive committee of the county farm bureau and the Board of County Commissioners. The commissioners of said county are hereby authorized and empowered to make provisions for the payment of such salary and expense out of the general tax fund of the county or out of other available funds not otherwise appropriated."

You will note not only does this fail to make any provision for a special levy, but it expressly authorizes and directs the payment out of the general fund or other available and existing funds not otherwise appropriated. I therefore, regret to say that there is no authority in law for a special levy.

B. E. Hyatt, November 2, 1921.

Commissioners: Special Prosecutor: Criminal.

Query: Have the County Commissioners the authority to hire a special prosecutor to assist the County Attorney in criminal matters?

Held: In answer thereto we beg to advise that it is our opinion that they have no such authority. Section 3654, Compiled Statutes, provides:

"When there is no Prosecuting Attorney for the county, or when he is absent from the Court, or when he has acted as counsel or attorney for a party accused in relation to the matter of which the accused stands charged and for which he is to be tried on a criminal charge, or when he is near of kin to the party to be tried on a criminal charge, or when he is unable to attend to his duties, the District Court may, by an order entered in its minutes, stating the cause therefor, appoint some suitable person to perform for the time being, or for the trial of such accused person, the duties of such prosecuting attorney, and the person so appointed has all the powers of the Prosecuting Attorney, while so acting as such."

You will note that the above quoted section makes provision for the District Court to make the appointment of a special prosecutor upon certain conditions. Section 3654 has been before the Supreme Court in the case of Adamson vs. Board of County Commissioners, 27 Idaho 190, wherein in substance it was held that under the provisions of Section 3654, Compiled Statutes, when a Prosecuting Attorney is disqualified as provided by the said section, the District Court is given the authority to appoint a person to prosecute any criminal action; that it is the duty of the Prosecuting Attorney to prosecute all criminal actions unless he is disqualified under the law to prosecute; and that County Commissioners are not authorized under the law to employ counsel to assist the Prosecuting Attorney in prosecuting criminal cases.

Note: See Mills v. Minidoka Co. (Ida.) 204 Pac. 876.

J. Peter Jensen, Malad City, Idaho, July 16, 1921.

Commissioners: Negligence: Liability.

Query: 1. What is the responsibility of the county for physical injuries received or financial damages sustained, or both, when the same were the result of the unsafe condition of a county bridge, which had been condemned, an order condemning the same having been entered in the Commissioners' minutes, and a notice that the structure was condemned having been posted on the bridge?

2. The same as above except that no notice of the bridge having been condemned was posted.

3. The same as 1, except that the structure had not been condemned and no notice posted?

Held: It is our opinion that under the decisions of Gorman v. Commissioners, 1 Idaho 655, and Worden v. Witt, 4 Ida. 404, that neither the county nor the Commissioners would be liable for injuries resulting from an unsafe county bridge. We think the answer would hold good as to all three questions asked.

George F. Church, Emmett, Idaho, June 24, 1922.

Fees: Criminal Appeal to District Court: Demurrers.

Query: Shall there be a $5 fee collected on criminal cases appealed from the lower court to the District Court?

Held: Yes. See Section 3702, Compiled Statutes.

Query: In civil cases should there be a $3 fee collected on each demurrer filed, or does the $3 fee on the first demurrer cover all demurrers filed in the same case?

Held: One $3 fee covers all demurrers or pleadings filed, even the answer, by the same defendant or by defendants appearing jointly in the same pleadings. Where there are separate appearances filed for different defendants, $3 should be charged for each one of them on their first appearance by demurrer or answer.

Fred Garrecht, Clerk District Court, Idaho City, Idaho, April 8, 1922.

Fees: Change of Venue.

Query: On change of venue from a Justice Court to another county, is the county to which the action is changed entitled to receive the same filing fees as if the case were being started in that county originally?

Held: It is. See Section 6668, Compiled Statutes.

H. G. Gardner, Auditor and Recorder, Payette, Idaho, April 2, 1921.

Fees: Clerk: Execution.

Query: Do the fees paid the Clerk of the Court for filing an action cover the fees for the publication of a writ of execution?

Held: No.

Carl C. Kitchen, Clerk District Court, Cascade, Idaho, July 31, 1922.

Fees: Joinder of Defendants.

Query: Under Section 3702, Compiled Statutes, where several defendants join with the same attorney and file a demurrer, and thereafter a joint answer is filed, what fee should be charged?

Held: It is our opinion you should charge the fee for the answer regardless of the number of people named in it. It is but one instrument. However, where different answers are filed by defendants appearing separately, then you should charge the fee for each answer filed.

J. R. Sayer, Clerk District Court, Rigby, Idaho, May 5, 1922.

Fees: Divorce: Cross Complaint.

Query: An answer is filed in a divorce action and in the answer sufficient allegations are made to claim a divorce for defendant. In other words, allegations sufficient to constitute a cross complaint. Should the filing fee be $6.00 or $3.00?

Held: The filing fee in such a matter should be $6.00, $3.00 for general appearance and $3.00 for the cross complaint. This has been the uniform holding of this office since the statute in question was adopted.

F. W. Byrd, Nampa, Idaho, April 20, 1921.

Fees: Conditional Sales Contract.

Query: What is the correct fee to charge for filing and indexing conditional sales contracts?

Held: It is our opinion that Section 3, Chapter 153, 1921 Session Laws, is controlling, and not Section 3706, Compiled Statutes.
Homer E. Estes, County Auditor, Moscow, Idaho, September 26, 1921.

Fees: Industrial Accident Board: Appeal From.

Query: What is the proper fee to charge for the filing of an appeal from a decision of the Industrial Accident Board?

Held: There is no express provision any place in the fee schedule or elsewhere as to the amount of fee to be paid. However, Section 3702, Compiled Statutes, states:

"For all services not herein enumerated and of him lawfully required, the Clerk of the District Court shall demand and receive such fees as are herein allowed for similar services."

The filing of an appeal from an inferior court where the filing fee is $5.00 would seem to be that in nearest relation to "similar service."

C. C. Siggins, Clerk of District Court, Twin Falls, Idaho, March 11, 1922.

Legislator: County Officer.

Query: May a member of the 1919 Idaho Legislature be appointed as a Deputy Clerk in a new county formed by legislative enactment of the session of which he was a member?

Held: Answering this question will say that we find no prohibition against a member of the Legislature acting as a deputy in such county. Our Supreme Court seems to have held in a case where it was not exactly in issue, that the deputy office is created, not by the Legislature, but by the will of the County Commissioners.

Mrs. Caroline Allen, Dubois, Idaho, March 5, 1919.

Prosecuting Attorney: Public Administrator: Fees.

Query: Can a Prosecuting Attorney charge a fee for advising the County Treasurer while acting as public administrator in the matter of estates being administered by said officer?

Held: We doubt the legality of such a charge. See In re Rice, 12 Idaho 305; Givens v. Carlson, 29 Idaho 133.

W. A. Brodhead, Hailey, Idaho, July 14, 1921.

Prosecuting Attorney: Contingent Fund.

Query: May a portion of the contingent fund mentioned in Section 3662, Compiled Statutes, be used for the purpose of employing a detective to secure evidence in a criminal case?

Held: It is our opinion that the employment of a detective to secure evidence is one of the purposes contemplated by Section 3662, Compiled Statutes. The fund is at the disposition of the County At-

torney, subject to the approval of the District Court, to aid the county in securing evidence or otherwise preparing for trial of criminal cases. We believe to rule otherwise would be to thwart one of the very purposes for which the fund was created.

Clarence S. Hill, Prosecuting Attorney, Caldwell, Idaho, July 19, 1922.

Prosecuting Attorney: Offices.

Query: You were elected County Attorney and a part of the county officers are provided with an office, such as Sheriff, County Auditor and Recorder, Assessor, Farm Bureau, etc., at the expense of the county. The county has not supplied an office for the County Attorney and have no room for the County Attorney in the court house. They have supplied you with a county stenographer at the annual salary of $700 per year, the balance to be paid by yourself personally. You are renting an office at the monthly rent of $30 a month and the owner of the building has filed his claim for the entire rent with the county but the commissioners have disallowed the claim; you further state that you use your office in part for civil practice. Your question is whether or not it is mandatory upon the County Commissioners to either pay the rent of the County Attorney's office or to furnish an office for the County Attorney in the court house?

The sections of our statute which are in point are as follows:

Held: Section 3463 provides: "The board must cause to be erected or furnished a courthouse, jail and such other public buildings as may be necessary, and must, when necessary, provide offices with necessary furniture for the Sheriff, Clerk of the District Court and ex-officio Auditor and Recorder, County Treasurer, Prosecuting Attorney, Probate Judge, County Assessor, County Surveyor and Superintendent of Public Instruction, and must draw warrants in payment for the same."

Section 3659 provides: "The Board of County Commissioners of any county in this State may if they deem it advisable for the best interests of the county, employ a competent stenographer at a fixed compensation not to exceed $100 per month, to take and transcribe testimony at preliminary hearings or examinations."

Section 3660 provides: "Said stenographer shall also perform such other duties as may be required by the Prosecuting Attorney in the conduct of his office and other county business."

Answering your question, will say that under the above statutes it is incumbent upon and the duty of the county to furnish the County Attorney an office of some kind at the county expense. It is also incumbent upon the county, if they deem it advisable and to the best interests of the county to do so, to provide a stenographer within the limit provided in the above statute.

If the County Commissioners provide such office it is wholly immaterial that the office is used in part for private business, but it is wholly in the discretion of the County Commissioners how big the office and what kind of an office shall be furnished for the County Attorney, so long as the same is in the county seat. Where larger quarters are necessary for the conduct of the private business than the county furnishes, then, of course, the amount of the rent should be prorated and the County Attorney pay for that portion of the rent which is added because of the conduct of his private business.

As to the stenographer, that, of course, is optional with the County Commissioners, but it is incumbent upon the County Commissioners to pay for the stenographic services of reporting and transcribing preliminary hearings, etc., and in most counties, in fact all that I know of, the County Commissioners furnish a stenographer for that purpose at the expense of the county. However, it requires a very good stenographer to take preliminary hearings and do such reporting work, and therefore the general rule over the State is, as you have apparent-

ly adopted in your county, a good stenographer is employed and the county pays so much and the County Attorney so much, and of course the privilege is given because of the County Attorney paying a portion of the salary, to use the stenographer also in connection with his private law practice.

As to the furnishing of a library, as is mentioned in the letter of the County Commissioners, will say that is a matter wholly optional with the County Commissioners. The general rule seems to be among the counties that they furnish a few special books on criminal law and criminal procedure. The reason being that these are books that the average practitioner does not have in his library, and while the County Attorney is working for the county he should have access to these books pertaining to criminal law, and his having access to them will reflect to the best interests of the county.

As to where the office furnished by the county shall be, or as to the kind of office, that is optional with the County Commissioners.

Keith Ferguson, Jerome, Idaho, March 29, 1921.

Probate Judge: Clerk: Salary.

Query: Can a Probate Judge, acting as his own clerk, draw a salary as clerk in addition to his salary as Judge?

Held: He cannot.

E. Kenneth Gorton, Clerk District Court, Soda Springs, Idaho, October 15, 1921.

Probate Judge: Practicing Law.

Query: You ask for our construction of the amendment to Section 3560, Compiled Statutes, as the same appears in 1921 Session Laws, Chapter 214, at page 426.

Held: It is our opinion that the Probate Judge must not only refrain from acting as attorney in actual litigation, but also that he must not draw, nor assist in drawing, any petition for letters, probate of will, account, petition for sale, guardianship, and in fact, any paper which he is not required by law to draw; and, further, that he should not draw any debatable order or paper. The administrator or executor must do the work if competent to do so, and if not, counsel must be employed. We think our conclusion would be true whether the Probate Judge would draw a fee or not. It must be made clear, however, that the Judge is not forbidden to draw the Court orders or other papers that are papers of the Court or Judge, as distinguished from the papers to be made or filed by the parties.

Francis R. Hall, Jr., Salmon, Idaho, March 20, 1922.

Recorder: Fees: Chattel Mortgages.

Query: A County Recorder in the course of business issued certified copies of chattel mortgages on file in his office and makes abstracts of the chattel mortgage record on request therefor, which he signs in his official capacity and for which he makes a charge. Has he any color of title personally to the fees so collected? If not, whose duty is it to see they are turned into the Treasurer?

Held: It is our opinion that he has no color of title to the fees so collected, but that they must be turned into the treasury. In giving you this opinion we have taken into consideration the provisions of Sections 3694 and 3706, Compiled Statutes, and Article 18, Section 7 of the Idaho Constitution. Under the provisions of Section 3655 it is the duty of the County Attorney to enforce such payment.

Jeremiah W. Robinson, Certified Public Accountant, Boise, Idaho, July 31, 1922.

Recorder: Searching Records.

Query: Can a County Recorder be compelled under Section 3648, Compiled Statutes, to search the records for any and all instruments with reference to any certain described land?

Held: Under Section 3648, Compiled Statutes, taken by itself we are not of the opinion that the Recorder would be required to make a search simply by property description, but taken in connection with Section 3649 it would seem that it was the intent of the statute that search be made by property description alone.

F. M. Hobbs, Auditor and Recorder, Mountain Home, Idaho, February 21, 1922.

Surveyor: License: Necessity.

Query: Can an unlicensed person act as County Surveyor?

Held: We believe under the limitations of Section 2242, Compiled Statutes, that it is necessary for a County Surveyor to be licensed. We have also considered Section 492 and Section 3672, Compiled Statutes.

Paul Davis, Bureau of Licenses, April 9, 1921.

Surveyor: Furnishing Supplies.

Query: Has the Board of County Commissioners authority to enter into a contract with a County Surveyor for the purpose of the latter supplying the county with coal, oil, gasoline and auto accessories for the use of the county?

Held: Section 386, Compiled Statutes, provides: "Members of the Legislature, State, county, city, district and precinct officers, must not be interested in any contract made by them in their official capacity, or by any body or board of which they are members."

Section 387, Compiled Statutes, provides: "State, county, district, precinct and city officers must not be purchasers at any sale, nor vendors at any purchase made by them in their official capacity."

The argument, no doubt will be made that the County Surveyor may contract in a private capacity with the county, but the difficulty is that the County Surveyor in his official capacity will no doubt be in need of those certain supplies furnished by him to the county. We believe the case of McRoberts vs. Hoar, 28 Idaho 163, while perhaps not exactly in point on the question herein involved, states with an exceptional degree of clearness and comprehensiveness the duties of public officials in respect to services expected and required of them by virtue of their official positions. While we are not able to definitely state that such a contract is one prohibited by the laws of the State, we do think, by virtue of the language used in the case of McRoberts vs. Hoar, it is most inadvisable and questionable on the part of the Board of Commissioners to enter into such a contract.

A. E. Later, Rigby, Idaho, April 7, 1921.

Sheriff: Summons: Fees.

Query: Where a Sheriff has several summons to be served in several individual suits at the same time and in the same direction, shall he charge fees only in one case and that the one which is most distant on his route?

Held: It is our opinion that the Sheriff should charge fees which include mileage for each individual suit, as he is entitled to the same. Section 3718, Compiled Statutes, is in point only where more than one process is served in the same case.

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

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

Grant W. Soule, Dubois, Idaho, December 4, 1920.

Sheriff: Summons: Out of Probate or Justice Courts.

Query: What charge should the Sheriff make for the service of summons out of the Probate or Justice Courts?

Held: Reviewing Sections 3711, 3704 and 7052, Compiled Statutes, we are of the opinion that the Sheriff should charge Constable fees.

H. Simmons, Blackfoot, Idaho, January 3, 1921.

Sheriff: Search Warrant: Intoxicating Liquor.

Query: Is a Sheriff, Deputy Sheriff or any other peace officer authorized and empowered to search wagons, autos, buildings, etc., without a search warrant when he has good reason to believe the same are being used to store, transport or contain intoxicating liquor within this State?

Held: We give it as our opinion, after a consideration of Article 1, Section 17, of the Constitution of the State of Idaho, as the same has been interpreted by State v. Anderson, 31 Idaho 514, that such a search cannot be made.

R. Grant Costley, Burley, Idaho, May 23, 1921.

Treasurer: Taxes: Penalty.

Query: Can you accept payment of 1920 taxes without penalty and interest, even though your Board of County Commissioners should order you to do so?

Held: No. You must comply with the law regardless of any orders, which lack legislative authority, that any other officers may make regarding your office.

Miss Jennie L. Wake, County Treasurer, Burley, Idaho, January 27, 1921.

ELECTIONS

Candidates: Writing in Names.

Query: Since writing in the name has the effect of rather nullifying the provisions requiring the nominee to possess certain qualifications as to party standing, is it legal to write in names on the primary ballot at the coming election?

Held: This question was up many times during the primaries of 1920. At that time we arrived at the conclusion only after the most careful consideration that the names could be written in at the primary election. Our decision was reached after consideration of the following statutory provisions: Sections 525, 573, 557 and 554. From the provisions of these statutes we cannot escape the conclusion that names may be written on the ballots whether nominations for the particular office had been previously made or not, and we have given that opinion many times at the last election and this one, and of course, unless the Court should give it a different interpretation, we will adhere to this ruling.

E. R. Whitla, Coeur d'Alene, Idaho, July 21, 1922.

Candidates: Nomination: Writing in Names.

Query: Where a candidate for a county office was defeated on the ticket for which he had filed his nomination, but received sufficient written in votes to nominate for the same office on the ticket of another political party, should the certificate of nomination issue for the political party the ticket of which his name was written on?

Held: It is our opinion that the certificate should issue.

Roger Wearen, Coeur d'Alene, Idaho, September 26, 1922.

Candidate Defeated at Primaries: Files as Independent.

Query: Where a party files on the Democratic ticket for representative and at the primary election is beaten, can he, under our election laws, file as an independent candidate for the same or any other office by petition before August 10th?

Held: Answering the same will say that we find nothing in the statute with reference to the contents of the petition or the signers of the same which would prevent such a candidate from being nominated on an independent ticket provided he gets the requisite number of signers to comply with the last part of Section 541, Compiled Statutes, which provides that no person shall sign such nomination certificate if he has voted or intends to vote at a primary held for the purpose of nominating candidates to be elected at the same election, for which the nomination provided for in said section, is made.

Therefore, it is our opinion that if he could come within those provisions he might be a candidate the same as any other person. It is barely possible a Court might say that he having made the certificate of nomination required under the primary, declaring his party affiliation, would be barred from afterwards running on any ticket except that named in his certificate; but since the nomination paper or petition provided for in Section 541 is silent regarding his signing the same himself, it is our opinion that the Court would not hold that the other certificate disqualified him.

E. L. Schnell, Nez Perce, Idaho, July 28, 1920.

Election Boards: Party Representation.

Query: In the appointment of election boards, is it necessary that each party be given representation?

Held: Under the provisions of Sections 512 and 513, Compiled Statutes, we find the matter of the appointment of election boards is left to the discretion of the County Commissioners.

J. W. Bissell, Cambridge, Idaho, October 14, 1922.

Nomination by Petition: Fees.

Query: Where nominations for office are made by petition instead of at the primary, what fees, if any, are required to be paid upon the filing of the same?

Held: It is our opinion that the same fees for filing such nomination must be paid as though the nomination were made in the other manner provided in the statute. Said fees are set forth in Section 546, Compiled Statutes.

C. C. Siggins, Twin Falls, Idaho, August 5, 1920.

Nomination on Two Tickets: Choice.

Query: Where a county candidate files on the Republican ticket and also receives the highest vote at the primary on the Democratic ticket, shall the County Auditor certify the same name on both tickets?

Held: It is our opinion that where a candidate is nominated on two tickets he must choose between them, as the same name cannot appear on the general election ballot twice.

C. J. Taylor, Rexburg, Idaho, September 2, 1922.

Nomination Papers: Endorsements.

Query: Where a person has failed to secure on his nomination petition the signatures of the county chairman or five of the county

central committee or five voters, as is required by Section 543, Compiled Statutes, and attempts to file his name without them, should the County Auditor accept such filing?

Held: No. Our conclusion is sustained by a decision rendered by Judge Reddoch (3rd Judicial District, Ada County) on July 12, 1922, in Beckwith v. Hobbs, Auditor of Elmore County.

Memorandum, July 15, 1922.

Nomination: Endorsement County Committee.

Query: May the name of a person be written in on the Progressive ticket at the general election without the name being officially endorsed by the county central committee of the Progressive party? I would also like to know what steps can be taken to get the name of a candidate whose name is written in without the endorsement of the county central committee off the ticket?

Held: It is our opinion that the name may be written in and if the person receives a sufficient number of votes he is legally nominated, and that in spite of the fact that he is not endorsed by the county central committee. We know of no method by which the name can be kept off the ticket.

A. K. Baker, Fruitland, Idaho, September 29, 1922.

Nominees: Expense Accounts.

Query: Is it mandatory for the candidates regularly nominated and for those who are nominated by having their names written in on the primary ballots to file itemized expense accounts, under the provisions of section 557?

Held: In our opinion it is mandatory, not only for those who filed their nomination papers, but for those whose names were written in on the ballots, provided, of course, such candidates received at least 20 per cent of the votes cast for the office.

County Auditors, August 8, 1922.

Polls: Time of Opening and Closing.

Query: This will acknowledge receipt of your letter of the sixth instant, wherein you refer to the fact that two different systems or standards of time-keeping are in vogue in the city of Twin Falls, and inquire by what standard or system polls should be opened and closed on election day, under the provisions of Section 583, Compiled Statutes, appointing the hour for opening as "8 o'clock in the forenoon" and specifying the time they must remain open as "until 7 o'clock in the evening of the same day."

Held: The question is of considerable importance not only in connection with the coming election, but elsewhere with reference to the enforcement of laws and legal procedure. In reaching our conclusions we have made a rather exhaustive examination on the general subject of what is the legal system of time in the State of Idaho. We have considered the following authorities:

Goodman v. Caledonian Insurance Company (N. Y.) 118 N. E. 523 26 Enc. Brittanica, page 983.
State v. Johnson, (Minn.) 77 N. W. 293.
Century Dictionary, definition standard time.
Henderson v. Reynolds, (1899) 84 Ga. 159, 7 L. R. A. 327, 10 S. E. 734.
Parker v. State, 35 Tex. Crim. App. 12, 29 S. W. 480.
Walker v. Terrell, (1916) (Tex.) 189 S. W. 75.
Texas Tram & Lumber Co. v. Hightower, 100 Tex. 126, 96 S. W. 1071, 6 L. R. A. (N. S.) 1046, 123 Am. St. Rep. 794.

Curtis v. March, (1858, England) 3 Hurlst & In. 866, 157 Eng. Rep. (reprint) 719.
Jones v. German Insurance Co. of Freeport (1899), 110 Iowa 75, 46 L. R. A. 60, 81 N. W. 188.
Searles v. Aberhoff, (1890) 28 Neb. 668, 44 N. W. 872.
Orvick v. Castleman, (1905) 15 N. D. 34, 105 N. W. 1105.
Salt Lake City v. Robinson (Utah) (1911), 116 Pac. 442.
Rochester German Insurance Co. v. Peasely (1905), 120 Ky. 752, 1 L. R. A. (N. S.), 364, 87 S. W. 1115.
9 Ann. Cas. 329.
1 L. R. A. (N. S.) 324.
6 L. R. A. (N. S.) 1046.

The question in the last analysis is purely one of legislative intent in enacting the statutes, and our own Court says, in Howard v. Grimes Pass Mining Co., 21 Ida. 12, that statutes dealing with subjects "which are neither technical nor scientific, should be construed as the ordinary reading public would read and understand them" and again, in State v. Morris, 28 Ida. 599, that when words have no technical meaning, or have not been so used in the statutes, that they should be given their ordinary significance as popularly understood.

We cannot conceive of the Legislature, in enacting any statute specifying certain time for doing acts, having in mind any time other than that in use, and as commonly and ordinarily understood by the people; neither do we think there can be any escape from the fact that the standard time is in almost universal use in this State, and we, therefore, are of the opinion that standard time will govern in all matters in connection with State statutes.

Not passing on the effect of city ordinances or local customs as to time-keeping, on matters of local concern, but the election laws and other State statutes are of State-wide concern, and cannot be affected by local custom or usage and must have uniform application throughout the State. This is fully met by the adopted system of time under the present standard.

H. H. Friedheim, Twin Falls, Idaho, October 9, 1920.

Proxies: County or State Conventions:

Query: May proxies be used at county or State conventions?

Held: It is our opinion that the law makes no provision for the use of proxies on such occasions.

F. W. Brown, Secretary to Governor, Boise, Idaho, June 26, 1920.

Progressive Party: Entitled to All Privileges.

Query: A new political party known as the Progressive party has, through compliance with the provisions of Section 517, Compiled Statutes, come into being. Can this new party hold a primary election under the same terms and conditions as are allowed the Republican and Democratic parties? Are the Boards of County Commissioners required to furnish such new party with the necessary books, ballots and other election supplies necessary for the conduct of such primary election in the same manner as for the Republican and Democratic parties?

Held: You will note that under the last portion of Section 517, Compiled Statutes, are the following words, "whereupon such affiliation shall, under the party name chosen, have all the rights of a political party whose ticket shall have been on the ballot at the preceding general election."

Under Section 517, Compiled Statutes, such new party can hold a primary the same as either the Republican or Democratic parties, and it is the duty of the County Commissioners of the various counties to

furnish such Progressive party election supplies, books, etc., just the same as such supplies are furnished to the Republican and Democratic parties. In other words, under the express wording of the statute, this new party has all the rights from now on, that either the Republican or Democratic parties have in the primaries, conventions, both county and State, and the general election."

Capital News Publishing Co., Boise, Idaho, June 28, 1922.

Registration: Removal to Another County.

Query: Where a person resides and registers in one county and within thirty days prior to the general election moves to another, may he vote at the general election?

Held: We regret to advise that he would not be entitled to vote. When a person takes up his residence in a new county, as distinguished from being there without changing his residence, he has to live there thirty days and then re-register.

J. F. Wallen, Glenns Ferry, Idaho, October 21, 1921.

Registration: Qualifications for Primary Election.

Query: Can one who is not now qualified either by being of age or by not having lived in the State six months or county thirty days, preceding the primary election, register and vote at the primary provided he would have such qualifications, that is, be of age, a resident of the State six months, and of the county thirty days, before the general election?

Held: It is our opinion that such person could not vote at the primary. He could register and upon that registration vote at the general election, but he could not vote at the primary unless he had all the qualifications, including registration, prior to the primary election.

W. R. McClure, Council, Idaho, July 27, 1922.

Registration: Transfer.

Query: Can a voter who has registered in one county and who thereafter moves to another county, obtain a transfer of registration?

Held: It is our opinion that transfers run only between precincts in the county and not from county to county.

Mrs. Frances Fry, Parma, Idaho, October 27, 1922.

State Senator: File Papers With County Auditor:

Query: Shall a candidate for State Senator file nomination papers with the County Auditor or the Secretary of State?

Held: Under the provisions of Section 518, he should file his papers with the County Auditor.

Dow Williams, Idaho Falls, Idaho, July 2, 1920.

State Conventions: Appropriation: Expenses.

Query: Is there an appropriation provided by Chapter 107 of the 1919 Session Laws, with which to pay railroad expenses of delegates who attend the State political conventions in 1922?

Held: There is such an appropriation. The word "such" in the last paragraph of said law, pertaining to the appropriation, is a typographical error, as the word "each" was used in the bill passed by the Legislature. That word and the title containing the word "each" makes it plain that there is a continuing appropriation, making $7500 available, or so much thereof as may be necessary.

E. G. Gallet, State Auditor, Boise, Idaho, August 10, 1922.

State Conventions: Delegates: Expenses.

Query: If a delegate to a State convention goes by automobile instead of on the railroad, is he entitled to receive an amount equal to railroad fare for his expenses to the convention, in lieu of railroad fare?

Held: Under the reading of Section 560, Compiled Statutes, it is our opinion that the State cannot allow any expense for delegates to the State Convention except the railroad fare when they present a receipt showing that they have advanced money for railroad fare to and from the convention.

George Huebener, Emmett, Idaho, August 11, 1922.

University Students: Election: Residence Qualification.

Query: May a student at the University of Idaho who comes here to attend school, and gives his residence as some other town than Moscow, vote while in school at Moscow in any of the local elections?

Held: Section 5 of Article VI provides:

"For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of this State or of the United States, nor while engaged in the navigation of the waters of this State or of the United States, nor while a student of any institution of learning, nor while kept at any almshouse or other public asylum at public expense."

The same thing is repeated in Section 504, Compiled Statutes.

California has a similar, if not identical, provision. We understand it has been construed by their Court merely as granting them the privilege of not having their residence lost by their absence under the conditions specified in the Constitution, but not as a legal barrier to obtaining a new residence under these conditions if they so choose. The Courts of other states have construed it as a mandatory requirement and legal prohibition to obtaining residence in all cases falling within the section. Our Court has adopted the latter view. (Powell v. Spackman, 7 Ida. 693, 65 Pac. 503, 54 L. R. A. 378.)

We, therefore, have no alternative but to say that such is the law of this State and that residence for voting purposes cannot be gained or lost by one attending as a student any institution of learning.

Harold O. Perry, Moscow, Idaho, March 15, 1922.

Vacancy: Next Highest Candidate Not Entitled to Nomination:

Query: This acknowledges yours of the 11th setting out that the same person received the highest number of votes for nomination for County Superintendent of Schools on both Republican and Democratic tickets and she accepted the Republican nomination and filed written declination of the Democratic nomination. Is the person receiving the next highest number of votes on the Democratic ticket nominated, or is there a vacancy to be filled under Section 554, Compiled Statutes?

Held: There is a vacancy to be filled under Section 554. Section 538 says, "The person of each party receiving the highest number of votes shall be the nominee for the specified office." It does not say that the person receiving the next highest number shall be the nominee in case the first is disqualified. On the contrary, Section 554 says in its opening paragraph that if for certain reasons—among others a person nominated at a primary election decline the nomination—or such nomination become insufficient or inoperative from any cause, the vacancy must be filled as provided in Section 554.

Isaac McDougall, Pocatello, Idaho, September 16, 1922.

Vacancies Before Primary: How Filled.

Query: May the County Organization make an appointment to fill a vacancy in any office before the primary ballots are printed?

Held: No.

S. D. Farnsworth, St. Anthony, Idaho, July 18, 1922.

FISH AND GAME

Fines: Justice of the Peace: Remission.

Query: May a Justice of the Peace remit a fine levied, which fine was imposed for violation of the fish and game laws?

Held: No.

Edw. Thamart, New Meadows, Idaho, December 1, 1921.

Justice of Peace: Fines: Appeal to District Court.

Query: Where a person is fined for violation of the fish and game laws in the Justice Court, and the case thereupon appealed to the District Court, where the judgment is affirmed, does the Justice of Peace thereafter have authority to remit the fine?

Held: We advise that the Justice of the Peace has no authority to interfere in any way with the judgment as confirmed by the District Court.

Fish and Game Department, September 15, 1921.

License Applied For: Defense.

Query: Is it a defense to a person on trial for having hunted without a license that he has applied for a license, but has not received the same?

Held: No. The law requires that the party hunting or trapping have a license and until he received a license he is not entitled to fish or hunt or trap.

See Sections 2686, 2687, 2693 and 2697, Compiled Statutes.

Otto M. Jones, Game Warden, May 4, 1921.

Predatory Animals: Definition: "Game".

Query: Does the word "game", as used in Section 23 of Chapter 112 of the 1921 Session Laws, include predatory animals, as defined in Section 2684, Compiled Statutes?

Held: We do not think so. Section 47, Chapter 112, 1921 Session Laws, defines game animals to include:

"Moose, elk, deer, caribou, mountain goat, mountain sheep, antelope, snowshoe and cotton tail rabbits, and bear."

In view of the foregoing provision, we do not believe that the word "game", as used in said Section 23, includes any of the predatory animals defined in Section 2684, Compiled Statutes.

Frank L. Kimball, Orofino, Idaho, November 17, 1921.

Private Clubs: Trespassing.

Answering your favor of the 10th inst. relative to fishing privileges, beg to advise that owners of lands bordering a non-navigable stream may exclude fishermen from their land and from the adjoining stream as far as the middle or thread thereof, if they own on one side only, and if they own on both sides, they may exclude them entirely, so far as their land bounds the stream.

On the other hand, owners of land bordering navigable streams cannot exclude fishermen from between the meander lines thereof, if they be meandered, and if not meandered, between the ordinary lines of high water.

Rigby Rod & Gun Club, Rigby, Idaho, May 21, 1921.

Private Clubs: Trespassing on Leased Lands.

Query: We have an organization here which leases over 600 acres on the Payette River for hunting, fishing and trapping privileges. We have had considerable trouble with people, not members of the club, fishing on these lands, and they contend that the club has no authority in expelling them. Will you kindly inform me what the club's rights are in this matter?

Held: We call your attention to Sections 2729 and 2796, Compiled Statutes. It seems to us, in view of those statutes, that if your lease embraces a navigable stream, slough or lake, any citizen of this State would have the right to fish thereon. Otherwise, not.

Martin O. Luther, Probate Judge, Payette, Idaho, March 30, 1921.

GAMBLING

Ball Games.

Query: Is there any statute of this State which prohibits betting on ball games?

Held: We fail to find any.

C. C. Kitchen, Cascade, Idaho, June 30, 1922.

Pool Hall: Dice: Treats.

Query: Is it against the law to shake dice in a pool hall for treats?

Held: It is our opinion that it is prohibited by Section 8307, Compiled Statutes.

E. L. Maston, Chief of Police, Shelley, Idaho, January 13, 1922.

HIGHWAY DISTRICT COMMISSIONERS

Commissioners: Auto Charge.

Query: Is it legal for a commissioner of a highway district to charge for the use of his own automobile, operated by himself, while inspecting the highways of the district?

Held: No.

Carl Hansen, Rose Lake, Idaho, January 6, 1922.

Note: See Sanborn v. Pentland, (Idaho) 208 Pac. 401.

Commissioners: Compensation.

Query: What pay is the commissioner of a highway district entitled to?

Held: Section 1514, Compiled Statutes, makes provision only for the actual and necessary expenses incurred in performance of official duties.

D. C. Pennel, Nezperce, Idaho, February 7, 1922.

Commissioners: Compensation.

Query: May highway district commissioners appoint one member of the commission as secretary at a salary and pay such salary from the funds of the district while he is acting as commissioner?

Held: It is our opinion that they cannot under the provisions of Sections 1515 and 1514, Compiled Statutes.

J. M. Butler, Burley, Idaho, May 10, 1922.

Commissioners: Compensation.

Query: Can a commissioner of a highway district be paid for attending meetings of the board, the expenses for the use of his horse or automobile or other traveling expenses from outside the district or place of business to the office?

Held: It is our opinion that so far as traveling expenses are concerned a commissioner is entitled to traveling expenses from his place of residence in the district to the office of the commission, the place of residence in the district from which he is elected being distinguished from his place of business. In other words, if a commissioner maintains a business outside the district he would not be entitled to expense money from the place of business, but from the place of residence in the district.

As to whether or not you could be allowed so much per mile or otherwise for the use of your car or your horse and buggy, we are not certain whether the law would permit the same or not as the law is silent on that point. There is a Supreme Court case, Robinson vs. Huffaker, 23 Idaho 173, holding as follows:

"It may be safely stated as a rule that one who demands payment of a claim against a county, must show some statute authorizing it or that it arises from some contract expressed or implied which itself finds authority of law. It is not sufficient that the services performed for which payment is claimed were beneficial."

See also Irwin vs. Uba Co. (Cal.) 52 Pac. 35. Also 15 C. J. 252, Sec. 264.

Our statute, Section 1514, provides that commissioners may be allowed their actual and necessary expenses in the performance of their official duties. Whether the use of the man's own vehicle may be charged for as actual and necessary expenses where they do not actually pay the money out to somebody else, is the close question. In the State we have no prohibitory statutes and we do allow certain officials to use their car at the rate of 10c per mile actually traveled. In the counties where there is express statute about the filing of claims it has been held the counties could not allow the 10c per mile, this being based upon the Idaho decision.

We are frank to say that we do not know what the Court would say in a highway district case and where we cannot advise positively that such can be allowed as an expense. We hesitate to say that you could do so, as our courts nowadays are construing these things rather strictly. However, we would suggest that if you have an attorney employed, you accept his advice upon this matter.

C. W. Space, Weippe, Idaho, March 4, 1922.

Note: See Sanborn v. Pentland, (Idaho) 208 Pac. 401.

Election: Tie Vote.

Query: Where a tie vote has resulted in a highway district election, how shall it be lawfully decided as to who shall hold the office?

Held: It is our opinion that the County Commissioners shall immediately determine by lot which of the candidates shall be elected.

G. Emmett Harter, Plummer, Idaho, December 28, 1921.

Legislature: Highway Commissioners.

Query: Can a person holding the office of a highway commissioner be a member of the Legislature at the same time?

Held: In our opinion, yes.

M. J. Jarnagin, House of Representatives, February 17, 1921.

Regulations: Traffic.

Query: Under the present law do the highway commissioners have the right to direct traffic, that is, can they refuse to let certain traffic go over certain highways as long as there is some other way provided for the traffic to pass over?

Held: We know of no statutory authority.

Robert O. Jones, Secretary of State, July 13, 1922.

Roads: Abandonment.

Query: Have highway districts the authority to lay out a new road and abandon an old road when by so doing a school house will be cut off of any public road?

Held: In the absence of a prohibitory statute, yes.

J. B. Loomis, Orofino, Idaho, April 26, 1922.

Vacancies: Power to Fill.

Query: Where all the commissioners of a highway district resign, who shall appoint a new board?

Held: The Governor.

D. W. Davis, Governor, May 9, 1922.

Vacancies: Court Judgment.

Query: Three highway commissioners in one district have been removed by judgment of the Court. Petition has been filed for the appointment of new highway commissioners to take office immediately to fill the vacancies created. Appeal has been taken from the judgment of the Court removing the commissioners. Do vacancies exist under the foregoing facts?

Held: In our opinion the judgment takes effect immediately and the vacancies have been created.

D. W. Davis, Governor, May 7, 1921.

HIGHWAY DISTRICTS

Bond Provisions: Distribution: Cities.

Query: May a city included in a highway district compel the Commissioners in the highway district to apportion to the city a fixed percentage of the funds raised by bond issue?

Held: In our opinion such apportionment cannot be compelled.

A. L. Wood, Glenns Ferry, Idaho, December 24, 1920.

Commissioners' Duties.

Query: Have the Commissioners of a highway district the right to swear in each member as a road overseer?

Held: Under the provisions of Section 1520, they have.

Query: Can the Commissioners issue warrants in their own favor?

Held: Not in excess of the amount of the actual and necessary expenses incurred in the performance of their official duties.

Query: Do the Commissioners have the power to appoint one of their number as overseer when there are other available men in the district for such position?

Held: They have. It is discretionary under the provisions of Section 1520, Compiled Statutes.

Query: Does the law require the Clerk or Secretary to give bond?

Held: If the Secretary is also Treasurer it is necessary that a bond be furnished, but if the Clerk does not act as Treasurer it is not necessary that a bond be furnished.

Query: If the people, or a majority of the district, are dissatisfied with the Independent Highway District, how shall they turn it back to the county?

Held: It may be disorganized under provisions of Section 1520, Compiled Statutes.

Barney Russell, Rockford Bay, Idaho, April 20, 1922.

Cities: Paving Costs.

Query: May a highway district bear a portion of the expense of paving in the city?

Held: After considering Sections 1507 and 1409, Compiled Statutes, we are of the opinion that it can.

R. F. Kerchival, Coeur d'Alene, Idaho, May 31, 1921.

Financial Statement: Publication.

Query: Is it mandatory for the Board of Highway District Commissioners to publish the financial statement required by Section 1518, Compiled Statutes?

Held: It is mandatory.

Press Publishing Co., Ltd., American Falls, Idaho, Aug. 3, 1921.

Note: See Walton vs. Channel, 35 Idaho 532.

Forest Reservations: Inclusion in District.

Query: May a highway district be extended into a forest reserve of the United States?

Held: In our opinion, no.

C. P. Latham, Calder, Idaho, December 19, 1921.

Highway District: Special Levy: Federal Co-operation.

Query: The Clark County Highway District has no bonded indebtedness. The district desires to co-operate with the Federal Government in constructing a highway across the district. This is a main or trunk highway. The district would levy a regular highway district tax for road and bridge purposes under Section 1532, Compiled Statutes, as amended by the 1921 Session Laws, page 355, and it will receive its share of the county levy. These moneys, however, are not sufficient to take care of the district's portion of the expense of constructing this highway. Can it make a special and additional levy for this purpose?

Held: It is our opinion that it can. Section 1533, Compiled Statutes, provides that in addition to all other taxes a highway district, which has no bonded indebtedness in excess of 5% of its assessed valuation, may levy a special tax not exceeding fifty cents on each $100 valuation for the purpose of defraying all or any part of the expense of constructing a main or trunk highway traversing the district.

Board Commissioners, Clark County Highway District, Dubois, Idaho, September 8, 1922.

Lands: Authority to Purchase or Hold.

Query: Has a highway district the authority to purchase and hold lands?

Held: It is our opinion that under the provisions of Section 1506, Compiled Statutes, they have an implied power to hold lands for such purposes as are incidental to the proper functioning of the highway district.

J. Berklund, Deary, Idaho, February 11, 1921.

Motor Vehicle License Money: City's Apportionment.

Query: Can a highway district receive its pro rata share of the motor vehicle license money collected within a city where the city is geographically located within the boundaries of the district but is not incorporated within the highway district?

Held: It is our opinion that such license fees are pro rated to the highway district only where the city is actually a part of the district.

D. P. Olson, Director of Highways, May 20, 1921.

Organization: Unorganized Territory.

Query: Does Section 1496, Compiled Statutes, apply to a situation where a new district is created not from a previously existing district, but from territory in the county which was theretofore not organized as a highway district?

Held: In our opinion, it does not.

T. S. Becker, Aberdeen, Idaho, April 12, 1921.

Organization: Valuation Personal Property.

Query: Does the valuation referred to in Section 1491, Compiled Statutes, include personal property?

Held: In our opinion, the valuation referred to is exclusive of personal property.

Frank Hansen, Rock Creek, Idaho, March 6, 1922.

Petition: "Squatter".

Query: Under the provisions of Section 1491, Compiled Statutes, is a "squatter" a competent signer of a petition for the organization of a highway district?

Held: No.

Chas. P. Latham, Calder, Idaho, January 27, 1922.

Petition: Signers.

Query: Is it necessary for 20% of the aggregate of all votes cast for Governor at the election precincts affected thereby, or merely 20% of the votes cast within the boundaries of the precinct, the fact being true that some of the election precincts are partly within and partly without the territory proposed to be annexed?

Held: It is our opinion that precincts are the smallest units for which votes are counted and election returns recorded and we do not see how it would be possible to determine what the votes were for Governor in any territory smaller than a precinct.

Allen P. Asher, Sandpoint, Idaho, August 19, 1921.

Taxes: Share: Section 1359.

Query: Is a highway district entitled to its proportionate share of any taxes collected under the provisions of Section 1359?

Held: In our opinion, yes.

Scenic Better Roads Highway District, St. Maries, Ida., Feb. 11, 1921.

Tools, Etc.: Village.

Query: Are the trustees of a village included within a highway district entitled to the use of the highway district tools?

Held: Yes. See Section 1568, Compiled Statutes.

M. A. Pierce, Cottonwood, Idaho, September 15, 1921.

Treasurer: Bond: Bank Failure.

Query: Will the bond of the Treasurer of a highway district protect the funds which are placed in a bank which subsequently fails, where such funds were so deposited by order of the highway board?

Held: After a consideration of Sections 1504, 1544 and 8379, Compiled Statutes, it would seem that the bond to be filed is for the pro-

tection of the highway district and the loss of the highway district funds. It is our opinion that the bond could be held for the money that was not recovered from the bank where the moneys were on deposit.

Thos. A. Scruggs, Hill City, Idaho, December 28, 1920.

Vacancies: Board: Power to Fill.

Query: There are two vacancies in the Highway District Board. Who has the power to fill such vacancies?

Held: Since there is but one Commissioner on the board, it is our opinion that the Governor would be authorized to appoint one Commissioner, and this Commissioner, with the other one, who is now serving, could fill the third or remaining vacancy.

John P. Isaac, Spirit Lake, December 29 1920.

INSURANCE

Fire Insurance Brokers. Section 5009.

Query: Does Chapter 143, page 331, 1921 Session Laws, providing for the licensing of fire insurance brokers, in any way suspend or interfere with the operation of Section 5009, Compiled Statutes, requiring the signatures of resident agents on all policies except life?

Held: It is our opinion that Section 5009 is in force and policies issued through brokers are nevertheless required to be signed by a resident agent.

H. J. Brace, Director of Insurance, June 16, 1921.

Insurance Agents: Village or City License.

Query: Granting the constitutionality of statutes which give to a city or village the power to levy a license tax for revenue purposes or regulatory purposes, may a city or village require a license tax, whether imposed for regulation or revenue from insurance agents, in view of the fact that the State of Idaho grants a license to insurance agents authorizing them to solicit insurance any place in the State of Idaho?

Held: In reaching our conclusion we have examined carefully the statutes of this State relative to the power of a city or village to regulate business and occupations. We have found no decision of our Supreme Court which declares either one of the statutes relating to regulation or the power to impose a license tax for revenue unconstitutional, and in the absence of any decision from the highest court of this State so declaring, we are inclined to follow the statutes.

In the law which provides for the licensing of insurance agents, there is nothing which leads us to believe that it was the intent of the Legislature that cities or villages should be prohibited from exercising their powers to license for revenue, or regulate, which latter includes power to license. Certainly there is no express repeal of the statutes which give the cities that power, and it is fundamental that repeals by implication are not favored by the courts. It is also well established that statutes shall be so construed, if possible, as to give force and effect to all, unless they are clearly in conflict. That the Legislature may require a State license for the soliciting of insurance and at the same time authorize municipalities to require a license for the soliciting thereof within their boundaries, we do not doubt.

H. J. Brace, Director of Insurance, June 5, 1922.

JURY

Optometrist: Exemption.

Query: Does an optometrist have exemption from service on a jury?

Held: The only provision of law which we find is Section 6520, Compiled Statutes, which says, among other things:

"A person is hereby exempted from liability to act as a jurror if he be:

. . .

"6. A practicing physician."

In our opinion an optometrist will not fall within this classification, as a word will be interpreted in its ordinarily accepted meaning, and perhaps even by what was its ordinarily accepted meaning at the time the statute was enacted, which was many years ago.

Dr. E. M. Snodgrass, Jerome, Idaho, April 8, 1922.

MARRIAGES

First Cousins: Legality.

Query: May first cousins marry in Idaho?

Held: No.

A. E. Sheridan, Waukon, Iowa, July 31, 1922.

Marriage Certificate: Return: Witnesses.

We have your letter of recent date wherein you inquire whether it is necessary for the return of a certificate of marriage to contain the names of two witnesses who were present at the solemnization of a marriage.

We have given this matter more than ordinary attention, occasioned, pehaps, by a failure on first search of our statutes to find provisions which we had always presumed governed the solemnization of marriages in this State. There may be some doubt that witnesses are not required when a marriage is solemnized in order to make the marriage lawful under the laws of the State of Idaho. See Sections 4600 to 4603, Compiled Statutes.

But where a license and a certificate annexed has been issued, the execution of the same and the failure to follow the statutory provisions in so doing, presents an altogether different question. Section 4602 makes provision for those by whom a marriage may be solemnized. Section 4604 makes provision whereby such party may satisfy himself that the contracting parties are eligible to marry. One of the provisions of this latter chapter is the examination of witnesses.

Section 4610 prescribes the form of certificate and return annexed to each marriage license and which must be returned to the County Recorder. The form prescribed makes provision for two witnesses. Another part of that same section makes it a misdemeanor for a minister or officer who shall have solemnized the marriage to fail to return to the office of the Recorder within thirty days from the date of the solemnizing of the marriage, the license and certificate duly executed by the said officer or minister.

It would seem to us, irrespective of the question of whether or not a marriage is lawful or unlawful without witnesses, that it is incumbent upon any officer or minister authorized by law to perform a wedding ceremony, in order to make the return as provided for by law, to have two witnesses present at the ceremony. We think the Court, if called upon to construe this section, would hold it incumbent upon the officer or minister making the return to make his return in the form as prescribed by statute or substantially the same, and to do so requires the names of two witnesses.

Hence, it is our opinion that it is incumbent upon the officer or minister to protect himself under the laws of the State in performing a marriage ceremony to have two witnesses present at the solemnization.

W. R. Emerson, Nez Perce, Idaho, December 2, 1920.

MINORS

Minors: Tobacco Dealers: Employment.

Query: Is it unlawful for a person dealing in tobacco or other articles, to employ a boy or girl who, in the regular course of duty may handle cigars or tobacco?

Held: It is our opinion that it is not unlawful either from the standpoint of the employee or the merchant.

Paul Davis, Director of Licenses, Boise, Idaho, April 30, 1921.

NEPOTISM

City Commissioners: Brother-in-Law.

Query: May one of the City Commissioners under the commission form of government legally appoint a brother-in-law as street overseer or street commissioner?

Held: It is our opinion that he cannot do so. The nepotism law, being Section 416, Compiled Statutes, provides as follows:

"An executive, legislative, judicial, ministerial or other officer of this State, or of any district, county, city, or other municipal subdivision of the State, including road districts, who appoints or votes for the appointment of any person related to him, or to any of his associates in office, by affinity or consanguinity within the third degree, to any clerkship, official position, employment or duty, when the salary, wages, pay, or compensation of such overseer is to be paid out of public funds or fees of office . . . is guilty of a misdemeanor."

Section 4219 provides what officers shall be appointed by the council, among which is the "street commissioner".

In Barton vs. Alexander, 27 Idaho 286, the Supreme Court of Idaho construed the words "associates in office" as follows:

"Associates in office are those who are united in action, who have a common purpose, who share the responsibility or authority, and among whom is reasonable equality, those who are authorized by law to perform the duties jointly or as a body as boards or councils under the law."

Under said statutes and decision it would be immaterial that the councilman himself did not vote as the other councilmen would vote for a relative of one of their associates in office, and unless the statute, as the school statute does, expressly excepts or provides that the remaining members may make the appointment, of course the entire board action must make it, and it would be in violation of said law.

W. F. Porter, Twin Falls, Idaho, June 26, 1922.

First Cousin.

Query: Can a county officer employ a deputy, who is a first cousin of the officer?

Held: It is our opinion that the anti-nepotism act, as construed in Barton vs. Alexander, 27 Idaho 286, does not bar the employment of first cousins.

M. C. Rowley, Hailey, Idaho, February 21, 1921.

Highway Districts: Application.

Query: Does the Idaho nepotism law apply to independent highway districts?

Held: Section 416, Compiled Statutes, defines nepotism as follows:

"An executive, legislative, judicial, ministerial or other officer of this State, or of any district, county, city, or other municipal subdivision of the State, including road districts, who appoints, or votes for the appointment of any person related to him or to any of his

associates in office by affinity or consanguinity, within the third degree . . . is guilty of a misdemeanor. . . ."

The Supreme Court of this State has had one occasion to interpret the anti-nepotism law. In Barton vs. Alexander, 27 Idaho 286, at page 302, the Court states:

"The next question is, are school districts, irrigation, drainage and improvement districts included within the provisions of said law?

"It will be observed from the title that it applies to the municipal subdivisions of the State. The first section of said act is in part as follows: 'An executive, legislative, judicial, ministerial, or other officer of this State, or of any district, county, city or other municipal subdivision of this State, including road districts.' The title, as well as the body of the act clearly indicates that it was intended to apply to municipal subdivisions of the State and also to road districts. The act having expressly enumerated only one subdivision, to-wit, road districts, that is not a municipal subdivision, all other subdivisions of the State which are not municipal subdivisions are excluded. Hence it does not apply to school districts, irrigation districts, drainage districts, or improvement districts since they are not municipal subdivisions of the State."

Hence the sole question is whether or not a highway district is or is not a municipal subdivision of the State. This question is decided for us in the case of Shoshone Highway District v. Anderson, 22 Idaho 109, at page 119, the Court saying:

"A highway district as intended by this act is not a political municipal subdivision, it is not created for the purpose of government, it is an entirely different kind of municipality from that of a city, town or village . . . it is made a taxing district and consists of such territory as may be determined by the County Commissioners in creating the same."

Hence, it is our opinion that the anti-nepotism law does not apply to independent highway districts.

Roger G. Wearne, Prosecuting Attorney, Coeur d'Alene, Idaho, March 21, 1921.

Husband of Niece an Officer.

Query: Is the husband of your niece eligible for appointment as deputy in your office, that of County Assessor, the husband's father-in-law being on the Board of County Commissioners?

Held: Yes.

Tom Horsley, Soda Springs, Idaho, January 22, 1921.

Road Overseers: Sons.

Query: Is the law prohibiting road overseers from hiring their boys to work on county roads still in force?

Held: It is. Sec. 416, Compiled Statutes, has never been repealed.

Query: Are County Commissioners liable for allowing labor claims when they personally know of the relationship?

Held: Sec. 417, Compiled Statutes, makes them liable.

Clarence Mourning, Emida, Idaho, May 1, 1922.

Wife's Sister's Husband.

Query: Is the employment by a public officer of his wife's sister's husband a violation of the nepotism law?

Held: The Supreme Court, in Barton v. Alexander, 27 Idaho, 286-298, defined the degree of relationship affected as follows:

"Under the act in question, an officer cannot appoint the following relatives of either himself or his wife: Parents, grandparents and great-grandparents, uncles and aunts, brothers and sisters, children, grandchildren, great-grandchildren, nephews and nieces."

The public official's wife's sister's husband is not a relative of the official or his wife by affinity or otherwise.

Irvin E. Rockwell, Bellevue, Idaho, January 7, 1920.

NOTARIES

Acknowledgment: Director of Corporation: Legality.

Query: Would it be legal for you to have one of the directors of your corporation a notary public in order to take acknowledgments on your claims, etc., filed against cities, counties and public offices?

Held: We believe that under the provisions of Chapter 163, Section 1, 1921 Session Laws, that such an appointment would be permissible.

J. H. Gipson, Caldwell, Idaho, December 21, 1921.

Commission: Marriage: Effect.

Query: Does the notary's commission granted to a woman while single, expire on her marriage?

Held: It is our opinion that it does not, but if she continues to exercise the powers of a notary public it will be necessary for her to use the name as it appears upon her seal and her commission.

A. H. Wilkie, Idaho Falls, Idaho, September 9, 1921.

Notary Fees: Disposition.

Replying to your letter of the 23rd, wherein you inquire whether or not, under Section 210, Compiled Statutes, as amended by Chapter 255, 1921 Session Laws, the sum of $10 collected by the Secretary of State for the issuance of a notarial commission, is to be paid into the State Library fund.

Said section referred to, as amended, says that each notary appointed "must pay the sum of $10 to said Secretary, who must keep an account of and remit the same to the State Treasurer, to be apportioned as provided in Chapter 56 of the Compiled Statutes." Chapter 56, Compiled Statutes, is that which concerns law libraries. Section 1272 provides that the notary fees from certain counties shall be used for the benefit of the Lewiston library, and Section 1274 makes like provision for the Pocatello library. The fees from the remaining counties are not expressly mentioned, but I have no doubt of the intent of the Legislature that the notary fees derived from counties other than those mentioned in Sections 1272 and 1274 should be set apart for the use of the Boise library.

E. G. Gallet, State Auditor, Boise, Idaho, April 27, 1921.

PROHIBITION

Druggists: Fermented or Malt Liquors.

Query: In Idaho may druggists or doctors prescribe fermented or malt liquors containing more than one-half of one per cent of alcohol for medicinal purposes?

Held: No.

Piel Brothers, Brooklyn, New York, November 28, 1921.

REAL ESTATE BROKERS

Auctioneers' Licenses.

Query: Is it necessary for an auctioneer who auctions off or sells at auction real property in the State of Idaho to have a real estate broker's license as provided in Chapter 184, 1921 Session Laws?

Held: Yes.

Paul Davis, Bureau of License, November 21, 1921.

Corporation: Broker.

Query: Where a corporation or copartnership names a member to act as a broker, who thereafter severs his connection with such corporation, can the corporation or copartnership name any other officer without new bond and new license fee?

Held: Our opinion is different as to copartnership and as to a corporation. Retirement of a partner from a partnership dissolves the partnership. If other members of the firm continue to carry on the business these would constitute a new partnership. We think a new bond and license would be required under such conditions, but as to corporations Section 8 provides:

"Whenever a license is issued under the provisions of this act to a corporation said license shall entitle one officer of said corporation to be named by said corporation in its application for said license, who shall qualify the same as any other agent to act as real estate broker on behalf of said corporation without the payment of additional fees."

The requirement that he qualify refers undoubtedly to the giving of the bond. On change of agents, the first bond having been given for the first agent, we think a new bond would be required of the second agent, as the first bond would not apply to him. We do not see any requirement, however, that additional fees be paid, as the fees paid were for the corporation and that entity continues in existence. Robert O. Jones, Commissioner of Law Enforcement, June 30, 1922.

Personal Property: License.

Query: Does the sale of grocery stock or the equipment of a rooming house come within the meaning of Section 5, Chapter 184, 1921 Session Laws?

Held: In our opinion it does not.

Paul Davis, Bureau of Licenses, April 8, 1922.

Partnership: Individual Licenses.

Query: You are doing business as a partnership but may dissolve during the year, in which event each member of the firm would possibly like to do business separately. Would it be permissible for each member of the firm to take out a license personally instead of one, in representing the firm?

Held: Yes.

Hodgson, Schmitt & Whipkey, Gooding, Idaho, January 10, 1922.

Place of Business:

Query: Can the Department of Law Enforcement, under the real estate law, Chapter 184, 1921 Session Laws, require an applicant for real estate broker's license to keep and maintain an office in the business portion of the city, as his principal place of business?

Held: No.

Paul Davis, Bureau of Licenses, January 13, 1922.

Rent: Rent Collectors' Licenses.

Query: Does the realtors' law, Chapter 184, 1921 Session Laws, include those persons of a corporation who merely collect rent?

Held: In our opinion it does not cover those who merely collect the rent. If the person collecting negotiates for the rent and makes the rental agreement, then we believe this person would be within the law.

Paul Davis, Bureau of Licenses, December 17, 1921.

Sales: Lands Outside of Idaho.

Query: Is it necessary for a salesman selling in Idaho lands outside of the State of Idaho to take out real estate broker's license?

Held: In our opinion it is.

Twin Falls Realty Co., Twin Falls, Idaho, April 22, 1922.

Transfer Building:

Query: Is a license issued under provisions of Chapter 184, 1921 Session Laws, transferable?

Held: In our opinion it is not. Not only is the recommendation under which the license is secured personal to the original holder, but the bond is conditioned as to the acts of the original holder and not as to some other person, and it would not be an enforcement as to the acts of any transferee. Also see Section 8 of the act.

Robert O. Jones, Commissioner Law Enforcement, June 30, 1922.

STATE HIGHWAYS

Apportionment: Division of Funds.

Query: May moneys appropriated under Chapter 109, 1921 Session Laws of Idaho, to the several counties, highway districts, etc., to be used in cooperation with those various counties and highway districts, be diverted by the State Highway Department to any other part of the county or State, or must the allotments made be held intact until the counties, highway districts, etc., are in a position to cooperate on work within their jurisdiction?

Held: It is our opinion that the moneys are to be held intact and not diverted.

Potts & Wernette, Coeur d'Alene, Idaho, March 16, 1922.

Apportionment: Bond Moneys.

Query: A highway district lies in two counties; both of these counties contain State highways and receive an apportionment of the moneys arising from the State highway bonds, fourth issue, pursuant to the provisions of Chapter 109, 1921 Session Laws; the portion of a highway district in one county contains State highways and the other does not; is that part of a highway district which contains no State highways entitled to any apportionment of the highway bond money under the provisions of Section 15a, Chapter 109, 1921 Session Laws?

Held: It is not.

D. P. Olson, Director of Highways, June 8, 1921.

Deficiency Warrants: Legality.

Query: Caribou county in 1920 entered into a contract with the State, contributing $16,000 as the county's share toward the construction of highways in Federal Aid Project No. 35; thereafter the county, without the consent of the State, diverted the $16,000 to other road construction. Can they issue deficiency warrants against their road and bridge fund to be levied in September and deliver them to the State on this obligation?

Held: I am not certain that you have used the term "deficiency warrants" advisably. Section 3 of Article VIII of the Constitution provides that

"No county shall incur any indebtedness or liability in any manner or for any persons exceeding in that year the income and revenue provided for it for such year"

without an election, and

'Any indebtedness or liability incurred contrary to this provision shall be void, provided that this section shall not be construed to apply to ordinary and necessary expenses authorized by the general laws of the State."

The construction of highways is not an ordinary or necessary expense within the meaning of this proviso, and hence is not excepted from the operation of this section. Nutt vs. Lemhi County, 12 Idaho 63.

The term "deficiency warrants," although commonly used to designate a warrant for which there is no immediate cash available, although there is outstanding levies sufficient to take care of it, is not proper so used. Such a warrant should be designated as a "registered warrant" and the term "deficiency warrant" applies only to warrants issued in excess of the outstanding levy. There is a vast distinction between the two. Real deficiency warrants are illegal, registered warrants are not illegal as you will see from this provision of the Constitution.

It is also provided in Section 3559, Compiled Statutes:

"All counties, town, municipal, road and school district officials who issue orders or warrants, or approve bills or order county warrants to be drawn in excess of the levies made for the different county, town, municipal, road or school district funds, shall be liable both personally and on their official bonds for the payment of such excess."

You have, therefore, really two questions involved in the one. First, the validity of the original indebtedness which would be determined as of the time the contract was made, and secondly, the validity of a warrant issued at this time.

If the original indebtedness was invalid, that is to say, if at the time the county made the contract with the State it thereby, after taking in account other indebtedness already incurred, exceeded the income of the road and bridge fund of that year, irrespective of what liabilities accrued afterwards against it, the original indebtedness would have been invalid and no warrant issued on an indebtedness originally invalid would be legal.

However, assuming, as I think in this case, that at the time the contract is made the outstanding obligations against the road and bridge fund, including the contract obligation, did not exceed the income of the fund for the year, the indebtedness would be valid, but nevertheless having in view the provision of the statute I have quoted prohibiting issuance of warrants in excess of outstanding levies, no warrant should be issued against any levy until it is made. When the levy is made and outstanding, however, warrant could issue even though there was no cash immediately available for its payment. In short, no warrant should issue in excess of levies outstanding at the time.

Attention should also be called to the additional point that the treasurer could not be required to and will not accept warrants unless the same are cashable at the time.

D. P. Olson, Director of Highways, June 16, 1921.

Railroad Rights of Way: Highway.

Query: Where the county has worked, kept up and used a public highway along and on a railroad right of way for a period exceeding twenty-five years, claiming it during all of said period as a county highway, has the public right of way over the property?

Held: Under the provisions of Section 1304, Compiled Statutes, it has.

D. P. Olson, Director of Highways, July 21, 1922.

Signs: Contracts.

Query: A proposal has been made by a company which desires to put up certain signs, such as danger signs, on the highway. It is proposed to give them exclusive rights for certain places on the State highway. Has this department the power to enter into such an arrangement?

Held: In our opinion it has not.

D. P. Olson, Director of Highways, February 25, 1922.

Signs: Removal.

Query: Are advertising signs prohibited on or along the State highways by law, and what is the width of the road right of way over which the State has jurisdiction?

Held: The width of the right of way depends upon the locality. Sections 1366 to 1373, Compiled Statutes, give the State Highway Department the right to remove encroachments, etc., from State highways. Under this section the State Highway Department has required the removal of advertising signs from the right of way. You will understand, of course, that such authority does not affect the sign on private property outside the State highway line.

S. G. Davis, Filer, Idaho, November 10, 1921.

Telephone Poles: Removal.

Query: Is it a proper expense against the State in the construction of State highways to pay the expense of moving telephone or light poles from a public highway when it is necessary for the use of the highway?

Held: Under Section 4832, Compiled Statutes, no.

D. P. Olson, Director of Highways, April 11, 1921.

Warrants: Discount: Reimbursement.

Query: Where State highway warrants were issued to contractor and he was compelled to discount them so as to get cash, is there any legal way for the State to reimburse such contractor for this discount?

Held: There is no statutory authority for such reimbursement.

D. P. Olson, Director of Highways, April 11, 1921.

STATE LANDS

Ditches: State Land: Carey Act Land.

Query: Is there any different law about running ditches across State land than there is Carey Act land?

Held: In a Carey Act project the right to run ditches is determined by the contract of the State with the project, and as to ordinary Carey Act land the contract expressly provides that ditches and laterals may be run over the Carey Act land. That rule would not follow as to State land either within a Carey Act project or outside of it, for under our Constitution no State land can be disposed of except on advertisement of four weeks to the highest bidder, and also at not less

than ten dollars an acre. There is no way that title can be given by the State to State school land, except as above stated in the Constitution.

Bert Wyant, Richfield, Idaho, November 10, 1922.

Land Offered for Sale by State.

Query: How should you proceed to get the State to offer some land for sale?

Held: If you are interested in having the State offer some land for sale you should make application to the State Land Commissioner, asking him to offer this land for sale at the first sale he will have in Lincoln county. The reason we are not having many sales is because of lack of funds in the appropriation to carry on individual and small sales. The advertisement and time of the department in sending a man to conduct these sales is prohibitive on small sales, and besides the appropriation for such purpose has now been so nearly used that we have to be very careful on making the expense in that direction. If, however, you will file your application, then when lands are offered for sale in Lincoln County to any one, your suggested tract will be included.

Bert Wyant, Richfield, Idaho, November 10, 1922.

Certificate of Sale: Assignment by Corporation: Form.

Query: Where a bank assigns a certificate of sale, is it necessary for the assignment to be accompanied by resolution of the board of directors?

Held: It is our opinion that the assignment should have a copy of the authority as expressed by resolution in the assignment or attached to it.

D. W. Church, Commissioner of Public Investments, December 9, 1921.

Land Sales: Extension of Time Forty Years.

Query: I have the letter of James Dodge, wherein he submits the following proposition:

Owing to condtions in the Gem district it is thought payments can not be made, and the suggestion is made of changing the contracts to forty years and dropping this year and last year therefore, and he desires to know if this can be done, since petitions to this effect are being circulated.

Held: There is no provision of law for such a change. The statute fixes the terms upon which these sale contracts must be made and the board has no option to change them. If they desire extensions of time they should apply through the State land commissioners, who will present the same to the land board.

Honorable D. W. Davis, Governor, May 10, 1921.

Leased Lands: Trespassers.

Query: You have requests from a number of lessors of State lands suggesting that they have not had success in prosecuting trespassers upon the leased lands and desire to know whether the State Land Board through the Attorney General's office should not, when it executes a lease, prosecute any trespasser for the lessee.

Held: We do not think it is a duty of the Attorney General's office to conduct prosecutions of such nature. We believe that the position which the lessee occupies towards this leased land is the same as that of a private individual towards private land.

I. H. Nash, State Commissioner of Lands, November 5, 1921.

Mineral Lands.

Query: Your letter written some time ago has been held for my personal attention.

In your letter the following questions are submitted as claims:

1. That under Section 13 of the Idaho Admission Bill, all mineral lands are exempt from the grants made to the State;

2. That the mineral location notice of record in Moscow is evidence that at the time title passed to the State in 1894, of the tract described in Certificate No. 7275, this land was known to be mineral. You have been referred to and have considered the cases of 89 Cal. 7 and 228 Fed. 426.

You state that it is a fact now that some of this land is valuable for mica.

Held: Answering the first claim, will state that Section 13 of the Idaho Admission Bill, is in point.

The rule that we have followed is this: If the land was known to be mineral at the time of the State selection or at the time of the survey, or if it was in Sections 16 or 36, and at that time mineral locations valid and existing were in good standing, then the mineral contestant by showing those facts, that is, that there was valid mineral locations upon this land, may be held to have a prior right to the State. The bare fact that it was a general idea that the land was mineral or that some government agency had designated the belt containing this land as a mineral belt, would not be sufficient to deprive the State of its land. The test being, was it mineral and were there valid claims located and in good standing, through which the land could be held as mineral? If the conditions survived that test, then the State would be deprived of the land and be permitted lieu selections. The fact that mineral is found upon the land after the State selection or after the survey, is wholly immaterial. The time of determination is the time of the State selection or survey.

You will find an interesting case decided by the United States Supreme Court, known as Wyoming vs. United States. This is case No. 257, decided March 28, 1921, reported in May, 1921, Advance Sheets of the U. S. Supreme Court, Advance Decisions. This will appear in 65 Law Edition. In this case the Court had before it the question of the effect of later discovery of oil.

This case will no doubt throw some light upon the questions. The procedure that we follow in these cases is that the presumption is that the land was not mineral and that the selection of the State was valid and legal. It is for the mineral claimant to establish his mineral right, which could supersede the State's right. This may be done by any direct proceeding in court.

M. John L. Dirks, Spokane, Wash., November 22, 1921.

Penitentiary Grant: Relinquishment to Federal Government.

I have before me the communication from the general land office dated January 14, 1921, which I am returning herewith, from which it appears that a certain subdivision of public land was clear-listed to the State, under the Penitentiary Grant, through an error, inasmuch as it had been previously patented to a homesteader.

I notice that the department requests a re-conveyance, citing the statute of the State authorizing re-conveyance of lands to the United States, and naming the officer or officers who may execute such re-conveyance. I have consulted the statutes and the case of Balderston v. Brady, 17 Ida. 567, and Rogers v. Hawley, 19 Ida. 751. Balderston v. Brady ruled, in substance, as to the controversy between the settlers and the State as to sections 16 and 36, that the State Board of Land Commissioners were without authority to relinquish the lands to the

United States government for the benefit of the settlers. The later case of Rogers v. Hawley says, in substance, that where there is an act of the Legislature authorizing the relinquishment of sections 16 and 36, the land board has the power to surrender these sections in exchange for other lands of like quality and character, but the decision implies that, without a statute authorizing the board's action with reference to other land grants, they do not have such authority. While there is a statute authorizing such action with reference to sections 16 and 36, I find none whatever authorizing like action with reference to the Penitentiary Grant.

I regret, therefore, to say that it is my opinion that neither the land board nor any other State officer is given any power to make the deed of relinquishment to the government under the circumstances of the particular case.

Hon. I. N. Nash, State Land Commissioner, September 20, 1921.

Rights of Way.

I have yours of the 23rd of August, relative to the rights of way over State land.

Replying will say that we have had this matter up a number of times. While Section 1304 would give a right of way by prescription against a private party where the road had been laid out and worked for a period of five years and used as a public highway, yet we cannot see where that would give a right of way as against a State or the government.

In other words, the rule seems to be that no rights by adverse possession or prescription can be obtained as against the State or government.

You can see the difficulties that we would be in if we did not have these matters adjusted when State lands are sold. If we sell the land and collect the money for the right of way from the purchaser then he would have a claim that he had bought the land from the State and would close up the trail or highway. If the matter is settled before the State land is sold, and deduct this amount of land from the amount sold and sell it subject to the right of way, then there can never be any question.

Our Constitution provides that no State land can be sold except that it be advertised and sold at public auction to the best bidder and at a price not less than $10 per acre. I do not believe that the State land can be disposed of in any other manner than that prescribed in the Constitution. We have held to this ruling in cases where State land is included in irrigation or drainage districts and they attempt to foreclose a lien for the assessments, and so far no one has seen fit to go into court and contest that position. If rights of way could be obtained in the manner you suggest, that is, by adverse possession for the statutory time, then it would be a conveyance from the State of that portion of the State land in a different manner than that provided by State Constitution. After you think it over from these angles I shall be glad to hear from you.

Isaac McDougall, Prosecuting Attorney, Pocatello, Idaho, September 4, 1920.

State Select List: Railroad Right of Way.

Under the act of Congress granting to the State of Idaho certain lands for university purposes, 21 U. S. Statutes 326, and 26 U. S. Statutes 215; selection list was filed by the State on September 4, 1883, including the above mentioned land. This was approved and clear listed June 29, 1893. Under the act which Congress approved March 3, 1875, the railroad company claims title to a right of way

across this land by reason of the fact that they actually constructed their road there in 1890 and filed their maps and took the other necessary steps for procuring a right of way January 5, 1891.

It will be noted that the filing of the State's selection list was prior to both the construction and the filing by the railroad company, but that the approval and clear-listing to the State was subsequent to both.

Our advice on this situation is that the State's title is superior to that of the railroad company by reason of the fact that the State's title did take effect as of the date of the filing of the original selection list and not as of the date of its approval, on the principle laid down in Weyerhauser vs. Hoit, 219 U. S. 55 L. Ed. 258.

I. H. Nash, Land Commissioner, September 21, 1921.

State Lands: Taxation: Equities.

Replying to your telephone inquiry of this date, as to how equities in State lands should be assessed, you understand, of course, that they are assessed as personal property. The valuation is determined by taking such portion of the actual value of the land as the amount paid thereon bears to the total purchase price from the State.

Section 3282 and Section 2940, Compiled Statutes; Lewis v. Christopher, 30 Ida. 197.

Hon. I. H. Nash, September 20, 1921.

Select List: Railroad Rights of Way.

Query: Where grants were made to the State of Idaho and lands could be selected thereunder from unappropriated public lands, it appears in a number of instances railroads were constructed across land acreage selected by the State and prior to the filing of the State's select list. The question is: If the State selected such lands that has existing upon it a right of way, is the State entitled, because of the land taken by the right of way, to ask for lieu selections over such acreage to take the place of the right of way?

Held: It is our opinion the State takes the land subject to the rights of way and cannot have other lands because of the acreage occupied by the rights of way therefore, if the State selects a subdivision of public land traversed by railroad right of way the State is not entitled to further acreage for the reduction of area occasioned by the railroad right of way.

Memorandum Opinion.

State Mortgage: Exclusion of Lands From Thereunder.

Query: Mr. Fred Rimon owns some land near Roy, in Power county, on which he has a State mortgage originally of $1500, but on which about one-third has been paid. He has now deeded to the Congregational Conference less than an acre for church purposes and they desire to have this acre released from the State's mortgage.

Held: I have suggested Mr. Rimon make application to the Commissioner of Public Investments, setting forth the description of his land, number of his loan, an accurate description of the acre or amount deeded to the church and ask that that amount be released from the State mortgage.

On receipt of this application the Commissioner of Public Investments will make his recommendation to the land board and if the loan is not impaired the land board will consider the release of the church property.

Memorandum for Rev. J. E. Ingham, March 31, 1921.

SOLDIERS AND SAILORS

Memorial Buildings: Section 4109.

Query: Under the provisions of Section 4109, Subdivision 8, would it be legal to issue municipal bonds and to erect a memorial building that would offer a suitable hall for ex-service men and have the building so arranged that parts of it would have a rental value, and could be rented for one purpose or another, so long as the building was so arranged and equipped as to provide a memorial and for the entertainment of soldiers of the late European war?

Held: The provisions of said statutes are as follows:

"Section 4109. Purposes for which bonds may be issued: Limitation on amount. Every municipal corporation incorporated under the laws of the Territory of Idaho, or of the State of Idaho, shall have power and authority to issue municipal coupon bonds not to exceed at any time in aggregate 10 per cent. of the assessed full cash valuation of the real estate and personal property in said municipal corporation, according to the assessment of the preceding year, for any or all of the purposes specified in subdivisions 1 to 8, inclusive, as follows:

"8. To provide for the purchase, erection, construction and furnishing of soldiers' memorials consisting of such public buildings or monuments and building sites for the use of such municipal corporation and for the entertainment of soldiers of the late European war."

Subdivision 8 of said section was passed by the Legislature in 1919, and is known as Chapter 71, 1919 Session Laws.

You will notice in the above language that it provides that this bond money may be used for the purchase, erection, construction and furnishing of soldiers' memorials, consisting of such public buildings or monuments and building sites for the use of such municipal corporation, and for the entertainment of soldiers of the late European war. I regret to say that, upon thorough consideration of this matter, it would, in our opinion, be unlawful to build a building to be used as you suggest in your letter where the same is built as a municipal building out of funds provided in part by the municipal corporation.

The legislative enactment, namely, subdivision 8, above referred to, would seem to give such power by implication. However, it seems to me that it would be in conflict with the general rule of law and with our own constitutional provisions relative to the power of the Legislature to authorize municipal corporations to construct buildings to be used in that manner. McQuillan on Municipal Corporations, Volume 4, Section 1807, says:

"A municipality has no implied power to engage in any private business. Under the rule that taxation can only be for public purposes, it was held at an early date in Massachusetts that the buying and selling of commodities of general trade was not a public service, without regard to how essential the business might be to the welfare of the inhabitants and that a municipality could not, therefore, engage in such business. So it has been held that a municipality has no power to establish and operate manufactures, and that the Legislature has no authority to authorize a municipality to establish manufactures."

Section 1117, Volume 3, of the same work, is as follows:

"It is generally held that a municipality has power to erect an assembly hall or auditorium for public purposes; or, under power to improve public parks, to erect in a park a pavilion for public amusement or convenience. A fortiori, it may erect a building for strictly municipal purposes, and fit up part thereof as a hall for public assemblies, dramatic exhibitions, etc. If, however, the project of the

municipality 'is merely colorable, masking under the pretext of a public purpose a general design to enter into the private business of maintaining a public hall for gain, or devoting it mainly to any other than its public use as a gathering place for citizens generally, such an attempt would be a perversion of power and a nullity, and no public funds could be appropriated for it.'

"In Iowa, in a recent case, it was held that a municipality had no power to erect a building which was in effect an opera house, with town offices and a place for the fire department as mere incidents to the building."

See also the following cases: Houghton vs. City of Camilla, 68 S. E. 472, 31 L. R. A. (N. S.) 116, and note to the same; Mass. Supreme Judicial Court, re Opinion of Justices, 98 N. E. 611, 42 L. R. A. (N. S.) 221, and note to same; McQuillan, Supplemental Volume 8, Sections 807-809, and note to same.

The constitution of the State of Idaho provides in Article 8, Section 4:

"No county, city, town, township, board of education or school district or other subdivision, shall lead or pledge the credit or faith thereof, directly or indirectly, in any manner, to, or in aid of any individual, association, or corporation, for any amount or for any purposes whatever, or become responsible for any debt, contract or liability of any individual, association, or corporation in or out of this State."

The above section was held, in Atkinson vs. Commissioners of Ada County, 18 Idaho 282, to nullify an act of the Legislature, providing for the formation of a railroad district and voting of bonds and purchase or construction of railroads by such districts and providing for operating or leasing the same as was proposed in said legislative enactment. It was also held to prevent school districts from taking out fire insurance in a mutual fire insurance company where the policyholders were assessed for the amount of the losses, and where the assessment was determined by the amount of loss as being a sanction to the use of public funds for private purposes. See School District No. 8 vs. Twin Falls County, (1917) 30 Idaho 400.

The Constitution, Article 12, Section 4, provides:

"No county, town, city, or other municipal corporation, by vote of its citizens or otherwise, shall ever become a stockholder in any joint stock company, corporation, or association whatever, or raise money for, or make donation or loan its credit to, or in aid of, any such company or association: Provided, That cities and towns may contract indebtedness for school, water, sanitary and illuminating purposes: Provided, That any city or town contracting such indebtedness shall own its just proportion of the property thus created, and receive from any income arising therefrom, its proportion to the whole amount so invested."

This section has been construed in: Pioneer Irr. Dist. vs. Walker, 20 Ida. 605; School Dist. No. 8 vs. Twin Falls County, 30 Ida. 400; Atkinson vs. Comnrs. Ada County, 18 Ida. 282, 28 L. R. A. (N. S.) 412.

It was held to prevent the donation by county commissioners to fair associations and a statute authorizing them to do so was held void as unconstitutional. See Fluharty vs. Comnrs. Nez Perce County, 29 Ida. 203.

There is no doubt but that the city can, under subdivision 8, provide strictly a memorial hall or public monument or building used exclusively for such purposes. It is, however, my opinion that it is very doubtful if they can erect a building and use part of it for private purposes, as is proposed. If it is a question of great enough importance, I would suggest that the only way to determine it absolutely

would be to prepare plans and specifications for a building, designating the particular private uses to which portions of it are to be put, and then if the city council take the initial step by passing an ordinance calling an election to vote bonds, an action could be predicated upon that state of facts and the question directly determined before any such election was held.

Dr. F. M. Cole, Caldwell, Idaho, November 9, 1921.

Veterans' Welfare Commission: Secretary: Expenses.

Query: Is it legal for the Veterans' Welfare Commission to pay the traveling expenses of the secretary, to attend a meeting of welfare workers at Seattle?

Held: We regret that it is not. We have no doubt that the money would be well spent and doubtless would have been appropriated for such purpose had it been called to the Legislature's attention. However, as the matter stands, it must be governed by the statutes as they exist. Section 7, Chapter 46, 1921 Session Laws, is the only appropriation for any purposes of this kind and under it the appropriation is expressly limited to travel for regularly called meetings of the Commission.

Lester Albert, Veterans' Welfare Commission, Boise, Idaho, March 16, 1922.

SCHOOLS

Attorney: Hiring.

Query: We have your favor of November 15, addressed to Miss Redfield, wherein you submit the following question:

You have received a bill from a County Attorney for $100 for charges made for service in connection with the annexation of a part of a lapsed school district to another school district. You question the amount of the charge and ask the question as to whether or not the County Attorney has authority to make a charge for such services.

Held: Answering the same, will say that the statutes do not make it the duty of the County Attorney to be the attorney for the school districts of the county. Therefore, any services which the district has the county attorney perform they would be required to pay him the same as if he were any other attorney.

Mr. E. C. Abrams, Greer, Idaho, December 3, 1921.

Attorneys: Prosecuting Attorney.

Query: Is it incumbent upon the County Attorney to perform legal services for school districts?

Held: It is our opinion that it is not one of his statutory duties, that when he performs such services, he is in the same position relative to charges as is a private attorney. School laws have given the school board of any district authority to employ an attorney to handle legal business and pay for such services from the funds of the school district.

Mrs. Floyd Hamilton, Weippe, Idaho, December 9, 1921.

Bonds: Issue for Water System.

Query: Dietrich, in which your school house is located, is an unincorporated village; its sole source of water supply is a water system consisting of a well, supply tank and system of mains on which the village has depended for its water, as well as the school. By reason of the order of the Public Utilities Commission, service by this water system was discontinued by the present company that has owned and operated it. This company offers to sell the well, tank and system

to the school district for $5000. An additional $3000 would be necessary to put it in repair. Its capacity is far in excess of the needs of the school district. It will be operated for the village as well as the district. Could the school district bonds be issued for the purpose of purchasing and repairing the plant?

Held: We regret, on account of your necessities, to say that, in our opinion, bonds cannot be so issued. Our Supreme Court has recently had occasion to express, in Bradbury vs. City of Idaho Falls, 32 Idaho 28, 32, one of the fundamental and often repeated rules governing the powers of municipalities and school districts and like public corporations, to issue bonds, to-wit:

"The power of municipalities to issue bonds must be found in a legislative enactment. Such an enactment is a grant of authority from the State to the municipality and must be construed with strictness against the grantee. The rule is thus stated, in Dillon on Municipal Corporation, 5th Ed., Vol. 1, Sec. 237: "It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no other: First, those granted in express words; second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable. Any fair, reasonable, substantial doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied . . ."

In short, the authority for the issuance of bonds must be found in the statutes or it does not exist. Examining the statutes of the State for provisions authorizing the issuance of bonds by school districts, we find they are very limited. Aside from the provisions for issuing refunding bonds, which are not in point here, that for issuing bonds for the purpose of purchasing property on the division of districts and that for the issuance of bonds for gymnasiums and play grounds, there is no provision whatever in our law for school districts to issue bonds for any purpose except the provisions of Chapter 215, Section 57, 1921 Session Laws, page 427. This says, so far as material:

"The purpose for which bonds may be issued is to acquire or purchase school site or sites, to build or provide one or more school houses or other needed buildings in said district, or to add to or repair said building or buildings, or to provide or furnish the same with all furniture, apparatus, or equipment, including lighting and heating, necessary to maintain and operate the school or schools, or any and all of said purposes: Provided . . ."

In our opinion, issuance of bonds for the purpose you intend does not fall within those authorized by this statute, and this is especially true in view of what the Supreme Court says in the quotation above as to the powers given municipal corporations being strictly construed.

School Board, Dietrich, Idaho, March 20, 1922.

Bond Issue: Use of Funding Money for Building.

Query: Additional room is needed in a high school and it is desired to issue building bonds. Can the district legally sell part of their outstanding warrants by issuing refunding bonds and then use the tax money which is levied to take up these warrants for building purposes, to the extent, say of $10,000?

Held: Such procedure would be illegal. The only way school buildings can be built is by the issuance of bonds as provided by statute, that is, regular building bonds. The only way refunding bonds can be issued is when there is legal outstanding indebtedness for which no levy has been provided, and in which event the district can, without

incurring any new obligation, change the form of the indebtedness from warrants to bonds, to the advantage and profit of the district.

Hon. E. A. Bryan, Commissioner of Education, January 16, 1922.

Bonds: Construction Water System.

Query: May a school district vote bonds to install a water system for domestic purposes?

Held: While the statutes are not as specific as one would like to have them, in answering this question, it is our opinion that a water system is necessary to the proper maintenance of the school and that the courts would be inclined to construe the purposes for which bonds may be voted to be broad enough to include the installation of a domestic water system.

Miss Ethel Redfield, Supt. of Public Instruction, May 19, 1921.

Building Funds: Loan of by Private Individual.

Query: May a private individual lend a school district money to finish a school building?

Held: It is our opinion that a school district has no authority to borrow money for the construction or finishing the construction of a school building, except by bond issue.

Mr. George R. Jones, Bruneau, Idaho, August 13, 1921.

Clerk: Duties and Compensation.

Query: Is a clerk of the school board required to be present at the annual school meeting?

Held: He is not.

Query: May the clerk of the school board draw pay for services and also draw pay for services from the irrigation district board?

Held: Yes.

Mrs. E. P. Jessup, Murphy, Idaho, July 12, 1922.

Creation New District From Old: Voting On.

Query: In case of the creation of a new school district by division of an existing district and annexation of small parts of two other districts, do the residents of the existing district have a vote in the matter as well as the residents of the proposed new district? As we understand Sections 13 and 17 of the Idaho School Code, each part of the district has a separate election and failure to carry the proposal in either part defeats such proposal. Will you please interpret for us Sections 13 and 17 of the Revised Code, 1921, before the January meeting of the County Commissioners, as this matter comes before them at that time?

Held: As we understand from your letter, there are two questions involved, the first is relative to the division of an existing district, and the second is relative to the annexation of parts of existing districts to an existing district.

As to the first question, of course, it is necessary to hold an election in all the parts affected to determine whether a division is made. As to the second question, it is necessary to hold an election in that part or parts which is to be annexed. It is not necessary, however, to hold an election in the territory or district from which the part or parts to be annexed are being subtracted from, unless the Board of County Commissioners orders an election to be held in the district or districts subtracted from.

Mr. Leo Smith, Clerk of School Board, Mountain Home, Idaho, December 10, 1921.

Contract: Advertising for Bids.

Query: 1. Under the provisions of Section 48, Chapter 215, 1921 Session Laws, can the school district make contracts where the amount is over $500, without complying with the provisions of said chapter?

Trustees: Employment of Relatives.

Query: 2. Can the board of trustees make a legal contract with the wife of a member of the board for a purpose like driving a wagon on school routes, when the member owns the team and wagon and the outfit is driven by a minor child of his?

Query: 3. Can this be done if the member refrains from voting or votes against such a contract?

Held: Answering the first question, will say that our letter of September 21, in my opinion correctly states the law. If the contract is for the total amount of over $500 for driving the wagon for seven months or nine months, then the provisions of said Section 48 would have to be complied with. If, however, the contract is simply for so much per month for time actually put in driving the wagon, which contract, of course, would be a monthly contract, then, if the amount of that contract would not exceed $500, said Section 48 would not need to be complied with. In other words, if the contract is for the term it would not be material as to whether the payment was monthly or not. If the entire term contract amounted to over $500 then Section 48 would have to be complied with.

Answering the second question, will say that it is our opinion that the board has no such power. Section 48 of the school laws reads as follows:

"It shall be unlawful for any school trustee to have pecuniary interest, either directly or indirectly, in any contract or contracts pertaining to the maintenance or conduct of the affairs of the school district or accept any compensation or reward for services rendered as such trustee except as herein provided."

This question seems to be answered in the case of Nuckols vs. Lyle, 8 Idaho 589.

Answering the third question will say that our opinion would be the same even if the member interested refrained from voting.

We note in the correspondence that you have asked to be advised for the benefit of the board. We suggest you carefully read in connection with the letter the statutes of school laws referred to and also the Nuckols vs. Lyle case in 8 Idaho, referred to, so you will have a better understanding. It may be that there are special circumstances that you have not stated in your letter but we have answered the questions as we gather them from your letter.

Mr. J. H. Van Tassel, Wendell, Idaho, December 3, 1921.

Contracts: Acceptance of Bids.

Query: "No board of trustees shall let any contract or contracts which shall call for the expenditure of $500 or more without first advertising for bids in a newspaper, published in the county in which said district is located, for at least two weeks prior to the date set for the consideration of bids, and if no newspaper be published in said county, then by posting a notice in said district in three public places for at least ten days prior to the date set for considering bids, calling for bids to perform such work and the board shall award the contract to the lowest responsible bidder; Provided, however, that the board of trustees shall have the right to reject any and all bids. . . ."

You state that, under the above, bids were called for and two or more bids received, and ask if the statute is mandatory in requiring

the letting of the contract to the lowest responsible bidder, or may the board reject the lowest bid and let the contract to the higher bidder?

Held: It is our opinion the statute is mandatory in that the contract must be awarded to the lowest responsible bidder. The word "responsible" leaves some discretion in the board as to the bidder. We think the law contemplates that the bid may be rejected only if a lower bidder is not a responsible bidder. Where such low bidder has been held by the majority of the board not to be a responsible bidder and for that reason the contract is awarded to the higher bidder, there is no way to remedy it except by court action and the interested party would be obliged to bring the matter into court, where it is claimed that the lowest bidder was not a responsible bidder. In other words, the board having decided to reject the lowest bid on that ground, it would require court action to review their decision and change the board's action. This would be a matter in which the interested party would have to secure the services of an attorney to present the matter.

Mr. S. E. Black, Bliss, Idaho, August 4, 1922.

Contracts: Emergency Labor.

Query: Under yours of 25th inst. you submit the following question:

Chapter 178, 1921 Session Laws, is a general statute authorizing the official in responsible charge of any State department, or any political subdivisions of the State, to declare emergencies and execute work by day labor without advertising for bids when the conditions and emergencies provided in said chapter exist; the new school law adopted by the 1921 session, being Chapter 215, Section 48, thereof, requires the board to let all contracts where the expenditure is $500 or more. This act, you will note, was approved at a later date than Chapter 178, which latter was approved on February 24, 1921. Neither act carried an emergency clause so both became effective on the same date. You desire to know whether or not the provisions of Chapter 178 are available to the school district where you desire to do construction work by force account or day labor rather than to advertise for bids and let a contract.

Held: It is our opinion that provisions of Section 48 of Chapter 215, Idaho Session Laws, 1921, control, and that the general statute, Chapter 178, does not change the authority granted under said Section 48.

There is a question of doubt in our minds as to whether a school district is a political subdivision of the State. However, we do not deem it necessary for us to consider that question. We believe the controlling point and any conclusion which we make is the proviso in Section 48, wherein it is provided for advertisement on three different occasions and then if no satisfactory bid is received, the board is authorized to proceed under its own direction subject only to the approval and consent of the State Board of Education, and after all, under the proviso of Section 48 the board will accomplish in the end that which may be accomplished under the provisions of Chapter 178.

D. L. Carter, Cambridge, Idaho, June 29, 1921.

Contracts: Legality: Trustees' Meeting.

Query: Is a contract which is not entered into by the school trustees at a regular or specially called meeting, legal?

Held: No.

Miss M. Gladys Houston, Weiser, Idaho, August 4, 1922.

Dissolution of District.

Query: We have your letter of July 18, asking whether or not it is possible to dissolve a consolidated school district.

Held: If we understand your question, what you wish to know is whether or not the original districts can be revived and the present district abandoned. The answer to this is no. When districts are consolidated the original districts are wiped out and cease to exist. The new district is a district by itself just as much as if it had been created in some other manner than by consolidation. It stands like all other districts, whether made by consolidation or otherwise. It, or any other district, no matter how created, can be divided or its boundaries changed by annexation or cutting off portions, but the procedure for accomplishing this would be exactly the same if it had been created in some other manner than by consolidation.

Mrs. L. C. McPherson, Sagle, Idaho, July 21, 1922.

Division of District: Notice.

Query: 1. Where it is proposed to divide an existing district into two parts, is it necessary to post and publish the notice of hearing of the petition before the County Commissioners?

Held: It is our opinion that it is necessary to both publish and post the notice of hearing of the petition before the County Commissioners in such a case.

Division of District: Modification of Petition.

Query: 2. It is proposed to divide an independent school district into three parts. May the Board of County Commissioners modify the proposal to the extent of ordering the election for division into two parts where the petition has called for division into three parts?

Held: It is our opinion that the Board of County Commissioners may make the modification.

Division of District: Vote Necessary.

Query: 3. Where an election affects two or more parts of existing school districts or territories, is it necessary that a proposition be carried in each part or each territory?

Held: It is necessary that the proposition carry in each part or territory affected.

Mr. Allen P. Asher, Sandpoint, Idaho, July 20, 1922.

Election: Place of Holding.

Query: We are in receipt of your favor of the 28th inst. relative as to the place where an election shall be held in common school districts.

Held: Section 14, Chapter 215, Idaho Session Laws, provides that the notice must state the definite places of holding the election, and Section 42, referring to annual school meetings, says that in cities of 5000 or more inhabitants, the trustees shall divide the city into two or more voting precincts for the purpose of school election and shall specify in the notice of election the place at which the election for each precinct shall be held. From this, we would take it, that in cities of less than 5000 there should be but one voting place in the district, and to avoid any confusion we would have the trustees pass

a resolution fixing that place at some definite point and specify it in the notice of election.

Mr. Archie Nogle, Supt. of Kootenai Schools, Kootenai, Idaho, July 30, 1921.

Elections: Tie Vote.

Query: In school elections, where there is a tie vote for an officer, how is the election determined?

Held: There is no provision in the statute for determining the tie vote when such occurs in school elections. It requires for election a majority vote, of course, and no candidate having received a majority, there is no election, and the County Superintendent is then empowered to make the appointment to fill such vacancy, such appointee to hold until the next annual election.

Miss Leila B. Clifford, St. Maries, Idaho, May 5, 1922.

Election: Ballots Destroyed: Publication Election Notice.

Query: "My County Attorney ruled, and I feel likewise, that if the ballots at the recent school election were not saved and transmitted under seal to the County Superintendent, that the election would not be legal. Will you kindly give me your ruling on this matter? If it is legal when the judges fail to send the ballots, I can see no use for this law, for how can any one tell whether the ballot box was stuffed or not. My County Attorney rules that the election was not legal, so that an appointment was made where the ballots were not sent to this office.

"Will you kindly give me your ruling on the following: If a district wisres to bond and has no newspaper published in the district, does this district have to have the notices of the school election published in the nearest newspaper, even though it has no particular circulation in the district? School law says publish, so I fail to see how circulate can or could possibly mean published."

Held: As to the first question, we beg to advise that the statute in point is Section 18 of Chapter 215, 1921 Session Laws, the pertinent part reading as follows:

"The board of election, within five days after the close of the polls or after the annual meeting, shall make return of the election to the County Superintendent of Public Instruction, upon forms to be supplied by that officer, and must transmit therewith to the County Superintendent all ballots cast at said election and during the annual school meeting, whether such ballots were counted by such board or not, or rejected thereby. The return of election and the ballots shall be transmitted under seal to said County Superintendent.

"The County Superintendent shall thereupon canvass such return and notify the board or boards of trustees of the district or districts concerned of the result of such canvass, and shall place the return of election as canvassed on file in his office. . . ."

While our Supreme Court has not yet passed upon the exact question, it is our opinion that the failure to send in the ballots, due to their destruction, would not invalidate the election. A close reading of Section 18, quoted, seems to sustain our view. While it is true that it is stated that all ballots must be sent in to the County Superintendent, the ballots are not made a part of the return to be canvassed by the County Superintendent. The actual returns, which are to be gone over by the County Superintendent of Public Instruction, are those returns made by the judges of election upon forms supplied by the County Superintendent and the ballots are not made a part of the returns. The law is not clear why the ballots are returned to

the superintendent, but it is our opinion that they are transmitted to her for safekeeping. Hence, it is our opinion that the failure to send in the ballots would not invalidate the election.

As to your second question, we advise that you publish the notice in a newspaper of general circulation in the district, whether or not the newspaper is published within the district.

Miss Evelyn S. Merwin, Orofino, Idaho, June 3, 1922.

Elections: Registration.

Query: 1. One paragraph of the school laws states that only registered voters may cast a ballot. Does that mean they must be registered at last registration or eligible to registration at the present time?

Held: We do not find where registration is made a prerequisite for voting at school district elections.

Election: Voters' Residence.

Query: 2. In one district a man and his wife, who live and have their buildings just over the line in another district, but pay taxes and send their children to this district, were allowed to vote at the election. Will they be allowed to vote?

Held: The sole question is one of residence. If they are residents of the district and have the other qualifications they will be entitled to vote. If their votes are illegal and would affect the result of the election, some court action might be taken. If the throwing out of these two votes would not affect the result of the election it would be useless to put anyone to the expense of contesting the election.

Election: Specification of Levy on Ballot.

Query: 3. In voting for or against a special tax, should the amount or number of mills be specified on the ballot?

Held: It would be a better plan to do so. However, if the number of mills which were being voted for was understood we do not think the election should be contested on that score. The third paragraph of Section 16, 1921 Session Laws, provides:

"In all elections it is intended that no informalities in conducting such election shall invalidate the same, if the election shall have been otherwise fairly conducted."

Election: Qualification of Voter.

Query: 4. Can any voter cast a ballot on special tax who is eligible to vote for trustees?

Held: A voter who is eligible to vote for trustees is eligible to cast a ballot on a special tax.

Election: Qualification of Voters.

Query: 5. Does paying taxes on personal property only entitle a person to vote?

Held: Yes.

Election: Powers of Judges and Clerk.

Query: 6. Does the clerk of election have equal authority with two judges in deciding questions?

Held: No, but so long as the two judges exercise their judgment in the matter, and their judgment is controlling, we see no reason for complaint, if the election is otherwise fairly conducted.

Election: Ballots: Vacant Space.

Query: 7. If ballots are not properly prepared with vacant space left to write in the candidates' names, what effect would it have on the validity of the election?

Held: None whatsoever, for a qualified voter could write the name of any qualified elector on the ballot, irrespective of whether or not there was a special space provided for it.

Dr. Ernestine J. Carl, Treffry, Idaho, May 1.

Elections: Registration.

Query: Is registration necessary for any kind of school elections?

Held: We have consistently held that in school elections, either bond or for trustees, or otherwise, that registration is unnecessary. The school law does not make registration a part of the qualification of an elector and by analogy the case which you cite, Shoshone Highway District vs. Anderson, 22 Idaho 109, seems to settle the question of reading in such a meaning by implication.

Mr. Ezra R. Whitla, Coeur d'Alene, Idaho, January 25, 1922.

Election: Registration.

Query: We are in receipt of your favor of the 5th inst., wherein you ask,

"Will you please explain the part of Article VI, Section 2, of the Constitution of Idaho, which says 'if registered as provided by law'?"

Held: As the same relates to election in school districts it has no bearing at this time for the reason that the Legislature has not proviled for the registration of voters at a school election.

Mrs. J. A. Whitesell, Twin Falls, Idaho, April 7, 1922.

Election: Hours Opening Polls.

Query: What time does the statute provide for the closing of polls in the election in common school districts?

Held: The statute does not fix any definite time and it is our opinion that they are only required to keep open until such hour as the business requires, which may be 10 minutes or eight hours.

Allen P. Asher, Sandpoint, Idaho, April 22, 1922.

Election of Trustees: Nominations.

Query: How many days must elapse between the filing of nomination for a school district trustee and the date of election?

Held: Our interpretation of the provisions of Section 41, Chapter 215, Session Laws, 1921, requiring nomination for trustees to be placed on file with the clerk "at least six days prior to the day of election," means that six clear days must elapse; that neither the date of the filing of the nomination nor the day of election could be counted.

Isaac McDougal, Prosecuting Attorney, Pocatello, September 3, 1921.

Election: Writing in of Names.

Query: Is a candidate whose name is written in a school ballot, and who receives more votes than a candidate who is regularly nominated, entitled to be declared elected?

Held: Unquestionably yes.

A. J. Gronewald, Soda Springs, Idaho, April 25, 1922.

Funds—Transfer to Pay Bond Interest.

Query: A common school district has insufficient money to pay interest on outstanding bonds by reason of many taxes being delin-

quent. It has $100 in the general fund and also registered warrants outstanding against this amount in excess of $100. Can money be transferred from the general fund to meet the interest due on the bonds?

Held: We find no provision which would allow such transfer, and in the absence of such statutory authority we advise that such transfer cannot be made.

Carrie E. Plummer, Department of Education, January 19, 1922.

Funds: Deposit.

Query: Is it lawful for a school district to keep its funds in banks outside of the State of Idaho?

Held: After a consideration of Chapter 215, 1921 Session Laws, Sections 55 and 69 of the same, and Chapter 256, 1921 Idaho Session Laws, Sections 9 and 27 of the same, we have come to the conclusion that the money of the district is required to be kept on deposit in the State of Idaho.

E. J. Smith, Franklin, Idaho, April 19, 1921.

High Schools: Accrediting.

Query: Does the State Board of Education possess the power to accredit high schools?

Held: It is our opinion that it does. Section 2 of Article IX of the Constitution of Idaho, provides:

"The general supervision of State educational institutions and public school system of the State of Idaho shall be vested in a State Board of Education, the membership, powers and duties of which shall be prescribed by law . . ."

Section 1061, Compiled Statutes of Idaho, prescribes the powers and duties of the Board of Education for prescribing rules of admission to the State university.

The accrediting system, as we understand it, was perfected in order to enable the high school students of the State to enter the State university without the necessity of taking an examination. The accrediting system is a method of determining whether the student possesses sufficient educational qualifications for entrance to the university without examination. If the high school has complied with the accrediting rules and regulations the presumption prevails that the graduate from this high school is properly qualified to enter the State university without an examination. Any high school in the State which desires to have its pupils on the so called accredited list, must comply with the rules and regulations governing accrediting.

We believe the constitutional provision and Section 1061 gives the State Board of Education ample authority to establish the system of accrediting as it exists in this State.

W. W. Chatburn, Albion, Idaho, July 20, 1922.

High School District: Requirements for Formation.

You have submitted to us for answer the following questions:

Query: 1. Where it is proposed to unite 14 common or independent school districts into a rural high school district, must the election carry in all districts in order to affect the formation of the district; that is, if the election fails in one district, shall it affect the creation of the district as to the remaining 13 in which the election has carried?

Held: It is our opinion that the election must carry in all 14 districts, and the failure to carry the election in one district defeats the proposal. Section 17, Chapter 215, Laws 1921, provides in substance that the election or other proceedings affecting two or more districts,

territories or parts, shall be separate and distinct throughout each of such districts, territories or parts, and a failure to carry a proposal in any one of such concurrent proceedings shall defeat the whole proposal.

High School Districts: Withdrawal.

Query: 2. May one district withdraw from the rural high school district, and if so, is it liable for the bond indebtedness of the original district?

Held: Subdivision f, Section 6, Chapter 215, 1921 Session Laws, provides:

"If, after the organization of any rural high school district, as provided for herein, it is desired to divide it or change the boundary line thereof, the same procedure will be observed as required in the case of independent districts."

By virtue of the aforesaid provision, a rural high school district can be divided, but this division is qualified by the provisions of Subdivision e, Section 6, Chapter 215, 1921 Session Laws, which provides that a rural high school district shall consist of two or more regularly organized school districts. In other words, the law does not contemplate the withdrawal of one school district so as to relieve that district of the obligations of a rural high school district. There can be a withdrawal from or division of a rural high school district, but such withdrawal or division must result in the creation of a new rural high school district. When the district is divided by virtue of Section 29 of Chapter 215, 1921 Session Laws, the old district shall retain title to all the property possessed by the district at the time of the division, and shall be liable for all of the validly existing bond indebtedness.

Henry W. Neimeyer, Nampa, Idaho, August 26, 1921.

Lapsed District.

Query: What disposition is made of the territory embraced in a district which has been lapsed as specified in Section 24, of the 1921 Session Laws? If this territory is considered unorganized, would the same procedure be followed as given in Section 8 of the 1921 Session Laws?

Held: Under the old law as existed relative to lapsed school districts, the territory which was included within the boundaries of the lapsed school district was, by order of the County Commissioners, attached to one or more existing school districts (see Section 833, Compiled Statutes), but that section has been repealed. Under the new school law, we do not find any provision for the disposition of the territory included within the lapsed district. Hence, it is our opinion that territory included within the lapsed district will remain as unorganized territory. It also follows that, since this territory is considered unorganized, the procedure outlined under Section 8 may be followed.

Boundaries: District.

Query: You also inquire "As I understand Section 26 of these same laws, no change of any nature whatever may be made in the boundaries of a school district within the State of Idaho having an outstanding indebtedness until all bond requirements as specified by law are met. Am I right in this matter?"

Held: It is our opinion that the boundaries of a school district which has an outstanding bond indebtedness may be changed, provided, however, that "there shall remain in the district property having upon the county rolls an assessed valuation in an amount at least equal to that amount resulting from dividing the total of the out-

standing indebtedness, including interest, principal, and penalties, by the percentage which the statute at the time the bonds were issued specified as the minimum bond issue of said district."

Miss Ethel Redfield, June 6, 1921.

Levy: Election: Special.

Query: Is it your opinion that the board should hold a special election in order that the taxpayers may authorize a special levy to take care of the deficiency?

Held: If warrants have been issued contrary to law, the authority given by the special election does not authorize the taking up of illegal warrants, but a special election at this time will authorize and provide for future emergencies within and not beyond the time specified in the emergency act.

Levy: Year: Special.

Query: Will that levy count as a part of the levy for the next year or will it be counted as a part of the levy for the present year, even if it is not collected until the taxes come in the last of next December?

Held: Strictly speaking, this levy cannot be considered as a part of either this year's or last year's regular school levy, but must be considered as a special levy authorizing the collection of taxes over and above what has been or will be provided for by the regular school levies of either this year or next year.

Query: If it is to be a part of the levy of next year, why cannot the school board make this levy as a part of next year's tax without calling a special election?

Held: If we understand the act aright, the levy provided for by the emergency act cannot be considered any part of the regular annual levy. Hence, being in the nature of a special levy and the machinery being provided for by the act, which authorizes the levy, such levy cannot be made by the school district without compliance with the special act. It could not issue warrants or incur indebtedness now, in anticipation of a levy to be made and collected this fall, unless authorized for under this law provided, prior to and as authority for the incurring of indebtedness.

Mr. George W. Padgham, Attorney, Gooding, Idaho, May 4, 1921.

Levy by Trustees: Annual Meeting.

Query: Where at the annual school meeting a vote was taken on a 7-mill special tax and it was voted down by a vote of 20 to 15, can the board of trustees thereafter make a special tax levy and raise it to 10 mills?

Held: Yes. Section 51, Chapter 215, 1921 Session Laws, provides:

"The board of trustees of common school districts shall have power, when the annual meeting neglects or refuses to levy a special tax to maintain the schools, to levy a special tax not to exceed 10 mills upon all the property of the district, sufficient, when added to the moneys apportioned by the County Superintendent of schools, to properly maintain said schools for the required period of time and the taxes so levied shall be certified to the Board of County Commissioners and the County Assessor in the same manner, and shall constitute a lien to the same effect as though the same were levied by the annual meeting."

P. H. Rasche, Stanley, Idaho, November 18, 1921.

Independent Districts: Contracts.

Query: Where a common school district has been created into an independent district, are teachers' contracts made by a common school district binding on an independent district?

Held: It is our opinion that any legal contracts made by the old district are binding upon the new district.

Miss Maud E. Toland, Arco, Idaho, November 17, 1921.

Levy in Newly Created District.

Query: We have before us your inquiry touching the question of the right of a new school district created out of a territory formerly belonging to other districts to levy a special tax of 10 mills for the use of the new district.

Held: Referring to the statutes, Chapter 215, 1921 Session Laws, we find in Section 29a that, when an existing school district is divided into two or more parts, it becomes the duty of the County Superintendent to apportion to the new district its due per capita of money and indebtedness from the old district.

Section 50 provides for the levy of a special tax of ten mills by the annual school meeting, which, by the provisions of Section 42, is held on the third Saturday of April, in common school districts. Section 51 gives the board of trustees in common school districts the power to levy this tax when the annual meeting neglects or refuses to so do. Section 53 makes it the duty of the board of trustees to immediately certify the amount of the levy to the clerk of the Board of County Commissioners, and the Board of County Commissioners "shall, at the time of making the annual county levies, make a levy in mills upon all taxable property in said school district not exempt from taxation, sufficient to produce said amount of money so certified . . ." According to the provisions of Section 3211, Compiled Statutes, the County Commissioners make the levy on the third Monday in September.

There would therefore yet be time for the levy to be certified to the Board of County Commissioners, so I do not see that the question could be decided on that point. I am of the opinion, however, that the limitation contained in Section 50, namely, that the special tax "shall not exceed 10 mills on each dollar of taxable property in the district," is a limitation upon the amount of the tax to which the taxpayers' property is subject for that year. It is therefore my opinion that the newly created districts, where a ten-mill levy was made by the old districts prior to division or creation of a new district, are not subject to a levy by the new district, but will receive their proportion of moneys thus raised by apportionment through the office of the County Superintendent as indicated in the statutes cited above.

On the other hand, where no special levy was made by the old district prior to division, I cannot see that there is anything to prevent a special levy being made by the new district, provided that it is made in such time that it can be certified to the county authorities on or before the third Monday in September.

Miss Ethel Redfield, State Superintendent, August 17, 1921.

Levy: Legal Use of Funds: Annual Meeting: Special.

Query: May a school district use part of the revenue coming from a special tax levy which was imposed for the general maintenance of the school to pay for building construction, equipment, etc., if the district has been able to meet all of its maintenance obligations?

Held: It is our opinion that under the provisions of Section 50, Chapter 215, Idaho Session Laws, 1921, it is for the annual school

meeting to say as to the purpose for which moneys derived from a special tax levy shall be spent. Perhaps it may be said that we are giving the law a rather strained interpretation, but in view of the wording of Section 50, believe that the annual school meeting should designate the purpose for which the surplus moneys are to be spent.

Miss Ethel Redfield, Superintendent of Public Instruction, June 6, 1921.

Insurance: Mutual Companies.

Query: May a school district become a member of a county mutual fire insurance company?

Held: In our opinion as given in School District No. 8 vs. Twin Falls, etc. County, 30 Idaho 400, our Supreme Court held that school districts are prohibited, under Section 4 of Article VIII of the Constitution, from becoming members of a county mutual fire insurance company, the objection being that they thereby become liable, in violation of the Constitution, for the liabilities of other people and that the credit of the district is thereby pledged and lent in aid of private individuals, which could not be done.

Mr. E. B. Sheppard, Buhl, Idaho, October 26, 1921.

Moneys: Creation Salary Fund.

Query: We have your favor of the 2nd inst. relative to the creation of a salary fund.

Held: We do not think such a fund can be created. The effect of such a fund, if we understand your idea correctly, is to make the moneys in this fund take precedence over any other claims against the district. This cannot be done, for warrants must be paid in the order of their issuance. If you have money on hand deficiency warrants yet unpaid must be paid out of this cash on hand.

Mr. W. L. Weaver, Bliss, Idaho, August 6, 1921.

Personal Injury: Liability.

Query: An injury occurs to school children while they are swinging in one of the school swings, which injury results from a break in one of the chains, the swings having been up a few weeks only. The girls at the time of injury were standing up in the swing and swinging. (a) Is there a liability of the school district, and if so what is the procedure? (b) Could the extent of the damage be determined without a court decision? (c) Could a warrant be issued for the amount of the damage without a court order?

Held: It is our opinion that a school district is not liable in damages in such a case. The school district acts in a governmental capacity and in the absence of express statute making it liable for negligence resulting in injury, it is our opinion that it is not liable. See Warden vs. Wit, 4 Idaho 404.

Mr. A. L. Daniel, Kendrick, Idaho, May 9, 1922.

Report: Itemization.

Query: What interpretation shall be placed upon subdivision 18, page 449, 1921 Session Laws, which provides as follows:

"Provided, that the report of any expenditures shall contain the specific items, amounts, and the names to whom such expenditures were made."

Held: This question has been up several times, both before this office and the Department of Education, and we have tried to place as fair an interpretation upon the foregoing section as is possible.

We do not think it would be allowable for the school district to itemize as you have indicated in your letter. It is our opinion that the following is a fair sample of the itemization contemplated by the aforesaid provision:

Coal, John Smith & Co.	$ 50.00
Coal, Tom Brown	30.00
Light, Idaho Light and Power Co.	30.00
Teacher, 9 mos., Mary Jones	1400.00
Teacher, 9 mos., Sally Brown	1200.00

We do not think it necessary to set out Mary Jones' and Sally Brown's names nine different times, but think that the total amount of their salaries can be set out once. We do think the law contemplates the total salaries of each teacher be set out in the report. Neither do we think, for instance, the law contemplates that you set out each individual purchase of coal, but that you may set out the total amount of coal purchased from one firm; if coal is bought from several firms the amount from each firm is necessary.

Messrs. Padgham & Padgham, Gooding, Idaho, July 28, 1921.

Rural High School District: Election: Voters' Qualifications.

Query: Where a question is one involving the formation of a rural high school district between two common school districts, are a teacher and his wife qualified voters?

Held: Yes, if they qualify under the provisions of Section 19, Chapter 215, page 427, 1921 Idaho Session Laws; and since you further state that the teacher has children in the school we submit that it is our opinion the teacher and his wife are qualified voters, provided they otherwise qualify under Section 19, aforementioned.

Rural High School District: Area.

You also ask concerning the six-mile area of the rural high school district. It is our opinion that if there is a question concerning the territory comprised within the district, involving more than a six-mile radius from the proposed center of the district, that you get the consent of the County Commissioners to increase the area, as is provided in Subdivision e of Section 6, Chapter 215, page 427, 1921 Idaho Session Laws.

W. E. Tyson, Minidoka, Idaho, March 7, 1922.

Schools: Relatives: Employment.

Query: Is it lawful for a school trustee to receive pay for such work as hauling articles, cleaning school houses, cleaning brick, removing rubbish, the amount being under $500, and not let by contract, and also for expenses incurred while attending school business?

Has a relative of any member of the school board the right to receive pay for work he does in or about the school buildings or grounds, if the other school trustees not being relatives, agree to hire him?

Held: Answering your first question, will say Section 48 of Chapter 215, 1921 Session Laws, being on page 30 of the pamphlet, reads as follows:

"It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in any contract or contracts pertaining to the maintenance or conduct of the affairs of a school district or accept any compensation or reward for services rendered as trustee."

Under this section, which is the law governing this matter, it would be unlawful for the trustee to be interested as a claimant for services or work done for the district. Since the law does not expressly pro-

vide for the receiving by the trustees of their expenses in the transaction of the school business, it is our opinion such expenses cannot be allowed and paid by the school district. Some cases in point are:

Corker vs. Coyne, 30 Idaho 213.
Corker v. Ike, 30 Idaho 218.
School Dist. No. 15 v. Wood, 32 Ida. 484.
Nuckles v. Lyle, 8 Idaho 589.

Your second question, I presume, has been raised because of your thinking it may have come under the nepotism law, which is Section 416, Compiled Statutes.

Our Supreme Court, in the case of Barton v. Alexander, 22 Ida. 286, has held that the nepotism law does not apply to school districts, hence there is no prohibition against the hiring of relatives for the purposes stated in your letter.

Of course, you understand that Subdivision 14 of Section 46 authorizes the employment of a relative for superintendent, principal or teacher, when elected by the remaining members of the board.

Mrs. Edna Osweld, Box 53, Idaho Falls, Idaho, May 6, 1922.

Sinking Fund: Investment.

Query: May money in school district sinking fund be invested in first mortgages on real estate?

Held: No.

D. C. Kunz, Montpelier, Idaho.

Sinking Fund: Investment.

Query: Who may invest the sinking funds of school districts, the school district treasurer or the County Treasurer?

Held: We find no statutory provisions for the investment of sinking funds of school districts. While they are in the possession of the County Treasurer they are kept on deposit, as other funds, but not invested.

Newhouse Investment Co., Boise, Idaho, April 25, 1921.

Schoolhouse: Dances.

Query: Can a board of school trustees be forced against its will to bar dances in a school building?

Held: It is our opinion that the board has absolute discretion in such matters.

A. F. Goldsmith, King Hill, Idaho, January 17, 1921.

Schoolhouse: Location Without Election.

Query: Have trustees the power to locate a school, even temporarily, without election?

Held: If your query contemplates a designation of a site for the construction of a temporary schoolhouse, we beg to advise that under provisions of Subdivision 9A, Section 46, Chapter 215, 1921 Session Laws, they can only locate the school upon authorization by a majority vote of the qualified voters present and voting at an election held for that purpose in the district.

Maxwell Kahn, Clerk School Board, Eden, Idaho, August 18, 1921.

Schoolhouse Construction: Eight-Hour Law.

Query: We have your favor of the 8th inst. wherein you call the attention of this office to the fact that one of the subcontractors on the high school building in this State is working a crew nine hours a day.

Held: "The eight-hour law in this State (see Sections 2324 to 2326), provides eight hours shall constitute a day's work for all

laborers, workmen, mechanics, or other persons now employed or who may hereafter be employed in manual labor by or on behalf of the State of Idaho, or by or on behalf of any county, city, township or other municipality of said state", excepting certain emergency cases. You will note from the quotation that it does not mention school districts; hence, the eight-hour law would not apply to school districts unless they could be classified as municipalities. They are not ordinarily so classified and, in our opinion, are not such.

Boise Building Trades Council, Labor Temple, Boise, Idaho, July 9, 1921.

School Year: Season.

Query: May a school district conduct school in the summer instead of the winter, and may parents be compelled to send their children to such summer schools?

Held: It is our opinion, under the provisions of Section 4, Chapter 215, 1921 Session Laws, that the annual school meeting may change the season of the school year to summer.

F. J. Matthews, Hill City, Idaho, July 7, 1922.

Schoolhouse Construction: Bids.

Query: Where bids for construction of a schoolhouse have been made once and all bids rejected, is it necessary to advertise before bids can be received a second time?

Held: Under the provisions of Section 48, Chapter 215, Session Laws, 1921, the bids must be readvertised.

Schoolhouse Construction: Change of Plans.

Query: May the present plans be used as a basis for advertising for bids and after the awarding of the contract a substantial change made in the plans?

Held: We do not think that this could be done if the change is really a substantial one, for it certainly would have affected the bidding. If the change were a minor change, such as occur in any contract, and such as could be classified under the head of alterations or extras for which all building contracts make provision, we think that would be proper and allowable.

Schoolhouse Construction: Board of Education's Approval.

Query: If the plans, which have already been approved by the State Board of Education, are changed and amended, will the plans as amended and changed have to be approved by the Board of Education?

Held: There is no law on the subject, but the State Board of Education advises us that they have a rule requiring such, and we advise that the amended plans be approved by the State Board of Education.

Arco Mill & Building Co., Hailey, Idaho, August 20, 1921.

Supplies: Sale to Individuals.

Query: May a school district order a car of coal through a coal dealer, issue an order for warrant for the full amount in the car and sell the coal out to residents of the district on time or for cash?

Held: This procedure is absolutely illegal.

Ed. B. Carothers, Dietrich, Idaho, August 4, 1921.

School Grounds: Sunday Baseball.

Query: Is there any law forbidding independent school districts from allowing a community baseball team to use the school grounds on Sundays?

Held: No. The use of the grounds for such purposes is a matter resting in the discretion of the trustees.

J. J. Boston, Apple Valley, Idaho, June 1, 1921.

School Moneys: Accounts Public.

Query: What rights have you to demand itemized accounts of receipts and disbursements of school moneys?

Held: The only statutory provision which might be in point is Section 46, Chapter 215, Idaho Session Laws. The records you refer to, however, are public property and can be examined by interested parties in the district. On refusal of the trustees to allow such examination, mandamus proceedings might possibly be brought.

C. E. M. Loux, Pocatello, Idaho, May 10, 1921.

Schoolhouse: Removal.

Query: To move a school building, is it necessary to hold a special election for that purpose?

Held: It is our opinion that under the provisions of Subdivision 10, Section 46, Chapter 215, 1921 Session Laws, it is necessary to hold a special election, and the proposal must be carried by two-thirds of the qualified voters present and voting.

Mr. R. G. Dixon, Orchard, Idaho, July 11, 1922.

Taxes: School and Highway.

Query: Is it necessary to designate the school and highway districts on the tax roll?

Held: It is our opinion it is the duty of the County Assessor to so designate. See Section 3135-3150, Compiled Statutes.

B. F. Wilson, County Auditor, Burley, Idaho, May 27, 1921.

Transportation of Pupils: Allowance Cost to Parents.

Query: Would it be lawful for the trustees of a common school district to expend from the funds of the district, for the transportation of pupils to the school, the money for such purpose direct to the pupils or parents and thus save the district hiring transportation wagons for outsiders to transport such pupils?

Held: We have had this question up a number of times and in every instance there is a showing on the part of the school board that they could make a saving if they had a right to pay it direct rather than furnishing the conveyance. However, upon careful consideration of the language of the statute we came to the conclusion that the statute would not permit the payment direct. We are sorry this question did not arise prior to the adoption of this law by the Legislature so that that point might have been made clear, but the questions have all arisen since last fall and we see no other way of operating under it but providing the conveyances until the next Legislature can change it.

Mrs. J. W. Jacobson, Weippe, Idaho, April 11, 1922.

Transportation of Pupils: Compensation to Parents.

Query: May parents who transport their children to school by their own private conveyance, draw money from the school district for transportation of pupils?

Held: No.

Evelyn S. Merwin, Orofino, Idaho, March 30, 1922.

Transportation of Pupils: Use of Fund for Tuition.

Query: Where Section 50, Chapter 215, 1921 Session Laws, provides that the trustees of a common school district may expend from the funds of the district a sum not exceeding $10.00 per school month per child for transportation of pupils living more than a mile from the school house, may the board permit the trustees to expend the amount for tuition for the same children in attending a closer school in an adjoining district?

Held: No.

Department of Education, September 12, 1921.

Transportation of Pupils.

Query: The school district trustees have made a flat rate of $12.50 for hauling children of school age to the school in the district. This flat rate has been established regardless of the length of haul; there are no regular school routes established. May a parent use his own conveyance and haul his own children to school and receive the sum of $12.50 for each child so hauled?

Held: If those facts are correct, it is our opinion that the school district trustees have exceeded their authority. The only method by which children may be hauled to school free of charge is through the establishment of regular rural routes. If they are not established, the obligation to haul the children to school is upon the parents.

Mr. Frank Alvord, Pierce, Idaho, July 29, 1922..

Trustees: Employment of Relative as Teacher.

Query: Is a director prohibited from employing his minor daughter, living in his home, as a teacher?

Held: He is, by virtue of the provisions of Section 76 of Chapter 215, Laws of 1921, saying first, that no person without a certificate can receive any compensation for teaching, and further "no person is eligible to teach in any public school in this State or to receive a certificate to teach, who has not attained the age of 18 years at the time the certificate is issued."

Query: Is the married daughter of a director, who lives with her husband in her father's house, prohibited from teaching?

Held: This question would not be governed by the opinion to which you refer, it being based on Section 48, of Chapter 215, 1921 Session Laws, making it unlawful for any school trustee to have any pecuniary interest, even indirectly, in any contract with reference to the school. Section 14 of the same act governs the matter of teachers and provides only:

"No trustee of any school district . . . shall vote to elect any relative of his or his immediate family to the position of superintendent, principal or teacher of any school within his district and in case such relative of his own or his immediate family shall be an applicant for such position in any school within his district, the question of whether or not such relative shall be employed shall be determined by the remaining members of the board."

Under this section my opinion would be that the married daughter could teach, provided her father did not take part in her election.

Mr. A. B. Lucas, Editor, Eden, Idaho, August 11, 1921.

Trustees: Employment of Relatives.

Query: We have before us your inquiry as to whether or not the husband of a trustee of your district may be employed by the district as janitor.

Held: Section 48, Chapter 215, 1921 Session Laws, provides:

"It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in any contract or contracts pertaining to the maintenance or conduct of the affairs of a school district, or accept any compensation or reward for services rendered as trustee, except as herein provided . . ."

In Nuckols vs. Lyle, 8 Idaho 589, the Supreme Court of this State had before it a very similar statute of a former school code, which said:

"No trustee shall be pecuniarily interested in any contract made by the board of trustees of which he is a member, and any contract made in violation of this section is null and void."

In that case the wife of a member had been employed as a teacher. It will be noted that, if anything, the present statute is the broader of the two and you will particularly notice as to both statutes that they do not say merely that the trustee interested shall not vote, but on the contrary, according to the present one, whether he votes or whether he doesn't, he is forbidden to have any interest in any contract pertaining to the maintenance of the school. The Court said in the case cited as to the validity of that contract, page 592:

"Touching the validity of said contract, only one question is necessary to be determined; was the husband of Mrs. . . . pecuniarily interested in the contract? We think he was. Under the laws of this State the earnings of the wife constitute a part of the community property and he may use it and is a part owner in it, and hence is pecuniarily interested in it. The said contract was by the terms of said statute null and void."

So in this case the earnings of the husband would be community property in which the wife undoubtedly has a pecuniary interest. The statutes say she shall have no interest directly or indirectly. We would call this a direct interest.

Mr. A. E. Bailey, Trustee, Collister School, Route No. 3, Boise, Idaho, August 5, 1921.

$500 Contract: Advertisement for Bids.

Query: Where a contract price for hauling pupils to school is $500 and over, is it necessary to advertise for bids?

Held: It is our opinion that under the provisions of Section 48, Chapter 215, 1921 Session Laws, it is necessary to advertise.

J. H. Van Tassel, Attorney at Law, Wendell, Idaho, September 21, 1921.

Trustees: High School District.

This will acknowledge receipt of your communication of May 16th, directing attention to the fact that Section 3, Chapter 215, Laws 1921, effective May 5, 1921, increases the number of trustees of high school districts from five to six, and inquiring as to how to fill the office of the sixth trustee until the next regular election.

It was ruled by the Supreme Court in the case of Knight v. Trigg, 16 Ida. 256-266, as follows:

"A newly created office which is not filled by the tribunal which created it becomes vacant on the instant of its creation."

There is therefore a vacancy in the office of the sixth trustee since May 5, and the question is how to fill the vacancy arising under these peculiar circumstances.

Article 6, Section 4 of the Constitution, provides:

"The Governor shall nominate, and by and with the consent of the Senate, appoint all officers whose duties are established by this Constitution, or which may be created by law and whose appointment or election is not otherwise provided for . . ."

In Elliott v. McCrea, 23 Idaho 524-528, referring to these provisions of the Constitution, the Supreme Court of this State says, in discussing the appointment of drainage district commissioners:

"The Constitution itself provides the method of selection of the legislative, executive and judicial officers named in the Constitution. The framers of the Constitution, however, could not foresee what offices might 'be created by law,' subsequently enacted, and so they provided that such offices should be filled by the Governor unless the appointment or election should be 'otherwise provided for.'"

The inquiry then is whether or not any provision has been made by the Legislature for filling these vacancies. There are but two sections in the school law, Chapter 215, that bear on the subject of filling of vacancies in trustees' offices. These are Sections 39 and 40. Section 39 provides in substance for the declaration of a vacancy by the board of trustees in certain specified contingencies and the filling of the vacancies thus arising. It obviously has no reference to vacancies arising in any other manner, and so is not in point. Section 40 comes closer, but we have decided, after carefully considering the matter, that it fails of covering the present case for the same reason that Section 39 does. It says:

"When the annual meeting fails to elect a complete board of trustees, the County Superintendent is empowered and directed to complete said board by appointment . . ."

It is obvious that the present vacancy does not arise by the failure to elect a complete board of trustees at the last annual meeting. The board as it then stood was completely filled.

There being no provision in the school law itself, it remains but to consult the general statutes of the State to see if they have made any provision. Section 458 provides that the County Commissioners shall fill the vacancies in county or precinct offices. A school district is obviously neither a county nor precinct office. This leaves but one section that could apply, Section 465, Compiled Statutes, stating:

"When any office becomes vacant and no mode is provided by law for filling such vacancy, the Governor must fill such vacancy by granting a commission to expire at the end of the next session of the Legislature, or at the next election by the people."

We are therefore of the opinion, both under the Constitutional provision and the statutory provision just quoted, that the power to fill vacancies in these rural high school trusteeships, arising by reason of the particular circumstances stated in your communication, vests in the Governor.

Dr. E. A. Bryan, Commissioner of Education, May 18, 1921.

Trustees: Allowance for Telephones.

Query: Can the school board vote to install phones in their residences at the expense of the school district?

Held: The district cannot incur such expense.

Transportation of Pupils: Outside District.

Query: May an independent school district hire a bus for the transportation of high school pupils to another district, there being no high school in the home district?

Held: An independent school district has no power to incur expense for such a purpose.

Mr. Archie Noggle, Kootenai, Idaho, January 28, 1921.

Trustee: Being Legislator.

Query: May the same person act as school trustee and legislator at the same time?

Held: It is our opinion that he may.

Miss Ethel E. Redfield, Supt. of Public Instruction, Feb. 9, 1921.

Trustees: Interest in Contracts.

Query: A, B and C are co-partners in a business; C is a member of the school board; may the school board, of which C is a member, purchase goods and articles from said firm of A, B, and C; the costs of which are to be paid out of the school funds of the district of which C is a member of the board?

Held: It is our opinion that under the provisions of Section 48, Chapter 215, 1921 Session Laws, such purchase would be illegal. Also see Corker v. Cowen, 30 Idaho 213; Corker v. Ake, 30 Idaho 218, and School District No. 15 v. Wood, 32 Idaho 484; Nuckols v. Lyle, 8 Idaho 589.

Padgham & Padgham, Gooding, Idaho, February 24, 1922.

Trustees: Hiring of Teacher.

Query: Has an uncle by marriage the right to vote in the hiring of a nephew to teach school?

Held: No.

Trustees: Loan of Money.

Query: Has the board of trustees the right to loan money from the sinking fund to private parties?

Held: No

Reese W. Harper, Oakley, Idaho, August 18, 1922.

Tuition: Residence.

Query: I have a 40-acre ranch in one school district, which I am renting; I am teaching school in an adjoining district, which has no public high school. I live at present in the district where I am teaching. I have two children of high school age; I wish to send them to a high school in another district. Will the district where my ranch is located be liable for the tuition?

Held: We regret to say that, under the circumstances, the district where you maintain your residence will be responsible for the high school tuition of your children.

Mrs. Bertha B. Reavis, Caldwell, Idaho, July 10, 1922.

Wagons: Bonds to Purchase.

Query: Is it legal to bond a common school district for the purpose of buying school wagons?

Held: We regret our inability to answer this question with any degree of certainty. It is our opinion, however, that the courts would lean more strongly in favor of construing the word "equipment", as used in Section 57, Chapter 215, 1921 Session Laws, as including the purpose you specify, than holding against it.

Miss Ethel Redfield, Supt. of Public Instruction, June 10, 1921.

Warrants: Illegal.

Query: Is it lawful for the chairman of the school board to refuse to sign a warrant or order for warrant for goods purchased for the school district by the trustees from a member of the board?

Held: It is legal for the chairman to refuse to help carry out an unlawful act. Our school law prohibits the school trustee from having any pecuniary interest, either directly or indirectly, in any contract or contracts pertaining to the sustenance or conduct of the affairs of the

school district. The purchase of goods or supplies is, of course, a contract; an agreement to buy on the one hand, and an agreement to sell on the other hand, for a consideration, the price.

The specific section of our school law applicable is Section 48, of Chapter 215, 1921 Session Laws (page 30 of the pamphlet school laws), the material part of which is as follows:

"It shall be unlawful for any school trustee to have any pecuniary interest, either directly or indirectly, in any contract or contracts appurtenant to the maintenance or conduct or the affairs of a school district."

When a member of the board knows that such a provision of the statute has been violated, it is not only his right, but his duty, to refuse to help carry it out.

Mr. E. A. Bryan, Commissioner of Education, April 19, 1922.

Warrants: Deficiency Building: Legality.

Query: Can independent school districts issue bonds for the purpose of taking up outstanding deficiency warrants, said warrants having been issued to complete the erection of a school building?

Held: We can only state that if we are called upon to advise the State concerning the purchase of school bonds issued under the circumstances as you relate them, our opinion would be unfavorable.

James & Ryan, Gooding, Idaho, December 13, 1920.

Warrants: Illegal.

Query: Are school district warrants issued to a garage for repairs and storage of school trucks of the school district, which garage is partly owned by a trustee, legal?

Held: If the trustee was a member at the time the expense was incurred, and also a part owner of the garage, the warrants, in our opinion, are illegal, and should not be paid. See Section 48, of Chapter 215, 1921 Session Laws.

P. A. Morensin, Declo, Idaho, June 9, 1922.

Warrants: Allowance of Discount.

Query: Where, under Section 915, Compiled Statutes (school laws, page 90), school warrants are issued which go at a discount, is it compulsory for the school board to pay the discount, and must it be included in the first original warrant?

Does it apply to all warrants or only to teachers' warrants?

Held: Answering the same, will say that the statute seems compulsory, and it reads:

"Provided, that when the warrants of the district shall be at a discount, the warrants shall be drawn for a sufficient amount to cover the discount."

We think the statute contemplates that the school board would know before the warrants were issued whether or not they would be discounted and could also know in advance the fixed rate of discount that would be determined upon, and, knowing these facts, the warrants should be increased the amount of such discount. I do not know that it would be entirely wrong to add the discount in a separate warrant, but the statute seems to contemplate that it be included in the warrant.

As to the second question, the statute makes no exceptions as to the class of warrants affected, and therefore would be held to affect all warrants. Generally in such cases warrants are discounted only for a short time and sometimes arrangements are made with local or even outside banks to take the warrants for that period at a specified dis-

count. It would not be a good thing for the school district to let a local bank make any sort of discount it desired, but to arrange for the general rate made by the banks to be allowed, and then proceed under that understanding.

Mr. Clayton Strain, Fairfield, Idaho, November 21, 1921.

Workmen's Compensation: Liability.

Query: Are school teachers and janitors within the terms of the Workmen's Compensation Act, and districts liable under provisions of said act to pay compensation to said teachers and janitors for injuries arising out of and received in the course of their employment?

Held: School districts are liable for teachers and janitors under the terms of the Workmen's Compensation Act.

Mr. J. I. Boston, Clerk, Independent School District No. 40, Parma, Idaho, February 17, 1921.

Workmen's Compensation: Liability.

Query: Is a school district liable under the Workmen's Compensation Act for compensation for its employees?

Held: We advise that it is. However, the district may insure in the State fund or they can carry their own risk. If they do not insure, they are liable to any employee injured and will have to pay the judgment in a lump sum whenever it is assessed. We strongly recommend to all school districts that they carry the insurance as a matter of business judgment. If they do insure they are not at liberty to insure with anybody but the State fund.

Mr. A. F. Goldsmith, King Hill, Idaho, February 17, 1922.

Unlicensed Teacher: Hiring.

Query: May the board of trustees of any school district hire an unlicensed teacher?

Held: Section 76 of Chapter 215, Session Laws, 1921, forbids the employment of any unlicensed teachers in the public schools of this State and forbids the payment of compensation to an unlicensed teacher.

Section 909, Compiled Statutes, provides:

"It shall be the duty of the County Superintendent when any board of trustees fails to comply with the provisions of this chapter, or any subsequent act, to notify the County Treasurer in writing that there has been a failure upon the part of such board of trustees to comply with the law, whereupon it shall be the duty of the County Treasurer to withhold all moneys apportioned to the district governed by the said board of trustees . . ."

Mr. T. M. Morris, Burley, Idaho, January 20, 1922.

TAXES

Abstract Plants.

Query: Are abstract plants assessable in this State?

Held: It is our opinion that they are assessable, the same as other personal property.

Teton Abstract Company, Driggs, Idaho, August 26, 1921.

Bank: Exemption Section 3297, Compiled Statutes.

Query: Where a bank claims exemption under the provisions of Section 3297, Compiled Statutes, must the property stand in the name of the bank, upon the records of the county wherein the shares of capital stock of said bank are assessed?

Held: It is our opinion that the statute makes it a condition precedent in order to claim exemption that the property owned and standing upon the records of the county wherein such shares of capital stock are assessed be in the name of the bank.

Chairman Board County Commissioners, Teton County, Driggs, Idaho, December 14, 1920.

Bank Stock: Transfer to Real Property Roll.

Query: Can the tax on bank stock be transferred to the real property roll if the bank owns real estate sufficient to cover the same?

Held: No. Not only is the bank stock a tax against the bank or the bank's property, but is simply a tax against shares in the hands of individual holders, which the bank is, in the first instance, under obligation to advance for the holders. But in addition, the procedure suggested by you seems to us inconsistent with the special provisions of statutes governing the matter of collecting bank stock taxes.

J. J. Crowley, Idaho Falls, Idaho, November 18, 1920.

City Taxes: Commission.

Query: May the county deduct 1½ per cent commission for the collection of city taxes when remittance is made?

Held: Yes. See Section 3224, Compiled Statutes.

City Taxes: Itemization.

Query: Is it necessary for the county to itemize the source from which the revenue is received, so that the city may give proper credit for such amounts?

Held: Yes. See Section 3226, Compiled Statutes.

John W. Fowler, Mackay, Idaho, December 9, 1921.

County Warrants: Payment of Taxes By.

Query: Can the county be required to accept county warrants in payment of taxes owed the county?

Held: No. See Section 3253, Compiled Statutes.

S. P. Worthington, Oakley, Idaho, December 3, 1921.

Defunct Bank: Taxes: Cancellation.

Query: May County Commissioners cancel tax of a banking institution which closed its doors six months after assessment was made?

Held: Under provisions of Section 3305, assessments on bank stock and personal property may be changed at the December meeting of the Board of County Commissioners, sitting as a Board of Equalization, but if the Assessor has assessed the bank stock and the County Board of Commissioners has not changed its assessment at it December meeting, then the asessment cannot be changed or canceled.

Memo to County Assessors of State of Idaho, January 1, 1922.

Expiration of Redemption Period: Offer to Pay.

Query: If a lien holder should come to the Tax Collector the day after the time of redemption expires, and pay up all back taxes and costs, could the tax deed be issued to him instead of to the county, and would the same hold good?

Held: In our opinion, no. The county's title to the property has then ripened and it could not be disposed of except under due notice and sale under order of the Board of County Commissioners.

Lida Belle Hauscheldt, American Falls, Idaho, October 5, 1922.

Grain: Storage.

Query: Where grain is stored in elevators in the State, unless the list of farmers owning the grain can be furnished, is such grain liable to assessment under Section 3284, Compiled Statutes?

Held: In our opinion it is liable.

H. I. Adams, Assessor, St. Anthony, Idaho, February 13, 1922.

Indian Land Exemption.

Query: Are improvements on Indian lands exempt from tax where they are owned by a corporation and consist of warehouses and elevators?

Held: They are not exempt from taxes but are assessable as other personal property.

Memo to County Assessors of State of Idaho, January 1, 1922.

Indian Lands.

Query: To what extent does a certificate of tax exemption on Indian land apply to a white citizen who has acquired title to said lands, or where he has an equity and not a deed?

Held: After careful consideration of federal statutes and cases it is our opinion that Indian land in the hands of the original patentee is not taxable, and second, that the non-taxability of this land is attached to the land and the exemption prevails in favor of a subsequent grantee.

Memo to County Assessors of State of Idaho, January 1, 1922.

Indian Lands: Tax Exemption.

Query: To what extent does a certificate of tax exemption on Indian lands apply to a white citizen, who has acquired title to said lands, or where he has an equity and not a deed?

Held: The rule may differ as to different Indian reservations, according to the treaty made. Since Mr. Stalker is evidently the one asking this question, we presume he has reference to the Fort Hall Indian reservation, a portion of which is in Bannock County.

As we understand the matter, patents to these lands were issued under the authority of the act of February 23, 1889, 25 Statutes at Large, 687, which provides in part as follows:

"The title to be acquired thereto by the Indians shall not be subject to alienation, lease or incumbrance, either by voluntary conveyance of the grantee or his heirs, or by the judgment, order or decree of any court, or subject to taxation of any character, but shall be and remain inalienable and not subject to taxation for the period of twenty-five years, and until such time thereafter as the president may see fit to remove the restriction, which shall be incorporated in the patent."

The certificate of competency is issued under the authority of the act of June 25, 1910, 36 Statutes at Large, 855, and provides, in part, as follows:

"That the Secretary of the Interior is hereby authorized, in his discretion, to issue a certificate of competency upon application therefor to any Indian, or in case of his death, to his heirs, to whom a patent in fee, containing restrictions on alienation has been or may hereafter be issued, and such certificate shall have the effect of removing the restrictions on alienation contained in such patent."

In the case of Chente v. Trapp, 244 U. S. 665, 56 L. Ed. 941, we find the following in reference to a somewhat similar state of facts arising in the State of Oklahoma:

"But the exemption and non-alienability were two separate and distinct subjects. One conferred a right and the other imposed a

limitation. The defendant's argument also ignores the fact that in this case, though the land could be sold after five years, it might remain non-taxable for sixteen years longer, if the Indian retained title during that length of time. The restrictions on alienation were removed by lapse of time. He could sell part after one year and part after three years, and all, except homestead, after five years. The period of exemption was not coincident with this five-year limitation. On the contrary, the privilege of non-taxability might last for twenty-one years, thus recognizing that the two subjects related to different periods and that neither was dependent on the other. The right to remove the restriction was in pursuance of the power under which congress could legislate as to the statute of the ward and lengthen or shorten the period of disability, but the provision that the land should be non-taxable was a property right which congress undoubtedly had the power to grant. The right was fully vested in the Indians and was binding upon Oklahoma."

In the case of New Jersey v. Wilson, 7 Cranch 164, 3 L. Ed. 303, it is said:

"The privilege, though for the benefit of the Indians, is annexed by the terms which created it, to the land itself, not to their persons. It is for their advantage that it should be annexed to the land because, in the event of a sale on which alone the question could become material, the value would be enhanced by it."

The theory of the foregoing cases is that the patents were issued to the Indians upon a treaty, which is in effect a contract. The Federal Government could impose as a condition precedent to the granting of a certificate of competency that the Indians waive their right to exemption from taxation. This the Federal Government has not done in this case. The case of McCurdy v. U. S., 246 U. S. 263, 62 L. Ed. 706, does not apply.

Our conclusion is, (1) that this land in the hands of the original patentee is not taxable; and, (2) that the non-taxability of this land is attached to the land and the exemption prevails in favor of a subsequent grantee.

F. M. Fisher, Blackfoot, Idaho, April 12, 1922.

Inventory: Refusal to Furnish.

Query: Where a taxpayer refuses to furnish an inventory and the Assessor assesses the property according to his best judgment and information, and the property owner fails to file a claim prior to the fourth Monday in November, have the Commissioners the authority to grant such claim?

Held: If the provisions of Section 3156, Compiled Statutes, are carefully complied with, the County Commissioners cannot grant the claim.

Memo to County Assessors of State of Idaho, January 1, 1922.

Mining Property: Patented.

Query: Is patented mining property assessable in this State?

Held: It is our opinion that it is assessable under the provisions of Section 3360, Compiled Statutes. In other words, the claim is valued at the price paid the United States, if it is used for mining purposes, and to this is added all machinery used in mining and all property used as improvements which have a value separate and independent of the claim, and to this is added the net annual proceeds of the mine.

Carl F. Leonardson, Dubois, Idaho, September 3, 1921.

Payment: Check: Dishonored: Effect.

Query: Where a County Treasurer has taken a check in payment of taxes, which check is subsequently dishonored, can he recall the receipt issued and reinstate the tax, assuming, of course, that he has used due diligence in presenting the check for payment?

Held: It is our opinion that the tax may be reinstated.

C. L. Taylor, Rexburg, Idaho, January 26, 1922.

Payment of Taxes: Extension of Time.

Query: Would the County Commissioners or any county officer be privileged to extend the time for payment of taxes for, say, thirty days, without penalizing the taxpayers?

Held: We have been unable to find any statutory authority for such action on the part of the County Commissioners or any other public officer.

J. N. Larson, Preston, Idaho, December 21, 1921.

Pacific Fruit Express Company: County Assessor.

Query: A building and machinery located on the right of way, and heretofore owned by a private company, used for ice and cold storage, has been sold to the Pacific Fruit Express Company. Should it be assessed on the personal property roll or by the State Board, as a part of the property of the corporation?

Held: We do not understand that the Pacific Fruit Express Company is a public utility, such as is ordinarily assessed by the State Board of Equalization. It should be assessed by local Assessor.

George Oylear, Assessor, Caldwell, Idaho, April 27, 1921.

Paving: Assessments: Side Streets or Alleys.

Query: In paving a side street or alley, is the cost assessable entirely to the lot adjoining said alley, or is the cost assessed to the inside lots?

Held: The late case of Amsberry v. City of Twin Falls, 34 Idaho 313, would seem to answer this question. The assessment is to center of block.

J. F. Bow, Nampa, Idaho, July 26, 1922.

Property of National Guard.

Query: Can taxes for former years be cancelled because the property on which the tax was levied and assessed is now owned by the National Guard?

Held: It is our opinion that they cannot be so cancelled.

E. G. Randolph, Gooding, Idaho, May 8, 1922.

Personal Property Tax: Lien.

Query: How long does the lien of taxes on personal property remain?

Query: The lien of taxes on personal property remains a lien until paid, no matter into whose hands the property may go. The property may be held for the payment of taxes in any person's hands.

Chas. V. Price, Pine, Idaho, November 17, 1921.

Personal Property Tax: Uncollected: Liability.

Query: In 1920 certain personal property was assessed and entered on the personal property roll and the tax computed thereon, but the tax was not collected at the December meeting of the County Commissioners, and at that meeting the board failed to transfer the tax

to the real property roll, according to provisions of Section 3304, Compiled Statutes, there being at the time of the assessment and at the time of said meeting of the board, real estate standing in the name of the assessed owner on which such personal property tax could have been transferred to secure payment. Your questions on that state of facts are: (1) can the 1920 personal property tax be transferred to the real property roll for 1921, and whose duty is it to make the transfer?

Held: The tax cannot now be transferred to the real property roll.

Query: (2) Who is responsible for the tax that was not collected?

Held: In our opinion, the County Commissioners.

Memo to the County Assessors of the State of Idaho, Jan. 1, 1922.

Silver Foxes: Taxation: Personal Property.

Query: Does the Assessor have authority, under the Idaho law, to assess silver foxes, and if assessable, what is the basis of assessment, the pelt value or market value of the live animal?

Held: It is our opinion that the animals are taxable. It seems to us that the market value of the animal would be the proper basis in figuring the assessment.

L. D. Buck, Sandpoint, Idaho, June 30, 1922.

State and Unpatented Land: Water Assessments.

Query: Are State lands and unpatented lands held subject to assessment for water taxes in the Milner Low Lift District, the same as other lands?

Held: Yes. The interests of the purchaser, whatever they may be, are subject to assessment and taxation, the same as privately owned lands.

David K. Egbert, Murtaugh, Idaho, August 12, 1922.

State Lands: Equities: Rebate.

Query: Where a county has carried upon its assessment roll the values contained in equities on State land, can it obtain a rebate from the State for portion of tax paid the State upon that value, when the sale contract from the State has been canceled, making it impossible for the county to collect the tax on the equity?

Held: Under our present law no such rebate can be made.

Memo to County Assessors of State of Idaho, January 1, 1922.

State Lands: Delinquency: Forfeiture.

Query: Does notice from the Assessor to the State of the delinquincy on equity in State land authorize the State Land Board to forfeit the contract?

Held: Yes. See Section 3282, Compiled Statutes.

Memo to County Assessors of State of Idaho, January 1, 1922.

Tax Deed to County: Sale: Balance: Disposition of.

Query: After a tax deed has passed from the Tax Collector to the county may the county lawfully sell a portion of the property described in the tax deed sufficient to satisfy the claim for taxes and incidental expenses, and reconvey the balance to the owner?

Held: In our opinion, no.

Tax Deed: Delinquent Taxes.

Query: Delinquent tax receipts for 1919, 1920 and 1921, on a piece of real estate, are held by the county. The 1919 taxes have gone to

deed in favor of the county and the commissioners have sold the property. What becomes of the 1920 and 1921 taxes?

Held: If it were not for the peculiar statutory provisions on the subject our opinion would be that they should be canceled on the theory that the lien of the 1920 and 1921 taxes merged with the fee in the county's hands and that the county on selling the property sold the entire title. However, Section 3263, as amended by the 1921 Session Laws, page 521, provides that the tax deed to the county conveys the absolute title to the county free of all encumbrances "except any lien for taxes which may have attached subsequent to the assessment." Therefore we do not think we are at liberty to modify the statute and that the effect is to keep the lien of subsequent taxes alive. A purchaser therefore would take subject to the subsequent tax liens, as the county could convey no better title when it sold than when it received it.

Ione S. Adair, Moscow, Idaho, September 16, 1922.

Tax Deed: Owner: Claim to Excess.

Query: Has the owner any claim, equitable or otherwise, in the excess over the amount necessary to pay the delinquent taxes where the county has sold the property thus conveyed for delinquent taxes?

Held: In our opinion, no.

R. R. Wedekind, Dubois, Idaho, March 9, 1922.

Tax Certificate: Partial Redemption.

Query: Where the owner of property covered by delinquent certificate or any party in interest applies for partial redemption of property covered in such certificate, that is, redemption of a part of the property, has the Assessor or any other public officer the authority to reassess any of the subdivisions in order to get the apportionment of the valuation to the subdivision desired to be redeemed and also to the subdivisions unredeemed?

Held: Where the property covered by the entry is assessed as one piece of property, say 160 acres, or several lots, we do not believe partial redemption can be made, for the reason that the statute provides no method for the Assessor or any other public officer to assess property except within the time provided for the regular assessment of property, which, in case of property covered by a delinquency certificate, would be during the preceding year. The Assessor would have no authority to go back and change any of the rolls to make a new or different assessment, or to apportion the value on the several lots or pieces of property. It is our opinion that the partial redemption can only occur where each individual subdivision of the property included within the delinquent entry has been originally assessed separately with separate values.

Letter to County Assessors, January 21, 1922.

Taxes: Refund.

Query: We are in receipt of your favor of the 17th instant, relative to the refund of certain tax moneys to the Pocatello Title & Trust Company. If we understand your statement of facts correctly, the claim of the company accrued in the year 1918, and they are now making their formal claim. Your question is whether or not the County Commissioners may act favorably at this time on a claim accruing in 1918.

Held: Section 3506, Compiled Statutes, provides that the board of County Commissioners may not hear or consider any claim in favor of an individual against the county unless the account, properly made out, giving all items of the claim, duly verified as to its correctness

and that the amount claimed is justly due, is presented to the board within a year after the last item of the account accrued.

Section 3624, Compiled Statutes, provides:

"The Auditor must draw warrants on the County Treasurer in favor of all persons entitled thereto in payment of all claims and demands chargeable against the county which have been legally examined, allowed and ordered paid by the Board of Commissioners . . ."

California has practically the same statutes as Idaho in dealing with the question of the allowance of claims. We have taken time to go into this matter and we find that there have been several decisions rendered by the California Supreme Court on this question, the most notable being the case of Carroll v. Sibenthaler, 37 Cal. 196, wherein it was said:

"If a claim is barred and extinguished, the board has no more authority to allow it than one that has not accrued. The statute is not merely advisory to the board, but it is peremptory, commanding the board not to allow, and the other officers not to pay, claims that are barred and extinguished. It was not intended that the board should have power under the act to allow claims of friends and reject those of enemies, which were not presented within the statutory period. The rule of the statute is inflexible and peremptory. The non-presentation of the claim within the year extinguishes it. It is not only the right, but it is the duty, of the Auditor and Treasurer to disregard an order which, upon its face, appears to be within the jurisdiction of the Board of Supervisors."

However, the statute under consideration in that case was a trifle different from the present California statute and our statute, which latter are practically identical. In spite of that, I think the principle of law laid down in Carrol v. Sibenthalor governs in the instant case. We discovered a later case, that of Perrin v. Honeycutt, (Cal.) 77 Pac. 776, which discusses the present California statute and cites with approval the quotation from Carroll v. Giebenthaler, supra, and holds that the Board of County Supervisors, which corresponds to our Board of County Commissioners, has no power to dispense with the provisions of the statutes and allow a claim which has not been filed more than one year after the claim accrued. Under our statutes and the cases which we have cited, we are of the opinion that the Board of County Commissioners should not allow the claim of the Pocatello Trust & Title Company.

We have cited the authorities for your benefit, for it may be that after you read them you will not be of the same opinion as we, and your opinion, of course, will be controlling with the County Commissioners.

Isaac McDougall, Pocatello, Idaho, October 18, 1921.

University Extension: Special Levy.

Query: May Boards of County Commissioners make special levy of taxes for University Extension work?

Held: Our answer depends entirely upon the provisions of the statutes of the State. There are three sections which have some bearing, to-wit: 3441, 3446, 3447, Compiled Statutes. The latter provides as follows: "The salary and expense of such extension agents shall be fixed by the University of Idaho Extension Division, acting in co-operation with the executive committee of the County Farm Board and the Board of County Commissioners. The Commissioners of said county are hereby authorized and empowered to make provision for the payment of such salary and expense out of the general fund of the county or out of other available funds, not otherwise appropriated." You will note that not only does this fail to make any provision for a special levy, but it expressly authorizes and directs

the payment out of the general fund or other available or existing funds not otherwise appropriated.

B. E. Hyatt, Director Bureau Public Accounts, November 2, 1921.

Watermaster's Salary: Collection.

Query: Is the collection of State Watermaster's salary considered as personal property; also, is the Assessor responsible?

Held: Such collection is not considered as personal property, and the Assessor is not responsible therefor.

Memo to County Assessors of State of Idaho, January 1, 1922.

TOBACCO LICENSE

Concession.

Query: Where a licensed dealer has a concession at a baseball park, where he sells tobacco probably once a week, would this constitute a separate location?

Held: In our opinion, it would require a separate license for the baseball park concession. While the decision may seem extreme, yet the law, as we read it, is intended to be broad and comprehensive.

Eberhardt Investment Co., Lewiston, Idaho, April 21, 1921.

Lumber Companies: Commissaries.

Query: Under Senate Bill 327, which is Chapter 262, 1921 Session Laws, would a lumber company keeping tobacco in its commissary at different camps, as an accommodation to the men, be required to have a license in order to handle the tobacco, when the amount of the license fee is so much that it would not compensate the companies sufficiently to enable them to take out the license.

Held: It is our opinion that it is necessary for the company to have a license if they sell tobacco at their commissary. I know personally that this was the intention of the Legislature, in addition to the plain provision which was put into the bill, and I argued with the committee of senators and representatives, who were preparing the bill, against such provision, and used the lumber companies and mining camps as examples. I argued from the standpoint of the lack of sufficient business and the lack of miners in such community, and also from the standpoint of the revenue produced by the license fee. I suggested that if they did not want to produce revenue, but only to enforce the provisions of law, they could do so as well by charging a nominal fee, of $5.00, for instance, for the license, simply to cover the overhead expense of carrying out the law. However, they decided both matters to the contrary, with the full intention of letting all be on an equality, whether they did a big or little business, and required the full license fee.

E. W. Wheelan, Sandpoint, Idaho, April 26, 1922.

Lumber Company: Giving Tobacco Away.

Query: If a license is required by a lumber company keeping tobacco in its commissary at different camps, as an accommodation to the men, would the company be violating the act if they made free distribution of the tobacco at the commissary.

Held: We do not believe it would be a violation of the statute, nor would it require a license if the company distributed tobacco free, they buying the tobacco and giving it to the men without charge, as the law does not use the words "give away", but it is based on the proposition of having it in possession for barter or sale. Neither do we believe it would be a violation if the men in advance gave their money to the company to act as their agent in bringing them tobacco.

If the tobacco were bought by the company and kept in their commissary and sold to the men, the license would be required.

E. W. Wheelan, Sandpoint, Idaho, April 26, 1921.

Non-Resident Licenses.

Query: 1. Would a license be required of a wholesale tobacco firm in another State, which sends a truckload of tobacco, etc., into Idaho at stated intervals and takes orders from and delivers to retailers in Idaho?

Held: Yes, where the tobacco is sold direct from the wagon or truck and delivery is made at the time of the sale.

Query: 2. Is the Idaho law intended to require a license of wholesale dealers in other States, who supply retail dealers in Idaho with tobacco ,etc.?

Held: No. The law does not make it necessary for wholesale dealers in other States to have a license to supply other retail dealers.

Query: 3. May a representative of a wholesale firm of another State distribute in Idaho to the public, free samples of tobacco, etc., without being licensed, or would it be necessary that such distribution of free samples be made by or under the direction of a licensed dealer of Idaho?

Held: We do not think a license is necessary.

Roger Wearne, Coeur d'Alene, Idaho, May 9, 1921.

Railroads.

Query: We have your inquiry as to whether or not Chapter 276, Session Laws, 1921, providing for licensing of all dealers in tobacco, requires separate license for each observation and dining car operating on the railroads of the State, or whether the railroad company may secure one license for all cars, it being stated that all the cars are operated in interstate commerce solely.

Held: As you are advised, the act, in summary, expressly forbids the sale of tobacco in any form without a license and, further, "without having such license conspicuously displayed at the place where goods, wares or merchandise of the above enumerated kinds or descriptions are bartered, sold or kept for sale."

It is also said in Section 1:

"If the same person, firm or corporation, barters, sells, keeps or has in possession for sale, cigars, cigarettes, cigarette papers or tobacco in any of the forms, products or compounds hereinbefore mentioned in more than one place, separate license shall be required for each such separate place."

We therefore see no way to avoid the conclusion, on the face of the act itself, that separate license would be required for each car.

The only thing, on first thought, that might arise is the question whether the statement that the cars are all moving in interstate commerce has any bearing. The general proposition that the States may not burden or interfere with interstate commerce is, of course, axiomatic. For this rule to have any effect here we would have to say that the requiring of a license and the payment of a fee for dining cars or observation cars to enable them to sell tobacco to passengers, placed a burden or interfered with interstate commerce. We are of the opinion that the prohibition or regulation of sales of tobacco to passengers traveling in interstate commerce is neither a burden, hindrance nor interference with interstate commerce in any manner.

In summary, under the law, we consider that a separate license is required from each dining and observation car.

Mr. Paul Davis, Director of Licenses, April 25, 1921.

Separate Place of Business: Bond and License.

Query: Is it necessary to purchase a tobacco license for each of two stores owned by one man, or would one license and bond be sufficient for both of them?

Held: It will be necessary to have a license and bond for each separate place of business.

Sadduth & Tingwall, Glenns Ferry, Idaho, April 7, 1921.

Separate Stands: Hotel.

Query. 1. Where a hotel has two separate stands in the same room or in adjoining rooms, owned and operated by the same owner, although one may be at a hotel counter and another in a side or card room for the purpose of selling cigars and tobacco, is it necessary for such owner to have a license for each of these stands?

Held: It is our opinion that where the facts exist as you relate them and the stands are all on one floor, one license is sufficient.

Query: 2. Where the same facts exist, except that the room is on a different floor in the same building, is it necessary to have an additional license?

Held: Yes.

Paul Davis, Bureau of Licenses, January 10, 1922.

Wholesale Department.

Query: You have a truck going out into the country taking orders and delivering from it. Would that require a separate license?

Held: It is our opinion that where deliveries are made from a truck it is necessary to have a separate license. Where the traveling man takes orders and the goods are shipped from without the State, it is our opinion that such would be interstate commerce and would not require a license for the transaction.

Dan O'Donnell, Coeur d'Alene, Idaho, April 22, 1921.

Wholesale: Non-Resident.

Query: Are wholesalers and manufacturers outside the State of Idaho offering tobacco for sale by circular, sample or personal representation in Idaho, required to take out a license under the provisions of Chapter 262, 1921 Session Laws?

Held: It is our opinion that wholesalers and manufacturers outside of the State offering tobacco for sale by circular, sample or personal representation would not be required to take out a license, if the orders were to be filled outside of the State. If, however, the goods are delivered at the time of taking orders, a license would be required.

Southern Idaho Wholesale Grocery Co., Twin Falls, Idaho, April 20, 1921.

Wholesale: Non-Resident.

Query: Must each license issued to a company having several places of business be accompanied by a separate bond, or will one bond cover two or more licenses issued to one company?

Held: The law requires a bond for each license, and any person or company doing business in several places will have to put up a bond for each individual license.

Southern Idaho Wholesale Grocery Co., Twin Falls, Idaho, April 20, 1921.

Wholesale Department.

Query: Is a license required for a wholesale department which is conducted in the same place of business as the retail department?

Held: In our opinion it is.

Dan O'Donnell, Coeur d'Alene, Idaho, April 22, 1921.

WATER

Water: Sufficient Amount.

Query: I have your inquiry as to the following:

"A" offers final proof on a water right; you happen to know that he already has a water right for this land which you deem sufficient. You ask if your department has power to pass upon the question as to whether he can have any more water.

Held: In our opinion the department has a right to investigate in this connection only the question of whether he has put it to beneficial use, and this, in the narrow sense, of finding out whether he has actually used it on the lands as required by law.

We do not think the department has the power to go any further and to pass upon the question of how much he needs it; in other words, on the duty of water. To our mind that will be left for the court.

W. G. Swendsen, Commissioner Reclamation, January 20, 1922.

WORKMEN'S COMPENSATION ACT.

Agricultural Pursuits: Section 6216; Written Acceptance.

Query: We are in receipt of your letter of July 13th setting out that the department has issued a workmen's compensation policy to an employer engaged in the occupation of farming, which contains the stipulation required in Section 6282, Compiled Statutes, that the policy covers "the entire liability of the employer to his employees covered by the policy . . ."

Section 6216, Compiled Statutes, enumerates the kinds of employment which shall not be covered by the provisions of the compensation act, among which is "agricultural pursuits," but the same section makes this exception, "unless the employer and employee expressly agree in writing, filed with the board, that the provisions of the chapter shall apply." In the instant case as we understand the facts there was no such written agreement, but in spite of that fact a policy was issued, and under these circumstances an employee of the insured, while engaged in putting up hay, received an injury which resulted in his death. Your inquiry is as to whether or not the department is liable for the payment of benefits to the dependents of the deceased under the compensation act.

Held: In our opinion the department is not liable, neither is the employer protected by the provisions of the workmen's compensation act. Section 6213 of the compensation act provides that it applies to employments "not expressly specified in Section 6216," which is quoted above. Section 6325 provides that employment includes the pursuits specified in Section 6216 "when the employer and employe shall have elected to come under the chapter as in said section provided." Section 6217 provides for the payment of compensation only in case of "personal injury by accident arising out of and in the course of any employment covered by this chapter." Section 6288, creating the State insurance fund, limits its purpose to that of "insuring employers against liability for compensation under this workmen's compensation law." Section 6321, as amended by 1921 Session Laws, page 482, expressly states:

"It does not include any person engaged in any of the excepted employments enumerated in Section 6216 unless an agreement, as provided in said section, is in force between employer and employee, making the provisions thereof applicable."

In summary, the workmen's compensation law and the right of any person to receive an award for injuries, is limited to the classes of employment embraced within the act, either by its own terms or by written agreement between employer and employee. Your department has absolutely no power or authority to issue any contract of insurance except for injury compensable under the act, and it is expressly provided that agricultural pursuits are not included within the terms of the act unless written agreement has been made to that effect.

D. W. Church, State Insurance Manager, July 13, 1921.

Cooperative Irrigation Companies: Compensation Act.

Query: Are cooperative irrigation corporations, which are not organized for the purpose of pecuniary gain, subject to the workmen's compensation act?

Held: No.

John W. Lee, Secretary Farmers' Protective Irrigation Association, Idaho Falls, Idaho, February 17, 1922.

Claims: Notice: Statute of Limitations.

Query: Replying to your letter of March 23 as to when the giving of claim for compensation is barred by lapse of time in cases of injury other than death, you will notice that under Section 6243 an injured employee is required to do two things: Notice must be given the employer as soon as practicable; and (2) claim must be made within one year. The two are distinct, the times for doing them are distinct, but the notice might include the claim. But if I understand the facts correctly, it did not in the case before you.

Under Section 6246, it is said:

"Want of notice or delay in giving notice shall not be a bar to proceedings under this chapter if it be shown that the employer, his agent or representative, had knowledge of the accident, or that the employer has not been prejudiced by such delay or want of notice."

You will note, however, that this refers expressly to the matter of giving notice and says nothing about the matter of making claim. There is no similar provision which waives the bar of the statute in making claim. I am therefore forced to the conclusion that under the express terms of the statute claim must be made within one year.

In this connection I should add that I don't think it makes any difference when your department got either the notice or claim, and that you would in any case be bound by the time when notice or claim was made to the employer.

State Insurance Fund, March 27, 1922.

Executive Officers of Corporation: Benefits.

Query: Are executive officers of a corporation engaged in the business of the corporation and which is one carried on for pecuniary gain, included in the workmen's compensation act?

Held: Considering the provisions of Sections 6217, 6320, 6321 and 6221, it is our opinion that not only are the executive officers of a corporation employees within the meaning of the workmen's compensation act, but that no agreement may be made exempting the officers from the benefits of the act.

Industrial Accident Board, February 17, 1922.

Fruit Farm: Benefits.

Query: You are operating a small fruit farm and as the harvest season approaches you desire to know the extent of your liability in case of accidental injury to parties working in the orchard, and if it is necessary for you to carry insurance.

Held: In our opinion you are exempted from the provisions of the compensation act under Section 6216 Compiled Statutes. If, however, you are operating a custom packing house, it is our opinion that you would not be engaged in purely agricultural work, and that you must take out industrial insurance. Do not understand us as saying that, although the law does not compel you to come under the compensation act while engaged in agricultural pursuits, you are exempted from liability for negligence.

W. C. Fox, Meridian, Idaho, July 29, 1922.

Highway Districts: Hauling by Contract.

Query: The State Insurance Department has taken the position that highway districts are obligated to pay for insurance on men who haul gravel by contract. That is, the district in this case has its own gravel pits and the farmers and teamsters, on their own time, haul the gravel at an agreed price per yard.

Held: It is our opinion that under the provisions of Section 19, Chapter 219, 1921 Session Laws, the stand which the State insurance department has taken is correct.

Haynes & Wilbur, Attorneys, Payette, Idaho, August 16, 1922.

Jurors, Judges, Clerks of Election: Casual Employment.

Query: Are jurors, judges and clerks of election throughout the various counties of the State employees of the State under the workmen's compensation act?

Held: It is our opinion that under the provisions of Section 6216, Compiled Statutes, they are casual employees not within the protection of the compensation act.

State Insurance Manager, November 23, 1921.

Lump Sum Settlement: Effect of Death Thereon:

Query: Where a lump sum settlement is made with a person entitled to compensation under the workmen's compensation act and the claimant subsequently dies and prior to the time when the amount advanced would otherwise have become due and payable, can any portion of the lump sum be recovered?

Held: It is our opinion that it cannot; that the settlement remains final.

D. W. Church, Insurance Manager, September 8, 1922.

Lump Sum Settlement: Marriage: Effect.

Query: The law provides that when a widow marries her compensation ceases. Should the department make a partial lump sum settlement? Would the department not be required to pay the children their full compensation until they have reached the age of eighteen, which is rquired by law?

Held: The law takes into consideration the very contingency as set forth above. It is a matter of policy for your department to decide in the matter of making lump sum settlements. The children would be entitled to full compensation.

Manager Insurance Fund, December 7, 1921.

Lessor: Lessee: Liability.

Query: A mining company is insured with the State insurance fund under the workmen's compensation act; the company is the owner of certain mining property; it executes a lease with one A. This lease expressly provides for the leasing of the property and in the lease it is required of the lessee to keep posted a notice informing workers at the mine that the lessee is responsible for all injuries; the lease also provides that the lessee shall insure under the workmen's compensation act; the operation of the property lies solely with the lessee. Your query under the facts as related, is whether or not, in case of injury, where no insurance is taken out by the lessee, the mining company is liable under its policy?

Held: It is our opinion that the mining company is not liable. Under the facts, as you relate them, the mining company is not "an employer". In our examination of the authorities, cases similar to the one at hand turned largely upon the relation which exists between the lessor and lessee. The courts have held that where the lessor does not retain any direction or control over the operations of the mine and does not, in effect, become a partner with the lessee, the lessor is not responsible. From an examination of the lease in the case in question it would appear that there was no relation of partnership nor that the lessor could control or direct anything about the operation of the mine.

In arriving at our conclusion, we have considered the following cases:

Maughelle v. J. H. Price & Sons, (Kans.) 161 Pac. 907.
Conners-Wayman Steel Co. v. Kilgore, (Ala.) 66 So. 609.
Higrade Lignite Co. v. Caurson, (Tex.) 219 S. W. 230.
Harger v. Harger, (Ark.) 222 S. W. 736.
Smith v. Workmen Fund, (Pa.) 105 Atl. 90.
Stricker v. Industrial, etc., (Utah) 188 Pac. 849.

Manager Insurance Fund, July 25, 1922.

National Guard: Benefits.

Query: Are members of the National Guard employees of the State, and as such entitled to the benefits of the workmen's compensation act?

Held: It is our opinion that members of the National Guard are not employees of the State in the sense contemplated in the compensation act. There are a number of reasons for this view, but one of those that moves us is that casual employment is excepted from the operation of the act. The National Guard duties, to our mind, are in the nature of casual employment. Besides, there has been no appropriation made for insuring such a liability for the State, or no appropriation made for paying it. In the absence of such appropriation it could not be paid.

D. W. Church, Insurance Manager, July 22, 1921.

Notice of Injury: Section 6243.

Query: Under Section 6243, is the notice of injury or claim required to be in writing?

Held: When this statute is construed in conjunction with Section 6244, it is our opinion that the notice of injury to the employer must be in writing.

Insurance Manager, March 4, 1922.

Partnership: Injury to Wife of One Partner: Liability.

Query: A partnership, consisting of two men, carries insurance in the state fund. The wife of one of the partners is injured while

employed as cook by the partnership. She has filed her claim for compensation. It is also well to add that she was dwelling in her husband's house at the time of the accident. Your inquiry is whether or not she is entitled to compensation.

Held: Section 6216, Compiled Statutes, provides that the workmen's compensation act shall not apply to "members of employer's family, dwelling in his house". The question is close and difficult. On the one hand, a partnership, unlike a corporation, is not an entity. It is in fact merely the individuals composing it, and payment of compensation to the wife of one of the partners in a community property state like ours is in one sense and in part nothing but payment of compensation to the employer himself. On the other hand, it cannot be denied that for some purposes the partnership is to be considered at least as a unit distinguishable from the individual partners composing it.

Even if it be said that the husband, being one of the partners, is an employer, it is equally true that the other partner is as much an employer as the husband. On the whole, we conclude that the spirit of the compensation act and the ends of justice will be more nearly served by the allowance of compensation in such a case than by its denial.

A second question arises, and that is whether or not the wife would be entitled to an increase of 5% by reason of having a husband and 5% additional for each child under the provisions of Section 6231, Compiled Statutes, as amended, 1921 Session Laws, page 476. As we construe the act, we hold that the increased compensation, as specified, is not allowable under the circumstances of this particular case, where there is a husband living, who is not shown to be incapacitated.

State Insurance Manager, December 12, 1921.

Reports: Chapter 217, 1921 Idaho Session Laws.

Query: Is it necessary for every employer to make semi-annual reports on January and July first respectively to the board of the average number of employes on the pay roll during the preceding months?

Held: Yes. See Chapter 217, 1921 Session Laws.

Mountain Lumber Company, Winchester, Idaho, April 25, 1921.

Road Overseers: Employer.

Query: Who is the employer of road overseers in road districts that are neither highway districts or good roads districts?

Held: Under the provisions of Section 1319 and 1329 we advise that the county is the employer.

Insurance Manager, January 16, 1922.

Special Deputy Sheriff; Casual Employment.

Query: Where a man was sworn in as special deputy for the purpose of assisting in making an arrest in emergency, and in making the arrest was shot in the forearm, is he entitled to compensation and medical benefits under the workmen's compensation law?

Held: It is our opinion that under the provisions of Section 6216, Compiled Statutes, the employment is casual, and no compensation is recoverable.

State Insurance Manager, December 16, 1921.

Section 6234, as Amended: Construction.

Query: We have your favor of August 4th asking our construction on the provisions of Section 6234, Compiled Statutes, as amended by Section 5, Chapter 217, 1921 Session Laws, page 477.

Held: After careful consideration we give it as our opinion, first, that the compensation for specific injuries as fixed by Section 6234 is additional to all other compensation; second, that the compensation for specific injuries is 55 per cent of the average weekly wages for the number of weeks specified in the schedule given in the statute, except in cases where 55 per cent would exceed the weekly compensation provided in Section 6231, and in such cases the amount would be the weekly compensation computed according to Section 6231.

Industrial Accident Board, August 5, 1921.

Teachers: Injuries on Way to School.

Query: Where a teacher going to her school is injured by a fractious horse which she was riding at the time, and which was not owned or furnished by the district for her to ride to and from school, is she entitled to the benefits of the compensation act?

Held: In our opinion she is not. If the school had agreed to furnish a conveyance for the teacher to go to and from school and she was injured in the course of the trip, then the district would be liable for the injury which would have arisen during the course of her employment, but where nothing is said in the contract of employment concerning the means of conveyance to and from school, the Industrial Accident Board of this State has held that the employing school district is not liable. The general rule is that no employment begins, in the absence of an agreement to the contrary, until the employee arrives at the place of employment.

E. A. Bryan, Commissioner of Education, February 13, 1921.

DOCKET 1921-1922

STATEMENT OF CASES ARGUED IN THE SUPREME COURT OF THE STATE

CRIMINAL APPEALS SUBMITTED

State v. Charles L. Anderson—Defendant convicted in the District Court of the Eighth Judicial District for Benewah County, Hon. R. N. Dunn, Judge, under syndicalism laws. Judgment affirmed.

State v. Miles Anthony et al.—Defendants convicted in District Court of the Second Judicial District for Latah County, Hon. E. C. Steele, Judge, under syndicalism laws. Judgment affirmed.

State v. Thomas Athens—Defendant convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. O. R. Baum, Judge, of possession of intoxicating liquor. Judgment affirmed.

State v. Tom Athens—Defendant convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. O. R. Baum, Judge, of possession of intoxicating liquor. Judgment affirmed.

State v. Everett Black—Defendant convicted in the District Court of the Eighth Judicial District for Kootenai County, Hon. W. F. McNaughton, Judge, of statutory rape. Judgment affirmed.

State v. Jerry Becker, Jr., and Harrison Becker—Defendants convicted in the District Court of the Sixth Judicial District for Lemhi County. Hon. F. J. Cowen, Judge, of herding sheep on cattle range. Judgment reversed and new trial ordered.

State v. William Boyles—Defendant convicted in the District Court of the Seventh Judicial District for Washington County, Hon. Isaac F. Smith, Judge, of the crime of grand larceny. Judgment reversed and new trial ordered.

State v. A. E. Blank—Defendant convicted in the District Court of the Seventh Judicial District for Washington County, Hon. Isaac F. Smith, Judge, of the crime of grand larceny. Judgment reversed and new trial ordered.

State v. Frank M. Brassfield—Defendant convicted in the District Court of the Third Judicial District for Ada County, Hon C. P. McCarthy, Judge, of the crime of grand larceny. Judgment reversed and new trial ordered.

State v. Albert Brown and Ray Christopherson—Defendants convicted in the District Court of the Ninth Judicial District for Madison County, Hon. J. G. Gwinn, Judge, of possession of intoxicating liquor. Judgment affirmed.

State v. Peter Bidegain et al.—Defendant convicted in the District Court of the Sixth Judicial District for Custer County, Hon. C. P. McCarthy, Judge, of violation of the herd law. Judgment reversed.

State v. T. C. Catlin—Defendant convicted in the District Court of the Third Judicial District for Ada County, Hon. Carl A. Davis, Judge, of running cattle at large in herd district. Judgment reversed.

State v. J. M. and Rebecca Chacon—Defendants convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. R. M. Terrell, Judge, of murder. Judgment affirmed.

State v. Roscoe A. Colvard—Defendant convicted in the District Court of the Seventh Judicial District for Canyon County, Hon. E. L. Bryan, Judge, of unlawful possession intoxicating liquor. Judgment affirmed.

State v. Hamp B. Cooper—Defendant convicted in the District Court of the Third Judicial District for Ada County, Hon. Charles F. Reddoch, Judge, of bootlegging. Judgment reversed.

State v. T. B. Cosgrove—Defendant charged with violation of "Blue Sky" law, in District Court of the First Judicial District for Shoshone County, Hon. A. H. Featherstone, Judge. Demurrer overruled and State appealed. Judgment reversed.

State v. Dong Sing and Lo Ming—Defendants convicted in the District Court of the Third Judicial District for Ada County, Hon. F. J. Cowen, Judge, of first degree murder. Judgment affirmed.

State v. Ed W. Douglass—Defendant convicted in the District Court of the Third Judicial District for Ada County, Hon. C. P. McCarthy, Judge, of the crime of burning hay. Judgment reversed.

State v. Joe Doyle—Defendant convicted in the District Court of the Eighth Judicial District for Shoshone County, Hon. R. N. Dunn, Judge, of criminal syndicalism. Judgment (no decision to date).

State v. William Dingman—Defendant convicted in the District Court of the Eighth Judicial District for Bonner County, Hon. R. N. Dunn, Judge, of criminal syndicalism. Judgment (no decision to date).

State v. John Otis Ellis—Defendant convicted in the District Court of the Second Judicial District for Clearwater County, Hon. W. W. Woods, Judge, under criminal syndicalism law. Judgment affirmed.

State v. Charles Ernst—Defendant convicted in the District Court of the Third Judicial District for Valley County, Hon. C. F. Reddoch, Judge, of first degree murder. Pardoned. Appeal dismissed.

State v. A. M. Farmer—Defendant convicted in District Court of the Sixth Judicial District for Bingham County, Hon. F. J. Cowen, Judge, of statutory rape. Judgment reversed.

State v. Spiro Fellis and George Georgantopoulos—Defendants convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. O. R. Baum, Judge, of possession of intoxicating liquor. Judgment reversed.

State v. Oscar Ford—Defendant convicted in the District Court of the Seventh Judicial District for Canyon County, Hon. E. L. Bryan, Judge, of adultery. Judgment affirmed.

State v. William D. Grover, Jr.—Defendant convicted in the District Court of the Sixth Judicial District for Bingham County, Hon. F. J. Cowen, Judge, of murder. Judgment reversed.

State v. E. M. Goodrich—Defendant convicted in the District Court of the Third Judicial District for Ada County, Hon C. P. McCarthy, Judge, of the sale of intoxicating liquors for beverage purposes. Judgment affirmed.

State v. Henry Halverson—Defendant convicted in the District Court of the Fourth Judicial District for Cassia County, Hon. W. A. Babcock, Judge, of murder. Judgment affirmed.

State v. T. E. Hawkins et al.—Defendants convicted in the District Court of the Second Judicial District for Latah County, Hon. E. C. Steele, Judge, under criminal syndicalism law. Judgment affirmed.

State v. Leonard Hurst—Defendant convicted in the District Court of the Fifth Judicial District for Franklin County, Hon. R. M. Terrell, Judge, of grand larceny. Judgment reversed.

State v. Albert Jutila and Matt Kohkonen—Defendants convicted in the District Court of the First Judicial District for Shoshone County, Hon. W. W. Woods, Judge, of simple assault. Judgment reversed.

State v. John Kootlas—Defendant convicted in the District Court of the Seventh Judicial District for Adams County, Hon. E. L. Bryan, Judge, of robbery. Judgment affirmed.

State v. Dennis McCarthy et al.—Defendants convicted in the District Court of the Eighth Judicial District for Benewah County, Hon. R. N. Dunn, Judge, under criminal syndicalism law. Judgment affirmed.

State v. J. J. McMurphy—Convicted in the District Court of the First Judicial District for Shoshone County, Hon. W. W. Woods, Judge, under syndicalism law. Judgment affirmed.

State v. Frank Miller—Defendant convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. O. R. Baum, Judge, of the crime of cattle stealing. Judgment reversed.

State v. E. L. Montgomery—Defendant convicted in the District Court of the Eighth Judicial District for Benewah County, Hon. R. N. Dunn, Judge. Judgment affirmed.

State v. Joseph H. Moodie—Defendant convicted in the District Court of the Sixth Judicial District for Lemhi County, Hon. F. J. Cowen, Judge, of violation of cattle range law. Judgment affirmed.

State v. Raymond Moore—Defendant convicted in the District Court of the Third Judicial District for Ada County, Hon. C. F. Reddoch, Judge, of possession of intoxicating liquors. Judgment (no decision to date).

State v. W. A. Myers and V. A. Fitzgerald—Defendants convicted in the District Court of the Third Judicial District for Ada County, Hon. C. F. Reddoch, Judge, of conspiracy to defraud. Judgment affirmed.

State v. Henry Neidermark—Defendant convicted in District Court of First Judicial District for Shoshone County, Hon. W. W. Woods, Judge, of possession of intoxicating liquor. Judgment affirmed.

State v. Joe Orbea—Convicted in the District Court of the Fourth Judicial District for Lincoln County, Hon. H. F. Ensign, Judge, of violation of liquor laws. Judgment affirmed.

State v. David William Odell—Defendant convicted in District Court of the Fifth Judicial District for Bannock County, Hon. O. R. Baum, Judge, of adultery. Judgment affirmed.

State v. Mike Petrogalli—Defendant convicted in the District Court of the Second Judicial District for Latah County, Hon. E. C. Steele, Judge, of possession of intoxicating liquor. Judgment affirmed.

State v. Melvin Pettit—Convicted in the District Court of the Fourth Judicial District for Twin Falls County, Hon. W. A. Babcock, Judge, of statutory rape. Judgment affirmed.

State v. Gust Poulos and Leona Baker—Defendant convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. O. R. Baum, Judge, of adultery. Judgment (no decision to date).

State v. Henry Poynter—Defendant convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. R. M. Terrell, Judge, of unlawful possession of intoxicating liquor, second offense. Judgment affirmed.

State v. Vicente Ramirez and Pedro Espinoza—Defendants convicted in the District Court of the Ninth Judicial District for Madison County, Hon. J. G. Gwinn, Judge, of first degree murder. Judgment affirmed.

State v. 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 assault with intent to commit rape. Judgment affirmed.

State v. Fred Root—Defendant convicted in the District Court of the Seventh Judicial District for Washington County, Hon. Issac F. Smith, Judge, of the crime of unlawful possession of intoxicating liquor. Defendant pardoned. Appeal dismissed.

State v. J. A. Sheehan, alias W. T. Watson—Defendant convicted in the District Court of the Third Judicial District for Ada County, Hon. Carl A. Davis, Judge, of otaining money under false pretenses. Judgment affirmed.

State v. H. W. Sawyer—Defendant convicted in the District Court of the Eleventh Judicial District for Twin Falls County, Hon. W. A. Babcock, Judge, of practicing surgery without a license. Judgment (no decision to date).

State v. Harold M. Sims—Defendant convicted in the District Court of the Eleventh Judicial District for Twin Falls County, Hon. W. A. Bacock, Judge, of adultery. Judgment affirmed.

State v. Phumn Singh—Defendant convicted in the District Court of the Seventh Judicial District for Washington County, Hon. B. S. Varian, Judge, of assault with intent to commit murder. Judgment reversed.

State v. Charles W. Snook—Defendant convicted in the District Court of the Sixth Judicial District for Lemhi County, Hon. F. J. Cowen, Judge, of running sheep on cattle range. Judgment affirmed.

State v. T. A. Sterrett—Defendant convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. O. R. Baum, Judge, of bootlegging. Judgment affirmed.

State v. Fermin Subisaretta—Defendant convicted in the Third Judicial District Court for Ada County, Hon. C. P. McCarthy, Judge, of violation of herd law. Judgment affirmed.

State v. Art Suennen—Defendant convicted in the Distrit Court of the Fifth Judicial District for Bear Lake County, Hon. R. N. Terrell, Judge, of kidnaping. Judgment affirmed.

State v. Frank Sullivan, Edw. Grautman, Frank Edward Walch and C. W. Darcy—Defendants convicted in the District Court of the Fourth Judicial District for Lincoln County, Hon. H. F. Ensign, Judge, of burglary. Judgment reversed.

State v. A. J. Steensland—Convicted in the District Court of the Fourth Judicial District for Gooding County, Hon. W. A. Babcock, Judge, of transporting intoxicating liquor. Judgment reversed.

State v. Otis Syster and Mollie Syster—Defendants convicted in the District Court of the Fourth Judicial District for Gooding County, Hon. H. F. Ensign, Judge. Judgment affirmed.

State v. Henry C. Voss—Defendant convicted in the District Court of the Eighth Judicial District for Kootenai County, Hon. J. M. Flynn, Judge, of manslaughter. Judgment reversed.

State v. George H. Waterman—Defendant convicted in the District Court of the Tenth Judicial District for Lewis County, Hon. Wallace N. Scales, Judge, of making false bank report. Judgment reversed.

State v. John White—Convicted in the District Court of the Seventh Judicial District for Canyon County, Hon. E. L. Bryan, Judge, of unlawful possession of intoxicating liquor. Judgment affirmed.

State v. Jerry Williams—Defendant convicted in the District Court of the Fifth Judicial District for Bannock County, Hon. O. R. Baum, Judge, of first degree murder. Judgment affirmed.

State v. Lavon Williams and Dewey Arnold—Defendants convicted in the District Court of the Ninth Judicial District for the County of Madison, Hon. J. G. Gwinn, Judge, of assault with intent to commit rape. Judgment affirmed.

State v. F. A. Young—Defendant convicted in District Court of the Third Judicial District of Owyhee County, Hon. Raymond L. Givens, Judge, of the crime of murder in the second degree. Appellant died pending appeal and appeal dismissed by stipulation.

CRIMINAL APPEALS PENDING

State v. Jess Abbott et al.—Received notice of appeal December 9, 1921.

State v. Daniel Breyer—Received notice of appeal May 1, 1922.

State v. Vicente Bilbao—Received notice of appeal June 20, 1921.

State v. Walter Cosler—Received notice of appeal August 31, 1922.

State v. Roy Clemens and C. A. Allen—Notice of appeal June 28, 1922.

State v. Frank Cox—Received notice of appeal November .., 1921.

State v. Joe Chacon—Received notice of appeal November 25, 1921.

State v. O. N. Coonrod—Received notice of appeal July 30, 1921.

State v. William Foell—Received notice of appeal February 28, 1922.

State v. A. A. Hanson and Walter Shaw—Notice of appeal October 9, 1922.

State v. T. C. Hall—Received notice of appeal June 20, 1921.

State v. Jack Hunsaker—Received notice of appeal October 5, 1922.

State v. Frank Keyser—Received notice of appeal May 23, 1921.

State v. John McMahon—Received notice of appeal May 31, 1922.

State v. Gilbert Montroy—Received notice of appeal April 15, 1922.

State v. F. F. Main—Received notice of appeal, August 1, 1921.

State v. Nick Mitchell and Clyde H. Smith—Received notice of appeal November 15, 1919.

State v. Parley Nelson—State's appeal filed January 21, 1922.

State v. Leo Noonan—Received notice of appeal May 27, 1920.

State v. Paul and Floyd Price—Received notice of appeal June 24, 1922.

State v. C. S. Roe—Received notice of appeal December 14, 1921.

State v. Louie Sayko—Received notice of appeal February 20, 1922.

State v. Don Uttley—Received notice of appeal May 7, 1921.

State v. E. B. Waddell—Received notice of appeal May 3, 1921.

State v. Indah Walker—Received notice of appeal.

State v. F. A. Young—Received notice of appeal November 19, 1921.

State v. Roy Yugi—Received notice of appeal December 30, 1921.

UNITED STATES SUPREME COURT

Etate of Idaho v. J. N. McBride—Appeal from judgment of conviction of violation of prohibition law. Judgment affirmed.

SUPREME COURT

Matters of Original Jurisdiction

State of Idaho ex rel. C. W. Allebaugh v. E. G. Gallet, State Auditor—Application for alternative writ of mandate. Granted.

Blaine County Investment Co. v. E. G. Gallet, State Auditor—Application for writ of mandate. Denied.

State of Idaho ex rel. D. W. Davis, R. L. Black and W. J. Hall vs. D. F. Banks, State Treasurer—Application for alternative writ of mandate to compel employment of brokerage agent and advertising for bids for sale of highway bonds. Denied.

Fred Herrick, doing business as Export Lumber Co., vs. E. G. Gallet, State Auditor—Petition for writ of mandate. Denied.

In the matter of the application of C. K. Hinkle for writ of habeas corpus. Denied.

State of Idaho ex rel. D. W. Davis and R. L. Black vs. C. S. Kingsley—Application for writ of mandate to compel payment percentage teachers' salaries into retirement fund. Denied.

S. Grover Rich and W. L. Burton vs. B. S. Varian, District Judge—Petition for writ of prohibition. Denied.

State of Idaho ex rel. Black vs. State Board of Education and Board of Regents of University of Idaho—Application for writ of prohibition against defendants using university money except through State treasury. Denied.

UNITED STATES CIRCUIT COURT OF APPEALS

Fred W. Gooding et al. v. Idaho Irrigation Co. et al.—Suit to obtain injunction to prevent further sale of water by Idaho Irrigation Co. Judgment for plaintiffs affirmed.

Twin Falls Salmon River Land & Water Co. v. State Board of Land Commissioners—Judgment for defendant affirmed.

UNITED STATES DISTRICT COURT

Charles Hart et al. v. C. A. Bicknell et al. and State of Idaho.

A. H. Karatz v. Lion Bonding & Surety Co.

State ex rel. Public Utilities Commission v. Mountain States Telephone Co.—Petition for injunction to restrain defendants from putting into effect increased rates.

Mountain States Telephone & Telegraph Co. v. County Treasurer of Canyon, Ada, Twin Falls, Cassia, Bonneville, Bingham and Bannock.

United States of America v. William L. Oliver et al.—Condemnation proceedings American Falls.

United States of America v. DeWitt Garrison Brown et al.

Utah Construction Co. v. B. B. Harger et al.

CIVIL CASES ON APPEAL TO SUPREME COURT

(Decided)

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

Charles O. Dumas v. E. A. Bryan et al. (Board of Education). Judgment for defendant reversed.

E. Ralph Evans v. W. G. Swendsen, Commissioner of Reclamation Judgment for plaintiff affirmed.

Mary A. Jorgenson & Spokane & Eastern Trust Co. v. L. E. Bigelow, McAllister, et al. State Intervenor.

State v. Leroy C. Jones and American Surety Co.—Defendants' appeal denied.

Matter of application for Habeas Corpus for Dean Martin, inmate of St. Anthony institution—Granted.

Joseph Martin and C. A. Russell v. George W. Walker—Dismissed.

State v. Charles S. Moody—Dismissed.

M. E. Roby and 12 Other Dentists v. R. O. Jones, Commissioner of Law Enforcement—Judgment for plaintiffs affirmed.

Matter of appeal of First National Bank of Weiser—Judgment for plaintiff affirmed.

Harry Watkins et al. v. Mountain Home Cooperative Irrigation Co. —Dismissed for failure to prosecute.

CIVIL CASES ON APPEAL TO SUPREME COURT
(Unfinished)

A. J. Aylor v. Swendsen—Application for writ of mandate.

Drainage District No. 2, Ada County, v. Ada County.

State and George W. Rice v. Twin Falls Land & Water Co. et al.—Application for writ to compel defendant to furnish water under State contract.

East Side Blaine County Livestock Association v. Board Land Commissioners—Alternative writ of mandate to compel auction of lease certain State grazing lands. Briefs filed.

H. K. Fritchman v. Catherine R. Athey et al. (Tuberculosis Commission)—Suit to enjoin construction tuberculosis hospitals. Submitted.

J. G. Fralick, as Commissioner of Finance, etc., v. Raymond Guyer —Submitted.

Myra Fisk v. Bonner Tie Co.—Suit regarding award on death of A. N. Fisk.

Tony Rizzi and Tony Motetta, executors estate Joe Ghirardi, from order Board County Commissioners Shoshone County.

C. A. McKenzie and Jas. Armstrong v. Vincent D. Miller and State of Idaho.

Homer C. Mills v. Board County Commissioners Minidoka County & Min. Co.

Northern Pacific Ry. v. Idaho Co., State et al.

L. O. Naylor v. A. H. Simmons—Suit to recover possession auto seized under liquor laws.

CIVIL CASES TRIED IN DISTRICT COURTS
(Finished)

Fred H. Brincken v. Milton M. Adamson et al—Suit in District Court of Second Judicial District of State of Idaho, for Latah County, to quiet title.

D. F. Banks, State Treasurer, v. Lion Bonding & Surety Company et al.

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

Matter of Drainage District No. 4, Benewah County.

Ralph G. Hoseley, Executor, v. E. G. Gallett, State Auditor—Contest, computation, transfer tax. Final decree for defendant.

State v. S. F. Hartman—Suit for collection overpayment salary as chief clerk. Judgment for defendant.

State v. Fred Herrick and Export Lumber Co.—Injunction to prevent timber cutting in Heyburn Park. Judgment for plaintiff, December 28, 1920.

State ex rel. Black and Hall v. Fred Herrick and Milwaukee Lumber Co.—Injunction proceedings concerning Heyburn Park. Judgment for plaintiff, December 28, 1920.

Idaho State Poultry & Pet Stock Assn. v. Miles Cannon, Commissioner—Demurrer to petition. Demurrer sustained.

State v. Leroy C. Jones & American Surety Co. Suit to recover shortages approximating $25,000 in fish and game office. Judgment for plaintiff June 1, 1922, in amount of $1139.50.

Martha M. Knight, Executrix, v. Lion Bonding & Surety Co.—Garnishment. Judgment for plaintiff, July 23, 1921.

Crawford Moore v. Craster Farm & Mortgage Co.—Foreclosure action. State defaulted.

Matter of application for habeas corpus for Dean Martin, inmate of Industrial School—Granted.

State v. Charles S. Moody—Suit for recovery of $1523.71. Judgment for plaintiff in sum of $610.75, June 17, 1922.

J. M. Neil and Mike Hyde and G. F. Brown et al. v. W. G. Swendsen, Commissioner, et al.—Judgment for plaintiff.

State v. National Surety Company—Action on construction bond of King Hill Extension Co. Judgment for defendant.

Pullman Company v. State Board of Equalization et al.—Action to secure return tax paid under protest. Compromised.

CIVIL CASES IN DISTRICT COURTS
(Pending)

Laura A. Ake v. W. G. Swendsen, Commissioner Reclamation, et al.—Suit in District Court, Third Judicial District, Elmore County. Petition for writ of mandate to compel delivery of waters of Canyon Creek.

R. D. Bailey v. Idaho Irrigation Co., W. G. Swendsen et al.

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

F. F. Beeker v. D. W. Davis et al. (Land Board).

Boise Title & Trust Co. v. Fruitland Acreage Co. et al.

Thomas Costello et al. v. W. W. Parish et al. (Board of County Commissioners).

Clearwater County v. State of Idaho—Condemnation for highway right of way.

Ira R. Chaney v. W. G. Swendsen—Water adjudication in District Court of Fourth Judicial District for Blaine County.

Thomas M. Carlisle v. W. G. Swendsen et al.—Water adjudication in District Court of Sixth Judicial District for Butte County.

Davis et al. v. Stoecker, State Intervenor.

Harry W. Espey v. State of Idaho—Suit to quiet title.

George L. Exeter et al. and State v. Andrew Thacker.

State and Fralick v. Commercial & Savings Bank of Mountain Home—Insolvency proceeding.

State and Fralick v. Grangeville Savings & Trust Co.—Insolvency proceeding.

Henry A. Foss v. Washington Wolheter & Palouse Pottery Co., State Intervenor.

Fralick v. Coeur d'Alene Bank & Trust Co.—Insolvency proceeding.

State and Fralick v. Stockgrowers Bank & Trust Co.—Insolvency proceeding.

Maurice Falk et al. v. State of Idaho—Action in District Court of Ninth Judicial District of State of Idaho for Bonneville County, to quiet title.

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

First National Bank of Weiser v. Clarence Van Deusen, State Auditor, et al.—Petition for writ of mandate.

Will Graefe v. Galland Trading Co., State Intervenor.

Matter of Drainage District No. 1, Gem County.

William Heaton v. State of Idaho—Suit to clear title.

State v. A. C. Hindman—Suit for collection moneys paid for salary, etc.

Ada Harrison v. W. G. Swendsen, Commissioner of Reclamation—Action in District Court of Fourth Judicial District of State of Idaho, Camas County, for decree to waters of Cow Creek.

Emil Hendrickson v. W. C. Griffin et al. and State of Idaho—Suit to quiet title.

B. B. Harger et al. v. W. 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.

Craig Mountain Lumber Co. v. Industrial Accident Board—Appeal from decision of board in Houghton case.

Independent Irrigation Co. v. Long Island Irrigation Co. et al.

Idaho Rose Milling Co. v. McCammon Ditch Company—Involving Lava Hot Springs water.

William Koeppe v. W. G. Swendsen, Commissioner of Reclamation et al.—Contest of change of point of diversion of water.

Grover Kirkpatrick et al. v. W. G. Swendsen, Commissioner.

Matter of Insolvency of Leadore State Bank of Leadore.

Harry F. Larson et al. v. S. H. Chapman and W. G. Swendsen, Commissioner of Reclamation—Action to enjoin diversion of irrigation waters.

David W. Lemon v. W. G. Swendsen, Commissioner of Reclamation—Adjudication of water right on Big Lost River.

S. K. Mittry et al. v. Bonneville County.

D. L. McClung v. Twin Falls North Side Land & Water Co.

George McKean v. Idaho Irrigation Co. and W. G. Swendsen, Commissioner of Reclamation.

Miller-Cahoon Co. v. Wade et al.

Mountain Home Water Users' Protective Assn. v. Mountain Home Cooperative Irrigation Co. and W. G. Swendsen.

Carl H. Neusiis v. Mascot Mining & Milling Co.

Leo Nowack v. State of Idaho, Flora M. Sisk et al.—Suit to quiet title.

Oregon Short Line Railroad v. State and A. L. Bennett—Condemnation proceedings Homedale Branch.

Plummer Gateway Highway District v. State—Action to obtain title for public roads.

Portland Feeder Co. v. Lion Bonding & Surety Co.—Writ of attachment.

Payette-Boise Water Users' Assn. v. T. W. Tarr et al.

Matter of appeal of St. Joe Boom Co. from award of Industrial Accident Board to Elizabeth Pyre and children.

I. Thomas Ramsey v. E. L. Lawyer et al.—Water case.

Matter of application of T. B. Richardson v. R. N. Stanfield before Industrial Accident Board.

Rupert Electric Co. v. Public Utilities Commission—Appeal from order of commission fixing rates.

John F. Shelley v. State and State Board of Land Commissioners—Condemnation proceedings for purpose of power plant.

Minnie Schodde v. W. G. Swendsen et al.—Water case.

A. R. Shimmin v. W. G. Swendsen, Commissioner.

Alvor C. Thompson et al. v. Edward Mulligan and W. G. Swendsen, Commissioner of Reclamation.

E. C. White v. R. W. Redington and Department of Public Works.

Joe Werry v. W. G. Swendsen, Commissioner of Reclamation—Water right.

Lena Webb v. John W. Noell.

Fred E. Pearl v. J. E. Weston and Bruneau State Bank.

A. W. Warr v. W. G. Swendsen, Commissioner—Summary adjudication water right.

Ciriaca Ybaibarriaga v. James Farmer et al.—Appeal from decision of Accident Board.

MORTGAGE FORECLOSURES

(Suits Closed)

State of Idaho v. Norton et al.
State of Idaho v. Foulks et al.
State of Idaho v. Post et al.
State of Idaho v. McTaggart et al.
State of Idaho v. Gilman Estate.
State of Idaho v. Field et al.
State of Idaho v. Smith et al.
State of Idaho v. Rockwell et al.
State of Idaho v. Allen et al.
State of Idaho v. Cox et al.
State of Idaho v. Julius Bauman.
State of Idaho v. Rettig et al.
State of Idaho v. Morrison et al.
State of Idaho v. Peters et al.
State of Idaho v. Drennan et al.
Clara Shinn v. O. S. L., Lane et al.

SUITS PENDING

(December 1, 1922)

195. State v. John E. Beede et al.
260. State v. Ethel Tonkin Clark, acting as executrix of estate of Peter Meves, deceased, et al.
469. State v. Nick Altmyer et al.
528. State v. Otto A. Altschul et al.
672. State v. Chas. P. Hartley et al.
763. State v. Ben Muir et al.
794. State v. Frank A. Johnson et al.
880. State v. William G. Schmelzel et al.
891. State v. R. C. McKinney et al.
929. State v. Caroline E. Cruse et al.
944. State v. Fred J. Colburn et al.
1048. State v. Olive L. Coate et al.
1053. State v. Chas. F. Shuck et al.
1185. State v. Emma J. Lane et al.
1303. State v. Josiah A. Cruse et al.
2817. State v. Oliver B. White et al.
2301. State v. William J. Buhler et al.
2306. State v. Arthur O. Moore et al.
2307. State v. James L. Bowlden et al.
2521. State v. Amos B. Jacklin et al.
2525. State v. Ross A. Jacklin et al.
2534. State v. Edward L. Brackett et al.
2543. State v. Waldemar Nielsen et al.
2544. State v. Edgar Scott et al.
2547. State v. William Barben et al.
2568. State v. Loa B. Larson et al.
2575. State v. Charles B. Jones et al.
2611. State v. Ephriam Buhler et al.
2770. State v. Robert Barben et al.
2771. State v. Rachel Buhler et al.
2773. State v. John T. Workman et al.
2774. State v. William J. Buhler et al.
2944. State v. Carl M. Grayson et al.
2945. State v. G. W. Grayson et al.
2946. State v. Vibert I. Marshall et al.
2977. State v. Mary J. Curley et al.
2978. State v. Albert E. Cahoon et al.
2979. State v. George E. Cahoon et al.
2980. State v. George B. Curley et al.
2987. State v. John Boyd Cahoon et ux.
3051. State v. Fred R. Nagel et al.
3126. State v. David G. Taggert et al.
750. State v. Edgar L. Montgomery et al.
780. State v. Joseph R. Bailey et al.
729. State v. Charles O. Workman et al.
317. State v. Frederick Palmer et al.
761. State v. Walter A. Shaw et al.
1187. State v. F. C. Christ et al.
2034. United States of America v. State of Idaho.

FINANCIAL REPORT OF ATTORNEY GENERAL'S OFFICE FOR THE BIENNIUM 1921-1922

Appropriation for Two Years:		**Expenses During Two Years:**	
Salaries:		Salaries:	
Attorney General	$ 8,000.00	Attorney General	$ 8,000.00
First Assistant	6,000.00	First Assistant	5,983.34
Second Assistant	5,000.00	Second Assistant	4,986.04
Third Assistant	4,800.00	Third Assistant	4,786.88
Special Assistant for Public Utilities Commission	6,000.00	Special Assistant for Public Utilities Commission	5,983.34
Stenographers	6,080.00	Stenographers	5,804.31
Traveling Expenses	2,000.00	Traveling Expenses	1,402.93
Office Expense, Including Printing Reports and Briefs	3,425.00	Office Expenses	1,994.74
Total Appropriation for 1921 and 1922	$41,305.00	Total Expenditures for 1921 and 1922	$38,941.58

Balance of Unused Appropriation ..... $ 2,363.42

During the four years I have held office the Legislature has provided a Special Attorney for the Public Utilities Commission. This attorney was provided to be appointed by the Attorney General and be designated, as an assistant in the Attorney General's office. It was a new office, however, created for a specific purpose, and such assistant has always devoted his entire time to the work of the Public Utilities Commission and has never performed any duties in the Attorney General's office. The appropriation, as will be noted, for this Special Attorney is $6,000.00 for two years, or $3,000.00 per year.

To ascertain, therefore, a comparative expenditure of this department with other bienniums when there was no Special Assistant to the Public Utilities Commission, $6,000.00 should be subtracted from the amount expended as shown above, which would make the amount used by the Attorney General's office to compare with other bienniums the sum of $32,941.58. The work of the office has greatly increased in the last four years and I am pleased to be able to refer to the economy which has been practiced in the office to keep the expenditures at the above amount.

Respectfully,

ROY L. BLACK,
Attorney General.

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WORKMEN'S COMPENSATION ACT (Continued)