REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF IDAHO
1925-26

A. H. CONNER, Attorney General
†HERBERT WING, Assistant  SAM E. BLAINE, Assistant
xJAMES L. BOONE, Assistant  JOHN W. CRAMER, Assistant
xBARTLETT SINCLAIR, Assistant  LEON M. FISK, Assistant
Margery Scholes, Secretary, Lillian C. Fraser, Law Stenographer,
Dora M. Haas, Mortgage Clerk.
†Deceased
xResigned
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<tr>
<th>District</th>
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<td>Hugh A. Baker</td>
<td>Rupert</td>
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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 .................................................................1899-1909
Frank Martin .................................................................1901-1902
John A. Bagley .................................................................1903-1904
+J. J. Guheen .................................................................1905-1908
D. C. McDougall .................................................................1909-1912
Joseph H. Peterson ............................................................1913-1916
T. A. Walters .................................................................1917-1918
Roy L. Black .................................................................1919-1922
A. H. Conner .................................................................1923-1926
Frank L. Stephan .............................................................1927-

JUSTICES OF THE SUPREME COURT, 1925-1926
+Robert N. Dunn ...............................................................Coeur d'Alene
+William A. Lee ...............................................................Blackfoot
Alfred Budge .................................................................Pocatello
William E. Lee ...............................................................Moscow
Raymond L. Givens ............................................................Boise
Herman H. Taylor ............................................................Sandpoint
T. Bailey Lee ...............................................................Burley

Clerk of the Supreme Court—I. W. Hart

JUSTICES OF THE SUPREME COURT, 1927-1928
William E. Lee ...............................................................Moscow
Alfred Budge .................................................................Pocatello
Raymond L. Givens ............................................................Boise
Herman H. Taylor ............................................................Sandpoint
T. Bailey Lee ...............................................................Burley

Clerk of the Supreme Court—I. W. Hart

UNITED STATES DISTRICT JUDGE
Frank S. Dietrich .............................................................Boise

+Deceased
PROSECUTING ATTORNEYS FOR THE VARIOUS COUNTIES OF IDAHO
1927-1928

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<tr>
<th>County</th>
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REPORT OF ATTORNEY GENERAL

Honorable C. C. Moore,
Governor of Idaho,
Boise, Idaho.

Sir:

I have the honor to make this report concerning the affairs of this department up to December 1, 1926. I am attaching a transcript of the Attorney General's docket showing the status of cases handled during the past biennium. A digest of the more important opinions prepared and written by this office during the past biennium is also included in this report.

I wish to repeat my recommendation of two years ago that the Reclamation District Bond Commission law be repealed. I also wish to invite your attention to the recommendations made two years ago regarding the amendment of the inheritance tax laws of the state.

REVENUE LAWS

The revenue laws relating to the collection of personal property taxes have been in a chaotic condition since the decision of the Supreme Court of this state in the case of State vs. Malcom, reported in 39 Idaho, page 185. This decision held that Sections 3267 and 3307, C. S., which made it the duty of the assessor to collect certain personal property taxes, were unconstitutional. There are other sections to which the same principle would apply. This condition should be called to the attention of the legislature so that the resulting confusion can be cured. There has been a little difficulty in some of the counties, but on the whole, the splendid cooperation between the assessors, county auditors and tax collectors of most of the counties has prevented any serious loss of revenue. The condition, however, should be remedied at the earliest opportunity.
CLAIMS AGAINST THE STATE

The law relating to the work of the State Auditor and the Board of Examiners in the auditing and allowance of claims is archaic and cumbersome. The legislature has prescribed the procedure in the handling of claims against the state in minute detail. These provisions hamper the work of the State Auditor, and quite often work a distinct hardship on officials and employees who are required to travel on business of the state. I have filed with the State Auditor a copy of the official government travel regulations prepared by the Bureau of the Budget and approved by the President, effective October 1, 1926. These rules and regulations are the result of a very careful study of the entire question, and Idaho's system could well be modernized by taking advantage of the research and experience of the federal government. I recommend that the statute fixing a $5.00 per day limitation upon travel expenditures be repealed; that the other provisions requiring that receipts be furnished in all instances and prescribing in detail the form and manner of handling vouchers be repealed; and that a general statute be passed authorizing the Board of Examiners to make rules and regulations governing the whole question. For the Board of Examiners, I would recommend that all commutation for use of privately owned automobiles be dispensed with, and that an official or employee using his own car be reimbursed only for his actual expenditures for gasoline, oil and garage rent. While this might work a hardship in some instances, I believe it would effect a material saving for the state, and check a practice which is rapidly growing into an abuse.

I further recommend that, if the laws shall be changed as above suggested, the Board of Examiners model their
rules and regulations for travel and other expenses very closely upon those of the federal government which appear in the pamphlet filed with the State Auditor.

**PENITENTIARY**

I know that you are fully aware of the necessity of some relief for the congested condition at the state penitentiary. Eventually, the state will be forced to purchase land elsewhere and build a new prison. Until this is done, it is imperative that more cell room be provided. While the Warden has carried out the segregation policy of the board as well as could be expected under the circumstances, the legislature should be asked for a sufficient appropriation to complete the unfinished cell house now occupied by the shoe factory, and modern, up-to-date, steel cell equipment should be placed therein. This equipment could be moved to a new site when one is chosen. The legislature should also be requested to appropriate a sum sufficient to permit the construction of a dormitory outside the walls for the housing of trusties. It might be possible for this dormitory to be constructed from the earnings of the shirt factory, and the appropriation for that purpose might well take the form of an advance of funds to be repaid out of the earnings of the factory, as was the case with the original appropriation for the construction of the factory building.

**HABITUAL CRIMINAL LAW**

I would earnestly recommend the passage of an habitual criminal law for Idaho. While the population of our penitentiary has increased during the past two or three years, it has not been because of any particular increase in crime over the state, but is the result of the policy of the pardon and parole boards to be slow about releasing men duly convicted and sentenced to the penitentiary. I firmly believe, however, that a law providing a more severe punishment for habitual criminals will materially reduce crime in this state, as it will in any other jurisdiction where it obtains. I would particularly invite your attention to a law commonly known
as the "Baumes Law", passed in New York last winter and effective July 1st of this year, (Vol. 1, Laws of New York 1926, Chapter 457, page 805). This law provides that as a punishment for a second offense of felony, the offender shall be sentenced for not less than the longest term, or more than twice the longest term, prescribed for a first conviction; and for a fourth conviction of a felony, such offender shall be sentenced to life imprisonment.

There is no question about the effect of this law in the State of New York. A prominent New York official connected with its prison work informed me that in his opinion this law had resulted in at least twenty-five per cent of the known criminals in the City of New York migrating to neighboring states. The law became effective July 1, 1926, and the courts of that state were crowded during the latter part of June with applications for those awaiting trial for permission to plead guilty that they might be sentenced before this law took effect. This one fact alone should be sufficient proof of the efficacy of an habitual criminal act. There have been some objections made to the severity of the act, and the fact that it leaves no discretion to the court charged with fixing the sentence. I do not believe, however, that these objections are particularly well founded. Certainly the resulting benefits to society outweigh them. I earnestly urge that this matter be called to the attention of the legislature.

CONCLUSION

I would invite your attention to the copy of the office dockets attached hereto. The large number of mortgage foreclosure cases closed and pending is the result of determination on the part of the Land Board and the Department of Public Investments to clean up state loans and get them upon a business basis. For this purpose, I employed extra stenographic help during the biennium, and these matters are now in process of determination.
All criminal cases have either been disposed of or are ready to be argued at the next sessions of the Supreme Court.

The civil dockets indicate the wide range of litigation which it is necessary for this office to handle.

Respectfully Submitted,

A. H. CONNER
Attorney General.
COMMON CARRIER: DEFINITION.

1. A “common carrier” is generally defined as “one who undertakes for hire or reward, to transport the goods of such as choose to employ him from place to place.” Before an operator can be held to be a common carrier of passengers or goods, there must have been a dedication of his facilities to the public, by which he becomes obligated to transport passengers or goods, or both, to the extent of the facilities offered and within the limits of his dedication. Without this dedication to the public he is a “private” as distinguished from a “common” carrier.

CORPORATIONS: BLUE SKY, FORFEITURE.

2. The forfeiture referred to in Section 5312 applies only to a corporation’s right to do business as an investment company, and does not affect its right to do business in other capacities upon compliance with the laws governing such other activities.

CORPORATIONS: FEES, REINSTATEMENT.

3. The $10.00 reinstatement fee prescribed by Section 4782, C. S., in the case of delinquent corporations, is to be collected for each year of the delinquency.

CORPORATIONS: SURETY COMPANIES.

4. Corporations which have not complied with the laws of Idaho relating to surety companies and have not secured a certificate from the Department of Finance, as required by Section 5105, C. S., cannot be accepted as sureties in this state.

ELECTIONS: FILING FEES.

5. Section 546, requiring the payment of a fee upon the filing of a nomination paper, does not apply to a candidate who becomes such by reason of having had his name written on the ballot.

ELECTION: STICKERS, USE OF.

6. Two general principles underlie all questions as to the use of the Australian ballot: first, the vote must be counted in accordance with the evident intention of the voter; and, second, a ballot is void if it is so marked as to identify the person casting it. In the absence of a statutory prohibition of the use of stickers, I cannot see any objection to them, provided they are so printed and attached to the ballot as to prevent the identification of the voter. It seems to me a sticker is capable of expressing the intention of the voter very clearly, and if it meets the requirements as to the secrecy of the ballot, I think the law would be satisfied.

ELECTION: VOTERS, INTENTION OF.

7. Where a voter places a cross in the circle at the top of two different tickets, his vote must be counted for the names in each column where there are no other names in the other column for the same office.
The whole test of counting votes is the intention of the voter, and if his intention can be determined, the vote must be counted no matter how he marks his ballot.

ELECTION: VOTERS, QUALIFICATIONS OF.

8. Under the Constitution of Idaho, a person who is confined in prison on conviction of a criminal offense cannot vote.

ELECTIONS: VOTERS, RESIDENCE OF.

9. There is no more puzzling question than that of the qualification of a voter where it depends upon residence. A person may have maintained his residence in Idaho for a decade and by some act of his demonstrated in a very short time, by moving out of the state, acting as an elector in some other jurisdiction, or some other overt act, his intention to take up his residence in some other place; or he may, as many people actually do, move from the state with the intention of returning and with no intention of taking up his residence somewhere else. I have known cases where people have been absent from the state for several years, travelling, or on other business, but who have always maintained their local residence in Idaho because they had no intention of establishing their residence anywhere else. I was once absent from the State of Idaho for something like three years and no question ever arose in my mind, and I do not think in the minds of anyone else, as to my rights as a citizen of Idaho. Each case must rest upon its own facts.

ELECTIONS: WRITING IN NAMES.

10. There is no direct provision for the writing in of names at a primary election, but it is evident that it was the intention of the legislature to permit nominations to be so made. The only reference, however, to writing in of names is found in Section 557, C. S., where it is provided that a person whose name is not printed on the official ballot shall not be considered a candidate so as to require him to file an itemized statement unless he receives a certain percentage of the votes cast for that office. The necessary corollary to this is that if a person receives more than a certain percentage of the votes cast, he is a candidate, and under Section 538, C. S., if he receives the highest number of votes cast, he is nominated.

ESTATES OF DECEASED PERSONS: ADMINISTRATRIX.

11. I see no reason why a female nineteen years of age, if she is not otherwise disqualified, cannot be appointed administratrix under Section 7491, C. S. Under Section 4583, C. S., a female reaches her majority at the age of eighteen years, and this has been recognized in Platt v. Platt, 32 Ida. at page 414.

ESTATES OF DECEASED PERSONS: FEES OF ATTORNEY.

12. Idaho laws do not provide for a sliding scale for attorney’s fees in the settlement of estates. There is a sliding percentage scale for the compensation of executors and administrators, but that officer is allowed such sum as the court may approve for attorney’s fees.

ESTATES OF DECEASED PERSONS: PUBLIC ADMINISTRATORS, ATTORNEY.

13. The public administrator has no right to employ counsel other than the prosecuting attorney, except under the same cir-
cumstances which would authorize the employment of outside counsel in connection with any other county business.

EXTRADITION: ESCAPE FROM INSANE ASYLUM.

14. Under the Idaho statutes it is not a crime for a patient to escape from an insane asylum, and he could not be extradited for the mere act of escape. If, however, he was aided or assisted by another person in making his escape, he could be charged with the crime of conspiracy to obstruct justice and the due administration of the laws, as criminal conspiracy is defined in Section 8204, C. S. He could then be extradited and returned to Idaho by the usual procedure. See Drew v. Thaw, 235 U. S. 432, 59 L. Ed. 302.

EXTRADITION: EXPENSE OF RETURNING FUGITIVES.

15. On the authority of Kroutinger v. Board of Examiners, 8 Ida. 463, and Roberts v. Board of County Commissioners, 17 Ida. 379, which cases construe Section 9348, C. S., the cost of returning fugitives from justice to this state is not a proper charge against a county but is a proper charge against the state.

FARM PRODUCE LAW: CASH SALES.

16. The farm produce brokers act does not apply to cash sales for the reason that the title to the property passes with the sale.

FARM PRODUCE LAW: PURPOSE.

17. The purpose of the farm produce act was to protect the producer of fruit, vegetables and hay, and not to regulate competition in the purchase and sale of such commodities.

FARM PRODUCTS: STANDARDS AND GRADES.

18. Section 2032, C. S., specifically vests the Department of Agriculture with the authority to establish and promulgate standards for grade and receptacles for farm products, and to prescribe and promulgate rules and regulations governing the marks, bands and labels upon such receptacles “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.” Standards adopted by the United States, so far as applicable, must be followed, and the statute contains a general proviso that the standards established and the requirements for marking shall not become effective until the expiration of six months after they shall have been promulgated.

Proper rules and regulations established and promulgated by the department, pursuant to the authority of this section, would have the force and effect of law and would subject a violator thereof to the penalty prescribed by Section 2037, C. S.

GARNISHMENT: STATE NOT SUBJECT TO.

19. I am of the opinion that the State of Idaho is not subject to garnishment nor can funds in its hands be attached.

GAMBLING: SLOT MACHINES.

20. This office has always held that slot machines come within the terms of our statute prohibiting the use of gambling devices.
REPORT OF THE ATTORNEY GENERAL

HIGHWAY DISTRICTS: INCLUDED MUNICIPALITIES.

21. Under Section 1507 and 1568, C. S., the highway district board has general supervision and jurisdiction over all highways in their district, except in incorporated cities or villages, which constitute a separate division of the district, and the governing bodies of such municipalities, so far as relate to their respective municipalities, have the powers conferred upon the highway board.

HIGHWAYS: MAINTENANCE.

22. Chapter 66, Laws of 1925, relate solely to the maintenance of state highways and has nothing to do with construction.

HIGHWAY DISTRICTS: ORGANIZATION.

23. A highway district becomes organized when a certified copy of the order of the Board of County Commissioners declaring the district to be duly organized has been filed for record in the office of the County Recorder.

HIGHWAY DISTRICTS: RIGHT OF WAY, CONDEMNATION OF.

24. Boards of County Commissioners have no power to condemn rights of way for highways through highway districts. The department of public works has such power.

HIGHWAY DISTRICTS: SECRETARY.

25. Under Section 1504, C. S., a board of highway commissioners has the right to employ a secretary-treasurer, who is not a member of the board, if they so desire.

IRRIGATION DISTRICTS: ASSESSMENTS AND TOLLS.

26. So far as maintenance and operation are concerned there are two methods provided under the statutes for an irrigation district to collect payment for water furnished to water users in the district. The district may levy an assessment against the lands, in which event the amount of assessment becomes a lien upon the land to secure payment for the water, or the district may fix the amount of tolls to be charged for water and collect the money in advance.

It is my opinion that if the district adopts the first method, that is, levying a water assessment against the land, the district has no right to shut off the water to secure payment, but is limited to its lien on the land and must follow the statutory method of foreclosure. If the district follows the other method, by fixing the water tolls, it may refuse to deliver the water until it is paid for.

IRRIGATION DISTRICTS: SALARY OF OFFICERS.

27. The salary of a secretary or treasurer of an irrigation district is not fixed by law, but the board of directors has authority to fix such salaries under Section 4352, C. S., as amended by Chapter 73, Laws of 1923.

JUSTICES OF PEACE: SMALL CLAIMS COURT.

28. Section 2360, et seq, C. S., pertaining to collection agencies, do not apply to justices of the peace so far as their conduct of the small claims court is concerned.
LICENSES: COLLECTION AGENCY, REALTORS.

29. The taking out of a real estate broker’s license would not excuse a realtor from complying with Section 2360, C. S., as amended by Chapter 126, Laws of 1925, relating to collection agencies, if such realtor came under its provisions. The real estate broker’s license covers only the “selling” of real estate or an interest therein.

LICENSES: MOTOR VEHICLE.

30. No Idaho license is required in Idaho for a motor vehicle unless it is used on the public highways. A vehicle which is not licensed, however, must pay a personal property tax.

LOTTERIES: CHANCES; PUNCH BOARDS.

31. The use of a device to which an envelope is attached in which is inserted a premium certificate purporting to be worth ten cents and exchangeable under certain circumstances for merchandise, some of the envelopes containing a certain number also entitling the purchaser to a box of candy, in my opinion violates Section 8488, 8316 and 8318, C. S. I think punch boards are also in violation of Sections 8316 and 8318, C. S.

NEPOTISM.

32. The employment of the wife of the chief deputy in the county auditor’s office to do clerical work in the same office would not be a violation of the nepotism law in view of the decision in Barton v. Alexander, 27 Ida. 286.

NEWSPAPERS: PUBLISHING LEGAL NOTICES.

33. Section 2340, Compiled Statutes, defines the qualifications of newspapers for printing legal notices. In order to print legal notices a weekly newspaper must have been published in the county during a period of 78 consecutive weeks prior to the first publication of a legal notice, and if published daily must have been published as a daily paper in the county during a period of 12 consecutive months prior to the first publication of a legal notice. This section pertains to all legal notices, advertisements or publication required or provided by the laws of the State of Idaho to be published in a newspaper.

OFFICERS, COUNTY: FEES.

34. A Clerk of the District court, as such, is not authorized to perform a marriage ceremony under Section 4602, C. S. If he does perform it, therefore, it must be as a minister of the gospel or in some other capacity than that of a public official, and the state or county is not interested in the fee that he may collect in so doing.

OFFICERS, COUNTY: ABSENCE, DEPUTIES.

35. Section 3555, C. S., which provides that no county officer must absent himself from the state for more than 20 days without the consent of the county commissioners, and the proviso in Section 3454, C. S., with reference to the appointment of a deputy to fill the officer’s place during his absence, and obtaining consent of his bondsmen, must be construed together.

OFFICERS, COUNTY: COMMISSIONERS, VACANCY.

36. If a county commissioner has changed his residence from the commissioner’s district from which he was elected, a vacancy exists.
OFFICERS, COUNTY: DEPUTIES.

37. Under Section 3546, C. S., a deputy acts in the absence of his principal; under Section 3550, C. S., the use of the name of the principal officer includes his deputies, and under Section 404, C. S., a deputy is required to take and file an official oath.

I think all of these provisions point to the necessity of a deputy having the same qualifications as his principal officer, and a person under twenty-one years of age would not be eligible to appointment.

OFFICERS, COUNTY: JUSTICES OF PEACE, JURISDICTION.

38. The jurisdiction of a justice of the peace as an examining magistrate extends throughout his county.

OFFICERS, COUNTY: NEGLIGENCE OF.

39. Some wise, old statesman once made the remark that "guilt is always personal," and this might well be applied to the relationship between a county and its officers. Its officers are charged with the performance of certain duties, and within the scope of their authority these officers can bind the county, but as the law does not authorize them to transact their business in a negligent manner, necessarily the county cannot be held responsible for such negligent acts. It is the individual officer, therefore, who becomes responsible in a case where damage arises from his negligence, and not his principal.

OFFICERS, COUNTY: PROBATION OFFICER, COMPENSATION.

40. A probation officer can be paid either a fixed monthly salary or by the job, in the discretion of the probate court with the approval of the Board of County Commissioners.

OFFICERS, COUNTY: PROSECUTING ATTORNEY, DUTIES OF.

41. In ordinary criminal cases, no duty to prosecute in justices' courts arises on the part of the Prosecuting Attorney until the Justice's Court has requested him to act, as provided by Subdivision 2, Section 3655, C. S., but in the case of a violation of the fish and game law, I think it becomes the duty of the Prosecuting Attorney to act whether he is required to do so by the Justice's Court or not.

OFFICERS, COUNTY: PROSECUTING ATTORNEY, EXPENSES OF.

42. The Prosecuting Attorney of a county is entitled to his actual and necessary expenses incurred in the performance of his official duties.

OFFICERS, COUNTY: SHERIFF'S DEPUTIES.

43. A sheriff has no authority to appoint a deputy to perform the ordinary and usual duties of his office unless empowered to do so by the Board of County Commissioners in the manner provided by law.

PUBLIC UTILITIES COMMISSION: JURISDICTION.

44. The Public Utilities Commission would have no jurisdiction over a local telephone company which is a purely mutual, non-profit or cooperative affair, operating at cost and not for profit, so as to bring it within the exception named in Section 2371, C. S.
SCHOOLS: BIBLE, READING OF.

45. The provisions of the Idaho Constitution are peculiar in that while the teaching of "religious" tenets or doctrines is prohibited, so far as the introduction and use of books are concerned, the question of religion seems to have been left out. It is only books of a "sectarian" or "denominational" character which are prohibited. In other words, while teachers or students may not be required to participate in religious services, and no religious tenets or doctrines may be taught, the use or introduction of religious books, etc., is not prohibited so long as those books are not sectarian or denominational in character.

I am of the opinion that selections from the "Standard American version of the Bible" may legally be read, without comment, by teachers in the public schools of the State of Idaho, provided such selections are chosen for their literary and moral value, as distinguished from their religious, sectarian, or denominational character.

SCHOOLS: CHILDREN, TRANSPORTATION OF.

46. The whole matter of transportation of school children rests in the discretion of the board of trustees, and so long as the provisions they make are reasonable, that discretion cannot be interfered with.

SCHOOLS: CONTRACTS.

47. A member of a school board of an independent school district may not write the insurance for the district.

SCHOOLS: COUNTY SUPERINTENDENT, DUTY OF.

48. If a teacher refuses to comply with the law relative to reading the Bible in the schools, and is upheld in her action by the Board of Trustees, it is the duty of the County Superintendent to notify the County Treasurer of such delinquency by the Board of Trustees, and it thereafter becomes the duty of the County Treasurer to withhold moneys apportioned to the district until he is notified by the County Superintendent that the delinquent board has fully complied with the law.

SCHOOLS: ELECTION RETURNS.

49. Informalities in the return to a county superintendent would not invalidate a school election if sufficient information is given so that that official is able to canvass the return and notify the board or boards of trustees of the result.

SCHOOLS: FUNDS, DISBURSEMENT OF.

50. The State Board of Education has nothing to do with the paying out of the funds of school districts.

SCHOOLS: INDIANS.

51. The Idaho Constitution and laws make no exception of Indian children, and I am of the opinion that they have the right to attend the public schools of the state.

SCHOOLS: SCHOOL HOUSE, PURCHASE OF.

52. No part of the general fund of a common school district can be used for the purchase of a school house unless authorized by the annual meeting, as provided in Section 50, Chapter 215, Laws of 1921, as amended by Chapter 52, Laws of 1923.
SCHOOLS: SCHOOL HOUSE SITE.
53. In order to designate a site for a new school house, an election must be held for that purpose.

SCHOOLS: TEACHER, BREACH OF CONTRACT BY.
54. The failure of a teacher to comply with the law requiring the reading of the Bible in the schools constitutes a breach of the contract which the teacher entered into with the school district.

SCHOOLS: TEACHERS, EMPLOYMENT OF.
55. The power to employ a teacher rests entirely with the board of trustees. The county superintendent has no authority to employ a teacher, or cause one to be employed.

SCHOOLS: TEXT BOOKS.
56. The State Board of Education may adopt textbooks for the use of all the public schools of the state with the exception of independent class A and joint independent class A school districts, who are authorized to adopt their own textbooks under Section 47A, Chapter 215, Laws of 1921.

SCHOOLS: TUITION, SPECIAL AID.
57. Under Section 998, C. S., the payment of high school tuition may be judged a part of the necessary minimum expense of a district in applying special aid under the 17% fund provided for by Section 908, C. S., as amended by Chapter 68, Laws of 1925.

SUNDAY CLOSING: MERRY-GO-ROUND.
58. Any person who operates a merry-go-round in Idaho on Sundays is guilty of a misdemeanor.

TAXES: ASSESSMENT, RAILROAD OPERATING PROPERTY.
59. Any property acquired or held by a railroad with the intention of using it in the immediate future for operating purposes is classed as operating property, and should be assessed by the State Board of Equalization.

TAXES: CANCELLATION.
60. Personal property taxes properly levied remain a lien upon the real property of the owner, and under Section 3098, C. S., can only be discharged by their payment, cancellation or rebate. The Board of County Commissioners under Section 3332, C. S., is empowered to cancel taxes which for any lawful reason should not be collected, but this applies only to those taxes which have been illegally assessed.

TAXES: COUNTY AS TRUSTEE.
61. Where the county acquires title to property via the tax route, it takes its title in trust for the various taxing units involved, and when it is sold under Section 3423, C. S., the proceeds must be prorated.

TAXES: DELINQUENT, NOTICE, SERVICE OF.
62. There are four combinations of circumstances affecting the manner of service of notice of delinquent taxes by the tax collector:

(a) Assuming that the property is occupied and that the owner of the property is within the state, it becomes the duty of the
tax collector to serve the notice on the person in possession and also upon the record owner. He is not required to either post or publish the notice.

(b) If the property is occupied, but the record owner lives outside of the state, the tax collector is required to serve only the person in possession. He is not required to serve the record owner or to post or publish the notice.

(c) If there is no one in possession of the property, and the owner lives in the state, the tax collector must serve the owner with the notice, but is not required to post or publish it.

(d) If the property is not in the possession of any one, and the owner cannot be found in the state, the tax collector must post a copy of the notice on the property, and also publish it, and in addition thereto, must mail a copy of the notice to the record owner at his last known place of residence.

TAXES: DELINQUENT, PERSONALITY, INTEREST AND PENALTIES.

63. There is no statutory authority for the collection of any penalty or interest in connection with personal property taxes. Evidently the legislature did not contemplate that personal property taxes which do not become a lien on real property would ever become delinquent.

TAXES: RECEIPT AND DEED.

64. Where land is deeded to a county, on account of delinquent taxes, and a mortgagee pays the taxes, the tax receipt and deed should both run to the owner of the property for the reason that the mortgagee is redeeming on behalf of such owner.

TAXES: STATUTE OF LIMITATIONS.

65. Taxes due the State of Idaho, or any of its subdivisions, are not barred by the statute of limitations. Section 3097, C. S. specifically referring to real and personal property taxes, provides that such taxes “shall only be discharged by the payment, cancellation or rebate of the taxes as provided in this chapter.” This is a special statute relating to this particular subject, and, even if the general statute of limitations had application here, the special statute would govern.

TAXES: TAX DEED, TITLE OF COUNTY UNDER.

66. Under Section 3263, C. S., as amended by Chapter 232, Laws of 1921, a tax deed conveys to the county the title to the land free of all encumbrances except certain mortgages and except “any lien for taxes which may have attached subsequently to the assessment.” The county cannot convey any better title than it received; therefore, the purchaser of this property would have to take it subject to the taxes for the later years. The county commissioners may not cancel taxes except under the authority of Section 3332, C. S.

TREASURY NOTES: COUNTIES, BASIS FOR.

67. I am of the opinion that no revenues other than taxes can be considered as a basis for issuing treasury notes in counties.
TREASURY NOTES: NOT MANDATORY TO ISSUE.

68. The provisions of Section 4, Chapter 187, Laws of 1925, with reference to borrowing money in anticipation of the collection of taxes is not mandatory. The act does not provide that the taxing districts must borrow, but merely provides that they may borrow in anticipation of the collection of taxes.

TREASURY NOTES: SCHOOL DISTRICTS.

69. Under the provisions of Chapter 187, Laws of 1925, common school districts have no power to issue treasury notes. That power, so far as school districts are concerned, is limited to independent and specially chartered school districts.

TRADING STAMPS: PROHIBITED.

70. Section 8488, Compiled Statutes, prohibits the issuance by merchants of coupons or stamps which are redeemable in merchandise.

WATER AND WATER RIGHTS: APPROPRIATION ON STATE LAND.

71. Section 5572, C. S., prohibits the Department of Reclamation from issuing permits to divert the waters of lakes, less than five acres in area, ponds, pools or springs located wholly upon lands "of a person or corporation" without the consent of such owner.

I am of the opinion that this section should be invoked for the protection of the state, and that no permit should be issued by the Department of Reclamation to appropriate waters of springs, etc., on state lands unless it is accompanied by the written consent of the State Land Board.

WATERMASTERS: BONDS.

72. Under Section 5609, C. S., as amended by Chapter 60, Laws of 1925, watermasters are permitted to qualify by furnishing a personal bond.

WORKMEN'S COMPENSATION: NON-PROFIT ASSOCIATION.

73. I do not think that athletic associations, fair and rodeo associations or baseball associations, none of which are operating for pecuniary gain, come under the Workmen's Compensation Law.

WORKMEN'S COMPENSATION: POLICIES, NON-INSURANCE.

74. Insurance in the State Insurance Fund is initiated by the entering into of a contract of insurance between the employer and the fund, and unless such contract is entered into, there is no insurance. It follows that if the liability of the State Insurance Fund only arises as a result of a contract of insurance, then it has the right to protect itself by inserting in the policy such provisions as to cancellation, etc., as may be reasonable and necessary.

This emphasizes what I consider to be the great weakness or the Idaho Workmen’s Compensation Law. The employee is not insured unless his employer takes out a policy of insurance or furnishes a surety bond or guaranty contract. The penal provisions of the law which are directed against the uninsured employer do not furnish very much protection to the employee. The employer who fails to take out insurance or furnish a surety bond or guaranty contract is usually irresponsible financially, and in case one of his employees is injured or killed, the employee or his beneficiaries are without a practical remedy in most cases.
In Section 6214, C. S., the legislature made a beautiful gesture when it declared that the whole question of personal injury to employees came under the police power of the state, and that it was the purpose of the act to provide sure and certain relief for injured workmen and their families. It then proceeded to permit an employer to elect as to whether or not he would insure with the state, furnish a surety bond or guaranty contract, or take a chance on the penalties which the law prescribes. The employee has no election. He is protected only to the extent that his employer complies with the law. A Workmen's Compensation Law, to be fully effective and to meet the high purposes contained in the declaration of police power under Section 6214, C. S., must provide for insurance, or security through other means, which is non-elective, compulsory and automatic.

WAREHOUSE: BONDED, JURISDICTION OF STATE.

75. The only basis for state interference and regulation of a warehouse is that it is devoted to a public use, and the state, therefore, has the right under its police power to regulate that use. If the warehouse is not devoted to a public use, it follows that the state's power cannot be invoked, and the parties are left to make their own contracts. The same general principle applying to other public utilities applies to a warehouse, and before such warehouse can be subjected to regulation by the state, there must have been a dedication to the public by the owner. When an owner once dedicates his property to the use of the public and holds himself out as being willing to receive agricultural produce "for storage or transfer for compensation," he becomes a public utility under the definition in Section 6179, C. S. If the owner leases either his entire warehouse or any portion of it to some other party, who may do with the leased portion as he will, such warehouse, so far as that particular use is concerned, is not a public utility. If a farmer rents a portion of a warehouse and places agricultural produce therein, it is the farmer who is doing the storing and not the owner of the warehouse.

ATTORNEY GENERAL'S DOCKETS 1925-1926

UNITED STATES SUPREME COURT


UNITED STATES DISTRICT COURT


SUPREME COURT OF IDAHO
ORIGINAL PROCEEDINGS


Earl Fruit Company v. State. Action for recommendatory judgment to refund fees paid under protest by plaintiff to the Secretary of State. Denied. 40 Ida. 426, 233 Pac. 518.

State v. Stuart. Application for Writ of Mandate to compel county treasurer of Power County to accept tender of delinquent taxes for year 1920, and to issue tax deed therefor. Writ issued. 41 Ida. 126, 238 Pac. 305.

SUPREME COURT OF IDAHO
CRIMINAL APPEALS SUBMITTED


STATE v. Choate. District Court, Nez Perce County. Judgment of conviction of burning a stack of bean hay, under Section 8556. Reversed. 41 Ida. 251, 238 Pac. 538.

STATE v. Dawn. District Court, Canyon County. Appeal from order of the district court dismissing an appeal from a judgment of conviction of a misdemeanor, upon a plea of guilty, in the probate court. Reversed. 41 Ida. 199, 239 Pac. 279.


State v. Wharfield. District Court, Canyon County. Prosecution for offering to bribe an "executive officer of the state." Judgment dismissing information affirmed. 41 Ida. 14, 236 Pac. 892.

State v. Wheeler. District Court, Bingham County. Assault with intent to commit robbery. Judgment of conviction reversed. 41 Ida. 212, 238 Pac. 312.


State v. Johnson. District Court, Payette County. Convicted of unlawfully selling cigarettes to minor. Affirmed. 246 Pac. 531.


State v. Larsen. District Court, Bannock County. Convicted of statutory rape. Reversed. 246 Pac. 313.


State v. Miles. District Court, Kootenai County. Appeal by the State from an order denying change of venue. Action of lower court affirmed. 248 Pac. 442.


CRIMINAL APPEALS PENDING

State v. Peters. District Court, Twin Falls County. Embezzlement.

State v. Murray. District Court, Twin Falls County. Unlawful possession of intoxicating liquor.

State v. Moultrie. District Court, Canyon County. Manslaughter. On rehearing.

State v. Jester. District Court, Canyon County. Embezzlement.

State v. Pate. District Court, Twin Falls County. Burglary.

State v. Arregui. District Court, Ada County. Unlawful possession of intoxicating liquor.


State v. Pasta. District Court, Bingham County. Violation of road laws.

State v. Andreason. District Court, Bannock County.

State v. Smith. District Court, Bingham County. Possession of intoxicating liquor.

State v. White. District Court, Bannock County. Embezzlement.

State v. Lockie. District Court, Twin Falls County. Embezzlement.

State v. Kimery. District Court, Canyon County. Statutory rape.

State v. Poglianiich. District Court, Clearwater County. Murder in the first degree.

State v. Foyte. District Court, Shoshone County. Murder in the first degree.

State v. Petrogalli. District Court, Latah County. Persistent violator of the prohibition law.

State v. Gibbs. District Court, Oneida County. Statutory rape.

State v. Noorlander. District Court, Bannock County. Murder in the first degree.

State v. Williamson. District Court, Twin Falls County.

State v. Whitney. District Court, Ada County. Obtaining money under false pretenses.

State v. George. District Court, Twin Falls County. Interfering with headgates.

State v. Roby. District Court, Canyon County. Exhibiting a deadly weapon.
State v. Marks. District Court, Nez Perce County. Burglary.

CIVIL APPEALS TO SUPREME COURT OF IDAHO
(Closed)


Brady v. Place. District Court, Kootenai County. Appeal from judgment of the district court affirming the decision of the Industrial Accident Board denying an award in a proceeding under the Workmen's Compensation law. 41 Ida. 747. 242 Pac. 314.


State v. Cleland. District Court, Ada County. From a Judgment granting a peremptory writ of mandate, defendant appeals. Affirmed. 248 Pac. 831.


Aldrich v. Dole. District Court, Nez Perce County. From judgment reversing the decision of the Industrial Accident Board which denied an award, the employer and insurer appealed. Affirmed. 249 Pac. 87.

CIVIL APPEALS PENDING IN SUPREME COURT OF IDAHO

Burley Independent School District v. Cordell. District Court, Cassia County. Action to restrain county assessor from collecting automobile license tax on automobile trucks owned by school district. From judgment in favor of district the county appealed.

Department of Law Enforcement v. Myers. District Court, Ada County. Action to restrain Department of Law Enforcement from revoking dental license. From decision in favor of Myers the Department appealed.


Hamilton v. Swendsen. District Court, Custer County. Appeal from an order refusing to tax cost of agricultural survey.

In the matter of the Estate of Samuel Marx Rothchild, deceased. District Court, Ada County. Action to determine amount of inheritance tax due the State.


In the matter of Melvin Farnsworth, a Juvenile Delinquent. District Court, Bannock County. Appeal from an order dismissing an appeal from an order of commitment of the probate court.

CIVIL CASES IN DISTRICT COURTS


In the Matter of the Application of Lester Grove for Writ of Habeas Corpus. District Court, Ada County. Writ denied.


Koeppe v. Swendsen, et al. District Court, Owyhee County. Suit involving change in point of division of water. Closed as to State.

Ake v. Swendsen. District Court, Elmore County. Petition for Writ of Mandate to compel delivery of water. Closed as to State.


In the matter of the estate of Helen Sommer, Deceased. District Court, Washington County. Action to determine amount of inheritance tax due the State. Closed.


Bramwell v. Baldwin. District Court, Fremont County. Adjudication of water right. Closed as to State.

Ellis v. Baldwin. District Court, Fremont County. Adjudication of water right. Closed as to State.


Laidlaw v. Swendsen. District Court, Blaine County. Adjudication of water right. Closed as to State.


In re Peter Hunter. District Court, Shoshone County. Appeal from an award of the Industrial Accident Board in favor of the State. Pending.
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CASES IN PROBATE COURTS


In the Matter of the Estate of David Hutchinson, Deceased. Probate Court, Shoshone County. Petition to withdraw payment of money deposited in the state treasury. Pending.

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