

REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF IDAHO
1927-1928



FRANK L. STEPHAN, ATTORNEY GENERAL

S. E. BLAINE, Assistant ALFRED C. CORDON, Assistant x JOHN W. CRAMER, Assistant
LEON M. FISK, Assistant :: H. O. McDOUGALL, Assistant

x DOROTHY CLAPP, Secretary
x HARRIET CLAPP, Law Stenographer
DORIS CRAWFORTH, Law Stenographer
x FLORENCE DELIN, Law Stenographer

AUDREY HAYNIE, Law Stenographer
KATHERINE F. HOY, Law Stenographer
MARY MAUGHAN, Law Stenographer
MARTHA G. WILLIAMS, Secretary

:: Deceased
x Resigned

IDAHO DISTRICT JUDGES

1927-1930

DISTRICT

First	A. H. Featherstone	Wallace
Second	Edgar C. Steele	Moscow
Third	Dana E. Brinck	Boise
	Clinton H. Hartson	Boise
Fourth	Henry F. Ensign	Hailey
Fifth	Robert M. Terrell	Pocatello
	Jay L. Downing	Pocatello
Sixth	Ralph W. Adair	Blackfoot
Seventh	Ed. L. Bryan	Caldwell
	Bertram S. Varian	Weiser
Eighth	W. F. McNaughton	Coeur d'Alene
	Bert A. Reed	Sandpoint
Ninth	Clarence J. Taylor	Rexburg
Tenth	Miles S. Johnson	Lewiston
Eleventh	Wm. A. Babcock	Twin Falls
	Hugh A. Baker	Rupert

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	1923-1926
Frank L. Stephan	1927-1928
W. D. Gillis	1929-

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, Clay Kolesch

JUSTICES OF THE SUPREME COURT, 1929-1930

Alfred Budge	Pocatello
Raymond L. Givens	Boise
William E. Lee	Moscow
Herman H. Taylor	Sandpoint
T. Bailey Lee	Burley

Clerk of the Supreme Court—Clay Koelsch

UNITED STATES DISTRICT JUDGE

Charles C. Cavanah	Boise
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*Deceased

xResigned

PROSECUTING ATTORNEYS FOR THE VARIOUS COUNTIES OF IDAHO

1929-1930

Ada	Carl A. Burke	Boise
Adams	Carl H. Swanstrom	Council
Bannock	Isaac McDougall	Pocatello
Bear Lake	Geraint Humphreys	Paris
Benewah	Ed. S. Elder	St. Maries
Bingham	Z. Reed Millar	Blackfoot
Blaine	J. G. Hedrick	Hailey
Boise	Lawrence Quinn	Idaho City
Bonner	Robert E. McFarland	Sandpoint
Bonneville	Joshua T. Evans	Idaho Falls
Boundary	A. T. Aronson	Bonnors Ferry
Butte	Jo G. Martin	Arco
Camas	R. M. Angel	Fairfield
Canyon	Cleve Groome	Caldwell
Caribou	D. K. McLean	Soda Springs
Cassia	C. W. Thomas	Burley
Clark	Grant W. Soule	Dubois
Clearwater	Paul W. Hyatt	Orofino
Custer	Merle L. Drake	Challis
Elmore	R. W. Beckwith	Mountain Home
Franklin	A. W. Hart	Preston
Fremont	Hensley G. Harris	St. Anthony
Gem	H. M. Haag	Emmett
Gooding	M. F. Ryan	Gooding
Idaho	Harry J. Hanley	Grangeville
Jefferson	Bash L. Bennett	Rigby
Jerome	A. B. Barclay	Jerome
Kootenai	E. T. Knudson	Coeur d'Alene
Latah	Abe Goff	Moscow
Lemhi	Francis R. Hall, Jr.	Salmon
Lewis	Elbert A. Stellmon	Nez Perce
Lincoln	Harlan D. Heist	Shoshone
Madison	E. West Parkinson	Rexburg
Minidoka	H. V. Creason	Rupert
Nez Perce	Fred J. Babcock	Lewiston
Oneida	T. E. Ray	Malad
Owyhee	Earl E. Garrity	Silver City
Payette	F. A. Wilbur	Payette
Power	Charles W. Cotant	American Falls
Shoshone	Charles E. Horning	Wallace
Teton	Samuel Adelstein	Driggs
Twin Falls	E. V. Larson	Twin Falls
Valley	Fred M. Taylor	Cascade
Washington	Wm. J. Nixon	Weiser

REPORT OF ATTORNEY GENERAL

December 1, 1928.

Honorable H. C. Baldridge,
Governor of Idaho,
Boise, Idaho.

Sir:

I have the honor to submit to you this biennial report covering the business transacted by the Attorney General's Department for the period beginning December 1, 1926 and ending December 1, 1928.

DUTIES

Section 1, of Article 4, of the Constitution of Idaho provides that the Executive Department of the State of Idaho shall consist of the Governor, Lieutenant Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, and Superintendent of Public Instruction. For the purpose of enabling the Attorney General to perform certain duties prescribed, he has been named in the Constitution and Statutes as a member of numerous boards. He is a member of the following boards:

State Board of Examiners which is required to pass upon and approve all claims for the expenditure of State moneys;

State Board of Land Commissioners, which handles all State land matters, and loans and otherwise invests endowment funds, school moneys and other State funds, totaling in all approximately \$15,000,000;

The State Board of Equalization which equalizes all assessments of property made by County Assessors, and also originally assesses the property of public utility companies in the State;

The State Cooperative Board of Forestry which is charged with the responsibility of enforcing the forestry laws for the prevention of forest fires and

for the protection of forest resources, forest range, water conservation, etc.;

The State Board of Prison Commissioners which has supervision of the Idaho State Penitentiary and its inmates;

The State Board of Pardons which hears, considers and grants or rejects applications for pardons and commutations of sentences;

The State Board of Parole which has jurisdiction over applications for parole;

The State Library Commission which has supervision of the State Traveling Library;

The Reclamation District Bond Commission which passes upon and either certifies, or rejects for certification, bonds issued by irrigation or drainage districts;

The State Board of Canvassers which canvasses the returns of the election of State and District officers.

It is manifest from a consideration of the number of boards of which the Attorney General is a member, and the duties devolving upon those boards, that a great portion of his time is taken up in executive duties. In addition to the executive duties imposed upon the Attorney General, he is required to represent the State and prosecute or defend all causes to which the State or any officer thereof in his official capacity is a party, and to prosecute or defend in the Supreme Court, all causes to which the County may be a party unless the interest of the State is adverse thereto, to prosecute or defend all of the above named causes in the United States Courts, and to render his opinions in writing to the Legislature or either house thereof, and to State executive and administrative officers, and to State Boards, Departments and Institutions.

RECODIFICATION OF LAWS

The Compiled Statutes of Idaho were codified in

1919, nearly ten years ago. Since that date, the legislature of Idaho has convened four times and at each session, has enacted numerous laws which were either new laws or amendments to or repeals of existing laws. I recommend that the next legislature give consideration to the matter of a re-compilation or recodification of the Idaho laws with a view of having them recompiled or recodified during the biennium of 1929 and 1930, and reenacted in 1931.

REVENUE LAWS

There are many conflicts, ambiguities, uncertainties and weaknesses in our present revenue laws. No set of laws on the statute books has caused this office so much difficulty in their interpretation and application during the past biennium as have the revenue laws. I doubt seriously if the next session of the legislature will have sufficient time at its disposal to give the careful consideration to these laws which they should have. I am of the opinion that while perhaps some of the more glaring discrepancies may be corrected at the next session, the appointment of a committee or commission for the purpose of carefully drafting proper amendatory and repealing statutes should be authorized by the legislature, that funds should be appropriated for the purpose of defraying the expenses of such committee or commission, and that it be required to report to the legislature in 1931, its draft of proposed laws. I would not recommend the repeal of any considerable portion of our revenue code. Such portion or parts of the revenue laws as have been construed by the Supreme Court of this State and found to be workable, should be dispensed with very reluctantly.

INHERITANCE TAX LAWS

During the past biennium, one of the Assistants from this office has given considerable of his

time and attention to investigating the records of decedents' estates in various counties throughout the State, and has succeeded in making numerous collections of delinquent inheritance taxes. From the experience this office has encountered during the past biennium in the enforcement of the inheritance tax laws, I have concluded that our present inheritance tax laws are inadequate and that they should be given serious consideration by the next session of the legislature.

RECLAMATION DISTRICT BOND COMMISSION

Honorable A. H. Conner, Attorney General of this State from 1923-1927, in each of his biennial reports to the Governor recommended the repeal of the Reclamation District Bond Commission law in its entirety. Although the legislature has not seen fit to abolish the Commission, I believe it should be urged to do so at its next session. Certification of bonds by the State Treasurer, based upon the approval by the Commission unquestionably has created the impression among some of the bond holders that the State of Idaho guarantees the validity and the safety of irrigation district and drainage district bonds which, of course, it does not. The obligations of such districts are not guaranteed by the State; the faith and credit of the State are not pledged for the payment of such bonds; the State does not underwrite the bond obligations of such districts and the practice of misleading investors should be discontinued.

AUTO TRANSPORTATION LAW

During the past biennium we tried two suits involving issues arising out of the enforcement of the Idaho Auto Transportation Law. One of the cases was *Burns vs. Lukens*, instituted in the District Court of Clearwater County, and finally on

appeal to the Supreme Court. The case was presented by the State upon the theory that the law required private as well as public carriers to comply with the law, pay certain fees, post a bond, etc., but the Supreme Court, adhering to the rule announced in the case of *Smallwood vs. Jeter*, 42 Idaho, 169, held that it was not necessary for private carriers to comply with the provisions of the Act.

The case of *Sanger v. Lukens* was instituted in the Federal Court. The case raised an issue similar to the issue in the case of *Burns vs. Lukens*. It was presented on the same theory on a legal issue raised by demurrer. The Federal Court sustained the State in its contention. The case was appealed and the Circuit Court of Appeals remanded the case to the Federal Court for trial. After the decision by the Supreme Court in *Burns v. Lukens*, the case was dismissed on motion of the State, made on the theory that the rule announced in the Burns case was decisive of the question and binding upon the Federal Court.

Whether private carriers should be brought under the provisions of the law and made to comply with its provisions and pay certain fees for the special uses they put the public highways to, I will not attempt to say. That is primarily and largely a legislative question. However, I invite your attention to the fact that if the law is left in its present form undoubtedly it will be practically impossible to make it reach all carriers which are in fact public carriers and which the law was clearly designed to reach. The Act should have the consideration of the legislature at its next session.

MORTGAGE FORECLOSURES

The entire time of one of my Assistants is required to attend to the matters submitted by the Department of Public Investments, some of the duties of which Department are to supervise, loan

and invest the permanent funds of the State in such securities as are designated in the Constitution. The matters submitted by the Department of Public Investments consist of the examination of abstracts of title covering lands mortgaged to the State to secure farm loans, and abstracts upon which deeds are taken in lieu of mortgage foreclosures, and abstracts for bond election proceedings such as school district bonds.

In addition to examining the abstracts of title for the Department of Public Investments, this office also examines all abstracts of title covering lands purchased by other State Departments and Institutions.

During the biennium and up to December 1, 1928, this office has rendered 1204 opinions on abstracts of title and abstracts covering bond issues. In addition to the examination of the abstracts of title and the bond election proceedings hereinabove referred to, this Assistant has charge of the foreclosure of mortgages held by the State of Idaho. Due to the fact that at the beginning of the present biennium, many foreclosure actions were pending in District Courts throughout the State and many mortgages securing loans from State funds were past due and unpaid, and awaiting foreclosure action, a strenuous effort has been made to bring the mortgage foreclosures up to date. During the biennium this office has commenced 137 actions for the foreclosure of mortgages and has prosecuted to judgment and sale 240 actions and 44 are now pending. In addition to the foregoing, 116 farm mortgages were submitted to this office by the Department of Public Investments for foreclosure proceedings or collection, and the office succeeded in some instances in collecting the amount of the loans secured by such mortgages, and in the other instances in collecting the delinquent interest thereon so that the loans were entitled to be rein-

stated and accordingly, the foreclosure proceedings in those cases were dispensed with.

During the past two years the policy of the State Land Board, in making loans and particularly in holding the appraised valuations of farm lands securing such loans to a minimum, has been extremely conservative and it is anticipated that the percentage of the loans made during such period resulting necessarily in foreclosure actions will be materially reduced.

OTHER WORK OF THIS DEPARTMENT

Numerous court cases, civil and criminal, and proceedings before Boards, Commissions and Examiners have been handled during the biennium. In some of those cases and proceedings, the work entailed has been limited, but in others, numerous issues calling for the interpretation of statutes and the provisions of the State and Federal Constitutions have been involved, necessitating painstaking and elaborate briefing. No attempt is made in this report to detail the work done by the office in those matters, but I invite your attention to a copy of the office docket attached hereto, disclosing the present status of said actions and proceedings. No continuations or delays have been requested or obtained by the Attorney General in any of the matters hereinabove mentioned to accommodate this Department. The work of the Department is up to date; all cases are either now ready for presentation or will be ready for presentation before the cases are set down for hearing.

CONCLUSION

The work of this office has been conducted by the Attorney General and three Assistants during a part of the biennium, and four Assistants during the remainder of the biennium. Those Assistants were S. E. Blaine, Alfred C. Cordon, John W. Cra-

mer, Leon M. Fisk, and the late H. O. McDougall. The fourth Assistant was not added to the staff until in April, 1927. Mr. Cramer resigned in July of 1927, and Mr. Cordon was added to the staff in August of that year. Mr. H. O. McDougall was killed in an aeroplane accident at Pocatello, Idaho, on November 11, last and no appointment has been made to fill the vacancy caused by his death. I am pleased to state that the success of this office during the past biennium, in a great measure is attributable to the efficient and thorough work of my Assistants.

My stenographic force has consisted of three stenographers for a part of the biennium, four stenographers for a part of the biennium, and a fifth stenographer was added during the Month of September, 1928. Those stenographers were Dorothy Clapp, Harriet Clapp, Doris Crawforth, Florence Delin, Audrey Haynie, Katherine F. Hoy, Mary Maughan and Martha G. Williams, all of whom have been efficient, painstaking and faithful in the performance of their duties.

Although I declined to be a candidate to succeed myself as Attorney General, such declination or refusal was prompted merely through my desire to return to the private practice of law. My relations with the other Departments of State and the officers and employees of the State have been most cordial; my experiences during the past two years have been extremely pleasant, and memories of my work and associations with yourself as Governor, and other State Officers and Employees during this term of office, will always be cherished as among the fondest experiences of my life.

Respectfully submitted,

FRANK L. STEPHAN,
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.

ACCOMPLICES

Testimony of

1. QUESTION:

(1) Is the uncorroborated testimony of the thief admissible in the trial of the "fence" or receiver or seller of stolen goods?

(2) Is the thief an accomplice of the receiver of such stolen goods?

OPINION:

(1) The uncorroborated testimony of the thief may be accepted upon a trial against the "fence" or receiver, but conviction cannot be had upon his testimony alone. (Authority: Section 8957 C. S.; *State v. Gillum*, 39 Ida. 457, 228 Pac. 334.)

(2) It is manifest from an analysis of the rule announced in the case of *State v. Banks*, 26 Ida. 567, 144 Pac. 779, that in certain cases the thief may be regarded as an accomplice of the receiver of stolen property. If the receiver of stolen property receives the property from the thief, himself, and knows at the time of the receipt of such property that the same has been stolen, then, unquestionably, the thief is an accomplice of the receiver. On the other hand, if the receiver of stolen property receives possession of the same without knowledge of the theft and without notice of such facts or circumstances as would cause a reasonable person to believe that the property had been stolen, he would not be guilty of the crime of receiving stolen property as defined by an Idaho Statute, and in such case the question of accomplice would be eliminated.

Albert L. Smith. 11-21-27.

AD VALOREM TAX

Basis For Determining

2. QUESTION:

Shall the State Board of Equalization, in determining the amount of the State Ad Valorem tax to be collected from each county, base the same upon the gross equalized assessed valuation of each county or upon the equalized valuation of each county after a deduction of the exemptions has been made?

OPINION:

Under the provisions of Section 3163 of the Compiled Statutes, the county auditor must prepare an abstract of all the property entered upon the real property assessment roll including property exempt from taxation under subdivisions 4, 7, 8, 9, 10 and 21 of Section 3099. Under the provisions of Section 3177 the State Board of Equalization must include property exempt under the foregoing subdivisions in fixing the valuation of the property of the county from which it shall determine the amount of the State Ad Valorem tax.

Hon. E. G. Gallet. 12-28-27.

AGRICULTURE

Potatoes: Branded Sacks.

3. QUESTION:

May a potato producer or shipper pack potatoes in plain bags, consign them to himself and ship them to some point outside the State and thereby avoid compliance with the branded sack regulations.

OPINION:

If the potato producer or shipper packs his potatoes for sale, the law and regulations relative to branding the sacks apply even though he consigns them to himself for shipment outside the State.

Hon. A. W. B. Kjosness, Commr. Agri. 12-1-26.

AGRICULTURAL SEEDS**Noxious Weeds.****4. QUESTION:**

(1) May the Commissioner of Agriculture define sweet clover as an agricultural seed?

(2) Does the Commissioner of Agriculture have the power to define Poverty Weed, French Weed, Night Flowering Catchfly, White Champion, Hoary Cress and Blue Lettuce as noxious weeds?

(3) May lots of seed be legally condemned due to the presence of one or more of the above mentioned weeds in sufficient number to do so according to the official grades?

OPINION:

(1) The legislature has, by Section 2019 C. S. declared what seeds shall be regarded as agricultural seeds. It has not included sweet clover in its list of agricultural seeds. By defining certain seeds as agricultural seeds, it has by implication, excluded from the list all seeds not mentioned as agricultural seeds. The legislature has not vested the commissioner with the power to define agricultural seeds; the legislature, itself, has exercised that right, and the commissioner, therefore, has no power to extend the effect of Section 2019 C. S.

(2) The legislature has, by Section 2021 C. S., defined certain weeds as noxious weeds. It has not included therein the weeds named in the inquiry. The Commissioner of Agriculture in the absence of specific authorization from the legislature cannot extend the effect of that section and does not have the right to define or name any of such weeds as noxious weeds.

(3) All agricultural seeds are enumerated in Section 2019 C. S. All noxious weeds are enumerated in Section 2021 C. S. When any of the agricultural seeds enumerated in Section 2019 C. S. contain more than one noxious weed seed enumerated in Section 2021 C. S. to each 10,000 of agricultural seeds, such agricultural seeds may be condemned, but inasmuch as the weeds mentioned in question two are not noxious, lots of agricultural seeds containing a greater proportion of such weed seeds than is specified in Section 2021 C. S. may not be condemned or their sale prevented.

L. D. Raeder. 4-24-28.

ALIENS**Japanese.****5. QUESTION :**

May alien Japanese purchase and own town property for residence and business purposes in Idaho?

OPINION :

Japanese are ineligible to citizenship under the laws of the United States. Chapter 122 of the 1923 Session Laws restricts the rights of aliens ineligible to citizenship, in the leasing and ownership of property and provides also that the rights of such persons must be determined according to the provisions of the treaties existing between the United States and the Nation or Country of which such aliens are citizens or subjects. The treaty between the United States and Japan provides among other things as follows: "The citizens or subjects of each of the high contracting parties shall have liberty to enter, travel and reside in the territories of the other, to carry on trade, wholesale and retail, to own, or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established." From a consideration of the provisions of Chapter 122, and the treaty between the United States and Japan, we conclude that it was the intention of the legislature in enacting Chapter 122 to prohibit ineligible aliens from acquiring ownership in lands for agricultural purposes, and that said chapter was not designed to prohibit ineligible aliens from owning or leasing or occupying houses, manufactories, warehouses or shops, where such right is extended to them under the provisions of a treaty or treaties between the United States and their native country, or the country of which they are subjects. Japanese, therefore, have the right to purchase and own town property for residence and business purposes.

Paul S. Haddock. 6-30.27.

AMUSEMENTS

Skating Rink: Operation of.

6. QUESTION:

Is it legal to operate a skating rink on Sunday?

OPINION:

Yes. (Authority. Section 8292 C. S. as amended by Chapter 260 of 1921 S. L. and 8293 C. S. as amended by Chapter 238 of 1921 S. L.).

O. W. Witham.—10-25-27.

APPEAL

Filing Fees. (From Indus. Acc. Board.).

7. QUESTION:

What filing fee must be paid for filing an appeal in the District Court from the decision of the Industrial Accident Board?

OPINION:

The filing fee for that type of appeal is not specifically provided for by statute. Section 3702 C. S., after setting out the schedule of fees for certain services, provides that for all services not therein enumerated and of him lawfully required, the Clerk of the District Court shall demand and receive such fees as are allowed for similar services. The filing fee of an appeal in the District Court from a decision of the Industrial Accident Board is similar in character to the filing of an appeal from an inferior court. The fee for filing an appeal from an inferior court is \$5.00; hence, it appears that a filing fee of \$5.00 is the proper one to be charged and collected where an appeal is taken from the decision of the Industrial Accident Board.

J. Ward Arney. 4-17-28.

APPROPRIATION

Governor's Right of Veto.

8. QUESTION:

Has the Governor of the State of Idaho the right to veto any separate item in an appropriation bill?

OPINION:

The Supreme Court of the State of Idaho, in the case of *Wheeler v. Gallet*, 43 Idaho 175, 249 Pac. 1067, has held that the Governor of the State of Idaho has no right to change an item of appropriation, but must either approve or reject in toto each individual and distinct item as set forth.

Hon. Rush J. White, 1-21-27.

ARCHITECTS**When Employed by School Boards.****9. QUESTION:**

May a school board, or other public officials appoint or have act for them, a man in the capacity of superintendent of construction, if such superintendent of construction does not act under the direction of a licensed architect?

OPINION:

Under the provisions of Section 2231 C. S., Boards of Education and other public officials have no right to employ an architect to act in the capacity of superintendent of construction, unless such architect, as superintendent of construction, acts under the direction of a licensed architect, who has prepared the drawings and specifications for the building to be constructed.

David C. Lange. 2-14-27.

ASSESSMENT**Patented Mining Claims.****10. QUESTION:**

Is timber standing on a patented mining claim subject to assessment under the provisions of Section 3360 C. S.?

OPINION:

Under the provisions of Section 3360 C. S., mines must be taxed at the price paid the United States therefor, unless the surface ground, or some part thereof, of said mine or mining claim is used for other than mining purposes, and

has a separate and independent value for such other purposes in which case the surface ground, or any part thereof so used for other than mining purposes, must be taxed at its value for such other purposes. If the timber standing on the patented mining claim does not have a separate or independent value, but may be used only in connection with the mining claim, and no part of the surface of the claim, including the timber, has been or is being used for other than mining purposes, the timber is not taxable.

Hon. James H. Hawley. 5-14-28.

ATHLETICS

Amateur Bouts: Admission Charges.

11. QUESTION:

May an amateur athletic association or club charge admission to boxing or wrestling exhibitions or contests held under its auspices?

OPINION:

Whenever amateur charges are made to witness such exhibitions or contests, such contests must be held under the direction and control of the State Athletic Commission. (Authority: Chapter 72 C. S.).

W. B. Pratt. 7-16-27.

Exhibitions: Minors.

12. QUESTION:

May a minor participate in the preliminaries of a boxing bout?

OPINION:

Under the provisions of Section 1029 C. S., no person under 16 years of age may be permitted to participate in any kind of a contest or exhibition. Under the provisions of Section 1833 C. S., a boy over 16 years of age and under 18 years of age may be a contestant in a preliminary, but may not be a principal in any match.

John H. Kane. 12-9-26.

AUTO TRANSPORTATION ACT

Liability: Exemption.

13. QUESTION:

May an endorsement specifically exempting an insurance company from liability for injury or death suffered by an employee of an auto transportation company, while engaged in the maintenance or operation of any of the assured's automobiles, be attached to the insurance policy required to be filed by Chapter 197 of the 1925 Session Laws, as amended by Chapter 237 of the 1927 Session Laws?

OPINION:

The relation between the transportation company and the employee in such cases is that of master and servant. The company is required to comply with the Workmen's Compensation Act to protect the employee or his dependents. A person employed to maintain or operate one of the auto transportation company's motor vehicles could not be classed as a passenger. It appears that the law in question was designed to protect only those contracting with the common carrier in the capacity of passengers. The exemption endorsement may be attached.

Hon. Fred E. Lukens. 9-30-27.

BANKS AND BANKING

Investments.

14. QUESTION:

Is the stock of a corporation organized under the provisions of Section 25a of the Federal Reserve Act, commonly known as the "Edge Act" or the Foreign Banking Bill, a legal investment for banks and trust companies in Idaho?

OPINION:

Section 29 of Chapter 133 of the 1925 Session Laws provides in part as follows:

"No bank shall accept as collateral, or make any loans or discounts on the security of nor purchase any shares of its own capital stock or the shares of any

other bank wherever organized, or situated, except stock of Federal Reserve Banks, unless such security or purchase shall be necessary to prevent loss upon a debt previously contracted in good faith;"

The foreign banking corporation referred to in the inquiry, although subject to regulation by the Federal Reserve Board, is not a Federal Reserve Bank and the stock thereof is not a legal investment for State Banks or Trust Companies.

B. Aubrey Harris & Company. 9-11-28.

Liquidation of Banks.

15. QUESTION:

May a state bank voluntarily pay off the bank's depositors, discharge whatever other liabilities the bank may have and make a division of the remaining assets without turning over the affairs of the bank to the Department of Finance for liquidation through that department?

OPINION:

Section 5287 C. S. which provided for voluntary liquidation on the part of bank or trust companies was repealed by the provisions of Chapter 133 of the 1925 Session Laws. Section 66 of said Chapter provides for the voluntary placing of the assets of the bank in the hands of the Commissioner of Finance for liquidation purposes. However, there is no provision in the law which may be construed to prevent a bank from discharging all of its obligations voluntarily without delivering its assets and affairs to the Department of Finance. While it appears that the bank may proceed to pay off its depositors and other creditors as hereinbefore indicated, before the liquidation of the bank's affairs may be fully consummated, it will be necessary for the bank to deliver its affairs over to the Commissioner of Finance so that a decree may be procured from the District Court in conformance with the provisions of Chapter 133 of the 1925 Session Laws.

Hon. E. W. Porter, Commr. of Finance. 12-5-27.

BLUE SKY LAW**Expenses.****16. QUESTION:**

May the members of the "Blue Sky Commission" appointed by the Governor pursuant to the provisions of Chapter 255, 1927 Session Laws, be reimbursed for their actual and necessary expenses incurred in the work of said commission?

OPINION:

Section 1 of said Chapter 255 authorizes the Governor to appoint a "Blue Sky Commission" to consist of three members and further provides that said members shall serve without pay but shall be reimbursed for their actual necessary expenses incurred in the work of the commission. This act which contains the only reference found in the statutes to the "Blue Sky Commission" makes no appropriation from which to reimburse the members for their actual necessary expenses and hence, under the provisions of Section 13 of Article 7 of the Constitution of the State of Idaho, the members of such commission may not receive their actual necessary expenses until an appropriation bill is passed by the Legislature and signed by the Governor appropriating money for this purpose.

Ira High. 8-3-27.

Manufacturing Companies.**17. QUESTION:**

Where a foreign corporation enters the State of Idaho for the purpose of using certain clay deposits in the manufacture of brick, tile and pottery, is it necessary before selling its securities in Idaho, to comply with the Blue Sky Law?

OPINION:

Section 5319 C. S. as amended by Chapter 179 of the 1921 Session Laws, constitutes a part of the Blue Sky Law and provides as follows:

"The provisions of this chapter shall not apply to any person, corporation, or association engaged in actual mining operations developing mining property within the State except as hereinafter provided and not other-

wise. The term 'actual mining operations,' within the meaning of this and the following sections, includes the development or production of gas or oil."

Ordinary brick clay is not regarded as mineral, (18 R. C. L. 1096) and land upon which brick clay deposits are located is not subject to mining entry for the purpose of exploiting such deposits. *Jordon v. Idaho Aluminum Mining and Manufacturing Co.* 20 Land Decisions, 500). It would appear that manufacturing is the primary purpose of the company's operations in Idaho and that its "mining" operations, if the term "mining" may properly be applied to the taking of clay deposits, are only incidental or secondary to the primary purpose of manufacturing. Consequently, before offering or attempting to sell any stocks, bonds or other securities of any kind or character other than those specifically exempted in Section 5305 C. S. or transacting any business whatever in the State, such company shall comply with the provisions of the Blue Sky Law.

Hon. E. W. Porter, Commr. of Finance. 11-17-27.

Private Company Must Comply.

18. QUESTION:

May a public utilities corporation of a foreign State which seeks to sell the stock of a pole and tie company organized in Delaware, sell such stock without compliance with the Blue Sky Law?

OPINION:

The public utilities corporation is not seeking to sell its own stock. It is seeking to dispose of the stock of the pole and tie company, a private corporation. Where a foreign corporation, acting as agent or employee of the pole and tie company seeks to dispose of the stock of the latter company within the State of Idaho, the latter company must comply with the provisions of the Blue Sky Law before its stock may be sold within the State.

Hon. J. R. Middleton, Dept. Finance. 10-8-28.

Individuals Owning Securities.**19. QUESTION:**

Must an issuing company designate a statutory agent within this State under the provisions of Chapter 206 C. S., when stock issued by the company is not sold by the company, but is sold by the individuals owning the stock?

OPINION:

Chapter 206 C. S. applies to the regulation of investment companies, and is otherwise known as the Blue Sky Law. There is no provision within said chapter prohibiting a person who is a bona fide owner of securities from disposing of such securities, even though the issuing company does not designate a statutory agent within the State.

Hon. E. W. Porter. 4-23-27.

Sale of Securities in Foreign State.**20. QUESTION:**

Where a company located in a foreign state issues bonds in such foreign state and which bonds are to be sold in that state, but are secured by property located in Idaho and Montana, does such transaction bring the company within the provisions of the Blue Sky Law of Idaho?

OPINION:

The operations of the company would not come within the provisions of Section 5306 C. S. Said section would affect the company only when selling or offering to sell securities within Idaho.

Hon. E. W. Porter. 6-7-27.

BONDS**Irrigation District: Official Bonds.****21. QUESTION:**

Does the official bond filed by the State Treasurer in accordance with Section 177 C. S. cover the money placed in his custody by Irrigation Districts under authority of Chapter 178 of the 1923 Session Laws?

OPINION:

Section 157 of Article 4, Chapter 10 of the Compiled Statutes, makes it the duty of the State Treasurer to receive and keep all money belonging to the State, not required to be received and kept by some other person. The bond posted by the State Treasurer, as such officer, is for the protection against the loss of money belonging to the State, and not such money as belongs to a quasi-municipal corporations which may be deposited with the State Treasurer. All of the provisions of Article 4, relate to the Treasurer's duties with reference to State funds and the bond posted by the State Treasurer in conformance with the provisions of Section 177 C. S. is for the exclusive purpose of protecting the State against the loss of its funds. The funds of a quasi-municipal corporation, such as an irrigation district, are not State funds. (*Strickfaden v. Greencreek Highway District*, 42 Idaho, 738). Although Chapter 178 of the 1923 Session Laws specifically authorizes the State Treasurer to act as Treasurer of such district for the purpose of receiving, and disbursing the district's funds, in payment of certain obligations, the State Treasurer does not perform such duties as State Treasurer, but as Treasurer of the district, and he should post a separate bond with the district running to the district in accordance with the provisions of Section 4329 C. S.

American Falls Reservoir District. 9-8-27.

BRIDGES

Maintenance of.

22. QUESTION:

A bridge originally constructed by a county is now within the corporate limits of a city of the second class. Is it the duty of the county or the city to maintain and repair such bridge?

OPINION:

Section 1302 C. S., in defining highways, includes roads, streets, alleys, and bridges laid out or erected by the public, or if laid out or erected by others, dedicated or abandoned to the public use. Inasmuch as the duty of maintaining the streets within its corporate limits, in a

reasonably safe condition for travel, devolves upon a municipality, the city is obligated to maintain and repair the bridge in question.

Arthur S. Guerin, Jr. 7-9-27.

BUDGET

Bureau of Animal Industry.

23. QUESTION:

When is it necessary that the County budget covering an appropriation for cooperation with the Bureau of Animal Industry for the eradication of tuberculosis be made so that such cooperation may be carried on in the year 1928?

OPINION:

The budget must be filed with the County Auditor on or before the second Monday in February. (Authority: Chapter 232 of 1927 S. L.).

Dr. A. J. Dickman, Bureau of Animal Industry. 11-16-27.

CEMETERY DISTRICTS

Maintenance of: Widow not Exempt.

24. QUESTION:

(1) Is the revenue for maintenance of a cemetery district raised by general taxes or by special improvement assessments?

(2) If such maintenance is raised by assessments, may a widow claim an exemption from the payment thereof?

OPINION:

(1) Under the provisions of Section 1, Chapter 197 of the 1927 Session Laws, the assessments are special improvement district assessments, based upon the benefits accruing to the property within the district.

(2) A widow is not entitled to claim exemption from the payment of special improvement district assessments, and inasmuch as the assessments referred to are assess-

ments based on benefits accruing to the property within the district, a widow cannot claim any exemption.

A. K. Jensen. 10-9-28.

Secretary-Treasurer: Compensation.

25. QUESTION:

May a Secretary-Treasurer of a Cemetery District who is also one of the Commissioners of the District receive compensation for services performed as Secretary-Treasurer?

OPINION:

Commissioners may not be paid for services rendered as Commissioners. However, if the office of Secretary-Treasurer is filled by a Commissioner he may be paid for his services rendered in the capacity of Secretary-Treasurer. (Authority: Chapter 197 of 1927 S. L.).

George A. Cordon. 10-13-27.

CHIROPRACTORS

Electrical Instruments: Operations by.

26. QUESTION:

May a chiropractor remove tonsils or hemorrhoids by the use of electrical instruments, or does that type of operation amount to practicing surgery?

OPINION:

Section 2152 C. S. defines the practice of chiropractic, and also provides:

"But nothing herein contained shall allow any licensee to prescribe medicine, perform surgical operations or practice obstetrics."

Section 2112 C. S. defines the practice of medicine and surgery. The removal of tonsils or hemorrhoids by the use of electrical instruments constitutes surgery and a chiropractor is therefore prohibited, under the provisions of Section 2152 C. S. and the provisions of Chapter 90 C. S. from performing such operations. (Authority: *State v. Sawyer*, 36 Idaho 814, 214 Pac. 222.).

Hon. Fred E. Lukens. 3-8-28.

CITIES

Civil Service.

27. QUESTION:

Does a city of the second class have a right to place the electric, water, police, and fire departments under civil service regulations?

OPINION:

Chapter 128 of the 1923 Session Laws authorizes civil service in cities of the first class, which are not organized under the commission form of government, but no such authority is granted cities of the second class. Appointments made in cities of the second class shall be made under the provisions of Section 3864 C. S.

E. H. Underhill. 6-29-27.

Exemption From Gasoline Tax.

28. QUESTION:

Is the Commissioner of Law Enforcement permitted by law to make a refund of tax on gasoline to the City of Boise for gasoline used in graders, motor lawn mowers, sprinklers, fire engines, police cars and trucks used by the city?

OPINION:

Under the provisions of Section 10 of Chapter 172 of the 1923 Session Laws, as amended by Chapter 231 of the 1927 Session Laws, the exemption may be allowed where the gasoline is used in graders and motor lawn mowers. In the case of sprinklers and fire engines where part of the gasoline is used for transportation purposes and part is used to create pressure to pump water, the city may claim its exemption on that part of the gasoline actually used for the purpose of developing pressure to pump water. On that part of the gasoline used for purely transportation purposes, the exemption may not be allowed. The exemption may not be allowed on gasoline used in police cars and trucks.

Hon. Fred E. Lukens. 6-2-27.

Fines : Imprisonment for Non-Payment : Credit.**29. QUESTION:**

What per diem credit should be allowed to one convicted under a city ordinance and committed to jail to lay out his fine, or fine and costs?

OPINION:

Where one is convicted of the violation of a city ordinance and committed to prison upon default of payment of the fine and costs, or fine, he shall be allowed \$1.50 for each days' imprisonment. (Authority: Section 3889 C. S.).

J. B. Loomis. 9-27-27.

Fines and Penalties : Disposition of.**30. QUESTION:**

How should police court fines and costs be distributed or apportioned?

OPINION:

One-half of the fines, exclusive of costs shall be paid to the school district or districts embraced in whole or in part within the territory of the municipality, and the other half thereof and all costs shall be paid to the municipality. (Authority: Section 3882 C. S.).

F. M. Ruse. 3-15-28.

Municipal Band : Tax Levy For.**31. QUESTION:**

May a special municipal election be called to vote upon the question of a tax levy for a municipal band?

OPINION:

No. The question of a levy for the purpose of maintaining a municipal band shall be submitted at the general municipal election. (Authority: Chapter 47 of 1927 S. L.).

Ralph R. Rice. 5-1-28.

Taxes on Gasoline.**32. QUESTION:**

May a city of the second class levy a tax on gasoline sold within its limits?

OPINION:

The gasoline tax does not fall within the provisions of Section 3940 or Section 3941 C. S. There appears to be no statutory authority for that type of tax in municipalities. In the absence of specific authorization, such tax would be illegal.

Thomas H. Davie. 4-13-28.

Vacancies : How Filled.**33. QUESTION:**

How are vacancies occurring in City and Village offices filled?

OPINION:

Section 457 C. S. provides that the mayor and council or board of trustees shall fill vacancies occurring in city offices.

C. W. Thomas. 9-26-27.

Vacancy : Term of Appointee.**34. QUESTION:**

Where a councilman in a city was elected two years ago for a term of four years and resigned shortly after he had qualified and the mayor and council appointed a successor to serve in his place, does the appointee act for the balance of the term of the councilman who resigned or should another councilman be elected at the next ensuing election to serve the balance of the term of two years?

OPINION:

The councilman appointed under the foregoing conditions holds office only until the next municipal election, at which time his successor must be elected for the balance of the term of the councilman who vacated the office by resignation.

F. J. Whitney. 3-30-27.

CITIZENS**Naturalized.****35. QUESTION:**

A boy born in Spain was eight years old when he arrived in the United States. His father became a naturalized citizen of the United States when the boy was fifteen years of age. He will be twenty-two years of age in December, 1928. May he vote at the coming election?

OPINION:

If the boy in question was dwelling in the United States and was under the age of twenty-one years at the time of the naturalization of his father, he is a citizen of the United States, and if otherwise qualified, is entitled to register and vote at the coming election. (Authority: U. S. C. A. Title 8, Chapter 1, par. 7, page 18.).

Dr. Wm. J. Erkenbeck. 7-17-28.

Woman Who Marries Alien.**36. QUESTION:**

Has a woman who was a natural born citizen of the United States and who has married a man who is not a citizen of the United States a right to vote at a Highway District Election?

OPINION:

Section 9 of Title VIII of the Code of Laws of the United States provides, in part, as follows:

"A woman citizen of the United States shall not cease to be a citizen of the United States by reason of her marriage, unless she makes a formal renunciation of her citizenship before a court having jurisdiction over naturalization of aliens: Provided, that any woman citizen who marries an alien ineligible to citizenship shall cease to be a citizen of the United States. * * *

If the husband is not ineligible to citizenship, the wife is still a citizen of the United States, unless she has made a renunciation of her citizenship before a court having jurisdiction over naturalization of aliens.

If the wife is a citizen of the United States and possesses the other qualifications prescribed in Section 2 of Article 6 of the Constitution of the State of Idaho, she is entitled to vote at the Highway District Election.

Hon. J. B. Manifold. 12-9-27.

COLLECTION AGENCY

Justices of the Peace : Must Furnish Bond.

37. QUESTION:

Must a Justice of the Peace post a bond with the Department of Finance to conduct a collection agency, or collection bureau?

OPINION:

If the Justice of the Peace is not a duly and regularly licensed attorney at law of this State, it is necessary for him to post a bond with, and pay a filing fee to the Department of Finance before he may be authorized to conduct a collection agency or collection bureau. (Authority: Section 2360 C. S. as amended by Chapter 186 of 1927 S. L.).

Elmer E. Johnston. 11-1-27.

COMMON CARRIERS

Free Transportation : Y. M. C. A. Secretaries.

38. QUESTION:

The traveling secretaries of the Northwest Council of the Y. M. C. A. are engaged in service for men and boys in areas where there are no established Y. M. C. A.'s, and give aid and counsel to Associations already established, and conduct such activities as Boys' Camps, student, boys and young men's conferences. Their aid and counsel includes Railroad Y. M. C. A. work as well as other types of Y. M. C. A. work. There is one regular Railroad Y. M. C. A. in Idaho, and special service is extended to Railroad men and an annual conference is provided for railroad men in the Pacific Region. The Northwest Council of Young Men's Christian Associations has no income producing properties and is entirely financed by contributions and donations from friends and appropriations from local Y. M. C. A.'s. May common carriers in the State of Idaho legally issue free transportation to such Traveling Secretaries of the Y. M. C. A. in the State of Idaho?

OPINION:

That part of Section 2421 C. S. as amended by Chapter

68 of the 1923 Session Laws pertaining to the inquiry, provides:

"No common carrier shall directly or indirectly issue or give any free ticket, free pass or free transportation for passengers, except to its employees and their families, its officers, agents, surgeons, physicians and attorneys at law; to ministers of religion, traveling secretaries of railroad Young Men's Christian Associations, inmates of hospitals, and charitable and eleemosynary institutions, and persons exclusively engaged in charitable and eleemosynary work."

Inasmuch as it appears that the Secretaries are persons exclusively engaged in charitable and eleemosynary work, common carriers may legally issue free transportation to them.

Public Utilities Commission. 9-26-28.

CONDITIONAL SALES CONTRACT

Filing Notice of Satisfaction.

39. QUESTION:

Upon the filing of Notice of Satisfaction of Conditional Sales Contract, should the Recorder return the Contract, or the copy thereof filed in the Recorder's office, to the maker or the person filing same?

OPINION:

Where a Conditional Sales Contract, or a copy thereof, has been filed in the Recorder's office, it becomes a part of the permanent files and records of that office and a discharge of the obligation evidenced by it, or the filing of the Notice of Satisfaction, does not entitle the maker or the person who filed the same, to its return.

C. G. Cromwell. 5-10-27.

CONTRACTOR'S BOND

Resident Agent.

40. QUESTION:

Where the Department of Public Works enters into a contract for the construction of roads or public buildings, is it necessary for a resident agent to countersign the

contractor's bond where the same is written by a foreign corporation authorized to write surety bonds within the State of Idaho?

OPINION:

Under the provisions of Section 5009, C. S., it is necessary that a resident agent countersign a contract bond written by a foreign corporation.

Hon. J. D. Wood. 6-2-27.

CONVICTS

On Parole May Not Marry.

41. QUESTION:

Where a person has been convicted of a felony and sentenced to serve a term of imprisonment in the State Penitentiary, and is thereafter paroled, is a marriage contracted by him during the parole period legal?

OPINION:

Under the provisions of Section 8611 C. S. the civil rights of a person sentenced to imprisonment in the State Penitentiary are suspended with certain exceptions. As marriage is a personal relation arising out of a civil contract, a marriage contracted by one on parole would be illegal.

George F. Huffman. 2-23-27.

CORONER

Right to Appoint Deputy.

42. QUESTION:

Does a coroner have the right to appoint a deputy coroner in special cases?

OPINION:

No. Only the county officers enumerated in Section 6, Art. 18, of the Constitution, and Section 3700 C. S. are authorized to appoint deputies.

W. A. Shaw. 5-25-27.

CORPORATIONS**Annual License Fee : Exemption Non-Productive Mines.****43. QUESTION:**

Where a mine has been worked during the past year and a shipment of ore made therefrom, returning to the corporation an insignificant sum resulting in a loss to the corporation, is it necessary for the corporation to pay the annual license fee for the full capitalization, or may it be exempt therefrom under the rule that it is a non-productive corporation?

OPINION:

Under the provisions of Sec. 4781 C. S., if a mine is a productive mine, it is not entitled to exemption even though the operation of the mine results in a loss.

J. G. Sawyer. 6-24-27.

Foreign : Collection Agencies.**44. QUESTION:**

Before a corporation, organized under the laws of a foreign state for the purpose of conducting a collection agency, transacts business in the State of Idaho, will it be necessary for the corporation to file its articles of incorporation, designate an agent, and go through the regular formula provided for foreign corporations generally, or is it sufficient to comply with the special laws of Idaho applying to collection agencies?

OPINION:

A foreign corporation desiring to transact business as a collection agency in Idaho must qualify to do business as a foreign corporation under the provisions of Chapter 187 C. S., and in addition thereto, must comply with the laws relative to collection agencies. The law does not exempt foreign corporations doing a collection business within the state from complying with the provisions of the law regarding foreign corporations. (Authority: Chapter 114 C. S. as amended by Chapter 126 of the 1925 Session Laws, and as amended by Chapter 186 of the 1927 Session Laws.).

Myrvin Davis. 2-16-28.

Foreign : Effect of Non-Compliance With Idaho Law.**45. QUESTION:**

1. May a corporation organized in a foreign state exchange its preferred stock for common stock of an Idaho corporation without first complying with the provisions of Chapters 187 and 206, C. S., together with amendments?

2. If such exchange were made, would it be violative of Chapter 206, C. S., and would it constitute a sale within the meaning of such chapter?

OPINION:

1. Section 4775 of Chapter 187, C. S., provides as follows:

"No contract or agreement made in the name of, or for the use or benefit of such corporation prior to the making of such filings as provided in Sections 4772 and 4773 can be sued upon or enforced in any court of this state by such corporation."

The foregoing statute simply denies the right of access to the state courts in enforcing a contract made before such corporation has complied with the state law, but the statute does not make the contract invalid or void. The statute is a remedial statute. The foreign corporation may sue in the Federal Court for the enforcement of such contract. (See *Colby v. Cleaver*, 169 Fed. 206; *Continental Etc. Bank v. Corey Bros. Const. Co.*, 208 Fed. 976, 125 C. C. A. 64.).

2. If such exchange were made within the State of Idaho, it would be in violation of the provisions of Chapter 206, C. S.; it would constitute a sale within the meaning of such chapter and would render the corporation or its agents contracting such business within the State of Idaho subject to the penalties provided in Section 5317, C. S. However, the exchange would not amount to a void transaction.

Hon. E. W. Porter. 6-4-27.

Foreign : Qualifications of.**46. QUESTION:**

Is it necessary for a foreign corporation which has qualified under the laws of this state to do business within the State of Idaho, has later withdrawn from the state

and thereafter seeks re-admission to transact business within the state, to pay all license fees and taxes for the interim when it was not operating within the state, or may it be permitted to again file articles of incorporation and pay fees as if the corporation had not previously qualified?

OPINION:

If a corporation has complied with all of the legal requirements of this state up to the time of termination of its right to do business in the state, upon its later re-entry to do business within the state, it may file a new set of its articles of incorporation, and qualify under the laws of this state as a corporation coming into the state for the first time to transact business and pay the fees accruing from that date without incurring the liability of payment of fees covering the interim during which it was not engaged in business within the state.

Hon. Fred E. Lukens. 2-24-27.

Foreign : Qualifications to Transact Business.

47. QUESTION:

Is a foreign corporation desiring to qualify to transact business in Idaho required to file a certified copy of the Articles of Incorporation in the office of the County Recorder of each County in which the corporation may purchase, locate or hold property?

OPINION:

No. Such filing must be made only in the office of the County Recorder of the County in which is designated its principal place of business in Idaho and with the Secretary of State. (Authority: Section 4772 C. S. as amended by Chapter 82 of 1925 S. L.).

Hon. Fred E. Lukens. 5-21-28.

Must Adopt By-Laws and Set Forth Purposes.

48. QUESTION:

Can a corporation be legally organized with Articles of Incorporation of a general nature without provisions

for the conducting of its business, and without adopting a set of by-laws; if a corporation is so organized and applies to the Department of Finance for a permit to sell its securities, under the laws of Idaho relative to the regulation of investment companies, commonly known as the Blue Sky Law, would the Department of Finance be authorized to refuse to issue a permit to sell securities?

OPINION:

A corporation is not legally organized where the purposes for which it is formed are not particularly set out in the Articles of Incorporation. A corporation may be organized without adopting a set of by-laws, but before engaging in business such corporation must adopt by-laws. Where a corporation applies to the Department of Finance for a permit to sell securities, under the Blue Sky Law, the Department has the right to refuse to grant a permit unless the Articles of Incorporation set forth the nature of the business and a set of by-laws has been adopted.

Hon. E. W. Porter. 2-17-28.

COUNTIES

Disposal of Obsolete Equipment.

49. QUESTION:

How may obsolete supplies and equipment belonging to a County be disposed of?

OPINION:

County property, real or personal, not necessary for County use may be sold by the County Commissioners after a thirty day notice has been given by publication in a newspaper of the County, or after notice has been posted in five public places within the County, at public sale. (Authority: Section 3423 C. S. as amended by Chapter 180 of 1925 S. L.).

D. K. McLean. 2-10-27.

Fairs : Payment of Premiums.

50. QUESTION:

May a County appropriate money for the purpose of conducting a County Fair and use such money so appro-

priated to pay premiums or prizes to exhibitors of livestock and farm products coming from other Counties?

OPINION:

Yes. (Authority: Section 3438 C. S. as amended by Chapter 19 of 1927 S. L.).

W. D. Kinder. 4-26-28.

Fees : Clerk of District Court : Payable in Advance.

51. QUESTION:

May the Clerk of the District Court collect in advance, fees or costs for the publication of a Notice of Attachment?

OPINION:

Under the provisions of Section 6781 C. S. as amended by Chapter 206 of the 1921 Session Laws, the Clerk of the District Court is required to post and publish a notice that an attachment has been issued. Section 3712 C. S. provides that the officers named therein need not perform any official services, except for the State or County unless the fees are prepaid. Section 3702 C. S. provides:

"The Clerk of the District Court shall lawfully charge, demand and receive the following fees for services rendered by him in discharging duties imposed upon him by law."

Then follows a schedule of fees, etc., which schedule does not include fees for the publication of a Notice of Attachment, but does provide as follows:

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

In view of the fact that the statutes require the Clerk to publish the notice, the cost of which would be a legal charge against the County, and the further fact that official services need be rendered only upon the payment of fees prescribed, the Clerk is entitled to demand payment of fees in advance for the publication of the Notice of Attachment.

John A. Kofoed. 3-9-28.

Fiscal Year.**52. QUESTION:**

Since, under the provisions of Chapter 232 of the 1927 Session Laws, the fiscal year of Counties commences on the second Monday of April, do the County Commissioners have authority to make a levy sufficient to cover a fifteen months period from January 1, of the present year up to the second Monday of April of the coming year?

OPINION:

The foregoing inquiry evidently is based upon the assumption that prior to the enactment of said Chapter 232, the fiscal year of Counties began on the second Monday of January. That assumption however, is not correct. In the case of *LaCledde Highway District v. Bonner County*, 33 Idaho, 476, 196 Pac. 196, the Supreme Court in 1921 held that the fiscal year of Counties commences on the second Monday of April of each year. The Court, in its opinion, said:

"In order to interpret the foregoing sections, it will be necessary to construe and apply certain other sections not only of the compiled statutes, but of the constitution of this state, relating to revenue and taxation. It should be noted at the outset that while art. 7, sec. 1, of the constitution fixes the beginning of the fiscal year as the second Monday of January unless otherwise provided by law, the legislature has fixed the fiscal year for the conduct of county business to begin on the second Monday of April of each year. (C. S., secs. 3217, 3219; *Peavy v. McCombs*, 26 Ida. 143, 140 Pac. 965)."

Chapter 232 of the 1927 Session Laws does not change the beginning and close of the fiscal year. It simply reannounces or redefines the fiscal year for Counties. The County Commissioners, therefore, have no authority to make a levy for a greater period than the present fiscal year.

H. A. Griffiths. 9-15-27.

Funds : Transfer of.**53. QUESTION:**

May the Board of County Commissioners transfer sinking fund money to the warrant redemption fund, tem-

porarily, primarily for the purpose of saving 5 % interest on outstanding registered warrants?

OPINION:

Section 3503 C. S. provides:

"The board must not transfer any money from one fund to another, nor in any manner divert the money in any fund to other uses, except in cases expressly provided and permitted by law, * * *".

The only provision of law for the transfer of funds to the warrant redemption fund is contained in Section 3219 C. S., but there is no statutory provision or legal authority for the temporary transfer or loan of money from the sinking fund to the warrant redemption fund and the proposed transfer set out in the inquiry, may not be made. (Authority: *LaCiede Highway District v. Bonner County*, 33 Idaho, 476, 196 Pac. 196.

D. W. Thomas. 3-16-28.

Hospitals : Qualifications of Nurses.

54. QUESTION:

Are county hospital authorities required to employ graduate nurses in a county hospital?

OPINION:

Nurses employed to render services in a county hospital need not be graduate nurses. However, if a nurse is to be employed as a county nurse pursuant to the provisions of Section 3448 C. S., she must be a graduate nurse, and the county commissioners have no right to employ any other than a graduate nurse.

D. K. McLean. 4-29-27.

Indigent : Burial of : Contract.

55. QUESTION:

May the county coroner and the county of which he is coroner enter into a contract for the burial of indigents?

OPINION:

The statutes provide that after an inquest is held by the coroner and no person takes charge of the body of

the deceased the coroner must cause it to be decently interred; and if there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of burial the expenses are a legal charge against the county. (Sec. 3676 C. S.). County officers, and this includes the coroner, are prohibited from contracting with the county and for this reason a contract between the county and the county coroner for compensation for county burials would be illegal. The procedure outlined in Section 3676 C. S. may be followed, but a contract made with the coroner for the burial of all indigents dying within the county, is illegal.

Sidney H. Smith. 9-14-27.

Indigent Persons : Burial of.

56. QUESTION :

(1) May the board of county commissioners make a contract with a firm of funeral directors for the burial of indigent deceased persons?

(2) May an employee or partner of a funeral director, who is also a county officer, make a contract with the county commissioners for the burial of indigent deceased persons?

OPINION :

(1) The board of county commissioners has a legal right to enter into a contract with a firm of funeral directors for the burial of all of its indigent persons.

(2) An employee of a funeral director, who is a county officer, would have the right to enter into a contract with the board of county commissioners for the burial of indigent persons, providing such contract is a bona fide contract between himself and the county. He could not make a valid contract with the county in his own name for the benefit of a funeral director who is a county officer. The partner of a funeral director, who is a county officer, could not make a contract with the county for the burial of indigent persons, if it was intended that the director who is a county officer should share in the benefits of the contract.

Bruce Turnbull. 10-27-27.

Printing.**57. RE: COUNTY PRINTING.****OPINION:**

A county official contracting for county printing may not ordinarily go outside his county to have the printing done. However, if the printer or printers within the county undertake to charge in excess of the charge usually made to private individuals for the same kind and quality of work, then the county official may have the printing done outside of the county. (Authority: Sections 2336-2337 C. S.).

Tom W. Horsely. 4-19-27.

Sale of Property : Publication of Notice.**58. QUESTION:**

Upon a sale of county property, in how many issues of the newspaper is the notice of sale required to be published, and if the notice must be published in more than one issue, from which issue does the required "thirty days' previous notice" start?

OPINION:

It is necessary to publish the notice of sale of county property in only one issue of the newspaper in the county, but such notice shall be published at least thirty days' prior to the date of the sale. (Authority: Section 180 of the 1925 Session Laws, as amended by Chapter 159 of the 1927 Session Laws, *McGilvery v. City of Lewiston*, 13 Idaho 338, pp. 354-355.).

F. A. Wilbur. 2-16-28.

Sinking Funds : Investment of.**59. QUESTION:**

May Counties invest sinking fund money in highway district bonds?

OPINION:

Such investment is not permitted under the provisions of Chapter 119 of the 1925 Session Laws.

Fred J. Babcock. 11-4-27.

COUNTY BUDGET**Agricultural Agent.****60. QUESTION:**

Is it necessary for the county to budget for the expenses and salary of the county agricultural agent?

OPINION:

While it is true that the salary of the agricultural agent is fixed by the University Extension Division, nevertheless, payment thereof is made by the county and for this reason the agent is in reality a county employee.

Chapter 232 of the 1927 Session Laws requires that all expenses such as salaries, etc., shall be budgeted. Since the county is required to pay the agent's salary and expenses, such salary and expenses should be budgeted by the county commissioners and the auditor of the county furnished a statement of such budget.

No expenditure for such services or expenses may be made by the county unless it is included within the budget. The only exception to this rule is in the case of emergencies provided for in Chapter 232 of the 1927 Session Laws or in case of an order or judgment of a court of competent jurisdiction.

Dean E. J. Iddings. 2-20-28.

COUNTY OFFICERS**Auditor : Financial Report : Fiscal Year.****61. QUESTION:**

What period should County Auditors cover when preparing their 1927 annual financial report?

OPINION:

The fiscal year for counties begins on the second Monday of April of each year. (See opinion numbered 52 this report). The Auditor's financial report should cover the fiscal year. Perhaps the provisions of Section 3630 C. S. cannot be strictly complied with as that section requires the report to be completed on the day the fiscal year ends. Nevertheless, the report must be made for the year beginning on the second Monday of April of one year and ending on the second Monday of April of the succeeding year.

Hon. B. E. Hyatt, Bureau of Pub. Accts. 11-17-27.

Auditor : Hold Over.

62. QUESTION :

May the county commissioners authorize an out-going county auditor to hold over for two weeks for the purpose of finishing his work and to prepare his report?

OPINION :

No. The Board of County Commissioners may not prohibit the auditor-elect from qualifying for his office. The salary of the new auditor would commence immediately upon his qualifying for such office. (*Dotson v. Cassia County*, 35 Idaho 382). The out-going auditor, of course, would have the right to complete his report, but could not draw a salary therefor after the expiration of his term, unless he should be appointed as a deputy or employed by the incoming auditor.

Geraint Humpherys. 1-18-28.

Clerk of District Court : Vacancy : Appointment.

63. QUESTION :

(1) Is the office of the Clerk of the District Court a County office, the vacancy of which may be filled by the Board of County Commissioners, or is it an office the vacancy of which may be filled by the Governor as a judicial district office?

(2) Does the agency which has the power of appointment have authority to appoint for the unexpired term of the incumbent, or do the provisions of Sections 457, 458, or 461-467 C. S. govern it?

OPINION :

(1) The office of Clerk of the District Court and ex-officio Auditor and Recorder is a County office. Under the provisions of Section 458 C. S. the vacancy shall be filled by appointment made by the County Commissioners "until the next general election, when such vacancy shall be filled by election."

(2) Inasmuch as there is now a vacancy in the office of County Clerk in Nez Perce County, the Board of County Commissioners are empowered to appoint a qualified person to fill the office until the next general election

when the vacancy must be filled by an election, and under the provisions of Section 467 C. S. the Clerk to be elected in November, 1928 will hold office until January, 1931. (Authority: Article 18, Section 6, of Constitution; Sections 458, 467, 492 C. S.).

Fred J. Babcock. 4-16-28.

**County Commissioners : Councilmen : Two Offices Held
by One Man.**

64. QUESTION:

Is it lawful for a person to hold the office of County Commissioner and the office of Councilman in a city of the second class?

OPINION:

Inasmuch as the offices are offices of different governing bodies and the duties thereof in no way incompatible, the two offices may be held by one person.

Ralph H. Kelley. 4-18-27.

County Commissioners : May Not Hold Two Offices.

65. QUESTION:

May one person hold both the office of County Commissioner and Highway District Commissioner?

OPINION:

The duties of the two offices are incompatible and may not be held by the same person at the same time.

Russell Webb. 12-24-26.

County Commissioners : Vacancy.

66. QUESTION:

Who may make the appointment to fill a vacancy in the office of County Commissioner?

OPINION:

Under the provisions of Section 458 and 460 C. S. the Governor is authorized to make the appointment to fill the vacancy on the board of county commissioners.

John W. Graham. 1-31-28.

Deputies and Clerical Assistance : Employment of.

67. QUESTION:

Does compliance with the provisions of Chapter 232 of the 1927 Session Laws (County Budget Law) obviate the necessity of the County Officers named in Section 3700 C. S. to publish a Notice of Intention to employ deputies and clerical assistance for a period of thirty days?

OPINION:

No. Both the County Budget Law and Section 3700 C. S. must be complied with.

N. D. Jackson. 1-21-28.

Deputy : Two Offices : Incompatible.

68. QUESTION:

May a county deputy assessor be appointed county deputy treasurer and tax collector?

OPINION:

No. Public policy forbids one person holding two county offices at the same time. The duties thereof are incompatible.

Hon. Royal M. Jeppson. 1-26-27.

Probate Judge : May be U. S. Commissioner.

69. QUESTION:

(1) May a probate judge of one of the counties of this state legally fill the office of probate judge and also hold and perform the duties of the office of United States Commissioner?

(2) Must the fees earned as United States Commissioner be accounted for and turned into the State of Idaho?

OPINION :

- (1) Yes.
- (2) No.

Carl A. Burke. 1-17-27.

Superintendent : Expenses of District Meetings.

70. QUESTION :

(1) Is it compulsory for the County Superintendent of Public Instruction to attend the County Superintendents' Conference, if such meeting is called by the State Superintendent of Public Instruction?

(2) Is it obligatory on the board of county commissioners to allow a county superintendent's expenses at such conference, or is it left to the discretion of the board?

OPINION :

(1) It is provided in Section 182 C. S. that the State Superintendent of Public Instruction shall summon the county superintendents of each judicial district, or of two or more districts combined, to meet jointly or separately at such time and place as he shall appoint. It is compulsory for the county superintendents to attend such meeting.

(2) As it is one of the official duties of a County Superintendent of Public Instruction to attend such meeting, the expense thereof is a proper expense of a county superintendent and should be allowed by a board of county commissioners.

Pearl K. Black. 6-28-27.

DAIRY PRODUCTS

Price Discrimination.

71. QUESTION :

Re: Price discrimination in dairy products.

OPINION :

Not all price discrimination in dairy products is illegal or prohibited, but under the provisions of Section 2, Chapter 121 of the 1923 Session Laws, as amended by

Chapter 221 of the 1927 Session Laws, where the discrimination is made "with the intention or for the purpose of creating a monopoly or destroying the business of a competitor in any locality, or restraining trade or preventing, stifling or limiting competition," such discrimination is illegal.

The question of the illegality of discrimination in the prices of dairy products is not in any way dependent upon some other person, firm or corporation, setting or fixing the prices of dairy products in districts where there is competition. The test is whether or not the discrimination has been made with the intention or for the purpose of creating a monopoly or destroying the business of a competitor, etc., as hereinbefore stated.

Hon. John S. Welch. 1-4-28.

DECEDENT'S ESTATES

Ancillary Proceedings.

72. QUESTION:

Where a resident of the State of Washington dies testate leaving real property in Idaho and his will is probated in the State of Washington and the Probate Court in Washington undertakes to decree the decedent's Idaho real estate to decedent's heirs, is it necessary for decedent's will to be probated in Idaho.

OPINION:

Yes. (Authority: Sections 7459, 7560 and 7561, C. S.).

C. A. Shaw. 3-30-28.

Community Property : Expenses of Administration.

73. QUESTION:

Should the debts, costs of administration and other charges in community property estates be deducted from the total value of the whole community, or from the value of the decedent's interest only for the purpose of fixing the transfer tax?

OPINION:

The debts, costs of administration and other charges

in community property estates should be deducted from the value of the entire community estate. (Authority: *Swinehart v. Turner*, 44 Idaho 461; *Ryan v. Ferguson* (Wn.) 28 Pac. 410, 31 C. J. 193, 1339, Notes 53 and 54; *Wiley v. Verhaest* (Wn.) 100 Pac. 1008; Sections 7551 and 7617 C. S.; 24 C. J. 459; Pinkerton and Milsaps Inheritance and State Taxes, pp. 184.).

Hon. John Jackson. 9-13-28.

Decree : Extra Territorial Effect.

74. QUESTION:

Where a resident of the State of Washington dies, owning real property in the State of Idaho and his estate is probated in the State of Washington and the Idaho property is decreed to his heirs, does the rule of comity between states require that full faith and credit be given in Idaho to such decree?

OPINION:

Letters testamentary or of administration have no extra territorial force and confer no authority upon the representative to administer upon property outside of the state or county of his appointment. (Authority: 24 C. J. 1109, Section 2671.).

A. C. Shaw. 3-30-28.

Estate of Chinese : Administration of.

75. QUESTION:

May a Chinese born in the United States, now residing in Idaho, and in no way related to a deceased Chinaman, and not a creditor of such decedent, be appointed administrator at his own request?

OPINION:

If he is not disqualified under the provisions of Section 7491 C. S., and if no other person has a prior right to administer the property of the decedent under the provisions of Section 7487 C. S., such Chinese Person may be appointed administrator.

J. B. Loomis. 7-30-28.

Of Less Than \$250. Valuation; Formal Proceedings.**76. QUESTION:**

Where the property of an estate is inventoried and appraised at less than \$250. may the probate court make a summary order authorizing the sale of all of the real property of the estate without the publication of notice and without the issuance of an order to show cause, etc.

OPINION:

Section 7779 C. S. is applicable to the inquiry. The legislature evidently intended by the enactment of that statute to conserve as much as possible of the estate where the valuation thereof is less than \$250. and to eliminate certain formal proceedings requiring the expenditure of estate funds. Under the provisions of the statute, the publication of the notice to creditors is not necessary. The statute likewise declares other formal proceedings unnecessary. However, only such formal proceedings should be dispensed with as require the expenditure of money for publication, service of notice, etc., out of the estate funds. Where the estate consists in part of realty and the realty is sold before the estate is closed, the order authorizing the administrator to sell, and the order of confirmation should be made by the probate court.

C. A. Williams. 5-14-28.

Probate Court Fees.**77. QUESTION:**

Should the probate court collect probate fees on the amount of an estate as shown by the inventory and appraisement only, or upon that amount and the amount earned by the State during the period of administration?

OPINION:

The court should not collect fees upon the earnings of an estate during the process of probate; the fees should be based upon the valuation of the estate at the time of the demise of the testator or intestate as shown by the inventory and appraisement. See Section 7792 and 7656 C. S.

E. C. S. Brainard. 5-26-27.

Public Administrator : Prosecuting Attorney : Fees.**78. QUESTION :**

(1) Where a person dies intestate in this state leaving no relatives within the state and the estate is being administered by the public administrator and the prosecuting attorney acts as the public administrator's attorney, is he entitled to attorney's fees for his services?

(2) Is the prosecuting attorney required under our law to act as attorney in such estates?

OPINION :

(1) The county treasurer by reason of his office is ex-officio public administrator and all fees received by him for services rendered in behalf of the estate must be accounted for to the county.

There is no statutory provision authorizing the public administrator to employ counsel but the prosecuting attorney is charged with the duty of advising the board of county commissioners or other public officers in his county in all matters in which the people of the state or county are an interested party. He is prohibited by law from receiving fees or rewards for transacting any business which it is his official duty to transact.

Inasmuch as the public administrator is a public officer of the county, the prosecuting attorney is required to render such assistance to the public administrator as may reasonably be required while administering an estate where such estate is to escheat to the State of Idaho, and the prosecuting attorney is not entitled to any compensation for services rendered to the public administrator in such instances. Where the estate, however, will not escheat to the State of Idaho, and the prosecuting attorney renders services to the public administrator of a private nature valuable to the heirs or proper claimants of the estate and services from which such heirs or proper claimants are the sole beneficiaries and where the heirs or claimants appear and claim a portion of the estate before the Probate Court has made its decree of distribution, the court may allow and fix a reasonable fee to be paid to the prosecuting attorney for such services rendered to such heirs and claimants. If the probate proceedings have been completed and a final distribution of the estate made and no claimants have appeared up to this time and the funds have been turned over to the State Treas-

urer by the public administrator and deposited in the escheat fund, after which claimants do appear, the prosecuting attorney, although equitably entitled to a reasonable fee for his services, cannot enforce his claim against the estate since there is no method provided for by the law which authorizes the filing and the paying of such claim.

(2) The prosecuting attorney is required to act as attorney for the public administrator in the administration of estates in which the people of the state or the county are interested or a party, but he is not required to act as attorney in those estates administered by the public administrator wherein the state or the people are not interested parties, but where heirs and claimants are those who will benefit by the administration.

George E. Mitchell. 6-9-27.

Public Administrators: Appraisers.

79. QUESTION:

Must appraisers be appointed for the purpose of appraising a decedent's estate where the estate is administered by a public administrator?

OPINION:

Yes. (Authority: Section 7549 C. S.).

H. A. Griffiths. 12-15-27.

DEPARTMENT OF AGRICULTURE

Abatement of Pests : Canals and Ditch Banks.

80. QUESTION:

May the agents and employees of the Department of Agriculture enter upon the banks of ditches and canals of irrigation districts, eradicate certain pests and make the costs thereof a lien against the district?

OPINION:

It is the duty of the Commissioner of Agriculture, and he is empowered to abate certain pest nuisances injurious

to trees, fruits, etc., and even though, under the provisions of Section 3099 C. S. canals and ditches within an irrigation district are exempt from general taxes, the Commissioner of Agriculture and his employees may enter upon such canals and ditches and abate such pest nuisances. The costs thereof may be made a lien against the property of the district and a special assessment for the purpose of payment thereof may be made by the district. (Authority: Chapter 70 of the 1923 S. L.).

Hon. John S. Welch, Commr. of Agriculture. 6-7-27.

DEPARTMENT OF PUBLIC INVESTMENTS

Funds : Appropriations, Use of : Insurance.

81. QUESTION :

Is the Department of Public Investments authorized to use any of its appropriated funds for the purchase of insurance on buildings on real property covered by mortgage held by the State, or on buildings on real estate, title to which has been acquired by the State through mortgage foreclosure?

OPINION :

The Department is not authorized to use any of its funds for the purchase of insurance covering improvements on real estate mortgaged to the State of Idaho. The department may purchase insurance for improvements on real estate where title has been acquired by the State. (Authority: Chapter 236 of 1921 S. L.).

Hon. E. M. Hoover, Commr. Pub. Inv. 6-7-27.

Funds : Use of.

82. QUESTION :

May the Department of Public Investments pay premiums on insurance policies covering improvements on lands mortgaged to the State to secure a state loan, using the funds appropriated for that department?

OPINION :

No part of the funds appropriated may be used for such purpose.

Hon. E. M. Hoover. Commr. Pub. Invest. 5-13-27.

Commissioner: Salary.**83. QUESTION:**

Under the provisions of Chapter 142 of the 1923 Session Laws, the salary of the Commissioner of Public Investments was fixed at the rate of \$3000. per annum. By the provisions of Chapter 188, of the 1927 Session Laws, the salary of the Commissioner of Public Investments was fixed at the rate of \$3600. per annum. This bill contained an emergency clause and was approved by the Governor on March 9, 1927. The legislature approved the sum of \$7200. for the salary of the Commissioner of Public Investments for the biennium 1927-1928. What salary is the Commissioner of Public Investments entitled to between January 1, 1927 and the effective date of Chapter 188 of the 1927 Session Laws?

OPINION:

The Commissioner of Public Investments is entitled to the salary provided by Chapter 142 of the 1923 Session Laws, namely, \$3000. per annum between the first day of January, 1927 and the effective date of Chapter 188 of the 1927 Session Laws, namely, March 9, 1927.

Hon. E. M. Hoover, Commr. Pub. Invest. 3-19-27.

DEPARTMENT OF PUBLIC WORKS**Commissioner : Duties.****84. QUESTION:**

May contracts for highway construction be signed in the absence of the Commissioner of Public Works by an employee of the department, deputized by the Commissioner for this purpose?

OPINION:

Section 252 C. S. provides as follows:

"Each department shall have an officer at its head who shall be known as commissioner, who shall, subject to the provisions of this chapter, execute the powers and discharge the duties vested by law in his department."

There is no statutory provision for a Deputy Commis-

sioner of Public Works, or for the exercising of powers by any person, amounting to the powers of a Deputy Commissioner. The Commissioner of Public Works is required to give his personal consideration to all matters demanding the exercise of judgment and discretion. Clerical and ministerial duties may by him be enjoined upon employees in his department. The Commissioner has the right to authorize some person in his department to sign or attach the commissioner's name to a contract, but the commissioner may not designate to a clerk or other employee his authority to determine upon the terms and conditions of contracts to be entered into by the department for the construction of public highways. The law in its present form imposes upon him, alone, the exercise of that official duty.

Hon. J. D. Wood. 5-1-28.

DISTRICT COURT

Fees.

85. QUESTION:

When a civil case is transferred from the Probate or Justice's Court to the District Court on an order for Change of Venue, what fee may be charged by the Clerk of the District Court for filing the proceedings?

OPINION:

If the proceedings consist of a complaint on the part of the plaintiff, the fee to be charged by the District Court is \$10.00, and in the event that the defendant has made appearance in the Probate or Justice's Court by answer or demurrer, the fee to be charged by the District Court should then be \$13.00.

C. G. Cromwell. 3-24-27.

DRAINAGE DISTRICTS

Issuance of Bonds.

86. QUESTION:

May drainage districts issue bonds as provided by Chapter 179 of the Session Laws of Idaho for 1927 or must such bonds be issued in conformance to the pro-

visions of Chapter 254 of the Idaho Session Laws of 1927?

OPINION:

Chapter 179 above referred to amended Section 4545, Compiled Statutes of Idaho. This act was approved by the Governor on March 7, 1927. Chapter 254 above referred to likewise amends Section 4545, Compiled Statutes, without making any reference to the amendment provided by Chapter 179. Chapter 254 was approved by the Governor on March 14, 1927, or seven days after the approval of Chapter 179. Chapter 179 provides that bonds may be issued on the amortization plan, while Chapter 254 provides that bonds shall be issued on the amortization plan. Neither of the acts in question carried an emergency clause and hence each became the law sixty days after the adjournment of the Legislature. The Supreme Court of Idaho, in the case of *Peavy v. McCombs*, 26 Idaho 143, 140 Pac. 445, has laid down the rule that in case of an irreconcilable conflict between two acts passed by the same session of the Legislature, the one should prevail which was last approved by the Governor, the approval of the Governor being the last act in the process of legislation under our constitution and statutes. With this in view it must be held that drainage district bonds must be issued under the provisions of Chapter 254 and that said chapter impliedly repealed Chapter 179.

G. C. Crocker. 8-24-27.

DRUGGISTS

Poison Record : Right to Inspect.

87. QUESTION:

Is it necessary for a druggist to keep his poison record, or the record of the sales of poison, open so that it may be inspected at any time by the public?

OPINION:

Section 2181 C. S. provides as follows:

"The books must be always open for inspection by the proper authorities and must be preserved for at least five years after the last entry."

The foregoing does not mean that the record must be kept open for inspection by the public.

C. D. Boring. 9-28-27.

ELECTIONS

Ballots : Printing of.

88. QUESTION:

Is it necessary for the County Auditor in preparing the official ballot for the general election to cause a circle to be placed under the caption "Independent" heading the column for Independent candidates?

OPINION:

The purpose of placing a circle at the top of the ticket of a political party is to enable a voter to vote a straight party ticket by making one cross in such circle.

It is apparent from a consideration of all of the statutes governing nominations and elections that more than one person may be nominated as Independent candidates for the same office, and when nominated the names of such persons must be placed in the column or list of Independent candidates on the ballot. It is possible that all of the candidates whose names appear in the "Independent" column may be candidates for the same office. In such case a voter cannot vote for one of the "Independent" candidates by simply making a cross in the circle at the top of the list.

Independent candidates are not candidates of a "Political party"; there is no political party in Idaho known as the "Independent party." Section 517 C. S. as amended by Chapter 83 of the 1927 Session Laws may not be interpreted so as to include an Independent candidate, or a group of Independent candidates as an Independent political party, and the lists of Independent candidates cannot be characterized as a "party ticket."

Section 549 C. S. provides among other things, as follows:

"The names of all candidates so nominated shall appear under proper designation as to the offices for which they are proposed, in the same column of the official ballot with the word "Independent" and nothing more, at the top thereof, and no party appellation, statement of principles or other matter shall appear in connection with such names or column except as here stated."

From the foregoing, it is obvious that a circle should not be placed at the top of the list of "Independent" candidates.

F. A. Wilbur. 10-16-28.

Ballots : Disqualification of Nominee.

89. QUESTION:

1. May a person who is not admitted to practice law in Idaho be a candidate for the office of Prosecuting Attorney?

2. In the event the name of a person not admitted to practice law in Idaho is written in at the primary election, and such person receives the nomination without filing for office, should his name be permitted to remain on the ticket at the general election?

OPINION:

1. A person who is not admitted to practice law in Idaho may not be a candidate for the office of Prosecuting Attorney.

2. The name of a person who is not admitted to practice law in this state should not be placed on the ticket as a candidate for the office of Prosecuting Attorney at the general election. Such person is ineligible to hold such office, and where one is ineligible to hold the office for which he is nominated, a vacancy exists under the provisions of Section 554 C. S. The procedure outlined in Section 554 C. S. for filling vacancies should be followed and the ballots prepared and printed by the County Auditor, pursuant to the provisions of Section 572 C. S.

Robert E. McFarland. 10-8-28.

Candidate for Treasurer : Justice of the Peace.

90. QUESTION:

A candidate for the office of County Treasurer has his name written in upon the official ballot at a general election for the office of Justice of the Peace. He is defeated for the office of County Treasurer, but received more votes for the office of Justice of the Peace, than any

other candidate. May the County Auditor issue him a certificate of election to the office of Justice of the Peace.

OPINION :

The provisions of Section 573 C. S., relative to names appearing on the official ballot but once, apply only to the printing of the ballot. The elector still has the right to vote for any one he desires for any office, regardless of whether or not the name of the person is already on the ballot. Votes thus cast should be counted, and the County Auditor should issue to him a certificate of election to the office of Justice of the Peace.

Fred Garrecht. 12-1-26.

Nominations : Declinations.

91. QUESTION :

Under the provisions of Sections 553 and 555 C. S. may vacancies caused by declinations filed less than twenty days before the election be filled?

OPINION :

1

Declinations may not be filled or accepted within less than 20 days of the general election. In the event a regularly nominated candidate attempts to decline the nomination within less than 20 days before the election, no vacancy occurs by reason thereof which may be filled by the County Central Committee. The twentieth day preceding and excluding election day itself, is the last day upon which a declination may be filed.

E. D. Reynolds. 10-29-28.

Primary : Ballot : Form of.

92. QUESTION :

Where no nomination papers have been filed for any person as candidate at a primary election for a particular office, should a blank be left in the ballot under the name of such office, and at the primary election, may the name of any person be written in by an elector? Will the person

receiving the largest number of votes by having his name so written in become the candidate of that party at the general election?

OPINION:

A blank space should be left in the ballot under the name of such office. At the primary election, the name of any qualified person may be "written in" upon the ballot in such space by an elector, and the person receiving the largest number of votes by having his name so written in becomes the candidate of such party for the general election.

Sidney H. Smith. 7-16-28.

Primary : Filing Fee.

93. QUESTION:

(1) Where a candidate at a primary election withdraws or is unable to qualify, may the filing fee paid be returned to such candidate?

(2) When a person is nominated at a primary election by having his name written in upon the primary election ballot, must a filing fee be paid?

OPINION:

(1) A filing fee paid by a candidate at a primary election who withdraws or who is unable to qualify or who is defeated at the primary election, may not be returned.

(2) Where a person is nominated at a primary election by having his name written in upon the primary ballot, it is not necessary to pay the filing fee. Under the provisions of Section 546 C. S. filing fees need be paid only when a nomination paper is filed.

Bertha Nutting. 10-1-28.

Primary : New Political Party Must Hold.

94. QUESTION:

Must a political party not on the ballot at the last general election, hold a County primary election in order to hold a State Convention?

OPINION :

In order to nominate candidates for State offices, it is necessary to hold a State Convention. In order to hold a State Convention, it is necessary that delegates to the State Convention be elected by the County Conventions in the several counties. Delegates to the County Convention are elected at the County primary. (Section 520 C. S.). Such new political party must hold a County primary election if it intends to select candidates for State offices at a State Convention. The law providing for the organization of new parties requires the filing of a proper notice with the Secretary of State at least 30 days prior to such primary election. (See Section 517, C. S.).

Hon. Fred E. Lukens, Secretary of State. 5-19-28.

Primary : Nomination by Petition : Fees.**95. QUESTION :**

When a person is nominated for a County office by petition, must the fees provided for in Section 546 C. S. be paid?

OPINION :

Section 546 requires the payment of certain fees at the time of the filing of a nomination paper. A petition nominating a candidate is a nomination paper. The fees prescribed in said section must be paid when a petition is filed.

F. A. Wilbur. 7-25-28.

Primary : Nomination : Ineligible Candidate.**96. QUESTION :**

Where an ineligible or unqualified candidate is nominated at a primary election for a county office, does a vacancy occur or is the candidate receiving the next highest number of votes nominated?

OPINION :

A vacancy occurs. The contestant receiving the next

highest number of votes does not become the nominee of the party. The vacancy should be filled by the party's County Central Committee.

J. A. Goodall. 8-28-28.

Primary : Petitions.

97. QUESTION:

May a person who has signed a nomination petition prior to a primary election, vote at the primary election, and may a person who has voted at a primary election sign a petition after the primary election?

OPINION:

Section 541 C. S. among other things, provides as follows:

"* * * No person shall sign any nomination as provided for in this section if he has voted, or intends to vote at any primary held for the purpose of nominating candidates to be elected at the same election for which the nomination provided for in this section is made."

Under the provisions of said Section, a voter who, prior to a primary election, signs a petition to nominate a person for public office does not have the right to vote at the primary election, and if the nomination petition is circulated after the primary election and within the time provided by law, a person who has voted at a primary election may not sign such petition.

Paul T. Peterson. 7-23-28.

Primary : Qualifications of Voters.

98. QUESTION:

Does a person have a right to vote at a Democratic Primary in 1928 who qualified and voted at the Republican Primary Election in 1926?

OPINION:

The fact that the voter in question may have voted at a Republican Primary Election in 1926 would not in itself necessarily preclude him from voting at a Democratic Primary in 1928. There is no absolute criterion by

which to determine, for the purpose of a Primary Election, whether a voter is a Republican, a Democrat, or a member of some other political party. But if such voter IS a Democrat, he is entitled to vote at the Primary Election of that party. (Sections 529-530-531 C. S.).

One may be challenged on the ground that he is not a bona fide member of the political party holding the Primary at which he offers to vote. The judges of the Primary Election must determine the question of his party affiliation. If, after the election judges have examined the applicant it is determined that he is not a bona fide member of the political party holding the primary at which he offers to vote, his vote shall not be received. If, upon examination, the election judges determine that he is a bona fide member of such party, his vote shall be received.

R. W. Beckwith. 8-2-28.

Primary : Writing in Names of Candidates.

99. QUESTION:

At a primary election, may the name of a candidate be "written in" upon the official ballot for an office under the title of which the name of another candidate appears?

OPINION:

The name of a candidate may be "written in" upon a ballot under the title of an office, even though the name of the candidate, or the names of other candidates have been printed on the ballot under the title of said office.

Wm. D. Martin. 7-30-28.

Proxies : County Convention : County Central Committee.

100. QUESTION:

Does a person holding a written proxy from a delegate to a County Convention have a right to vote at the County Convention? May a person holding a proxy from a precinct committeeman vote at a meeting of the County Central Committee?

OPINION:

There is no provision in the law under which one holding either of the proxies described in the foregoing questions may vote at a meeting of the County Central Committee or at the County Convention. The right to participate in the business of the County Convention is restricted to delegates duly chosen in the primary election. Only regularly selected precinct committeemen may participate in any action taken by the County Central Committee. The right to vote may not be delegated through proxies by either delegates to the County Convention or Precinct Committeemen. (Authority: Sections 518-519-520 C. S.).

Robert E. McFarland. 8-10-28.

Qualifications of Candidates.**101. QUESTION:**

Must a candidate for political office be a registered elector?

OPINION:

He must be an elector, but he need not be registered. (Authority: Sec. 2 of Art. 6 Constitution of Idaho; Sec. 381 C. S.; *Wilson v. Bartlett*, 7 Ida. 271; *Jaycox v. Var-num*, 39 Ida. 78.).

Hon. Frank Croner. 10-24-28.

Registrars : Compensation.**102. QUESTION:**

What compensation may a registrar receive for registering voters?

OPINION:

Each registrar shall receive such compensation as shall be allowed by the Board of County Commissioners, but in no case shall the compensation be in excess of Seventy-Five (\$75.00) Dollars.

Isabella Phalon. 10-23-28.

Registration : General Laws Applicable to Municipal Elections.

103. QUESTION:

Does the permanent registration provided for by the 1925 Session Laws apply to registration for municipal elections?

OPINION:

By Chapter 102 of the 1921 Session Laws, the law pertaining to municipal elections was amended to conform to the law relative to general elections. By Chapter 96 of the 1925 Session Laws, the law relative to registration for general, state and county elections was amended to provide for permanent registration and the permanent registration provided for by said Chapter 96 applies to municipal elections.

Charles Stout. 4-5-27.

Registration : Removal From Precinct.

104. QUESTION:

Where an elector registered and voted in a certain precinct at the last general election, and since said election has changed his residence to another precinct, what procedure should be followed?

OPINION:

Under the provisions of Chapter 200 of the 1927 Session Laws, an elector residing within a precinct who voted at the last general election need not reregister for the coming election provided he still lives within the same precinct. If he now resides in another precinct, it is necessary for him to register within the precinct to which he has removed.

In order to prevent duplicate registration and voting, it is provided that the registrar should be furnished with a list of the voters who voted in his precinct at the last general election and it is his duty to copy into his register the list of voters who so voted, with the exception of those who, within his certain knowledge have died or removed from the precinct. The names of such electors are not to be copied in his register. If the elector removes

after his name has been placed on the register, the elector should inform the registrar of the precinct from which he removed and have his name stricken from the register.

W. W. Simmons. 6-20-28.

Registration : Transfer not Authorized.

105. QUESTION:

May a registered voter have his registration transferred from one precinct to another?

OPINION:

Chapter 200 of the 1927 Session Laws repeals Section 567 C. S., as amended by Chapter 96 of the 1925 Session Laws. In the absence of any statutory authority for the transfer of registrations, such transfer may not be made. Under the present law, if a registered voter removes from his election precinct into another election precinct, he must again register.

R. W. Beckwith. 4-28-28.

Registration : Who Must Register.

106. QUESTION:

Is it necessary for one who was registered for the last general election, but who did not vote, to re-register this year?

OPINION:

Yes. Only electors who voted at the last general election and have not removed from the precinct, are not required to register. (Authority: Chapter 200 of 1927 S. L.).

Syms-York Company. 4-14-28.

Residence of State Officials.

107. QUESTION:

The present manager of the State Insurance Fund resided at Parma, Canyon County, Idaho, before his ap-

pointment to that position. He now lives in Boise, Idaho. May he still vote at Parma?

OPINION:

Section 5, of Article 6, of the Constitution of this State 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 alms house or other asylum at the public expense."

Section 504 C. S. is identical with the foregoing constitutional provision. The provisions of the Constitution above quoted and of the statute referred to, apply to appointive officers as well as to elective officers; and, if the manager of the State Insurance Fund had a legal residence at Parma, Idaho, immediately prior to the time he moved to Boise, Idaho, to take up employment in the service of the State, he has not lost his residence at Parma, but will be entitled to vote if duly registered, at elections in Parma, Idaho.

Fred M. Fisk. 3-28-28.

Stickers : Use of.

108. QUESTION:

Re: The use of stickers at a general election.

OPINION:

When a voter desires to vote for a person whose name does not appear on the ballot as a regularly nominated candidate, he may vote for such person by filling in such person's name, by sticker or by writing in the name on the ballot in the blank space provided therefor under the name of a regularly nominated candidate, and marking a cross opposite the name thus filled in by such sticker or by marking a cross opposite the name he has written in.

If the voter places the sticker over the name of a regularly nominated candidate, such action would invalidate the vote for such office but would not invalidate the votes cast by such voter for candidates for other offices.

C. G. Cromwell. 10-16-28.

Vacancy.**109. QUESTION:**

In case no nomination paper was filed prior to the primary election, and no name was written in at the primary election for a particular office, may the vacancy on the ticket be filled after the primary election and before the general election?

OPINION:

Under the provisions of Chapter 198 of the 1927 Session Laws, there is no vacancy under the circumstances set forth in the inquiry, except in the office of Justice of the Peace, Constable, Precinct Committeemen or delegates to the County Convention. There being no vacancy, except in the instances above detailed, the name of a candidate may not be supplied by the County Central Committee.

Hon. Fred E. Lukens. 9-5-28.

Vacancy : Delegates : Committeemen.**110. QUESTION:**

In a precinct where no primary election is held, do the delegates and precinct committeemen hold over, or should new delegates and new precinct committeemen be appointed on the theory that there are vacancies in such offices?

OPINION:

Under the provisions of Chapter 198 of the 1927 Session Laws, a vacancy exists in the offices of delegates and precinct committeemen, where no primary elections have been held, and the County Central Committee has the right to fill such vacancies by appointment.

J. F. Lowe. 9-6-28.

Vacancy : State Representatives.**111. QUESTION:**

Where a State Representative was nominated at a Democratic Primary Election by having his name written

in upon the ballot, and thereafter he declines the nomination, may the Democratic County Central Committee fill the vacancy, and is it the duty of the County Auditor to place the name of such person on the ticket?

OPINION: *allow*

If the person nominated by having his name written in declines to accept the nomination; pursuant to the provisions of Section 553 C. S., as amended by Chapter 6 of the 1927 Session Laws, then the Democratic County Central Committee may select a person to fill the vacancy, and may certify its selection pursuant to the provisions of Section 554 C. S. When the procedure outlined in this section has been followed, it then becomes the duty of the County Auditor to place the name of the candidate so selected upon the ticket for the General Election.

R. W. Beckwith. 9-15-28.

Voters : Residence of.

112: QUESTION:

Re: Legal residence for purpose of voting.

OPINION:

The matter of establishing residence is a matter of the intention of the person himself. One may leave the State of Idaho and lose his residence and his right to vote in the State, immediately upon leaving the State, if it is his intention when leaving the State to abandon his residence and his home in Idaho. On the other hand, one may be absent from the State for an extended period of time and still retain his residence, his citizenship and his right to vote within the State, if it is his intention when leaving the State, not to abandon his Idaho residence. (Authority: Section 602 C. S.).

L. M. Rusk. 5-9-27.

Writing in Name : Nominated by Two Parties.

113. QUESTION:

(1) May the name of a candidate be written in at the primary election?

(2) May the County Auditor place the name of a candidate on a ballot when no nomination paper or petition has been filed?

(3) Where a person is nominated by two political parties at the primary election and thereafter accepts one nomination and rejects the other, is there a vacancy?

(4) Is the Progressive Party still a political party so far as the election of county officials is concerned?

OPINION:

(1) Nominations may be made at a primary election by writing in names upon the primary ballot.

(2) If no candidate was nominated at the primary election, a vacancy does not exist under the provisions of Chapter 198 of the 1927 Session Laws.

(3) If a person is nominated for a county office by two political parties and he accepts the nomination of one of the parties, a vacancy exists for that office, which may be filled by the County Central Committee of the other political party.

(4) The Progressive Party is still a political party so far as the State of Idaho and all counties thereof are concerned.

E. D. Reynolds. 10-3-28.

FARM PRODUCE LAW

Brokers : Dealers : Merchants.

114. QUESTION:

(1) If a corporation has several agents operating in the State, is one license sufficient to cover all agents, or should each individual agent be licensed and bonded.

(2) Do cooperative producers' associations come under the provisions of Chapter 236 of the 1927 Session Laws, and should they be licensed and bonded the same as a farm produce broker?

OPINION:

(1) One license procured by a corporation is sufficient. (Authority: Chapter 236 of the 1927 Session Laws).

(2) If a cooperative producers' association transacts a type of business strictly in keeping with the purposes of "The Cooperating Marketing Act" of this state, that

is, conducts its business on a non-profit basis and handles only the products of its own members, it is not required to procure a license or post a bond under the law in question.

Hon. John S. Welch. 4-28-27.

FISH AND GAME

Bag Limit : White Fish.

115. QUESTION:

Is there a bag limit on white fish?

OPINION:

No. Chapter 258 of the 1927 Session Laws includes white fish among game fish, but white fish are not included in the classification limited to fifteen pounds and one fish.

Hon. R. E. Thomas. 5-10-27.

Bass : May Not Shorten Closed Season.

116. QUESTION:

Where the legislature has, by statute, closed the fishing season for bass during the months of May and June of each year, does the State Game Warden have the authority to shorten the closed season?

OPINION:

Section 2793 C. S., as amended by Chapter 112 of the 1921 Session Laws, authorizes the warden when he believes it necessary for the preservation of any certain species of fish, to shorten or close any open season in any particular district or county or stream, but there is no statutory authority for the warden to shorten or open a season which has been closed by statute.

Hon. R. E. Thomas. 5-27-27.

Fishing Within 300 Feet of Ladder or Dam.**117. QUESTION:**

(1) Does it constitute a violation of the provisions of Section 2741 C. S. as amended by Chapter 223 of the 1925 Session Laws to fish within 300 feet below a dam in a stream where no fish ladder is constructed?

(2) Does it constitute a violation of the same law to fish within 300 feet below a dam where there is no fish ladder constructed and where there is no stream running over the dam or through the dam but where there is merely an artificial spillway as the only outlet?

OPINION:

(1) Under the provisions of Section 2741 C. S. it was a misdemeanor to fish within 300 feet of a fish ladder or dam in any stream either above or below the ladder or dam. Said section was amended by Section 7, of Chapter 223 of the 1925 Session Laws so as to prohibit fishing within 300 feet of a fish ladder or dam below such ladder or dam in any stream. By the provisions thereof a person is prohibited from fishing within 300 feet of a dam in a stream below the dam even though there is no fish ladder constructed at the dam.

(2) Under the law, it is an offense to fish within 300 feet below any obstruction in a stream which may be construed to constitute a dam even though no water is flowing through or over it, and even though there is no fish ladder provided at the dam.

D. L. Carter. 9-28-27.

License : Residence of Applicant.**118. QUESTION:**

Where a person owns real estate in Idaho and spends his Summers in this state and the remainder of the year in other states, is he entitled to purchase a resident Fish and Game License, or must he pay the fees incident to the issuance of a non-resident license?

OPINION:

The ownership of real estate is not the exclusive criterion by which residence may be determined. One may

own real estate in one or several states, and still not be a resident of either of such states. On the other hand, one may be a resident of this state without owning any real estate in Idaho, and may spend most or all of the year outside of the state. Residence is largely a matter of intention. Each case must be determined from the facts and circumstances surrounding it.

Wayne Durham. 4-14-28.

Navigable Streams : Rights of Fishermen.

119. QUESTION:

What are the rights of fishermen along the banks of navigable streams in the State of Idaho?

OPINION:

Owners of land bordering on 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. If they own land bordering on both sides of a non-navigable stream, they may exclude fishermen entirely so far as their land borders the stream. On the other hand, owners of land bordering navigable streams cannot exclude fishermen from the stream between the meander lines thereof if it be meandered, and if not meandered, between the ordinary high water flow lines.

R. I. Jones. 4-18-27.

Shipping Deer Hides Without Permit.

120. QUESTION:

Is the offense of shipping deer hides without a permit punishable under the provisions of Section 2779 C. S., or under the provisions of Section 2782 C. S.?

OPINION:

Where one is convicted of the offense of shipping deer hides without a permit, judgment must be pronounced in accordance with the provisions of Section 2802 C. S.

Hon. R. E. Thomas. 1-17-28.

FORESTS AND FORESTRY**Certificate of Clearance : Effect of.****121. QUESTION:**

Re: Effect of Certificate of Clearance issued by State Forester.

OPINION:

A foreign corporation, owning land in Idaho, contends that it is not required to pay forest protection fees on cut over land for which it has received the State Forester's Certificate of Clearance. It is the company's theory, as disclosed by its letter, that such certificate removes the land from the classification of forestry lands. The certificate does not have any such effect. The certificate certifies that slash created as an incident to the operation of a particular operator upon the forest lands described has been disposed of in accordance with the laws of the State and in accordance with the rules of the State Cooperative Board of Forestry.

It merely evidences the disposal of slash, and it has no effect, whatsoever, upon the classification of forest lands.

Hon. I. H. Nash. 2-20-28.

Forest Protection Assessments : Cancellation.**122. QUESTION:**

Where land has been deeded to the county because of delinquent taxes, and thereafter has been sold at public auction, is it the duty of the Board of County Commissioners to cancel the forestry taxes levied against such lands, and, if so, has the state forestry department any claim against the county for the forestry taxes so cancelled?

OPINION:

The county commissioners do not have the right to cancel or in any way affect the forestry assessments levied against such land. While the law provides that the county may make the collection of the assessments, the county's authority does not extend further. The county has no

such interest in the assessments, themselves, which would give the county commissioners any right to cancel or waive the assessments or do more than collect them.

Arthur S. Guerin, Jr. 2-3-28.

Penalties May Not Be Waived.

123. QUESTION:

May the 10 % penalty provided for in Section 4 of Chapter 150 of the 1925 Session Laws be waived by the State Forester?

OPINION:

Said section provides that any amounts paid or contracted to be paid by the State Forester for the protection of forest lands shall constitute a lien against the property protected, and unless paid by the owner thereof to the State Forester on or before the second Monday in November of the year in which said expenses shall have been incurred, the penalty of 10 % must be added thereto and collected. The provisions are mandatory. In the event the forest protection charges are not paid before the time specified in the statute, the penalty must be added, and neither the State Forester or the State Cooperative Board of Forestry may waive such penalty.

Hon. I. H. Nash. 5-7-27.

Protection Charges : Collection of.

124. QUESTION:

Upon the failure of the owner of forestry lands to pay the forest protection charges, what procedure may be followed for the collection thereof?

OPINION:

The charges may be collected by the enforcement of the lien provided for in Section 4 of Chapter 150 of the 1925 Session Laws.

W. D. Humiston. 7-5-27.

Remedies : Penalties.**125. QUESTION:**

Re: Remedies available for violation of Sections 5 and 6 of Chapter 150 of the 1925 Session Laws. (Idaho Forestry Law).

OPINION:

In the event one responsible therefor shall fail, refuse or neglect to properly dispose of slash in accordance with the requirements of Section 5 of said Chapter 150 for a period of thirty days after being notified so to do by the State Forester or the Fire Warden of the forest protective district within which such slash has accumulated, the State Forester or the Fire Warden may, if he deems it advisable, complete, direct or authorize the disposal of such slash at the expense of the owner of the timber or other forest products cut or produced from the land upon which such fire hazard remains undisposed of, and the cost and expense of such disposal shall constitute a prior lien upon the timber or other forest products so cut or produced from such land. Upon the completion of the work of disposal, the State Forester shall notify the owner of such timber or other forest products of the completion and cost of such work, and demand payment thereof together with a penalty of 10 per cent of such cost.

If payment of such cost and penalties is not made within sixty days from the completion of the work, the State Forester shall file a lien in the proper county demanding payment; and foreclosure of the lien may be prosecuted by civil action in the name of the State of Idaho, or if the lien is not filed, a civil action for debt may be prosecuted in the name of the state.

For a violation of the provisions contained in Section 5, one may be prosecuted in a criminal action. The penalty for such violation upon conviction is not less than \$100.00 nor more than \$1,000.00.

For the violation of Section 6 of said Act, the slash may be deemed a public nuisance on account of its menace to life and property, and the same may be abated by the State Forester at the cost and expense of the offender, and the cost and expense incident thereto may be recovered from the offender by civil action prosecuted in the name of the state. A violation of Section 6 shall consti-

tute a misdemeanor, punishable by a fine of not less than \$25.00 nor more than \$500.00.

Hon. Ben Bush. 11-10-27.

FUNDS

Garnishment.

126. QUESTION:

Is the State of Idaho subject to garnishment and may funds in its hands payable to an employee of the State be attached?

OPINION:

The State of Idaho may not be garnished, nor may funds or credits in its possession be attached.

Hon. E. G. Gallet. 3-25-27.

Interest : Earnings of.

127. QUESTION:

Re: Interest earnings on certain funds.

OPINION:

Interest earned on such portion of the State Insurance Fund deposited by the State Treasurer in depositories shall be credited to the State Insurance Fund.

Interest earnings on funds of an Irrigation District invested in warrants shall be credited to the account of the Irrigation District. (Chapter 129 of the 1927 S. L.).

Interest earnings on deposits of any endowment fund in depositories shall be credited to the interest fund of such endowment fund. (Section 5 of Idaho Admission Bill; *State v. State Board of Education*, 33 Idaho 415;).

Interest earnings on the deposits of the Escheat Suspense Fund in depositories shall be credited to the general fund.

Hon. E. G. Gallet. 4-30-27.

Proceeds From Sale of Obsolete Furniture.

128. QUESTION:

May funds derived from the sale of obsolete and dis-

carded capitol building or other State owned personal property, such as rugs, desks, chairs, etc., be used to purchase new items of a similar nature?

OPINION:

All funds derived from the sale of such property must be turned into the general fund of the State, except when such supplies and equipment are the property of the State Highway Department, and in such case the funds shall be turned into the State Highway Fund. (See Chapter 68 of the 1921 Session Laws).

Hon. J. D. Wood. 6-2-27.

GASOLINE TAX

County Not Exempt.

129. QUESTION:

Is a County entitled to an exemption from the payment of the motor fuels' tax?

OPINION:

No. (Authority: Section 185, 1925 S. L.).

L. C. Wilson. 2-11-27.

United States Government Exempt.

130. QUESTION:

Is the United States Government entitled to exemption from the payment of the tax on gasoline when purchased within the State of Idaho?

OPINION:

The Supreme Court of the United States, in the case of *Panhandle Oil Company v. State of Mississippi*, on the relation of R. H. Knox, Attorney General, 72 L. Ed. 517, decided May 14, 1928, had under consideration, a statute similar to the Idaho Statute. The Mississippi Statute requires every person engaged in retailing gasoline to pay an excise tax of four cents per gallon upon all gasoline sold. The State of Mississippi brought suit against the

defendant to collect taxes claimed on account of sales made by the company to the United States for use of its Coast Guard Fleet.

The Supreme Court of the United States held that the state could not collect the tax for the reason that it was an attempt to exact tribute on the governmental functions of the United States and apply the same to the support of the State of Mississippi. The Supreme Court held the statute ineffective in that respect.

There is no fundamental difference between the Mississippi Statute and the Idaho Statute providing for the payment of the tax on gasoline. The rule announced in the Panhandle Oil Company case is applicable to sales of gasoline made in the State of Idaho to the United States and to its Federal Agencies for use in governmental operations.

Hon. Fred E. Lukens. 6-23-28.

HERD DISTRICTS

Fence Unnecessary.

131. QUESTION:

Does the law require a lawful fence between a herd district and the free range in Idaho?

OPINION:

No. (Authority: Chapters 81 and 84 C. S.).

A. F. Tomchak. 6-28-27.

HIGHWAY DISTRICTS

Commissioners : Reimbursement for Expenses.

132. QUESTION:

(1) May a highway district allow and pay the claim of a highway district commissioner for the use of the commissioner's saddle horse, team, automobile or other vehicle used by him in attending meetings of the board, or used by him in connection with the duties of his office?

(2) May a commissioner of a highway district be paid by the district for labor performed by him or his team or teams for the district of which he is commissioner?

OPINION:

(1) A highway district commissioner shall receive no compensation for his services as commissioner, but shall receive the actual and necessary expenses incurred in the performance of his official duties, (Section 1514 C. S., as amended by Chapter 98 of the 1925 Session Laws). The commissioner would not be entitled to compensation for the use of his saddle horse, team, automobile, or other vehicle used by him in attending a meeting of the board, nor would he be entitled to reimbursement from the district for expenses necessarily incurred by feeding such horse or team or in buying gasoline for his automobile, while attending or going to or from a board meeting. If it becomes necessary for the commissioner, in the performance of his duties, to go to different parts of the district to inspect highways, etc., or to go outside of the district, he may be reimbursed for his expenses necessarily incurred for the purchases of gasoline or oil for his automobile or feed for his saddle horse or team.

(2) It is not legal for a highway district to pay a district commissioner for any personal services rendered by him. (*Robinson v. Huffaker*, 23 Idaho 173.). The highway district commissioner stands in such relation to the district that he is not justified in contracting with a highway district for his own personal services or for services furnished by his teams or automobile. (Authority: Sections 386 and 1515 C. S.).

T. B. Reed. 2-1-28.

Director of Highways : Failure to Appoint.

133. QUESTION:

May the board of commissioners of a highway district assume the duties of Director of Highways and receive compensation therefor?

OPINION:

If the board does not employ a Director of Highways, the duties of such highway director devolve upon the highway district board, and for the performance of those

duties the board is not entitled to independent or additional compensation. (Authority: Section 1520 C. S.).

David P. Weir. 5-11-27.

Disorganization.

134. QUESTION:

May a highway district be disorganized?

OPINION:

Yes. The procedure for disorganization of a highway district is provided for in Sections 1570 and 1571 C. S.

J. A. Haeg. 4-13-27.

Elections.

135. QUESTION:

Re: Election of Highway District Commissioners.

OPINION:

Section 1501 C. S. is amended by Chapter 195 of the 1925 Session Laws. The first part of the Act provides that on the first Monday of December, 1925 and of every alternate year thereafter, *three* highway district commissioners shall be elected. In a subsequent part of the Act it is provided that two of the Commissioners elected in 1925 shall be elected for terms of four years, and the Commissioner from the other district, for a term of two years, and that thereafter, the term of office of all Commissioners shall be four years. There is a conflict between the two provisions. The first provision however, is general; the subsequent provision is specific and particular. As between the two provisions, the latter should control. Furthermore, it was manifestly intended by the legislature in enacting Chapter 195 of the 1925 Session Laws, to provide a term of office and system of election of highway district commissioners so that the commissioners would not all be elected at the same time. The first part of the Act should, therefore, be treated as surplusage, and the election conducted in conformance with the latter provision. The election should be held on the first Monday of December, 1927, and one highway commissioner should be elected. The commissioner for subdistrict numbered three, should be elected for a term of four years.

Sweeley & Sweeley. 10-27-27.

Funds : Deposit of.**136. QUESTION:**

May a highway district deposit its funds in a bank on time deposit?

OPINION:

No. The title of Section 28 of Chapter 256 of the 1921 Session Laws, as amended by Chapter 45 of the 1925 Session Laws reads as follows:

"ALL DEPOSITS SUBJECT TO PAYMENT ON DEMAND."

Under the provisions of Section 17 of Chapter 256 of the 1921 Session Laws, as amended by Chapter 45 of the 1925 Session Laws, and as amended by Chapter 154 of the 1927 Session Laws, the form of bond prescribed therein requires the depository to keep "all such sums of money so deposited, or to be deposited, as aforesaid, and interest thereon, subject at all times to the check or order of the said treasurer. * * *". The deposit of highway district funds in a bank on a time deposit is not authorized.

C. F. Smith. 5-17-28.

Sinking Funds : Investment of.**137. QUESTION:**

May a Highway District legally invest its sinking fund balances in Joint Stock Land Bank Bonds?

OPINION:

Sinking fund balances may be invested only in the securities provided by Chapter 119 of the 1925 Session Laws. Among other securities listed in this chapter are general obligation bonds or treasury certificates, lawfully issued by the United States of America. Joint Stock Land Bank bonds are not interest bearing, general obligation bonds or treasury certificates, lawfully issued by the United States of America and Highway District sinking funds may not be legally invested in such bonds.

F. C. Graves. 3-18-27.

Sinking Funds : Investment of.**138. QUESTION:**

Do highway districts have the right to invest sinking fund money in either their own bonds or the bonds of other highway districts?

OPINION:

They may invest sinking fund money in their own highway district bonds, but may not invest moneys in the bonds of other highway districts. (Authority: Chapter 119, 1925 S. L.).

Fred Glenn & Company. 11-14-27.

Prosecuting Attorneys : Not Required to Advise.**139. QUESTION:**

Are highway districts entitled to have, free of charge, legal advice and services of prosecuting attorneys on matters or business of the district?

OPINION:

Prosecuting attorneys are not required under the law to furnish legal services to highway districts. The law requires prosecuting attorneys to furnish legal advice to county officers, and to represent the county in litigation in which the county is interested. But, they are not required to represent municipal or quasi municipal corporations within the county. Highway districts are by law authorized to employ attorneys.

Hon. J. B. Manifold. 5-7-28.

HORTICULTURE**Nurserymen : Bond : License.****140. QUESTION:**

May the State Department of Agriculture collect a license fee from persons handling nursery stock, and require a nurseryman of a foreign State, coming into this

State to dispose of his nursery stock, to furnish a bond and pay an annual license fee, and in addition, require each of such nurseryman's agents operating within the State, to secure an annual agent's certificate?

OPINION:

The horticulture inspection law is contained in Chapter 87 C. S. It provides for plant inspection and quarantine, and for the abatement of infested premises. The regulations referred to in the foregoing inquiry are provided for in Article 2, of said Chapter. The legislature intended by the enactment of Chapter 87 to provide adequate regulations to prevent the spread of diseases injurious to nursery stock within the State. To enforce such regulations is clearly within the police power of the State. Under the provisions of said Chapter all persons, firms or corporations, either residents or non-residents handling nursery stock within the State are required to post bonds and procure licenses. There is no discrimination between residents of Idaho, and residents of foreign states. The bond and license features of the statute are only incidents to the right of inspection and eradication of diseased nursery stock. A State may, in the exercise of its police power, legislate in the interest of health, safety, morals, and general welfare of its citizens, and such legislation is valid notwithstanding the fact that interstate commerce may be incidentally affected thereby. The provisions of the Idaho horticulture inspection law may be enforced. (Authority: 5 R. C. L. 702; 12 C. J. 13, 52, 53, also 65; *Hall v. Geiger-Jones Co.* 242 U. S. 538, 558, 61 L. Ed. 480-492; *Asbell v. Kansas*, 209 U. S. 251, 52 L. Ed. 778; *Patapsco Guana Co. v. North Carolina Board of Agriculture*, 171 U. S. 345, 43 L. Ed. 191; *In Re. Schechter*, 63 Fed. 695; *Noble v. Bragaw*, 12 Idaho, 265; *State v. Banks*, 37 Idaho, 27-36; *Griffith v. Owen*, 30 Idaho, 647).

American Association of Nurserymen. 4-1-27.

INSANE PERSONS

Maintenance of.

141. QUESTION:

Can the estate of an inmate of the Insane Asylum at Blackfoot, or the relatives of such insane person, be

compelled to pay the cost of maintaining such inmate at the asylum?

OPINION:

Yes. (Authority: Section 1190 C. S., as amended by Section 3 of Chapter 186 of the 1921 Session Laws).

H. W. Vanderwood. 5-11-27.

Parole of.

142. QUESTION:

Does the Board of Directors of the Blackfoot Asylum or the Governor have authority to parole a patient or inmate of that institution to a private sanitarium for special treatment?

OPINION:

The Board of Directors, and not the Governor, has authority to parole an inmate subject to the limitations prescribed by Section 1158 C. S.

Hon. H. C. Baldrige. 3-3-27.

INSURANCE

Foreign Stock Company.

143. QUESTION:

May a foreign stock insurance company, which is otherwise qualified, making insurance covering risks listed in Class 1, as defined by Section 4922 C. S., also make insurance in Idaho covering risks defined in Classes numbered 6, 7, 8, 9, and 12, as defined in Article 2, of Chapter 201, C. S.?

OPINION:

Under the provisions of Section 4951 C. S. any foreign stock insurance company making insurance in this State under Class 1, of Article 2, of Chapter 201 C. S. may not make insurance in Idaho in any other of the Classes of insurance specified in Article 2, except Class 2, and Class 12, and then only by increasing its capital stock pursuant to the provisions of Section 4951 C. S.

Hon. D. C. Neifert. 9-29-27.

INTOXICATING LIQUOR

Wine Elixir Tonic.

144. QUESTION:

Is Wine Elixir Tonic, a preparation sold in Drug Stores, the contents of which are approximately 22% alcoholic, within the definition of intoxicating liquor under the Idaho law?

OPINION:

If it is a preparation, the contents of which are approximately 22% alcoholic, and may be used as a beverage, it comes within the provisions of Section 2605 C. S. defining intoxicating liquors.

Arthur W. Hart. 9-6-28.

IRRIGATION DISTRICTS

Bonds : General Lien of.

145. QUESTION:

Will the bond obligation which may be created by an irrigation district for the purpose of purchasing dams, reservoirs, etc., outside the district continue a lien against all of the lands until the entire bond obligation is paid?

OPINION:

Under the authority of Section 4367 C. S. and the case of *American Falls Reservoir v. Thrall*, 39 Idaho, 105, the lien of the bonds is a general obligation against all of the property of the district.

Hon. R. L. Sutcliffe. 1-22-27.

Delivery of Water : Payment in Advance : Security.

146. QUESTION:

(1) Where the Board of Directors of an irrigation district makes an order fixing or levying tolls, and makes the same payable in advance of the delivery of water, may the board withhold the delivery of water upon the failure of a water user to pay the tolls in advance?

(2) May maintenance warrants be accepted as cash in the hands of the original owner for the payment of maintenance assessments? If so, is it mandatory that the district accept such warrants when so tendered?

OPINION:

(1) Where such order is made and the water user fails to pay the tolls in advance, or fails to give security for such tolls, the board is authorized to refuse delivery of water for irrigation purposes. (Authority: 5636 C. S.).

(2) Maintenance warrants in the hands of the original owner may be accepted by an irrigation district in lieu of cash for the payment of maintenance assessments. When such warrants are tendered for maintenance assessments by the original owner, it is mandatory that the district accept the same in payment of maintenance assessments, but the district may not accept such warrants in lieu of cash when tendered by any person other than the original owner.

Hon. Jacob Magleby. 2-9-27.

Directors : Qualifications.

147. QUESTION:

At a regular election of officers in the Indian Cove Irrigation District, a resident within the District who was not a freeholder, but was otherwise qualified, was elected to the office of Director of the District. Is he qualified to hold such official position?

OPINION:

The fact that the newly elected director was not a freeholder within the district does not disqualify him for the office of director. Section 4330 C. S. prescribes the qualifications for directors of drainage districts. That portion of the statute applicable to the question is as follows:

“* * * Every director must be a qualified elector and a resident of the division of the director whom he is to succeed in office.”

A former statute of this state which required that a person shall be a holder of land within the boundaries of an irrigation district in order to entitle him to vote at an

election of district officers, was held to be in conflict with Section 20 of Article I of the Constitution of Idaho, and declared unconstitutional in the case of *Bissett v. Pioneer Irrigation District*, 21 Idaho, 98. See also *Ferbrache v. Drainage District No. 5*, 23 Idaho, 85.

A. W. Wicher. 12-23-27.

Reports to Dept. Public Investments.

148. QUESTION:

Is it the duty of irrigation districts or persons or corporations engaged in furnishing water for irrigation purposes to make a report to the Department of Public Investments when so requested by the Commissioner of Public Investments, advising such Commissioner of the assessments due on any particular tract of land or assessments delinquent upon any particular tract of land upon which the State has any mortgage?

OPINION:

Chapter 109 of the Laws of 1925 requires that the irrigation districts or persons or corporations engaged in furnishing water for irrigation must make a report to the Department of Public Investments when so requested only when there are assessments which are due or delinquent on lands within the district against which the State of Idaho has a mortgage. No report is necessary if all assessments are paid.

The failure to make such report renders the district, person or corporation liable to a forfeiture of the sum of \$300.00. The statute requires that such report be made within sixty days after such request.

Hon. E. M. Hoover. 11-7-27.

JUSTICE OF THE PEACE

Court : Where Held.

149. QUESTION:

Is it necessary for a Justice of the Peace to have his office in the precinct in which he was elected, when that

precinct lies within the limits of an incorporate village?

OPINION:

Section 6470 C. S. provides as follows:

"Every justice of the peace must hold a justice's court in the precinct from which he is elected or appointed, except when the precinct lies wholly or partially within the limits of an incorporated city or village, in which case he may hold said court at any place within the limits of said incorporated city or village."

Jurisdiction : Small Claims Department.

150. QUESTION:

What is the jurisdiction of the Justice of the Peace in the small claims department?

OPINION:

The small claims department of the Justice's Court has jurisdiction in cases for the recovery of money where the amount does not exceed \$50. and where the defendant or defendants reside within the precinct of the Justice's court. The department does not have jurisdiction where the defendant or defendants reside outside the precinct, nor is the jurisdiction of that department exclusive. (Authority: Chapter 177 of 1923 S. L.).

R. M. Cunningham. 3-15-27.

Official Bonds : Payment of Fees.

151. QUESTION:

May the premiums on official bonds for constables and justices of the peace, where they furnish surety bonds, be paid by the County?

OPINION:

Section 6, of Article 18, of the Constitution of Idaho enumerates the several county officers. Justices of the Peace and Constables are not county officers. They are precinct officers, and the claims for premiums on their official bonds may not be paid out of county funds.

Lawrence Quinn. 5-13-27.

Parole : Authority to.**152. QUESTION:**

Does a justice of the peace, by virtue of the provisions of Section 9041 C. S. have authority to suspend sentence or parole the defendant at the time of pronouncing sentence in cases which are clearly within the jurisdiction of the justice of the peace?

OPINION:

Under the provisions of Section 7991 R. C. the court did not have the right to withhold judgment in criminal cases except in the instances provided for in Section 7990 R. C. Section 7991 R. C. was amended by Chapter 104 of the 1915 Session Laws, and extended to the courts the power to suspend or withhold judgment in certain cases, but extended the right of parole and suspension of judgment to the district courts only. Therefore, justices of the peace, or probate judges do not have the right to suspend sentence or grant a parole at the time of the pronouncement of judgment. (See case of *Ex parte Jennings*, decided by Idaho Supreme Court, April 24, 1928, reported in 267 Pac. 227.).

Wright A. Stacey. 6-24-27.

Party to Action May Appear in Own Behalf.**153. QUESTION:**

(1) Is it lawful for a Justice of the Peace to permit business, criminal and civil to be conducted in his court without the appearance of an attorney on either side?

(2) Is it lawful for one to practice law in a Justice's Court when such person is not a duly licensed attorney?

OPINION:

(1) A Justice of the Peace may permit a person who is a party to a civil action instituted in his court, to prosecute or defend in his own behalf. It is the duty of the Prosecuting Attorneys to prosecute criminal actions pursuant to the provisions of subdivision 2, of Section 3655 C. S. The defendant in a criminal action may appear in his own behalf.

(2) Under the provisions of Chapter 211 of the 1923 Session Laws, one may not appear in a Justice's court in behalf of a person other than himself, who is a party to a civil or criminal suit, unless he is a duly licensed attorney at law.

Elmer E. Johnston. 11-9-27.

Qualifications.

154. QUESTION:

What are the qualifications of a Justice of the Peace under the Constitution and laws of the State of Idaho?

OPINION:

A Justice of the Peace must be an elector under the provisions of Article 6, Section 2 of the Idaho Constitution, and under the provisions of Section 381, C. S., he must be a qualified elector of the precinct for which he aspires to the office of Justice of the Peace.

Norman B. Wood. 6-9-27.

LAKES

Driftwood Deposited on Shore.

155. QUESTION:

Does the owner of a tract of land bordering on Lake Pend d'Oreille, own the driftwood deposited by high water between the high water mark and the low water mark on the shores of the Lake?

OPINION:

The Supreme Court, in the case of *Callahan v. Price*, 26 Idaho 745, has held that the State holds title to the beds of navigable lakes or streams below the natural highwater mark for the use and benefit of the State. Lake Pend d'Oreille is a navigable lake. Inasmuch as the driftwood deposited below the natural highwater mark is deposited upon lands belonging to the State, the riparian owner would have no more right thereto than other persons.

Nina Owen. 1-10-28.

LICENSE**Dances.****156. QUESTION:**

Is it legal for a grange to give dances in the Grange Hall and sell tickets to pay for the music and other expenses without procuring a license under the provisions of Chapter 219 of the 1925 Session Laws?

OPINION:

If the grange conducts a dance in the Grange Hall for the entertainment of its members and guests and not for profit, it is not necessary for it to comply with the provisions of said chapter.

F. E. Albin. 3-10-28.

LIVESTOCK**Cattle : Tuberculosis.****157. QUESTION:**

Is it necessary to have petitions signed by sixty per cent of the cattle owners within a county or defined area, each year, to comply with the provisions of Chapter 146 of the 1923 Session Laws?

OPINION:

The petition or petitions should be signed each year by at least sixty per cent of the cattle owners, as designated by the last assessment roll.

Dr. A. J. Dickman. 11-19-27.

LOTTERIES**Vending Machines Prohibited.****158. QUESTION:**

Is the use of such devices as vending machines which vend to the player a package of mints, and also in certain instances, trade checks, prohibited in Idaho?

OPINION:

Such devices as are described in the inquiry come within

the prohibition of Section 8307 C. S. which makes it a misdemeanor for any person to deal, play or carry on, open or cause to be opened or who conducts either as owner, employee or lessee, whether for hire or not, any game played with cards, dice or any other device for money, checks, credit or any other representative of value. (*State of Rhode Island v. Certain gambling instruments and apparatus of Samuel O. Paul*, 128 Atl. 12, 38 A. L. R. 71 and Ann.).

Desmond Marvine Graham, Jr. 10-4-27.

Life Insurance : Prizes.

159. QUESTION :

A life insurance agent proposes to organize "A Hundred Thousand Club," wherein each accepted applicant will receive one free chance on a new Ford automobile for every thousand dollars' worth of insurance applied for and issued. Every applicant will have the privilege of interesting others in insurance, and will receive one free chance for every thousand dollars' worth of insurance that the agent may sell with the assistance of the applicant to a new prospect. The new prospect will receive one free chance for every thousand dollars' of insurance written. When a hundred thousand dollars' worth of insurance has been written, the car will be raffled and the holder of the lucky number will win. Is such plan legal?

OPINION :

No. It constitutes a violation of Section 8316 C. S.

Hon. D. C. Neifert. 10-17-27.

MEMORIAL

Erection by County : Cannot Divide Funds.

160. QUESTION :

Where a county complies with the provisions of Chapter 219 of the 1921 Session Laws for the purpose of securing State aid for the erection of a county memorial, may the funds be divided and two memorials in differ-

ent localities be erected in the county by the use of such funds?

OPINION:

From an examination of Chapter 67, 1919 Session Laws, Chapter 219, of the 1921 Session Laws, Chapter 69 of the 1923 Session Laws and Chapter 40 of the 1927 Session Laws, it is apparent that it was the intention of the legislature that State funds should be used for the erection of but one memorial in each county.

Hon. Lester F. Albert. 4-7-27.

MIGRATORY LIVESTOCK

Assessment.

161. QUESTION:

The owner of migratory livestock lives in Nevada, ships sheep into Bannock County over the railroad, and unloads the sheep at Bancroft in Bannock County. He immediately trails the sheep out of Bannock County into other counties. Should such migratory sheep be assessed in Bannock County as the home county?

OPINION:

Such migratory sheep should be listed and assessed in Bannock County as the home county.

Charles A. Brown. 5-10-27.

MORTGAGES

Foreclosure : Rents and Profits : State Entitle To.

162. QUESTION:

Where the State holds a sheriff's certificate of sale for land, is it entitled to collect the rents and profits accruing from the land during the period of redemption?

OPINION:

Yes. The holder of a sheriff's certificate of sale to real estate is so authorized under the provisions of Sec-

tion 6938 C. S. as amended by Chapter 169 of the 1921 Session Laws.

Hon. I. H. Nash. 5-7-27.

MOTOR VEHICLES

Dealer's License.

163. QUESTION:

Are automobile dealers who have their place of business in one county and whose agents make sales and deliveries in another county, required to procure a dealer's license before doing business in such other county?

OPINION:

The statute does not limit the territory wherein a dealer in motor vehicles might operate, nor is a dealer required to procure a dealer's license for each County where he operates, unless he maintains a place of business in such County. (Authority: Section 28, Chapter 244 of 1927 Session Laws.).

F. A. McCall. 2-24-28.

Dealer's License : Not Transferable.

164. QUESTION:

May a dealer's license be transferred to and used by a company which purchases the licensee's business?

OPINION:

The license is personal. In the absence of statutory authority, it may not be transferred to or used by a company purchasing the business of the licensee.

Hon. Fred E. Lukens. 10-13-28.

Disposition of : License Fees.

165. QUESTION:

The village of Plummer is surrounded by a Highway District, but is not a part of the highway district. May the fees collected from the sale of motor vehicle licenses

within the village of Plummer, or any portion thereof, be turned over to the village for the purpose of constructing and maintaining its streets?

OPINION:

10 per cent of all motor vehicle license fees collected within the State shall be paid into the State Highway Fund, and 90 pr cent of such fees shall be paid to the County in which such fees are collected. (Authority: Section 1582 C. S. as amended by Section 8 of Chapter 177 of 1925 S. L.). There is no authority for the payment of the motor vehicle license fees or any part thereof to a municipality. The apportionment must be made in strict conformity with the provisions of the Statute hereinbefore cited.

George J. McFadden. 1-28-28.

License : Automobile Bearing Foreign.

166. QUESTION:

Is a resident of Idaho required to purchase an Idaho Motor Vehicle License for an automobile purchased in a foreign state, which bears the motor vehicle license of such state, if the automobile is operated upon the highways in Idaho during the current year?

OPINION:

Yes. (Authority: Chapter 177 of the 1925 Session Laws).

B. Dick Hartley. 2-14-27.

License of : Foreign Trucks.

167. QUESTION:

Where a motor truck is owned by a corporation with its principal place of business in Spokane, Wn., and is used in making deliveries of products daily in the State of Idaho, must such truck bear an Idaho Motor Vehicle License?

OPINION:

Yes. (Authority: Chapter 177 of the 1925 Session Laws).

Spokane Bakery Company. 2-11-27.

Used in Private Business.**168. QUESTION:**

Where a person or corporation is engaged in private business, is the owner of motor trucks used to haul freight in the furtherance of such business and is not engaged in hauling persons or freight for hire, is such person or corporation required to comply with the auto transportation law?

OPINION:

The auto transportation law does not apply to one not using motor vehicles for hire upon the public highways of the State. (Authority: Chapter 197 of 1925 S. L. as amended by Chapter 237 of 1927 S. L.; *Smallwood v. Jeter*, 42 Idaho, 169; 244 Pac. 149; *Burns v. Lukens*, Idaho, 269 Pac. 596.).

N. S. Sage. 9-14-27.

License Fees : Personal Property Taxes.**169. QUESTION:**

Re: The matter of collection of motor vehicle license fees.

OPINION:

Section 1595 C. S. providing for the collection of a motor vehicle license tax by seizure and sale of the motor vehicle was repealed by Chapter 244 of the 1927 Session Laws. Section 7 of said Chapter requires every owner of a motor vehicle intended to be operated upon any highway in the state to apply to the assessor of his county for and obtain a registration of such vehicle before operating it upon any public highway. Section 15 of that Chapter requires the renewal annually of such registration and the payment of the prescribed fee. Section 24 makes it unlawful for any person to operate upon any highway any motor vehicle without having the same registered.

If the motor vehicle is not operated upon a highway within the state, registration thereof is not necessary. Section 26 of said Chapter provides that the registration fee shall be in lieu of all taxes upon motor vehicles, and any motor vehicle properly registered and for which the required fee has been paid, shall be exempted from taxa-

tion. If the motor vehicle is not operated upon a highway, and is not registered, the same is subject to the assessment of personal property taxes, and in such case the tax may be collected by distraint and sale under the provisions of Chapter 263 of the 1927 Session Laws.

Leo L. Abbott. 10-19-28.

Motor Boats.

170. QUESTION:

Is the Idaho Motor Vehicle License Law applicable to motor boats?

OPINION:

No. While, it is within the power of the legislature to provide for the taxing and regulation of motor boats, this has not been done.

R. S. Anderson. 5-11-27.

Subject to Taxation When Not Registered.

171. QUESTION:

Should the assessor assess as personal property, the automobiles held by a dealer for the purpose of sale, which have not been registered for license?

OPINION:

Subdivision 21 of Chapter 145 of the 1927 Session Laws, which amends Section 3099 C. S., provides that motor vehicles properly registered, and for which the required fee has been paid under the provisions of Chapter 69 C. S., are exempt from taxation. The laws providing for exemptions from taxation must be strictly construed. Unless one clearly comes within the provisions of the statute providing for the exemption, the exemption may not be claimed. Automobiles, new or secondhand, which have not been registered or licensed, are subject to taxation.

O. K. Meservy. 3-9-28.

MUNICIPAL CORPORATIONS**Local Improvement Districts : Collection of Fees.****172. QUESTION:**

Under the Improvement District Law, (Chapter 257 of 1927 S. L.) does the city have the right to charge a fee of $1\frac{1}{2}$ per cent. on improvement district assessments collected by its treasurer?

OPINION:

No. The duty of collecting such assessments is imposed upon the City without authority to collect compensation for such services.

Henry M. Hall. 10-26-27.

NEPOTISM**Appointment : Husband of Niece.****173. QUESTION:**

May a public officer appoint the husband of his niece as his deputy?

OPINION:

The Supreme Court in the case of *Barton v. Alexander*, 27 Idaho, 286, 148 Pac. 471, in construing the nepotism law held that the degrees of relationship were to be computed upon the rules of the civil law. Under the civil law a niece is within the third degree of blood and her husband would be within the same degree by marriage. Therefore, the husband's appointment as a deputy would be prohibited by the provisions of Section 416 C. S.

Paul Hyatt. 8-22-28.

Probation Officer.**174. QUESTION:**

Is a probation officer who is related to a member of the board of county commissioners in the first degree by affinity, eligible to hold such office?

OPINION:

Inasmuch as the probation officer shall be appointed

by the probate court, by and with the consent of the board of county commissioners, the probate court does not have the exclusive appointing power, and it necessarily follows that a probation officer who is related to one of the county commissioners within the degree prohibited by Section 416 C. S. is not eligible to hold that office.

Sidney H. Smith. 9-16-27.

School Districts : Anti-nepotism Law Does Not Apply.

175. QUESTION:

Two women who are sisters-in-law were members of the school board. One of them recently resigned and applied to the board for a contract to teach. The board employed her as a teacher. At the time the board voted to employ her, the sister-in-law who is a member of the board of trustees did not vote upon the resolution of employment. Was such employment in violation of the law?

OPINION:

School districts and school district officers do not come within the provisions of Section 416 C. S.. In the case of *Barton v. Alexander*, 27 Ida. 286, 148 Pac. 471, the Supreme Court of this state, construing the provisions of Section 416 C. S., said:

"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 specifically enumerated only one subdivision, to-wit, a road district, 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. * * *"

Furthermore, Chapter 215 of the 1921 Session Laws, Section 46, Subdivision 14, by implication permits a relative of a member of a school board to be employed by the board. The subdivision provides as follows:

"No trustee of any school district of any kind in the State of Idaho shall vote to elect any relative of his or of 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."

The employment was not unlawful.

H. Busse. 9-27-27.

NOXIOUS WEEDS

State Highways : Destruction of.

176. QUESTION:

Whose duty is it to destroy noxious weeds on the State Highway?

OPINION:

Section 3495 C. S. as amended by Chapter 204 of the 1927 Session Laws, in Section 2, thereof, provides as follows:

"It shall be the duty of the County Highway Districts, good roads districts, or State Highway Districts to destroy all noxious weeds."

The excerpt quoted above is ambiguous. Under the laws of this State there is no such thing as a County Highway District. Prior to the enactment of said Chapter 204, it was the duty of the property owners whose lands border on public highways, to proceed to destroy all noxious weeds on the half of the highway nearest their lands.

It appears that it was intended by the legislature in enacting Chapter 204 to relieve the abutting land owner of the responsibility of eradicating noxious weeds along the highways, and intended to place the responsibility upon the agencies having jurisdiction over the highways. Inasmuch as the Department of Public Works has a general jurisdiction over the State highways, that department is charged with the duty of destroying the noxious weeds on and along the State highways.

Hon. J. D. Wood, Commr. Pub. Works. 4-29-27.

OFFICIAL BONDS

Cancellation of.

177. QUESTION:

When a state officer completes his term, or resigns and is succeeded by a newly appointed or elected officer,

may his official bond be cancelled or returned to the surety company?

OPINION:

There is no statutory or other authority for cancelling or returning official bonds. Nothing may be done by the State or its officials which would amount to diminishing or terminating the liability of a surety company. The bonds must remain on file for the benefit and protection of the State.

Honorable H. C. Baldrige. 10-29-27.

PATENTS

Articles Must Be Marked.

178. QUESTION:

Must a patented article bear the inscription "patented?"

OPINION:

Yes. (Authority: Section 49 of Title 35 of United States Code Laws).

Harry L. Yost. 10-27-28.

PENITENTIARY

Shirt Factory : Earnings of.

179. QUESTION:

May the salary of the Prison Physician be paid out of the earnings of the shirt factory maintained and operated at the Idaho State Penitentiary?

OPINION:

The earnings derived from the operation of the shirt factory are credited to the Penitentiary Improvement Fund. Under the provisions of Section 3, of Chapter 35, of the 1923 Session Laws, as amended by Chapter 102 of the 1925 Session Laws, and as amended by Chapter 101 of the 1927 Session Laws, such fund may be used for "the construction of buildings and expenses of said Penitentiary, other than the operation thereof." The salary of

the Prison Physician falls within the classification of "operation expense" and as such expense is specifically excluded, such salary may not be paid out of earnings of the shirt factory.

Hon. J. W. Wheeler, Warden. 4-25-27.

Visitors Fees : Fund : Not Appropriated.

180. QUESTION:

(1) Are the visitor's fees provided for in Section 9362 C. S. appropriated for any use at the Penitentiary?

(2) If so, can any portion of such fees be used for any purpose other than the purchase of books, papers and periodicals for the use of the prison library?

OPINION:

Section 9362 C. S. does not constitute an appropriation of the funds realized from the fees paid by visitors to the State Penitentiary, and there is at the present time, no authority for using any of said fund for any purpose whatever.

(2) No part of the fund may be used for any purpose. Authorization must be granted by the legislature before such funds may be used. The matter should have the consideration of the next session of the legislature.

Hon. E. G. Gallet, State Auditor. 7-20-28.

POISONS

Blue Vitrol : Sale of.

181. QUESTION:

Is a hardware dealer or merchant authorized to sell "blue vitrol"?

OPINION:

There is nothing in the statute, which would prohibit hardware dealers or merchants from selling "blue vitrol," as it is not one of the poisons set out in Schedule "A" or Schedule "B" of Section 2181 C. S., which may be sold only by licensed pharmacists.

Claire Baldridge. 3-14-28.

Distribution of.**182. QUESTION:**

Where a board of county commissioners is engaged in distributing poison or poison preparations for the purposes enumerated in Sections 3484 and 3485 C. S., is it necessary for the board to keep a record of such distribution as provided for in Section 2181 C. S.?

OPINION:

If any of the poisons enumerated in schedule "A" of Section 2181 C. S. are distributed by the county commissioners for the purpose of exterminating rodents a record of such distribution should be kept by the county commissioners in accordance with the provisions of Section 2181 C. S.

Jo G. Martin. 1-26-28.

Distribution of, for Rodent Control.**183. QUESTION:**

1. May the Board of County Commissioners distribute poisons, particularly strychnine, for the eradication of injurious rodents?

2. May the University of Idaho distribute poison for the purpose of destroying injurious rodents?

OPINION:

1. Section 3485 of the Compiled Statutes authorizes the County Commissioners to furnish at cost to owners, occupants and lessees of land infested with injurious rodents, poison or poison preparations for the purpose of exterminating such rodents.

2. Section 3491 of the Compiled Statutes authorizes the Extension Division of the University to furnish poison and other supplies at cost to persons or organizations for the purpose of exterminating injurious rodents.

The poisons and poison preparations furnished as above are furnished only for the purpose of exterminating injurious rodents.

Dean E. J. Iddings. 1-20-28.

PREDATORY ANIMAL FUND**Continuing Fund.****184. QUESTION:**

Will any unexpended balance of the State Predatory Animal Fund revert to the general fund at the close of the present biennium?

OPINION:

Any unexpended balance or portion of such fund will not revert to the general fund at the close of the present biennium for the reason that the fund in question is a continuing fund. (Authority: Section 6 of Chapter 250 of the 1927 Session Laws).

J. L. Driscoll. 8-11-28.

Appropriation Fund : Unexpended Balance : Continuous Fund.**185. QUESTION:**

Will the unexpended balance of the State Predatory Animal Fund revert to the general fund at the close of the present biennium?

OPINION:

Any unexpended balance or portion of the fund will not revert to the general fund at the close of the present biennium, but will be available for the uses for which the fund was appropriated. (Authority: Section 6, of Chapter 250 of 1927 S. L.).

J. L. Driscoll. 8-11-28.

PRISONERS**Attempt to Commit Robbery : Punishment.****186. QUESTION:**

One entered a plea of guilty to the charge of felony, namely, attempt to commit robbery and was sentenced to serve a term of imprisonment of one year in the Penitentiary. What is the prisoner's legal sentence?

OPINION:

Section 8222, C. S. provides that the punishment for robbery shall be imprisonment in the State Penitentiary for not less than five years and the imprisonment may be extended for life. Section 8607 C. S. insofar as applicable to the question, provides:

"Every person who attempts to commit any crime but fails, or is prevented or intercepted in the perpetration thereof, is punishable, when no provision is made by law, for such attempt as follows:

1. If the offense so attempted is punishable by imprisonment in the State prison for five years or more, or by imprisonment in the County jail, the person guilty of such attempt, is punishable by imprisonment in the State prison or in the County jail as the case may be, for a term of not exceeding one-half the longest term of imprisonment prescribed upon a conviction of the offense so attempted."

No provision is specifically made by law for the punishment of an attempt to commit robbery, and such punishment must, therefore, be inflicted under the provisions of Section 8607 C. S. As the offense of robbery is punishable by imprisonment for five years or more, subdivision 1, of Section 8607 C. S. should be applied. (*Ex Parte James Hope*, 59 Cal. 423.). In *People v. Sama*, (Cal.) 207 Pac. 893, construing a section identical with Section 8607 C. S. of Idaho, the Supreme Court of California held that the indeterminate sentence law of that State had no application in the case of a conviction in an attempt to commit robbery.

In the well considered case of *State v. Stone*, (Mont.) 105 Pac. 89, the Supreme Court of Montana construed a Statute identical with Section 8607 Compiled Statutes of Idaho, and held that the attempt was punishable by imprisonment in the State Penitentiary for the definite period of two and one-half years.

Applying the rules announced in the foregoing cases to Section 8607 C. S. an attempt to commit robbery is punishable in Idaho by imprisonment in the State Penitentiary for the term of two and one-half years, and under the rule announced in *In Re Erickson*, 44 Idaho, 713, and *Ex Parte Bottjer*, 260 Pac. 1095, even though the prisoner has been sentenced to serve a term of one year in the Penitentiary the law imposes upon him a term of imprisonment of two and one-half years in the State Penitentiary.

Hon. J. W. Wheeler, Warden. 1-16-28.

Eligible for Parole.**187. QUESTION :**

Where one is sentenced by District Court to serve not less than one, nor more than five years in the Penitentiary, and also sentenced to pay a fine of \$1000.00, the judgment containing no provision that in default of the payment of fine, the fine should be satisfied by imprisonment at a certain rate per day, is the prisoner eligible for parole after having served the minimum sentence of one year?

OPINION :

Section 9038 C. S. provides as follows:

"A judgment that the defendant pay a fine, or pay costs or pay both fine and costs may also direct that the defendant be imprisoned until the fine or costs or both fine and costs are satisfied, specifying the extent of the imprisonment which cannot exceed one day for every \$2.00 of the fine or costs, or fine and costs, as the case may be."

Under the provisions of the foregoing statute, the court was authorized to require the defendant to serve out the fine in prison. However, the court did not do so, and inasmuch as the prisoner is not required to serve the fine in prison, he will be eligible for parole when he has served his minimum sentence.

Hon. J. W. Wheeler, Warden. 1-14-28.

Sentence of : Burglary in Second Degree.**188. QUESTION :**

Is the Warden of the State Penitentiary required to release a prisoner who has been convicted of burglary in the second degree and sentenced by the district court to serve a term of not less than eight months without fixing a maximum term, when the prisoner has served his term of eight months?

OPINION :

The statutes make burglary in the second degree punishable by imprisonment in the State Penitentiary for not more than five years. Section 9035 C. S. provides that the

term of imprisonment in the State Penitentiary shall be not less than six months in any case. Hence, the minimum sentence should be not less than six months, and the maximum should be not more than five years. The district court may increase the minimum to half the maximum, but it may not reduce the maximum. The district court had the right to increase the minimum from six months to eight months, and upon its failure to include in the sentence the maximum of five years, the law imposes the maximum penalty. In the instant case, the legal sentence is "not less than eight months nor more than five years." The Warden is, therefore, not required to release the prisoner upon the expiration of his minimum sentence. (See *In. Re. Erickson*, 44 Idaho, 713).

Hon. J. W. Wheeler, Warden. 5-18-27.

Sentence of : Manslaughter.

189. QUESTION:

Where one convicted of Manslaughter is sentenced to a term in the Penitentiary of from Eight Months to Two Years, is it compulsory for the Warden to release the prisoner at the expiration of the two years?

OPINION:

Under the provisions of Section 8215 C. S. the maximum sentence for the crime of Manslaughter is ten years confinement in the State Penitentiary. The minimum penalty prescribed by statute is six months confinement in the Penitentiary. The minimum punishment may be raised to one-half the maximum, but the maximum may not be changed. The Court had the right to increase the minimum from six months to eight months, but the Court was not authorized to reduce the maximum punishment of ten years to two years. In the instant case, the legal sentence is imprisonment in the State Penitentiary for "not less than eight months, nor more than ten years." The Warden is therefore, not required to release the prisoner when he has served a term of two years imprisonment. (Authority: *In Re. Erickson*, 44 Idaho, 713).

Hon. J. W. Wheeler, Warden. 10-28-27.

PROBATE COURT

Fees : Heirship : Adoption.

190. QUESTION:

(1) What fees should a Probate Court charge for determining heirship?

(2) What fees should a Probate Court charge for adoption proceedings?

OPINION:

(1) If heirship proceedings are instituted to determine heirship in an estate matter in the process of probate, no fees may be charged for the proceedings, as the determination of heirship is properly a part of the probate proceedings. (See Section 7925 C. S.). If heirship proceedings are instituted after an estate has been administered and closed, fees provided for in Chapter 91 of the 1927 Session Laws should be charged.

(2) Chapter 16 of the 1925 Session Laws provided for a \$3.00 fee in all adoption proceedings. That law was amended by Chapter 91 of the 1927 Session Laws and the provision for the foregoing fee was omitted. It evidently was the intention of the legislature to eliminate the charge for such proceedings. Therefore, no fee for adoption proceedings should be charged.

E. C. S. Brainard. 5-25-27.

Signing of Criminal Complaints.

191. QUESTION:

Is it the duty of prosecuting attorneys to personally sign criminal complaints to be filed in either the Probate or Justice Courts?

OPINION:

Criminal complaints in Probate or Justice Courts must be signed under oath, and the offense sought to be charged must be named in the complaint, or the particulars of the crime charged must be set forth with such definiteness as to enable the defendant to understand distinctly the character of the offense complained of. It is manifest that ordinarily the prosecuting attorney does not know

of his own knowledge the particulars which constitute the crime, so as to enable him to make a complaint under oath.

Furthermore, from a consideration of Sections 9249 and 9250 of the Compiled Statutes, it is evident that the legislature intended that some one other than the prosecuting attorney should sign criminal complaints. It is not necessary for the prosecuting attorney to be personally present or to prosecute criminal actions in either the Probate or Justice Court unless expressly requested so to do.

Geraint Humphreys. 11-28-27.

PROBATION OFFICER

Authority of.

192. QUESTION:

Does the authority of a probation officer extend throughout the county and cover both common and independent schools, schools within the county, cities and other towns within the County?

OPINION:

Under the provisions of Chapter 169 of the 1927 Session Laws, his authority extends throughout the County and covers all schools within the County.

R. S. Anderson. 1-24-28.

Salary of : How Payable.

193. QUESTION:

Where a probate court, by and with the approval of the County Commissioners, appoints a probation officer, are the various schools throughout the County desiring his services obliged to pay or contribute toward the payment of his salary?

OPINION:

The salary of the probation officer is not a proper charge against the several school districts within the County, but is a proper charge against the County.

R. S. Anderson. 1-27-28.

PUBLIC BUILDING ENDOWMENT FUND**Construction of Picket Fence.****194. QUESTION:**

May the cost of a picket fence to be erected at the three main second floor entrances to the Capitol Building, be paid out of the Public Building Endowment Fund?

OPINION:

Section 6 of the Idaho Admission Bill defines the Public Building Endowment Fund. By the provisions of that Section, certain unappropriated public lands within Idaho are set aside by the Federal Government to create a fund or funds for the purpose of erecting public buildings at the Capitol in Idaho for legislative, executive and judicial purposes. The fund may be used for construction purposes, but not for maintenance. Inasmuch as the cost of erecting or constructing the fence in question will constitute a construction charge, it may be paid out of the public building endowment fund.

Honorable H. C. Baldridge. 5-28-27.

Fixtures and Equipment for Traveling Library.**195. QUESTION:**

May expenditures be made from the Public Building Endowment Fund to pay the cost of steel shelves for books in the traveling library?

OPINION:

No part of the fund in question may be used for the purchase of equipment or fixtures.

Hon. E. G. Gallet. 11-5-27.

PUBLIC LANDS**Patents : Gravel Deposits : Placer Claims.****196. QUESTION:**

Is a commercial gravel deposit subject to entry and patent as a placer claim?

OPINION:

If the gravel does not contain any valuable metaliferous mineral such as gold, silver, etc., or other deposits referred to in Section 2320 U. S. R. S., it is not subject to patent as a placer claim. (Authority: Sections 2318, 2319, 2329, 2330, 2333 U. S. R. S.; *Zimmerman v. Brunson*, 39 Land Decisions 310; *Hughes v. State of Florida*, 42 Land Decisions 401; *United States v. Aitken*, 25 Philippine Reports, 7).

Jess O. Eastman. 6-6-28.

PUBLIC PARKS

Island Park : Purposes.

197. QUESTION:

May the Island known as "Island Park" situated in the North Fork of Snake River near the City of St. Anthony, Idaho, granted to the City of St. Anthony by an act of Congress found at page 1093, 41 Statutes at Large, approved January 27, 1921, be used by the City of St. Anthony for tourist park purposes?

OPINION:

Among other provisions, the act referred to provides that the Island herein mentioned shall be used by the City of St. Anthony for park and memorial purposes only and should the city abandon the park for such purposes said island shall revert to the United States. There appears to be no qualification or limitation or designation as to the kind of park purposes the land in question may be devoted to and it may be used for tourist park purposes but no charge may be made for the use of the park.

F. S. Adam. 5-11-27.

PUBLIC UTILITIES

Reports of.

198. QUESTION:

Is it a violation of Section 2447 C. S. for the Public Utilities Commission of Idaho to divulge the information

contained in an annual report of a public utility filed with the commission?

OPINION:

Generally, the commission does not have a right to divulge information contained in such reports. There are, however, certain exceptions as specified in Section 2447 C. S. The exceptions permit the information contained in such report to be divulged in the following instances, only:

(1) When the reports are specifically required to be open to public inspection under the provisions of Chapter 115 C. S.

(2) Information contained in the reports may be divulged "on order of the commission."

(3) Information contained in such report may be divulged "by the Commission or a Commissioner in the course of a hearing or proceeding."

It was manifestly the intention of the legislature to require the commission to treat the information contained in the reports as confidential, except in the instances hereinbefore named.

Public Utilities Commission. 2-16-27.

RACES

Automobiles.

199. QUESTION:

Is there any law in this State prohibiting automobile races on a race track on Sunday?

OPINION:

Yes. Prohibited under the provisions of Section 8293 C. S. as amended by Chapter 238 of the 1921 Session Laws.

E. J. Fjeldsted. 3-16-28.

REPRIEVE

Effect of.

200. QUESTION:

A prisoner who had been sentenced to serve a term of 120 days in the County jail, had actually served 78

days of the sentence when he was reprieved on October 3, 1927. What would be the effect of terminating the reprieve?

OPINION:

The effect of a reprieve granted by the Chief Executive of the State is to merely delay the execution of the judicial sentence, and the time elapsing between the granting of the reprieve and the action of the Board of Pardons at its next legal meeting, may not be applied to a reduction of the sentence. In other words, if the reprieve is terminated without the board granting a pardon, the prisoner would be required to serve the remainder of the sentence of forty-two days in the County jail.

Honorable H. C. Baldridge, Governor. 1-6-28.

Granted in What Cases.

201. QUESTION:

Is the right of the Governor to grant reprieves limited to capital offenses, or may a reprieve be granted in cases of convictions for any offense against the State?

OPINION:

Article 4, Section 7, of the Constitution of Idaho gives the Governor the power to grant reprieves or respites in all cases of convictions for offenses against the State, except treason or conviction on impeachment. Therefore, the Governor's right to grant respites or reprieves is not limited to capital offenses, but may be granted in all cases of convictions for offenses against the State except in those cases where the right is specifically denied in the constitutional provision.

Honorable H. C. Baldridge, Governor. 4-21-27.

REWARD

Governor May Post and Pay.

202. QUESTION:

May the Governor post and pay a reward for the

apprehension of one who has committed a felony within the State of Idaho?

OPINION :

Under the provisions of Section 128 C. S. the Governor may offer rewards not exceeding \$1000. each, payable out of the State Treasury, for the apprehension of any convict who has escaped from the State Penitentiary, or of any person who has committed or is charged with the commission of an offense punishable with death. And he may also offer like rewards not exceeding \$500. each in cases of felony where the offense is not punishable with death.

Under the provisions of Chapter 144 of the 1927 Session Laws, adequate funds were provided to carry into effect the foregoing statutory provisions. The Governor may, subject to the foregoing limitations, post and pay a reward.

Honorable H. C. Baldrige, Governor. 8-23-27.

ROAD POLL TAX

In Highway Districts.

203. QUESTION :

Where there are several highway districts within a County, may the Board of County Commissioners levy a road poll tax upon all eligible persons residing within one highway district to the exclusion of all other eligible persons within the County?

OPINION :

The Board of County Commissioners is authorized to levy a road poll tax upon all eligible persons within the territorial limits of the County. (Section 1336 C. S.). Section 5, of Article 7, of the Constitution provides that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax. An attempt by the Board to levy a road poll tax only upon persons residing within a highway district including only part of a County would be illegal and void.

Hon. T. B. Reed. 10-28-27.

Volunteer Firemen Not Exempt.**204. QUESTION:**

Is a volunteer fireman exempt from the payment of poll tax?

OPINION:

Section 1336 C. S. authorizes the Board of County Commissioners to levy a road poll tax for the highway purposes of the County upon each able-bodied adult male person between the ages of 21 and 50 years within the County. The poll tax may not be in excess of \$4.00. Certain persons are excepted or exempted in this Section. Similar exceptions or exemptions are set forth in Section 1527 C. S. as amended by Chapter 16 of the 1927 Session Laws, but volunteer firemen are not excepted or exempted under the foregoing statutes and therefore would be required to pay poll tax when such levy is made.

C. I. Goff. 1-6-28.

SEARCH AND SEIZURE**Search Warrants : Affidavits.****205. QUESTION:**

What form of affidavit is necessary to procure a search warrant to search for intoxicating liquor?

OPINION:

Under authority of *State v. Arregui*, 44 Idaho 43, decided March 26, 1927, an affidavit is insufficient which is made upon information and belief. Under the rule announced in the foregoing case, it is necessary for one making an affidavit before a committing magistrate for the purpose of procuring a search warrant, to set forth facts within his personal knowledge, and such facts must be sufficient to justify the magistrate, upon consideration of the affidavit, in judicially determining that there is probable cause for believing that the intoxicating liquor is on the premises to be searched.

J. D. Jensen, Sheriff, Bingham Co. 3-30-27.

Automobiles.**206. QUESTION:**

In order to make evidence secured by search and seizure admissible in the trial of a defendant for violation of a criminal statute, is it necessary that the officer making the search, have, at the time of the search, a valid search warrant issued upon an affidavit of positive information, if the place searched is a car or other movable vehicle upon the highways of the state?

OPINION:

In the case of *State v. Anderson*, 31 Ida. 514, 174 Pac. 124, in which it was held that evidence otherwise competent and relevant to the issue is not rendered inadmissible by reason of its having been disclosed by an unlawful search or obtained by unlawful seizure, the Supreme Court of Idaho said:

"It may be conceded that the search of the automobile and the seizure of the liquors in this case was accomplished by a trespass of the deputy sheriff and was illegal, and that the statute under which he acted, insofar as it attempts to authorize a search and seizure without warrant, is unconstitutional and void."

The above language of the Supreme Court was predicated wholly upon the fact that the deputy sheriff did not have a search warrant.

The case of *State v. Anderson*, supra, insofar as it held that evidence otherwise competent and relevant to the issue is not rendered inadmissible by reason of its having been disclosed by an unlawful search or obtained by unlawful seizure, was expressly over-ruled by the Supreme Court of the State of Idaho, in the case of *State v. Arregui*, 44 Ida. 43, 254 Pac. 788, wherein it is held that evidence is inadmissible if disclosed by an unlawful search or obtained by unlawful seizure, where timely motion has been made to suppress such evidence.

The last mentioned case does not over-rule *State v. Anderson*, supra, insofar as that case holds that the search of an automobile without a warrant is unconstitutional and void, and so long as *State v. Anderson*, as modified by *State v. Arregui* stands, it appears that under the law of this state, an officer who attempts to search an automobile for contraband must have a valid search warrant, unless the search is incident to a lawful arrest,

as the Supreme Court of Idaho, in *State v. Myers*, 36 Ida. 396, 211 Pac. 440, has expressly held that a lawful search may be made where such search is incident to a lawful arrest.

The Supreme Court of Idaho, in *State v. Arregui*, supra, follows very closely the decision of the Supreme Court of the United States in the case of *Weeks v. United States*, 232 U. S. 383, 58 L. Ed. 652; and while, as heretofore stated, it would appear that until *State v. Anderson* is modified, a search of an automobile or other vehicle cannot be made without a search warrant, it is believed that when a proper case is presented to the Supreme Court of the State of Idaho, *State v. Anderson* will be modified, and the rule as announced by the Supreme Court of the United States in the case of *Carroll v. U. S.*, 45 Sup. Ct. Rep. 280, will be followed. The case last mentioned makes a distinction between the search of a store, dwelling house or other fixed structure and the search of a ship, motor boat, automobile or other movable vehicle, where it is not practical to secure a search warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought. The Court in this case expressly held that where the officer has reasonable or probable cause for believing that the automobile or other movable vehicle, which he stops and seizes, has contraband therein, the search and seizure is not in derogation of any constitutional right.

Geraint Humpherys. 4-22-27.

SCHOOL DISTRICTS

School House : Rebuilding : Remodeling.

207. QUESTION:

1. Is it necessary to call an election to determine whether a school house shall be torn down and remodeled?

2. May the board of trustees condemn a school building?

3. In the rebuilding or alteration of a school building, is it required that the plans be submitted to the State for approval?

OPINION:

1. The tearing down of an old building and the con-

struction of a new school house would in fact be building a new school, which must be submitted to an election of the qualified voters of the school district.

2. Yes.

3. No.

Frank Croner. 3-26-27.

School House : Community Center.

208. QUESTION:

May the school trustees of a common school district permit the school house in the district to be used by organizations such as Granges, Lodges, etc., for holding entertainments and dances open to the membership of such organizations?

OPINION:

Section 1045 C. S. authorizes the use of a school house as a community center. Dances and entertainments of various sorts may be conducted by Granges, Lodges, or other local organizations in a school house, provided the school house, when put to such use, generally serves the community responsible for its construction and maintenance.

Carl A. Burke. 3-10-28.

Bonded Indebtedness : Legal Amount.

209. QUESTION:

May Independent Class A and Joint Independent Class A school districts deduct the amount of sinking fund money on hand from the present bonded indebtedness to determine the amount for which such districts may legally issue bonds?

OPINION:

The limit of the outstanding indebtedness of such districts is 10 % of the assessed valuation of the taxable property of the district as shown by the assessment on the tax rolls for the year next preceding. (Chapter 185 of 1927 S. L.). The fact that the district may have on hand in its sinking fund, certain money available for

the redemption of bonds does not entitle the district to deduct the amount of such money from the outstanding indebtedness in determining the amount of a possible bond issue. So long as the money has not been paid out by the district to discharge the indebtedness, the indebtedness must be regarded as outstanding.

Chester Minden. 8-24-27.

Bonded Indebtedness : Share of.

210. QUESTION:

(1) Does a Common School District, on becoming a part of a Rural High School District, assume its share of the bonded indebtedness of the Rural High School District?

(2) Does the Rural High School assume any of the obligations of a Common School District which becomes a part of the Rural High School District?

OPINION:

(1) A Common School District, as a corporate entity, upon becoming a part of a Rural High School District does not assume any share of the bonded indebtedness of the Rural High School District, but the territory of the Common School District does become liable for its proportionate share of the bonded indebtedness of the Rural High School District.

(2) No.

Margaret E. Giesbrecht. 10-17-27.

Bonds : Maturity.

211. QUESTION:

Do the statutes of Idaho authorize a school district to call for payment, bonds issued by a district ten years after date of issuance regardless of the time when such bonds mature?

OPINION:

All school bonds issued in Idaho prior to 1911, are payable and redeemable as provided in the bonds. Bonds of Independent School Districts issued between 1911 and

1921 are payable within twenty years, and the district has the option to redeem after ten years from date of issuance. Until 1917, all other school districts had the authority to issue bonds payable and redeemable at any time. Since 1917, all other school districts have been and are now authorized to issue bonds on the amortization plan only, which are payable within twenty years.

Bank of Oregon City. 8-24-27.

Census List : Census Taker.

212. QUESTION:

Under the school law, is it necessary for the school census taker to give a detailed census to the County Superintendent or may she certify to the County Superintendent the totals of her census list?

OPINION:

The school census taker is required to furnish the County Superintendent with a detailed report of the census. It is provided in Chapter 95 of the 1927 Session Laws as follows:

"He shall make under oath full report thereon on blanks furnished for this purpose to the county superintendent in duplicate within fifteen days after the completion of the census and in addition thereto deliver a copy to the trustees."

Lucy Ormsby. 9-14-27.

Change in Character : Indebtedness.

213. QUESTION:

When a Common School District becomes an Independent School District, and has outstanding indebtedness, how should such indebtedness be paid?

OPINION:

When a Common School District becomes an Independent School District, the Common School District ceases to exist and cannot issue warrants in payment of its indebtedness, but the Independent School District is liable in full for the valid outstanding indebtedness of such district. The indebtedness should be paid by such

Independent School District by warrants of the Clerk of the Board of such Independent School District countersigned by the chairman of its Board.

Mabelle M. Allen, State Superintendent. 10-29-28.

Driver of Bus : Qualifications.

214. QUESTION:

What are the qualifications of the driver of a bus or of a school wagon?

OPINION:

There are no qualifications set forth in the statutes of this State relative to bus or school wagon drivers. The qualifications of such drivers are left wholly to the judgment and discretion of the trustees of the school district.

Margaret E. Giesbrecht. 9-20-28.

Duty of Trustees to Insure.

215. QUESTION:

Is it compulsory to carry general liability insurance on the school property of Idaho School Districts?

OPINION:

Under the provisions of Section 46 of Chapter 215 of the 1921 Session Laws, it is the duty of the board of trustees of all school districts to insure school houses and other property for the benefit of the district.

W. F. Sargent. 12-13-27.

Funds : Insurance.

216. QUESTION:

Is a School District entitled to use a portion of the school funds for purchase of insurance to protect pupils injured while being transported in school busses to and from school?

OPINION:

School funds may be expended, only, as provided by law. There is no provision in the law authorizing the expenditure of school funds for the purchase of insurance to protect pupils against accident. Section 10 of Article 7 of the Constitution of the State of Idaho provides:

"The making of profit, directly or indirectly, out of state, county, city, town, township, or school district money, or using the same for any other purpose not authorized by law, by any public officer, shall be deemed a felony, and shall be punished as provided by law."

Mrs. Mabelle M. Allen. 12-9-27.

Funds : District : Not Available for Parochial Schools.

217. QUESTION:

May any part of the funds of a school district be used to defray the expenses of transporting children to and from a parochial school?

OPINION:

Article 9, Section 5, of the Constitution of Idaho provides as follows:

"Neither the legislature, nor any county, city, town, township, school district, or other corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose."

Under the foregoing constitutional provision, public school funds must not be used to support or further the interests of any school controlled by any Church, and the district may not use public school funds or any part thereof to defray any expenses for transporting children to or from parochial schools.

D. A. Stephenson. 9-16-27.

Independent : Chairman to Cast Deciding Vote.**218. QUESTION:**

May the chairman of the board of trustees of an Independent School District, after casting his vote resulting in a tie, cast another vote to decide the question?

OPINION:

Under the provisions of Section 38, Chapter 215 of the 1921 Session Laws, the chairman of the board may vote in any and all cases, and in addition thereto, may cast the deciding vote.

Thomas Spillman. 4-1-27.

Independent : Investment of Sinking Funds.**219. QUESTION:**

May an Independent School District invest its sinking fund moneys in securities listed on the New York Exchange?

OPINION:

An Independent School District has a right to invest its sinking fund moneys in securities named in Chapters 119 and 120 of the 1925 Session Laws, and in no others.

M. H. Brownell. 3-25-27.

Independent : Sinking Fund : Investment of.**220. QUESTION:**

May an independent school district use money from the bond interest and sinking fund for the purpose of purchasing outstanding warrants drawn upon the general fund?

OPINION:

Yes. Provided, that the warrants shall be due and payable on or before the date on which outstanding bonds of the district shall become due or payable.

Sidney H. Smith. 3-19-27.

Lapsed District : Reorganization.**221. QUESTION:**

(1) When a school District has lapsed, how soon shall the school house be sold?

(2) How may the unorganized territory of a lapsed district become a school district again?

OPINION:

(1) A school district lapses immediately upon the entry of an order by the board of county commissioners, declaring the district lapsed, and immediately the County Superintendent of Public Instruction has authority to sell and dispose of the property and deposit the receipts of the sale with the County Treasurer. No specific time has been fixed for such sale, but it should be within six months following the entry of the order by the commissioners. At the expiration of the six month period, the funds are placed to the credit of the general school fund of the county.

(2) Unorganized territory may be organized into a new district or may be annexed to an existing district as provided by law. Sections 4, 5, and 6 of Chapter 215 of the 1921 Session Laws provides for the creation of a new district, and Section 8 of said chapter outlines the procedure for annexing.

May Cunningham. 12-1-27.

Legislature : Special Laws.**222. QUESTION:**

May the legislature enact a law providing for a special charter for Nampa Independent School District?

OPINION:

The Constitution of Idaho provides that the legislature shall not pass local or special laws, providing for the management of common schools or prescribing the powers and duties of officers in school districts, except as otherwise provided in the constitution.

The Supreme Court of this state, in the case of *Howard v. Independent School District No. 1*, 17 Idaho 537, has construed the foregoing constitutional provision,

and has held that the legislature may extend, change or amend by special law the charters of educational corporations which were in existence at the time of the adoption of the constitution, and which were under the control of the state, but, by implication, has held that the legislature may not enact special or local laws affecting school districts created after the adoption of the constitution.

The legislature may not grant the Nampa Independent School District a special charter.

D. A. Stevenson. 1-22-27.

Liability for Injury to Pupil.

223. QUESTION:

Where a student is injured at school while practicing basketball, and is put to the expense of a surgical operation, may the school district be held liable for such expense?

OPINION:

The school district is not liable for such expense or for any damages by reason of an injury sustained by a pupil while practicing or playing games at school, and the school district has no authority to assume the responsibility for such accident or use any of its funds to defray any of the expenses resulting therefrom.

Earl H. Smith. 1-31-28.

Property : Insurance.

224. QUESTION:

Is it legal and proper to insure public school property in Idaho in mutual fire insurance companies?

OPINION:

If the insurance company is a strictly mutual company, it is not legal or proper to insure school property with such company. (Authority: *School District No. 8 v. Twin Falls Etc. Co.*, 30 Idaho 400, 164 Pac. 1174.).

James B. Jones. 4-23-28.

Pupils : Transfer of.**225. QUESTION :**

Does Section 828 C. S. give the County Superintendent, upon proper application, power to transfer a pupil to the Boise Schools?

OPINION :

A pupil may attend school in any district in the County in which his own district is situated upon making the proper application to the County Superintendent, and receiving her permission to do so. The County Superintendent shall be the judge of the necessity for making the transfer and if she approves the transfer the pupil is entitled to attend in the district to which his transfer has been made.

Thornton D. Wyman. 10-5-27.

Residence of School Children.**226. QUESTION :**

What determines the residence of a minor child for school purposes; is it the residence of the father, mother or actual residence of the child?

OPINION :

In the absence of special circumstances, the residence of the father is the residence of the child. The Supreme Court, in a decision rendered May 5, 1927, in the case of *Smith v. Binford*, 44 Idaho, 244, 256 Pac. 366, said:

"The legal residence of a child, *in the absence of special circumstances or exceptions* to the contrary not obtained here, follows that of the father, and the minor cannot establish a residence or domicile."

Where, as in the instant case the parents of a child have failed to provide for the child since birth, and the sole responsibility, care, and expense of support have fallen upon the grandparents, the grandparents may be regarded as standing in *locus parentis*, and that such circumstances are "special circumstances" and are sufficient to warrant an exception to the general rule. In such case, the domicile of the grandparents may be regarded as the domicile of the child. (Authority: *Andrino v. Yates*, 12 Idaho, 618).

Maybelle M. Lyman, State Supt. 9-9-27.

Rules and Regulations.**227. QUESTION:**

May a school board of an independent school district enforce the following rule:

"Any student in this high school failing in more than half of the subjects for which he is registered must discontinue school for the remainder of the school year"?

OPINION:

Under the provisions of Sub-section 2 of Section 46 of Chapter 215 of the 1921 Session Laws, the Board of Trustees of a school district is authorized to:

"Make by-laws and rules and regulations for its government, and that of the district not inconsistent with the laws of the State, or with the rules and regulations promulgated by the constituted authorities."

Under the provisions of Section 75½ of said Chapter, it is imperative that children under the age of fifteen years, who have finished the grade schools, attend high schools, and it is, of course, a matter of common knowledge that many children have completed at least a full year's high school work before they reach the age of fifteen years. To promulgate or to attempt to enforce the rule above quoted would clearly be inconsistent with and violative of the provisions of said Section 2 of Chapter 46 and said Section 75½ C. S. While the right of attending the public schools is necessarily conditioned upon the pupil's compliance with the rules and regulations of the school, such rules and regulations must in all cases be reasonable. The public schools of this state are maintained at the public's expense for the education of all of the children of the State and not merely for those with unusual talents. It would be unreasonable to limit the expenditure of public money for the education of children endowed with exceptional mental facilities, and deny the privilege of education to children of mediocre intellectual ability.

B. H. Barrus. 2-18-28.

Sinking Fund Balances : Transfer of.**228. QUESTION:**

When a school district has money left in its sinking fund balance, after the bonded indebtedness has been

fully paid, how may such money be transferred to the general fund?

OPINION:

There are general statutes which provide that under certain circumstances, unencumbered balances in special funds revert to the general fund in the case of the state and to the warrant redemption fund in the case of a county, but there is no statutory provision authorizing the transfer of an unencumbered balance from the sinking fund to the general fund of a school district.

Mabelle M. Lyman, State Superintendent. 1-20-27.

Sinking Funds : Transfer of.

229. QUESTION:

May the County Superintendent transfer from the sinking fund of a school district to the general fund of the district, any surplus over and above the amount required to meet the semi-annual interest and the proportionate part of the principal due on the bond issue made under the amortization plan?

OPINION:

There appears to be no express or implied authority permitting the transfer of that part of the sinking fund in question; the transfer, therefore, may not be made. However, the earnings from invested sinking funds should be placed to the credit of the general fund.

Miss Ethel E. Redfield, Commr. Educ. 4-19-27.

District : Transfer of Funds.

230. QUESTION:

If a school district has money left in the sinking fund after the bonded indebtedness of the district is fully paid, may this money be transferred to the general fund of the district?

OPINION:

There is no provision of the Idaho law which permits

the transfer of moneys in the sinking fund to the general fund and hence such transfer may not be made.

Maybelle M. Lyman. 1-20-27.

District : Transfer of Funds for Tuition.

231. QUESTION:

When a pupil is transferred from his home school district, under the provisions of Section 828, C. S., how is a determination to be made of the amount of funds to be transferred from the pupil's home school district to the school district in which such pupil actually attends school?

OPINION:

The amount to be transferred in such a case should be the amount of state and county money accredited to such pupil by the County Superintendent under the provisions of Chapter 68 of the 1925 Session Laws.

L. W. Butler. 6-13-27.

Transportation : Liability of Drivers.

232. QUESTION:

1. Is a School District liable for injury resulting to pupils while being transported to or from school in a school truck?

2. Is a truck driver liable for injury resulting to pupils being transferred to or from school in a school truck?

OPINION:

The transportation of school children to and from school by a School District is a governmental function of the School District, and the School District is not liable in case of injury.

2. If the injury is the result of the driver's negligence, he may be held liable.

E. E. Coad. 12-9-27.

Trustees.**233. QUESTION:**

When, at an annual election in a common school district, the two nominees for a certain term tie each other, what shall be done to fill that particular office?

OPINION:

Under the provisions of Section 40, Chapter 215, of the 1921 Session Laws, the County Superintendent must complete the board by appointment.

Nina E. Steunenber. 4-25-27.

Trustees : Cancellation of Teacher's Contract.**234. QUESTION:**

May a board of trustees cancel a teacher's contract because she has taken bankruptcy?

OPINION:

No.

Mrs. Maybell M. Lyman. 1-10-27.

Trustees : Holdover.**235. QUESTION:**

How long does a hold-over trustee in a school district hold office? May he hold over until the next annual meeting or for the full term for which his successor was or should be elected?

OPINION:

The school laws contain no express provision by virtue of which a trustee may hold over until his successor is elected and qualifies. From an analysis of Sections 33 and 40 of Chapter 215 of the 1921 Session Laws, it is manifest that if no trustee is elected at the annual meeting, a vacancy exists by operation of law immediately following the meeting, and the duty immediately devolves upon the County Superintendent to appoint a successor to fill such vacancy, and at the next annual election the

voters in the district may vote for a trustee to fill the office for the unexpired term. Where a trustee is elected at the annual meeting but refuses to qualify, such refusal to qualify and perform the duties of trustee is "a refusal to act as trustee" under the provisions of Section 39 of said Chapter, and if the district is an independent school district, the board of trustees has the right to declare the office vacant and appoint a trustee to fill such vacancy. In other districts, the appointment is made by the County Superintendent of Public Instruction. Such appointee shall hold office until the next annual meeting.

Mrs. A. D. Robb. 7-21-28. and 7-27-28.

Trustees : Removal of.

236. QUESTION:

What is the proceeding to remove from the board of trustees of a school district, a member that is not qualified to act as such trustee?

OPINION:

Under the provisions of Section 39, Chapter 215 of the 1921 Session Laws, it is provided that when a person ceases to have the qualifications necessary to the election in the first instance, the board of trustees of a school district must declare the office vacant and notify the county superintendent, who must appoint a successor.

George B. White. 3-24-27.

SCHOOL DISTRICT ELECTIONS

Attorney Fees and Expenses of.

237. QUESTION:

Is a County Attorney's expense in connection with a school district bond election, a proper bill to be charged to the district?

OPINION:

If the County Attorney represents a school district, he does not do so as County Attorney. Such representa-

tion would be of a private nature. A bill for expenses would not be chargeable against the County but would be chargeable against the school district.

R. S. Anderson. 1-26-28.

Canvassing the Returns : Effect of.

238. QUESTION :

(1) Is it within the power of the County Superintendent of Public Instruction to declare an annual school meeting void on account of illegal voting and to call for another meeting?

(2) Is it within the power of the County Superintendent of Public Instruction to throw out such votes as are alleged to be illegal?

(3) Does canvassing the returns mean that the County Superintendent is in any way empowered to pass on the legality of the votes?

OPINION :

(1) Aside from the power to determine the genuineness of the election returns, the power to canvas the returns is purely ministerial and the County Superintendent does not have the right to go behind the returns. She, therefore, cannot declare an annual meeting void, and under no circumstances has she any power to call another meeting. She may do nothing but ascertain and declare the apparent result of the election by adding or compiling the votes cast for each candidate as shown on the face of the returns and file the same.

(2) The County Superintendent may not throw out or disregard in her canvassing, any votes alleged to be illegal.

(3) "Canvassing the Returns" does not include the determination of the legality or illegality of votes.

Pearl K. Black. 4-25-27.

Registration.

239. QUESTION :

May a person who is otherwise qualified but who is not registered, vote as a school election?

OPINION:

Registration is not required for school elections.

D. A. Stevenson. 12-20-27.

School Bonds : Qualifications : Civil War Veterans.

240. QUESTION:

Are Civil War Veterans who claim and receive exemption from taxes entitled to vote at school bond elections?

OPINION:

One who owns property which is subject to taxation is a taxpayer within the meaning of that term as used in the school laws. The fact that the owner of such property is entitled to exemption wholly exempting him from the payment of taxes on such property does not deprive him of the right to vote at a school bond election.

James W. Shields. 4-10-28.

Special : Trustees Cannot Be Compelled to Call.

241. QUESTION:

Is there any method by which the board of trustees of Independent and Joint Independent School Districts can be compelled to call an election for the purpose of determining whether a one mill levy shall be made for gymnasium purposes?

OPINION:

There is no method by which the board of trustees of Independent and Joint Independent School Districts may be compelled to call such an election unless such trustees abuse the discretion with which they are vested.

E. C. McCadden. 4-13-27.

Voters : Qualifications.

242. QUESTION:

(1) May a qualified voter vote by proxy at a school election?

(2) May a qualified voter vote at a school election though absent from the district at the time of the election?

(3) Must a voter at a special school election be in the school district thirty days prior and continuously before such election?

OPINION :

(1) No.

(2) A qualified voter may vote at a school election even though absent from the district at the time of the election, by complying with the "absent voting" statutes. (Section 16 of Chapter 215 of the 1921 Session Laws, and Section 609 C. S. as amended by Chapter 57 of the 1923 Session Laws).

(3) One of the qualifications of a voter at a school election is residence within the district at the time of the election. The voter need not reside within the district for thirty days or any other fixed period of time immediately preceding the election.

Mabelle M. Lyman, State Supt. 9-27-27.

SCHOOLS

County Superintendent : Jurisdiction of Private School.

243. QUESTION :

Has the County Superintendent of Public Instruction any jurisdiction over a privately maintained and operated school teaching children eligible for the first to eighth grades inclusive?

OPINION :

The County Superintendent of Public Instruction has no jurisdiction or authority over such school. A teacher in such school would not be required to hold a regular teacher's certificate.

Paul W. Hyatt. 9-10-28.

County Unit Plan.

244. QUESTION :

Under existing constitutional provisions can a county

unit plan for school purposes be provided along the following lines:

1. So that the scheme of County Organization may be made compulsory for all Counties in the State.

2. So that exemption may be made in the case of cities with a population of 5000 or over.

3. So that Boards of Education numbering from five to seven members may be elected at large in each County with powers and duties somewhat similar to the powers and duties now exercised by the Boards of Education in the Independent Class A Districts of the State.

4. So that Boards of Education would have authority to elect a County Superintendent of Schools who would have executive powers similar to those exercised by Superintendents of Independent Class A Districts.

OPINION:

Section 1, of Article 9, of the Constitution of the State of Idaho provides that inasmuch as the stability of a Republican form of Government depends mainly upon the intelligence of the people, it shall be the duty of the legislature of Idaho to establish and maintain a general uniform and thorough system of public free common schools. Carrying out the intention of the provisions of Section 1 of Article 9 of the Constitution, the legislature has enacted certain statutes providing for a system of free public schools. There is nothing in the proposed plan which would conflict with any of the provisions of said Section 1 of Article 9. There would, of course, be a conflict between the proposed plan and present statutory provisions enacted to carry out the purposes of said Section, but statutory enactments are subject to repeal and amendment and the legislature may repeal or amend the present statutes and substitute other statutes providing for the proposed County Unit Plan.

Section 6, of Article 18 of the Constitution provides for the election biennially of a County Superintendent of Public Instruction. There would be a conflict between the proposed plan and the provisions of Section 6 of Article 18, in that the County Unit Plan as proposed calls for the selection of a County Superintendent of Public Instruction by the County Board of Education. In order to carry out the proposal to select a County Superintendent in such manner, it would be necessary to amend Section 6, of Article 18. If, however, it should be

decided to adopt the other features of the County Unit Plan, and still elect the County Superintendent of Public Instruction by popular vote, it would not be necessary to amend that Section of the Constitution.

The duties of the County Superintendent of Public Instruction are not prescribed in the Constitution. They are set forth in statutory enactments. Those statutes may be repealed or amended by the legislature. Hence, if it may be determined that all of the features of a County Unit Plan as set forth in the proposal shall be adopted, the present statutes prescribing the duties of the County Superintendent may be amended in such manner as to permit that officer to function in conjunction with the County Board of Education during the interim pending the amendment of Section 6, of Article 18, of the Constitution.

Hon. W. D. Vincent. 9-8-28.

Flag.

245. QUESTION :

Must the School Flag be taken down at the close of the school day?

OPINION :

Subdivision 17, of Section 46, of Chapter 215, of the 1921 Session Laws provides that the United States Flag shall be floated during school hours of such days as the trustees and the teacher may determine. It also provides that the Flag shall not be floated on any day when a violent storm or inclement weather would destroy or materially injure such flag. The Flag should be floated during schools hours only, and should be taken down at the end of the school day.

Herman W. Lentz. 4-26-27.

High School Tuition : District Liable for.

246. QUESTION :

A high school student who is enrolled on the census list of a certain district becomes 21 years of age on October 20. Can the district be held for the tuition of such student after he reaches his majority.

OPINION:

Under the provisions of Section 37 of Chapter 215 of the 1921 Session Laws, school age is defined as applying to all persons between the age of six and twenty-one years, and the law requires the census to be completed and filed by the first Tuesday in October. There is no provision of law whereby names may be added to or stricken from the school census. The name of a pupil reaching his majority on October 20, would appear on the census list and the district would receive an apportionment of the State and County school money for such pupil, hence, the school district would be liable for high school tuition for the full school year.

Mabelle M. Allen, State Superintendent. 10-29-28.

Holidays.

247. QUESTION:

1. When New Year's day comes on Sunday, is the following Monday a school holiday in Idaho?

2. In the event the second of January is construed to be a legal holiday, has the school board of the district the authority to require teachers to teach without extra pay?

OPINION:

1. When New Year's day comes on Sunday, the following Monday is not a holiday in this state unless the State Board of Education has designated January 2nd as a holiday, following a proclamation of the Governor of the State of Idaho, declaring such day a holiday. (Authority: Sec. 49½ of Chap. 215 of the 1921 Session Laws).

2. When January 2nd is a legal school holiday, it is not necessary for teachers to teach school on that day. However, if they do so, they are entitled to extra pay.

Hon. W. D. Vincent. 1-7-28.

Teacher's Contract : Termination of.

248. QUESTION:

A contract made by a school district and a teacher contains the following covenant:

"It is mutually agreed between the parties hereto that in case either of the contracting parties hereto desire to terminate this contract at a date earlier than specified herein, the said party will give to the other hereto at least thirty days' written notice of such desire and the reasons therefor, but no such notice will work a cancellation of this contract without the consent of both parties hereto."

During the school term, the teacher notified the board of her intention to terminate the contract pursuant to the above covenant. Upon receipt of notice, the board advised her that it would accept her resignation, but that it was to take effect immediately. The teacher refused to consent to immediate termination of the contract. Was the action of the board proper?

OPINION:

If the teacher served a thirty days written notice upon the board, the board thereupon had the option under the provisions of the contract to cancel or to refuse to cancel the contract. In the event either party undertakes the cancellation of the contract in question, it must be pursuant to the provisions of the contract. If the contract is to be cancelled before it is terminated by performance, the party undertaking to terminate the contract must give the other party a thirty day notice. If the teacher has given the thirty day notice as is provided in the above quoted excerpt, the board may not immediately terminate the contract over the protest and without the consent of the teacher. The contract may not be terminated by the board within thirty days following service of the notice.

Carl A. Burke. 1-16-28.

Teachers : Right to Suspend Pupils.

249. QUESTION:

(1) Does Section 943 C. S. apply to Class A Independent School Districts?

(2) What authority does the Superintendent of a Class A district have to expel students from school?

OPINION:

(1) Yes.

(2) Under the provisions of Section 943 C. S. a

teacher in the public schools has authority to suspend pupils. Under the provisions of Subdivision 21, Section 46, Chapter 215 of 1921 S. L. the Boards of Trustees of School Districts are authorized to expel pupils.

Mabelle M. Allen, State Supt. 11-1-27.

Teachers' Salaries.

250. QUESTION:

May teachers' salaries in Independent Class A Districts be paid before they have been allowed by the Board of Trustees as claims against the district?

OPINION:

No.

J. J. Ray. 3-12-27.

Tuition : May Not Pay Outside of State.

251. QUESTION:

May a school district pay tuition to a high school outside of the State of Idaho?

OPINION:

No.

Mrs. Maybelle M. Lyman, State Supt. 1-20-27.

Tuition : Students Attending Sectarian Schools.

252. QUESTION:

Where families residing within a school district have children of high school age, and are compelled to send them outside of the district to attend high school, and accordingly send such children outside of the state to attend a sectarian boarding school, may the school district pay the tuition of such children while attending such sectarian school?

OPINION:

Section 5 of Article 9 of the Constitution prohibits

the use of school funds raised by taxation for the purpose of paying tuition to sectarian schools. Said section reads as follows:

"Neither the legislature, nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys, whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific institution, controlled by any church, sectarian or religious denomination, whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose."

A. L. Burkey. 9-17-28.

Tuition : Unorganized Territory.

253. QUESTION:

Who is responsible for the tuition of a student residing in organized territory and attending an accredited high school in another district?

OPINION:

Under the provisions of Sections 998 and 1001, inclusive, C. S., the parents or the student would be required to pay the tuition.

Gertrude Miller. 6-13-27.

SHEEP COMMISSIONERS

State Board : Appropriation : 1925 Unexpended Balance.

254. QUESTION:

Has the unexpended portion of the funds appropriated by the Legislature in 1925 (Chapter 215 of the 1925 Session Laws), for the State Board of Sheep Commissioners, reverted to the general fund?

OPINION:

The legislature appropriated \$10,000.00 for the State Board of Sheep Commissioners in 1925 in accordance with the provisions of Section 11 of Chapter 15 of the 1921

Session Laws. In the latter statute, a Sheep Inspection Fund was created, and the said sum of \$10,000.00 became a part of such Sheep Inspection Fund. By the provisions of the 1921 law, the Sheep Inspection Fund was made a continuing fund. Consequently, any unexpended balance remaining in the fund at the expiration of the biennium 1925-1926 would not return or revert to the general fund.

Honorable H. C. Baldridge. 5-11-27.

SINKING FUNDS

Earnings of.

255. QUESTION:

When sinking fund moneys described in Chapter 119 of the 1925 Session Laws are invested, to what fund should the interest earnings be credited?

OPINION:

The earnings should be credited to the general fund of the state, county, district, etc., owning the sinking fund.

Lee A. Blackmer. 1-27-27.

STATE HIGHWAY FUND

Expenditures : Limited When Contract Entered Into.

256. QUESTION:

Is the Department of Public Works entitled to contract with a county or highway district, or good roads district, so as to permit the Department of Public Works to expend out of the State Highway Fund, moneys in excess of the limitations provided in Section 1579 C. S.?

OPINION:

Where the Department of Public Works undertakes the construction and maintenance of a State highway, independent of any cooperation or assistance from any local organizations, it has the right to pay out of the State Highway Fund, the full cost thereof, but where it undertakes, under an agreement with a local organiza-

tion to construct or maintain a highway, it is limited in its expenditures to the percentage provided by Section 1579 C. S.

Hon. J. D. Wood. 4-4-27.

STATE HIGHWAYS

Location of Telephone Lines : Signboards, etc.

257. QUESTION :

(1) To what extent may the Department of Public Works or County officials regulate the location of the poles and lines of telephone, telegraph and power companies upon public highways?

(2) May sign boards on the public highways be removed, and if so who has the authority to remove them?

May the owner of sign boards on private land be compelled to change the location of such signs, or remove them if they are so situated as to be a menace to traffic?

(3) When an individual builds a fence along the highway and encroaches upon the right of way, may he gain title to the territory so fenced off?

Does any public official have the right to remove the fence which encroaches upon the public highways?

(4) May an individual or company construct ditches or canals in the right of way of a public highway to carry irrigation water?

May such ditch or canal become permanently established in the highway by prescription?

(5) When an irrigationist permits water to flow from his land upon the public highway and the water destroys or damages the highway, may the person responsible for such damage be compelled to repair the road so as to obviate the danger to the traveling public?

(6) Is the title to the right of way of the State highway system vested in the State, or in some other political unit?

When the highway is taken over by the State for maintenance as part of the State highway system, does the State obtain title to the entire right of way?

(7) May the Commissioner of Public Works establish a minimum width for highways?

(8) Paragraph 12, of Section 345 C. S. authorizes

the Department of Public Works "to prescribe rules and regulations affecting state highways and to enforce compliance with such rules and regulations." Does such paragraph give the Commissioner of Public Works the authority to control the location of poles and lines by telephone, telegraph and power companies and control the location of canals and irrigation ditches which encroach upon the highway?

OPINION:

(1) Although telephone, telegraph and power companies are authorized by statute to construct their lines on and along the public highways, such right is conditioned upon the companies' locating their lines and poles so as not to incommode the public use of the road or highway. (Authority: Sections 4832 and 4836 C. S.).

(2) If a sign or signboard actually encroaches upon a public highway, it may be abated as a nuisance. (1369 C. S.). The Department of Public Works may institute the action if the public highway encroached upon, is a State highway. If a sign or signboard on private property may be proven to be a nuisance it likewise may be abated.

(3) An individual who constructs a fence which encroaches upon the highway cannot gain title to that portion of the highway so fenced off. One may not acquire a right to a portion of a public highway by prescription. One cannot gain title to any portion of the right of way, regardless of the length of time his fence has been maintained. (*Thiessen v. City of Lewiston*, 26 Idaho 505.). A fence which encroaches upon the highway may be removed as any other obstruction.

(4) Ditches and canals must be constructed by private persons or companies so as not to interfere with the free use of a highway. (Section 4844 C. S.). The right to maintain a ditch or canal on the right of way may not be acquired by prescription.

(5) For appropriate remedies, see Sections 1373, 1376, 1378, 8522 and 8523 C. S.

(6) Section 1307 C. S. provides that by taking or accepting land for a highway, the public acquires only the right of way and incidents necessary to the enjoyment and maintenance of the same. That provision applies to all highways except where the title to the land may have been purchased outright. If a highway, constructed by the County, is taken over by the State to be maintained

as a State highway, the State, through its Department of Public Works would have control over the entire right of way.

(7) Section 1350 C. S. has prescribed that highways to be constructed after the enactment thereof shall be not less than 50 feet, nor more than 100 feet in width. The statute does not establish the exact width of any particular highway, but merely fixes the minimum and maximum width of roads to be constructed. The actual width of a state highway about to be constructed may be determined by the Commissioner of Public Works.

(8) Telephone, telegraph and power companies have an absolute right under the law to use the highways for the location of their poles and erection of their lines, so long as they do not incommode or inconvenience the public in its use of the highways. If such companies are not in any way inconveniencing or incommoding the public in the use of the highways, the Commissioner of Public Works has no power to interfere with the location of the poles or lines. Reasonable rules and regulations may be promulgated by the Commissioner, but such rules and regulations must not conflict or interfere with rights established under statute. In the matter of abatement, removal or encroachments, the power to remove the same results by reason of law and does not emanate from rules or regulations adopted by the Department.

Hon. J. D. Wood. 12-15-27.

STATE INSURANCE FUND

Rates : Individual Risks.

258. QUESTION:

Is the Manager of the State Insurance Fund authorized to make rates affecting individual risks differing from the basic rates charged upon other similar risks?

OPINION:

No. Although the legislature has used the term "schedule rating" in Section 6301 C. S., that term as therein used may not be given the interpretation or meaning which is ordinarily given to it. The section provides that the Department of Finance may take into account the peculiar

hazards of each individual risk and may adopt a system of schedule rating, but those things may be done by the Commissioner only for the purpose of fixing the rates for premiums for different classes. The rate of premium must be uniform for all risks on employments within a certain class.

Hon. F. E. Fisk, State Ins. Mgr. 8-14-28.

STATE LANDS

Land Sale Certificate : Valid Contract.

259. QUESTION:

Is a state land certificate a contract, option or sale, and can payments named in the sale certificate be enforced?

OPINION:

After a state land certificate has been delivered to a purchaser pursuant to a legally advertised and conducted state land sale, a valid contract is entered into between the State and the purchaser, and the State may enforce the payments due under the sale certificate.

Hon. E. M. Hoover, Commr. Pub. Inv. 4-4-27.

Mineral Deposits Reserved to State.

260. QUESTION:

Are minerals on land acquired by the State through mortgage foreclosures reserved to the State when the land is resold?

OPINION:

The statute provides that "all coal, etc., in lands belonging to the State are hereby reserved to the State." There is nothing in the statute which appears to limit its application to school lands or any other particular class of State owned land. The phrase is general and broad. The statute must be construed as applying to all State owned land. Under the provisions thereof, title to mineral deposits in land acquired by the State by mortgage fore-

closure is reserved to the State. (Authority: Chapter 96 of 1923 S. L. as amended by Chapter 220 of 1925 S. L.).

Hon. I. H. Nash, State Land Commr. 2-3-28.

School Lands : Sale of.

261. QUESTION:

Where the State has sold rights of way or easements over school land, may it sell the absolute title in such school land for less than \$10.00 per acre?

OPINION:

No. Where the State disposes of the fee simple title, it is prohibited by Section 11, of the Idaho Admission Bill, and Section 8, of Article IX, of the Constitution from disposing of the same for less than \$10.00 per acre.

Hon. I. H. Nash, Land Commr. 6-30-27.

STATE OFFICERS

Appointive : Term.

262. QUESTION:

May appointive state officers hold office until their successors are appointed and qualify?

OPINION:

Yes. (Authority: Sec. 74 C. S.).

Honorable H. C. Baldrige, Governor. 1-5-27.

Appointments.

263. QUESTION:

Who may appoint subordinate officers in the several appointive state departments?

OPINION:

Under the provisions of Section 261 C. S., all officers created by Sections 253-254 C. S. as amended by Chapters

104 and 170 of the 1921 Session Laws, shall be appointed by the Governor, and under the provisions of Section 266 C. S., the heads of the various departments may appoint the subordinate officers and employees.

Honorable H. C. Baldrige, Governor. 2-24-27.

Change of Name.

264. QUESTION:

If an elective state officer is elected under one name and during her term of office has her surname changed in divorce proceedings, may she sign her new name to official papers and documents?

OPINION:

The officer may sign her new name to official papers and documents. The case presented in the foregoing inquiry is similar to one where an unmarried public officer marries after assuming the duties of her office. In such case, there is nothing to prevent her from signing her new name. Her name is changed, but she is the identical individual elected to the office.

Where one is elected to office and thereafter a court decrees to her a new surname, there is nothing to prevent her from using the new name; and, when the new name is attached to public documents or other papers, such official acts are legal and binding.

Mabelle McConnell Allen. 10-26-27.

STATE OF IDAHO

Privately Owned Automobiles.

265. QUESTION:

Re: Liability of state for damage to privately owned automobiles used in the state's business.

OPINION:

HON. J. D. WOOD,
Commissioner of Public Works,
Boise, Idaho.

Dear Sir:

Replying to your letter of December 5, 1927, enclosing

copy of proposed contract or agreement for the use of privately owned automobiles for supervision and inspection in connection with the work in your department, we respectfully advise you that there does not appear to be any legal objection to the proposed form of contract, save and except the paragraph which provides:

"It is specifically agreed that the State shall not be liable for loss or accidental damage to the car while in use under the terms of the agreement beyond the sum of \$....."

This paragraph should be eliminated from the proposed contract for the reason that the State cannot be made liable for loss or accidental damage to a private automobile used in state business. There is no authority to bind the state to pay any sum whatsoever for such loss or damage and with this eliminated no legal objection exists.

December 9, 1927.

Purchase of Supplies.

266. QUESTION:

May the Department of Public Works declare an emergency covering purchases of road oil of various grades required for road oiling purposes and purchase such oil without advertising for bids in amounts not to exceed \$5,000.00?

OPINION:

While Section 1575 of the Compiled Statutes, as amended by Chapter 183 of the 1927 Session Laws, permits certain road work to be let by contract without advertising for bids, there is no provision in the statutes that permits the purchase of supplies without bids, except Section 375, which has no application in this case. Road oil purchases must be made in compliance with the provisions of Section 372, Compiled Statutes, which requires that the contracts be awarded after a bid and to the lowest responsible bidder.

Hon. J. D. Wood. 8-29-27.

Purchasing Agent : Notice : Bids : Contract.**267. QUESTION:**

(1) What constitutes "giving notice for at least ten days" as that term is used in Section 373 C. S., in connection with purchases made for the State Departments or Institutions?

(2) When purchasing coal for the Southern Branch of the University, located at Pocatello, would notice to that effect be legal if the notice appeared in Boise papers only?

(3) Must such notice be a paid advertisement or could the same be run as a news item?

(4) Must a contract be let to a bidder who is the lowest bidder?

OPINION:

(1) "Giving notice for at least ten days" means at least one publication of a legal notice in a newspaper having the qualifications prescribed in Section 2340 C. S. The notice must be published in an issue of the newspaper at least ten days prior to the opening of the bids, exclusive of the day on which the bids are opened.

(2) The notice may be printed in any newspaper within the State of Idaho having the qualifications necessary to print legal notices. The matter of the selection of the newspaper within which the notice shall be printed rests within the sound discretion and judgment of the State Purchasing Agent. The selection must be made upon reason and with a view of consummating the best contract obtainable for the state under the circumstances.

(3) A news item published within a newspaper of the State does not amount to "giving notice for at least ten days." The notice must be what is termed and generally understood to be a legal notice.

(4) The statute requires the contract to be let to "the lowest responsible bidder." A contract need not be let to a bidder who is not responsible even though his bid is the lowest bid. However, the lowest bidder may not be arbitrarily eliminated. (Authority: Section 372 C. S.; *Seysler v. Mowery*, 29 Idaho, 412.).

Hon. R. G. Archibald. 10-1-28.

State Owned Property : Public Building Endowment Fund.**268. QUESTION:**

The City of Boise is attempting to levy assessments for \$686.54 against the capitol building and grounds for gutter and street improvements on State Street. May the assessments or the City's claim be paid out of the Public Building Endowment Fund?

OPINION:

The Public Building Endowment Fund is the fund derived from the sale of lands granted to the State of Idaho under the provisions of Section 6 of the Idaho Admission Bill. The fund in question may be used only for the purposes set forth in said Section 6, which are as follows:

"For the purpose of erecting public buildings at the Capitol of said State for legislative, executive and judicial purposes."

Street and gutter improvements, such as have been made by the City of Boise and upon which the claim is based, do not constitute the erection of public buildings for either legislative, executive or judicial purposes. The fund may not be used for the payment of such assessments.

Furthermore, neither a local improvement district or a municipality has any right to levy assessments against state owned property. Such assessments could amount to no more than a request for payment. They could have no legal effect whatsoever. Before such assessments could have any legal effect, the legislature would have to authorize such assessments, and had the legislature already authorized such assessments, still, they could not be paid for the reason that no appropriation has been made for the payment thereof.

Hon. J. D. Wood. 5-11-28.

STATE SCHOOL AND COLONY**Appropriation.****269. QUESTION:**

May the Department of Public Welfare of the State of Idaho purchase additional land adjacent to the State

School and Colony at Nampa, Idaho, from any of the moneys appropriated for that institution by the Nineteenth Session of the Legislature of the State of Idaho?

OPINION:

By Chapter 99 of the Session Laws of 1927, there was appropriated to the State School and Colony at Nampa, Idaho, the sum of \$58,590.00 for salaries and wages and the sum of \$81,880.00 for other expenses. The appropriation under them item "other expenses" may be expended for any purpose which is reasonably necessary in the maintenance, operation and conduct of the institution or for the proper protection of the inmates thereof. If the Department of Public Welfare determines that additional land is reasonably necessary for any of the above purposes, such land may be purchased from the moneys appropriated by said Chapter 99 under the item "other expenses."

Hon. David Burrell. 4-19-28.

STATUTES

Amendment : Repeal.

270. QUESTION:

Is Section 3267 C. S., as amended by Section 1 of Chapter 233 of the 1927 Session Laws, repealed by Section 18 of Chapter 263 of the 1927 Session Laws.

OPINION:

Section 114 C. S. provides that where a section or a part of a statute is amended, it is to be considered as having been repealed and re-enacted in the amended form, but the portions which are not altered are to be considered as having been the law from the time they were enacted, and the new provisions are to be considered as having been enacted at the time of the amendment. Chapter 233 of the 1927 Session Laws, which, in part, purports to amend Section 3267 C. S. did not carry an emergency clause. This Act was signed and approved by the Governor on March 12, 1927, but did not become effective until sixty days after the end of the Session of the Legislature enacting it, which in this instance made Chapter 233 effective as a law May 3, 1927. Chap-

ter 263, which contains the clause repealing Section 3267 C. S. carried an emergency clause, and became effective on the date of signing by the Governor, which was March 15, 1927. At the time Chapter 233 amending Section 3267 C. S. became effective on May 3, 1927, Section 3267 C. S. had been repealed, and nothing was left to amend. The attempt to amend said section by Chapter 233 was ineffective, as an amendment to be valid must relate to a statute that has not been repealed. (Authority: *Schamblin v. Means* (Cal.) 91 Pac. 1021; *Fletcher v. Prather*, (Cal.) 36 Pac. 658; 36 Cyc. 1055; 36 Cyc. 1191; *Peachy v. Calaveras County*, 59 Cal. 548; *Reddington v. Waldron*, 22 Cal. 185; *Vallejo & N. R. Co. v. Reed Orchard Co.* (Cal.) 170 Pac. 426.).

Z. Reed Millar. 4-25-27.

Increase of Salary:

271. QUESTION:

Does House Bill No. 294 of the 1927 Session of the Legislature, which increases the salary of the Inspector of Mines from \$2,400.00 to \$3,000.00 per annum, and which was signed by Governor Baldrige on March 2, 1927, entitle the Inspector of Mines to compensation for the entire biennium of 1927-1928 at the rate of \$3,000.00 per annum?

OPINION:

House Bill No. 294 contains an emergency clause, and, therefore, it became effective as a law of the State of Idaho on its approval by the Governor. There is no provision in the statute making it retroactive, and even though the legislature may have appropriated sufficient funds to pay the Inspector of Mines a salary of \$3,000.00 for each of the years 1927-1928, still the salary of the Inspector of Mines must be computed on the basis of \$2,400.00 per annum, as provided for in Section 405 C. S., up to March 2, 1927. From and after March 2, 1927, his salary must be computed on the basis of \$3,000.00 per annum.

Hon. E. G. Gallet. 3-17-27.

Repeal : Section 1582 C. S. Not Repealed.**272. QUESTION:**

Has Section 1582 C. S. as amended by Section 1, Chapter 115 of the 1923 Session Laws, and as amended by Section 8, Chapter 177 of the 1925 Session Laws been repealed by Chapter 260 of the 1927 Session Laws?

OPINION:

The title of Chapter 260 of the 1927 Session Laws, among other things provides as follows:

"Repealing Chapter 177 of the 1925 Session Laws, Chapter 249 of the 1921 Session Laws, and Sections 1615, 1616 and 1618 C. S."

Section 67 of Chapter 260 of the 1927 Session Laws provides as follows:

"Section 1613 C. S. as amended by Chapter 177 of the 1925 Session Laws and Chapter 249 of the 1921 Session Laws, and Section 1615, 1616 and 1618 of the Compiled Statutes are hereby repealed."

Section 67 is the only portion of Chapter 260 which repeals any prior law and it is evident from a consideration of the Section that Chapter 177 of the 1925 Session Laws is not repealed in toto as is indicated by the title of the Act, but only that portion is repealed which amends Section 1613 C. S. Hence Section 1582 C. S. as amended by Section 1 of Chapter 115 of the 1923 Session Laws, and as amended by Section 8, of Chapter 177 of the 1925 Session Laws is still in effect and 10% of all moneys collected in any County of the State from the licensing of motor vehicles, etc., shall be paid to the State Treasurer, and 90% thereof shall be paid to the County in which such moneys are collected.

Hon. E. G. Gallet, State Auditor. 10-17-27.

SUMMONS**Return of.****273. QUESTION:**

Should a summons, after service, be returned to the County from which it has been issued, or to the Attorney?

OPINION:

Section 6675 C. S. governs the return of the service

of summons. It provides that when the summons is served by the Sheriff, it must be returned with his certificate of its service and of the service of a copy of the complaint when such copy is served, to the office of the Clerk from which it issued. (Authority: Section 6675 C. S.).

P. D. Pace. 9-24-27.

TAXES

Assessment : Date of.

274. QUESTION :

Where two concerns start business in this state, one during the month of March and the other during the latter part of August, has the County Assessor authority to assess such firms for the months they have been in business during the year 1927?

OPINION :

The County Assessor has the authority and it is his duty to assess the property of the firms in question at any time prior to the fourth Monday of November, and the assessment should be for the entire year of 1927. The fact that the property may not have been brought to Idaho or into the county until after the second Monday of January does not preclude the Assessor from assessing the property.

M. E. Mallory. 10-26-27.

Assessment of Equity of State Lands.

275. QUESTION :

When state land, which is not school land, is sold on contract, is such land assessable on the basis of the total purchase price contracted to be paid, or is only the equity of the purchaser assessable?

OPINION :

Lands owned by the state are exempt from taxation, but when school land or other land is sold by the state, the purchaser's equity or interest therein, which shall be determined by the amount paid on the contract of

purchase, and the amount invested in improvements thereon at the date of assessment, is assessable. (Authority: Sections 2920, 3099, 3102 and 3282 C. S.).

Hon. I. H. Nash. 12-7-26.

Cancellation or Rebate.

276. QUESTION:

Re: Cancellation or rebate of taxes.

OPINION:

The county commissioners have no authority to cancel taxes other than the authority contained in Section 3332 C. S., and Section 3332A of Chapter 193 of the 1925 Session Laws. If county commissioners attempt to cancel taxes in instances other than those named in said sections, their acts are a nullity, and the taxes must still be regarded as liens on the property, and may be collected pursuant to law.

B. W. Driggs. 2-14-27.

County May Borrow Money Anticipating Taxes.

277. QUESTION:

Does Chapter 187 of the 1925 Session Laws contemplate the county's issuing treasury notes upon any or all of the delinquent taxes, and, if so, shall the interest or penalty on delinquent taxes also be considered in issuing notes to the amount of 65 % of the uncollected taxes?

OPINION:

The county is empowered to borrow money to the extent of 65 % of the unexpended taxes levied for the current year. The limitation is as follows:

"Not in excess of 65% of the *unexpended taxes*."

Interest and penalties are not taxes. The Legislature did not intend to permit the County's borrowing 65 % of the unexpended taxes, interest and penalties. It may borrow, not in excess of 65 % of the unexpended taxes, exclusive of interest and penalties.

Hon. E. D. Reynolds. 12-12-27.

Definition of "Tax Payer".**278. QUESTION:**

Who is a "tax payer" within the meaning of that term as used in Section 4901-D C. S.?

OPINION:

The term "tax payer" as used in said section includes every person who is subject to the payment of tax except payers of poll tax. One who pays only an auto license fee or auto license tax, as it is sometimes termed is not a tax payer. (See *Hartman v. Meier* 39 Idaho, 261.). A person who is exempt from the payment of taxes, but who would pay taxes were it not for the exemption, is a "tax payer" within the meaning of the term used in said section.

C. G. A. Divelbiss. 2-26-27.

Delinquent : Computation of Interest.**279. QUESTION:**

How should interest on delinquent taxes be computed?

OPINION:

That portion of Section 3249 C. S. which provides "in computing interest, any fraction of a month shall be regarded as a full month" has been repealed. Under the present law, a tax collector should compute interest on a per annum basis, only to the date of redemption.

Anna Callahan. 10-17-27.

Delinquent : Payment for Prior Years.**280. QUESTION:**

May the first half of the 1927 taxes which are now delinquent be paid under the provisions of Chapter 121 of the 1925 Session Laws, as amended by Chapter 32 of the 1927 Session Laws, without the payment of delinquent taxes for the year 1926 and years prior thereto?

OPINION :

Under the provisions of Section 3254 C. S., the delinquent taxes for 1926 and years prior thereto must be paid before or at the time delinquent taxes for the year 1927 are paid.

Carl A. Burke. 5-14-28.

Delinquent : Penalty : Interest.**281. QUESTION :**

When taxes become delinquent and a penalty is added, do the tax and the penalty bear interest?

OPINION :

Yes. (Authority: Section 3249 C. S., as amended by Chapter 45 of the 1923 Session Laws.).

Dr. A. W. Reed. 11-4-27.

Delinquent : Sale of Property by County.**282. QUESTION :**

Where property has been acquired by the county on account of delinquent taxes, is offered for sale in 1927, and not sold because of lack of bidders, is it necessary for the county to again offer the property for sale in 1927?

OPINION :

The county commissioners of each county in the state are required to offer for sale in 1927, all property theretofore acquired by reason of delinquent taxes, and at least biennially thereafter all such property so acquired. The board has the right to reject any bid when it is less than the total amount of the delinquent taxes, penalties and interest. If the property has been offered for sale in 1927, but not sold because no bid was placed on the property, it is unnecessary to again offer the property for sale during either of the years 1927 or 1928.

John S. Connell. 9-7-27.

Description of Property.**283. QUESTION:**

Re: Description of property for tax purposes.

OPINION:

In any proceeding relating to the assessment of real property for taxes, including the forwarding of notices to the taxpayer and the further proceedings, finally resulting in a sale of the property because of delinquency, a full and complete description of the property assessed must be incorporated not only in the taxpayer's statement but also in the assessment roll, in the notice of taxes due and in the tax collector's receipt. This does not prohibit, however, the use of initial letters, abbreviations, figures, etc., so long as the initial letters, abbreviations and figures give the correct description in the abbreviated terms. (Authority: Section 3128 Compiled Statutes, *Wilson v. Jarron*, 23 Ida. 563, 131 Pac. 12, *Little v. Burlingame*, 33 Ida. 757, 198 Pac. 464.).

Hon. E. G. Gallet. 3-19-27.

Exemptions.**284. QUESTION:**

Are the exemptees named in Subdivision 4 of Section 3099 of the Idaho Compiled Statutes, particularly fatherless children and widows, entitled to the exemption provided by law where the status entitling such persons to exemption is acquired after the second Monday of January?

OPINION:

The exemptions provided by the foregoing section of the statutes are personal and extend to the person rather than to the property, and if one acquires the status of the classes or any class named in the statute before the time has expired for filing claim of exemption for a particular year, the person filing such claim is entitled to the exemption even though the status which authorizes an exemption was acquired subsequent to the second Monday of January.

F. A. Wilbur. 4-13-27.

Exemptions.**285. QUESTION:**

Under subdivision 4 of Section 3099, C. S., as amended by Chapter 145 of the 1927 Session Laws, should the County Commissioners in determining whether or not "the total valuation" of the property of a family exceeds \$5,000.00, require the claimant to disclose all of the family's property, whether taxable or not, thereby taking into consideration non-taxable property such as bonds, mortgage notes, etc., as a part of the \$5,000.00 valuation?

OPINION:

The limitation of \$5,000.00 placed on the valuation of property is a limitation upon the valuation of taxable property, and the assessor is not entitled to include in the \$5,000.00 valuation property which is not properly taxable.

F. A. Wilbur. 7-7-27.

Exemptions : Fatherless Children.**286. QUESTION:**

Are children fatherless under the exemption tax law when the mother marries and they thus have a step-father?

OPINION:

Under the provisions of the exemptions statute, children are to be considered fatherless where the father has died even though the mother marries. (Authority: Subdivision 4, of Section 3099 C. S.).

B. W. Driggs. 6-29-28.

Fraternal, Etc. Associations.**287. QUESTION:**

Re: Assessment of taxes against real estate held or used for fraternal, benevolent or charitable purposes.

OPINION:

In order for property to be exempted from taxation under the provisions of Subdivision 3 of Section 3099

C. S., as amended by Chapter 145 of the 1927 Session Laws, it must be the property of a "fraternal, benevolent, or charitable corporation or society of this state," and must be "used exclusively for the purposes for which such corporation or society was organized." If the property in question is not owned by a fraternal, benevolent or charitable organization or is not used exclusively for fraternal, benevolent or charitable purposes, it may not be exempted from taxation under said subdivision.

Property owned by a fraternal, benevolent or charitable corporation or society and not used for fraternal, benevolent or charitable purposes, but held by such organization with the expectation that such property may be put to such use at a future date, is not exempted from taxation under said sub-division 3.

H. A. Griffiths. 1-20-28.

Exemptions : Indian Lands.

288. QUESTION :

Re: Indian Lands in Idaho and Tax Exemptions thereon.

OPINION :

There were submitted to the Attorney General's office a copy of a Federal Act of date of February 23, 1889, (25 Stat. at Large 687) which was an act to accept and ratify the agreements submitted by the Shoshone, Bannack and Sheepeater Indians of the Fort Hall and Lemhi Indian Reservations in Idaho, May 14, 1880, and for other purposes, together with a copy of a treaty between the United States and the Eastern Band, Shoshone and Bannack Indians of date of February 26, 1869, and copies of trust patents executed by the United States to certain Indians conveying certain lands to said Indians subject to certain conditions; and also a brief on the question of the taxability of Indian Lands.

Three propositions were set forth in the brief and are as follows:

(1) All Indian lands for which patent has been issued and which has passed out of the hands of Indians are subject to taxation.

(2) All Indian lands for which unrestricted patent

has been issued and delivered are subject to taxation, whether now owned by Indians or others.

(3) All lands, including homesteads of Indian Allottees enrolled as intermarried whites, as freedmen, and as mixed blood, having less than one-half Indian blood including minors, shall be free from all restrictions and subject to local taxation; also all lands except homesteads of said Allottees enrolled as mixed blood Indians having one-half or more than one-half and less than three-fourths Indian blood, shall be free from all restrictions and subject to local taxation to the same extent as if it were the property of other persons. (Act May 27, 1908).

Under the provisions of the treaty of date February 26, 1869, between the Federal Government and the Shoshone and Bannack Indians, certain territory was defined or prescribed as reservation territory for said Indians, and those tribes in turn relinquished all title, claim and rights in and to any other portion of the territory of the United States, except such as is embraced within the boundaries of the reservation.

On May 14, 1880, an agreement proposed by the Shoshone, Bannack and Sheepeater Indians of the Fort Hall and Lemhi Reservations in Idaho was signed at Washington, D. C. by certain chiefs of said bands or tribes, and under date of February 23, 1889, an Act of Congress was enacted and approved wherein said proposed agreement is fully set out and is approved and confirmed in toto, and providing in Section 2 of said Act that allotments of land shall be made to each and all of the Indians pursuant to the provisions of said agreement and by patent "with the conditions, restrictions and limitations mentioned therein." (See 25 Stat. at Large 687.). It was also provided in the statute, among other things, that allotments in severalty shall be made.

It was further provided in the Act that:

"The Government of the United States shall consider the lands of the Fort Hall Reservation above named, to be properly surveyed and divided among the said Indians in severalty and in the proportions hereinbefore mentioned, and shall issue patents to them respectively therefor so soon as the necessary laws are passed by Congress. The title to be acquired thereto by the Indian 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."

It is assumed that the lands which the inquiry covered were lands covered by the treaty of February 26, 1869, and are covered by the Act of February 23, 1889.

In the brief submitted, reference is made to the provisions of the act of Congress of May 27, 1908, (35 Stat. at Large 312), and the provisions of that Act are relied upon to support the contention that the Indian lands in question are taxable. Section 4 of said Act provides as follows:

"That all land from which restrictions have been or shall be removed shall be subject to taxation and all other civil burdens as though it were the property of any other persons than Allottees of the Five Civilized Tribes; provided: * * *".

From a consideration of the Act of May 27, 1908, it appears that said Act affects only the status of lands allotted to the Five Civilized Tribes. The Indians of Southeastern Idaho, that is, the Bannacks, Shoshones, and Sheepeater Indians do not constitute a part of the Five Civilized Tribes, and therefore the provisions of said Act have no application whatsoever to the lands in question.

The samples of patents submitted with the request for an opinion were evidently issued to carry out the provisions of the Act of Congress of date February 23, 1889 (25 Stat. at Large 687), and contain the unqualified provision that the lands described therein shall not be subject to taxation of any character for the period of twenty-five years and until such time thereafter as the President shall see fit to remove the restriction, which provision is in conformance with the provisions of the Act of Congress of February 23, 1889.

The Act of Congress approved June 25, 1910, (36 Stat. at Large 855) was an act to provide for the determination of the heirs of deceased Indians, for the disposition and sale of allotments of deceased Indians, for the leasing of allotments, and for other purposes. The Act, among other things, provides at page 856 of 36 Stat. at Large 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 a 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."

No where in the 1910 Act is there an express provision affecting the non-taxability of Indian Lands. The provision in this paragraph above quoted affects only the "restrictions on alienation." Restrictions on alienation, and the exemption from taxation contained in the several Acts of Congress affecting Indians and Indian lands are separate and distinct features of the statutes, are not dependent one upon the other, and a provision in a statute removing the restrictions on alienation does not in itself make the land hitherto exempt from taxes, subject to taxes.

The Act of June 25, 1910 may therefore be eliminated from further consideration for the reason that the provisions thereof have no application to the questions presented.

The Federal Act of May 8, 1906 (Chapter 2348, 34 Stat. at Large 182), which was amendatory of Section 6, of an Act approved February 8, 1887 (Chapter 119, 24 Stat. at Large, 388) provides:

"At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in Section 5 of this Act, then each and every Allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law; Provided, That the Secretary of the Interior may, in his discretion, and he is authorized, whenever he shall be satisfied that any Indian Allottee is competent and capable of managing his or her affairs at any time to cause to be issued to such Allottee a patent in fee simple, and thereafter all restrictions as to sale, incumbrance, or taxation of said land shall be removed and said land shall not be liable to the satisfaction of any debt contracted prior to the issuing of such patent; Provided further, That until the issuance of fee-simple patents all Allottees to whom trust patents shall be issued shall be subject to the exclusive jurisdiction of the United States: And provided further, That the provisions of Section 331 to 334, inclusive, 336, 341, 348 to 350, inclusive, and 381 shall not extend to any Indians in the former Indian Territory."

The provisions of the Act of February 8, 1887, (24 Stat. at Large 388) and of the Act of May 8, 1906, hereinbefore referred to have no application to cases arising out of the Special Act of February 23, 1889. The Secretary

of the Interior may, under the provisions of the Act of May 8, 1906, properly determine upon the competency of Indians and cause a patent to issue conveying fee simple title, etc., thereby causing the land to become taxable, in instances where the Government has reserved the right to terminate the period of inalienability and non-taxability at any time it may see fit. However, that may not be done in such cases as are under consideration here. Here, we have patents issued in 1916 conveying lands to Indians and the patents containing the absolute and unqualified provision that the lands described therein shall not be subject to taxation for the period of twenty-five years, etc. That provision in the conveyance supported by a similar provision in the law (Act of February 23, 1889) vests the Allottee with substantial rights which cannot be abrogated or denied him. They are rights attaching to and running with the lands conveyed.

Nor may it logically be said that if the Indians have accepted and exercised the rights of citizenship, etc., by so doing they were compelled in exchange therefor, to surrender the right to have their property exempt from taxes, for it appears to be elemental that when the Government confers a right it is prohibited from imposing conditions on its acceptance which require the relinquishment of constitutional rights.

For the foregoing reasons, lands conveyed to Indians in conformance with the provisions of the Act of February 23, 1889 (25 Stat. at Large 687), the patents to which exempt the lands from taxes for the definite period of twenty-five years, etc. will not be taxable, whether in the hands of the allottees or white persons until the period of exemption therein expressly provided for, shall have expired.

H. B. Thompson. 7-31-28.

Exemptions : Indian Wars Veterans.

289. QUESTION:

Are veterans of the Indian Wars exempt from the payment of taxes?

OPINION:

The statutes of this state do not exempt Veterans of Indian Wars from the payment of any taxes.

Amos Strong. 1-25-28.

Exemptions : National Guard.**290. QUESTION:**

Are members of the National Guard exempt from taxation and jury duty in the State of Idaho?

OPINION:

Section 56 of Chapter 261 of the 1927 Session Laws exempts any member of the National Guard from serving as a juror in any court of this state, providing he shall furnish the certificate of his immediate commanding officer showing that he has performed the duties required by his enlistment or commission; and by the same section a member of the National Guard is exempted from service on any posse comitatus.

The act also provides that every reserve or member of the National Guard shall be exempt from the payment of poll or road taxes, providing he shall furnish the certificate of his immediate commanding officer, disclosing that he has performed the duties required of him for the year immediately preceeding. Such membership, however, does not entitle one to exemption from the payment of any other tax.

P. D. Cornell. 3-26-27.

Exemptions : Property Used for School Purposes.**291. QUESTION:**

1. Are real estate lots owned by the Gooding College and sold by it on contract subject to taxation?

2. If they are subject to taxation, is the vendee's interest alone subject to taxation and if the property is sold at a tax sale for non-payment of taxes, does the College lose all its interest in the lots?

OPINION:

1. Property owned by Gooding College and used exclusively for school or educational purposes, from which no pecuniary profit is derived, is exempt from taxation, but if such property returns a pecuniary profit or is sold, it then becomes taxable.

2. The College's interest in the property, as well as the vendee's is subject to taxation in such a case as above

set forth and if the property is sold at a tax sale the College's interest as well as the vendee's interest is sold and the College loses all its interest in said property. (Authority: Sub-section 16, of Section 3099 C. S. as amended by Chapter 145 of 1927 S. L. *Cheney v. Minidoka County*, 26 Idaho 471, 144 Pac. 343; *Salisbury v. Lane*, 7 Idaho 370, 63 Pac. 383; *Spokane Valley Light & Water Co. v. Kootenai County*, 119 Fed. 491, 37 Cyc. 938.).

M. F. Ryan. 12-19-27.

Exemptions : Spanish-American War Veterans.

292. QUESTION :

Is the property acquired by a Spanish-American War Veteran subsequent to the second Monday of January and prior to the fourth Monday of June exempt from taxation to the extent of \$1000, assessed valuation?

OPINION :

Property of a Spanish-American War Veteran acquired subsequent to the second Monday of January and prior to the fourth Monday of June is exempt from taxation to the extent of \$1000. assessed valuation, providing the exemption for the same is claimed as authorized in Section 3100, C. S.

F. A. Wilbur. 4-11-27.

Exemption : Spanish-American War Veterans.

293. QUESTION :

Are honorably discharged Spanish-American War Veterans entitled to tax exemptions for the year 1927, under the provisions of Chapter 145 of the 1927 Session Laws?

OPINION :

Chapter 145 of the 1927 Session Laws was approved March 5, 1927, and as it carries no emergency clause, became effective sixty days after the adjournment of the Idaho State Legislature for that year.

Chapter 145 of the 1927 Session Laws amended Section 3099 of the Compiled Statutes, as amended by

Section One of Chapter 106 of the 1921 Session Laws, and the only change is found in Section Four, which was amended so as to include honorably discharged soldiers and sailors, who served in the Army or Navy of the United States during the Spanish-American War and Philippine Insurrection, among that class of persons who are entitled to an exemption on the valuation of \$1,000.00 where the total valuation of the property of any one individual does not exceed \$5,000.00. This exemption is personal to the class of persons named in this section, which now includes Spanish-American War Veterans, and such Spanish-American War Veterans are entitled to the benefit of this act, providing the exemption is claimed in the manner provided for by Section 3100 of the Compiled Statutes.

Hon. H. C. Baldrige. 3-19-27.

Exemption : Widows.

294. QUESTION :

What exemption from the payment of taxes is a widow entitled to?

OPINION :

Under the provisions of Section 3099 C. S. as amended by Chapter 106 of the 1921 Session Laws and as amended by Chapter 145 of the 1927 Session Laws, a widow is entitled to an exemption from the payment of taxes on property of the valuation of \$1000.00 provided the total valuation of the widow's property does not exceed \$5,000.00, and provided further that such widow claims her exemption at the time of the assessment of her property, or on or before the 4th Monday of June, of the tax year.

Anna M. Heavrin. 12-15-27.

Migratory Livestock.

295. QUESTION :

Where the owner of a band of sheep on which a migratory livestock tax is assessed fails to pay the tax and thereafter sells the sheep, may the tax be made a lien

against the real estate of such original owner prior in effect to a first mortgage placed upon the land before the migratory livestock assessment was made?

OPINION:

It appears from a consideration of the statute that it was the intention of the Legislature to differentiate between personal property taxes as that term is generally used, and the tax assessed against migratory livestock. Section 3287 C. S., as amended by Section 12 of Chapter 236 of the 1927 Session Laws, among other things provides as follows:

"All migratory livestock shall be entered upon the personal property assessment roll, and a first and prior lien shall exist thereon, and upon all other personal property within the state belonging to the same owner until the taxes upon said migratory livestock have been paid."

Before amendment, Section 3287 C. S., provided among other things:

"All migratory livestock shall be entered upon the personal property assessment roll only, even though the taxes thereon be a lien on real property. * * *"

That part of the latter excerpt, which provides "Even though the taxes thereon be a lien on real property" has been eliminated from Section 3267 C. S., by the amendment. There is no part of the language of the amendment which may reasonably be construed to mean that the taxes upon migratory livestock may be made a first and prior lien upon real estate. Under the provisions of the amendment, the tax on migratory livestock constitutes a lien not only upon the migratory livestock but upon "all other personal property in this state belonging to the same owner."

The migratory livestock referred to in the inquiry may not be made a lien against the real estate of the original owner of the sheep which would be prior in effect to a first mortgage constituting a lien against the real estate prior to the assessment of the migratory livestock tax.

Dorothy Clapp. 4-27-28.

Partial Payment.**296. QUESTION:**

The owner of one hundred sixty acres of land desires to pay only the taxes assessed against eighty acres thereof. May he do so?

OPINION:

Yes. (Authority: Chapter 144 C. S.)

Arthur S. Guerin, Jr. 2-15-28.

Personal Property : Equity in State Lands.**297. QUESTION:**

(1) May an equity in State land be distrained and sold as personal property?

OPINION:

Under the provisions of Section 3282 C. S. upon a failure of the owner of an equity in State land to pay the taxes levied and assessed against such equity, a forfeiture of the equity may be declared by the State Board of Land Commissioners and such forfeiture is the exclusive remedy. The equity may not be distrained and sold on the theory that it is personal property. Under the provisions of Section 3102 C. S. an equity in State land is declared to be personal property for the purpose of taxation, but it is personal property for taxation purposes only; it is not such personal property as may be distrained and sold under the distraint statutes.

Laurence Dunn. 2-16-28.

Personal Property : Limitations.**298. QUESTION:**

Is the collection of personal property taxes barred by any provision in the statutes of limitations?

OPINION:

The collection thereof is not barred by the statute of limitations. Such taxes may be discharged only by

payment, cancellation or rebate. (Authority: Section 3098 C. S. as amended by Chapter 263 of the 1927 Session Laws.).

H. M. Haag. 1-21-28.

Personal Property : Reassessment.

299. QUESTION:

When the Board of County Commissioners is sitting as a Board of Equalization in June, does Section 3153A C. S. as amended by Section 3, of Chapter 263 of the 1927 Session Laws, authorize or justify the Commissioners in making a blanket order requiring that all personal property be reassessed separate and apart from the real estate, and placed upon the personal property roll, which includes all personal property, the tax of which is not a lien upon real property?

OPINION:

Section 3153A C. S. as enacted in Section 3, of Chapter 263 of the 1927 Session Laws, provides that when the Board of County Commissioners is sitting as a Board of Equalization as prescribed in Section 3152 C. S., it shall carefully examine the roll, tract by tract, and name by name to ascertain therefrom the assessed value of the real estate and the assessed value of the personal property in each instance where the lien of the tax on personal property will be a first lien upon real estate, and if in the judgment of the Board, the assessed valuation of the real estate is not sufficient to fully secure the lien of the personal property tax, the Board shall order the Assessor to reassess the property and proceed in the same manner as though the taxpayer did not own real estate. It is apparent that the legislature intended that the Commissioners base their decision upon the merits of each individual case and the statute may not be interpreted as authority for the Commissioners to arbitrarily make a blanket order requiring the reassessment of all personal property unless in every instance, the real property of each individual owner is not sufficient to fully secure the lien of the personal property tax of such owner.

T. E. Dotson. 8-24-27.

Personal Property : Time of Assessment : Daily Sheets.**300. QUESTION:**

1. May an assessment be made and taxes collected for the current year on personal property after the fourth Monday in November if the same is not on the rolls before that date?

2. Is the Assessor obliged under the personal property tax laws to turn over to the Auditor, daily, a copy of assessment sheets containing all the personal property whereon the tax is not a lien on real property of sufficient value to insure the collection of the same?

OPINION:

1. Personal property cannot be assessed for the current year if it has not been assessed and placed on the rolls prior to the fourth Monday of November.

2. Under the provisions of Section 3264, Compiled Statutes, as amended by Section 5, Chapter 263, Laws of 1927, the Assessor is obliged to turn over to the Auditor, daily, a copy of the personal property assessment sheets of personal property assessed by him whereon the tax is not a lien on real property of sufficient value to insure the collection of the same. At the end of the assessment period the completed roll of daily assessment sheets will constitute a complete register of all taxes that are subject to be collected by the distraint process.

R. D. Leonardson. 2-2-28.

Personal Property : Transfer to Real Roll.**301. QUESTION:**

May taxes assessed against personal property, the assessed valuation of which exceeds \$1,000.00 be entered on the real property assessment roll under the provisions of Section 3304-A of Chapter 233 of the 1927 Session Laws?

OPINION:

If the owner of such personal property is also the owner of real estate and the real estate is of sufficient value, the Assessor may transfer any amount of personal

property tax to the real property assessment roll; however, in that event, a mortgage, the holder of which has complied with the provisions of Section 3304-B will be prior to the lien of the personal property tax assessed against the personal property in excess of \$1,000.00 valuation.

If taxes assessed against personal property, the value of which exceeds \$1,000.00 is made a lien against real property and the County Commissioners determine that the assessed valuation of the real estate is not sufficient to fully secure the lien of the personal property tax, they may proceed in accordance with the provisions of Section 3153-A of Chapter 263 of the 1921 Session Laws, to order the Assessor to reassess such personal property.

Jessie H. Ford. 5-13-27.

Personal Property Roll : Preparation.

302. QUESTION:

What county official must prepare the personal property assessment roll?

OPINION:

The County Assessor. (Authority: Sec. 328 C. S., as amended by Chapter 263 of the 1927 Session Laws.).

W. A. Lewis. 5-12-27.

Proceeds of Tax Sale.

303. QUESTION:

Where title to real estate has been acquired by the County on account of delinquent taxes, and is thereafter sold for a sum in excess of the total delinquent taxes, penalties and interest, what disposition should be made of the amount in excess of such taxes, penalties and interest?

OPINION:

The total amount realized from such sale should be prorated among the various taxing districts. (Authority: *Washington County v. Paradis*, 38 Idaho, 364).

O. W. Witham. 1-13-27.

Prorating Proceeds From Tax Sale.**304. QUESTION:**

Do local improvement districts share in the proceeds of the sale of property acquired by the county through delinquent taxes?

OPINION:

Special assessments of local improvement districts are not taxes. Under the law of this state, they are assessments made on the basis of benefits derived. Where property is sold for delinquent taxes assessed against the property and the penalties and interest, the proceeds must be prorated among the taxing districts in which the property is located. No division, however, need be made among local improvement districts. (Authority: Section 3423 C. S., as amended by Chapter 159 of the 1927 Session Laws.).

H. C. Parsons. 12-17-27.

Recovery of From County.**305. QUESTION:**

(1) May taxes voluntarily paid by a corporation upon land owned by another corporation, or person, be recovered from the County?

(2) May taxes paid by a company upon land assessed as timber land when the timber had previously been removed or destroyed by fire, be recovered from the County?

OPINION:

(1) Such taxes voluntarily paid may not be recovered from the County. (Authority: *Asp v. Canyon County*, 43 Idaho, 560, 256 Pac. 92, construing Section 3332 C. S.; *Cooley on Taxation*, 4 Idaho, Vol. 3, Section 461.).

(2) Such taxes voluntarily paid may not be recovered from the County unless payment was made under protest, and an action to recover same must in that instance be commenced against the County within sixty days after payment. (Authority: *Asp v. Canyon County, Supra; Idaho Irr. Co. v. Lincoln County*, 28 Idaho, 98, 152 Pac. 1058. Chapter 107 of 1921 S. L.).

Dalkena Lumber Company. 7-28-28.

Sale : Local Improvement District.**306. QUESTION :**

Does a tax deed given by the County under the present law cut off the rights of the holder of a bond issued by a Special Improvement District, and convey the real estate covered by the deed from the County free and clear of all encumbrances?

OPINION :

The Supreme Court of this State has held, in a case involving a similar question, that the tax deed conveyed the title to the real estate free and clear of the special improvement assessments levied and maturing prior to the assessment of the taxes on account of the delinquency of which the property was sold, but that the property was not conveyed free and clear of such special improvement assessments as matured after the assessment of the taxes on account of the delinquency of which the property was sold. The enactment of Chapter 159 of the 1927 Session Laws did not change the rule announced by the Supreme Court. The sale for delinquent taxes would not affect the right of the bondholder in the assessments which have not matured prior to the assessment of taxes on account of the delinquency of which the sale may be made and he would have the right to collect such local improvement district assessment upon their maturity. (Authority: Section 3263 C. S.; Chapter 159, 1927 S. L.; *Hunt v. City of St. Maries*, (Idaho) 260 Pac. 155.).

O. W. Witham. 11-16-27.

Special, viz., Predatory Animal, Etc.**307. QUESTION :**

Do the special taxes such as State, Predatory Animal, Sheep Inspection, Tuberculosis Eradication and Glander's Indemnity taxes come within that class of state taxes which must be paid to the state within the time prescribed in Section 3212 C. S.?

OPINION :

Yes. (Authority: Section 3177 and 3212 C. S.).

Hon. E. G. Gallet. 10-28-27.

TAX COLLECTOR**Duties of.****308. QUESTION:**

(1) Where a tax deed was issued to the county in 1926, is the Tax Collector required to enter general taxes assessed for the year 1927 upon the 1927 tax rolls?

(2) Where a tax deed was issued to the county in 1926, is the Tax Collector required to enter special assessments of a local improvement district of a city made against the property for the year 1927 upon the 1927 tax rolls?

OPINION:

(1) The county was the owner of the land throughout the entire year 1927, and under the provisions of Subdivision 1 of Section 3099 C. S., as amended by Chapter 145 of the 1927 Session Laws, such property is not taxable.

(2) Yes. (Authority: *Hunt v. City of St. Maries*, 44 Idaho 700, 260 Pacific 155.).

N. D. Jackson. 1-24-28.

Duties : Service of Delinquent Notice.**309. QUESTION:**

Where one is the record owner of real estate and the address of such owner is known to the tax collector, and neither the owner or any one else is in actual possession of the property, is it necessary for the tax collector to post notices of delinquency on the property?

OPINION:

Although the owner is not in actual possession or occupancy of the real estate, inasmuch as the tax collector knows the actual residence or address of the owner, he is not required to post a notice on the real estate. Actual service of the notice on the owner is necessary in such case. It is only when there is no person in actual possession or occupancy of the real estate, *and* when the person in whose name such real estate stands upon diligent inquiry cannot be found in the state that the tax collector shall post the notice of delinquency. (Authority: Section 3258 C. S., as amended by Chapter 33 of the 1925 Session Laws.).

E. M. Wolfe. 4-24-27.

TAX DEED**Mining Claim : Separate Redemption of Land.****310. QUESTION:**

Where a County has secured a tax deed to a mining claim for 1922 taxes, may the redemptioner redeem the mining claim by paying the taxes thereon without paying the taxes on a mill located on such claim?

OPINION:

Section 3135 C. S. provides that the land and the improvements thereon shall be assessed separately but the reason for separately assessing such property is to facilitate the equalization of assessments on improvements and assessments on the land itself. Section 3101 C. S. as amended by Chapter 74 of the 1925 Session Laws defines real property as the land and all buildings, structures, improvements, fixtures, etc. thereon. The tax assessed against the land constitutes a lien against both the mill and the land, and the tax assessed against the mill constitutes a lien against both land and improvements. After the assessments are made, they are inseparable. The tax collector could not accept the tax assessed against the land without payment of the tax against the mill and vice versa. Likewise redemption could not be made by the payment of the tax on the land alone, or on the mill alone.

W. A. Lewis. 2-10-28.

Notice of Delinquency : Publication.**311. QUESTION:**

Is it necessary to publish the Notice of Delinquency of taxes and for the County to take a tax deed to a piece of property for each of the several years for which taxes have become delinquent in order to preserve the county's tax liens?

OPINION:

Under the provisions of Chapter 159 of the 1927 Session Laws, which amended Section 3423 C. S. it is not necessary for the County to take a deed for each year's tax or make a separate publication for each year's tax. Under the provisions of the foregoing statute, one

purchasing property from the County at tax sale acquires all of the County's right, title and interest in and to the property sold and acquires such interest free from all delinquent taxes which have become a lien on the property for the years intervening between the year in which the delinquency certificate was issued and upon which the sale was made, and the year in which he acquired title thereto. Inasmuch as property acquired by a County on account of delinquent taxes must now be sold free and clear of the taxes for such intervening years, it is no longer necessary for the County to take subsequent deeds in order to protect the County's tax liens. Likewise, it is no longer necessary where the County has acquired title to the property by reason of delinquent taxes to publish the notice of the delinquency of taxes assessed against the property for subsequent years.

C. J. Hahn. 9-6-28.

Prior Right of Purchaser.

312. QUESTION:

(1) Where a tract of land was sold in 1924 for the 1920 delinquent taxes, and the purchaser received a deed from the County, does the County have the right to again sell the property for the taxes becoming delinquent between the years 1921 and 1924?

(2) If the county may sell the land in question for taxes assessed for the intervening years and becoming delinquent who has the prior right to the land, the one holding the first tax deed or the subsequent tax deed?

OPINION:

(1) The taxes levied and assessed against such property for the years intervening between the year in which the first delinquency certificate issued and the year of the sale by the county, were valid, and constituted liens against the property, and the county had the right to sell the property for such delinquent taxes in the event the purchaser did not pay such taxes. (The foregoing was true prior to the time of the enactment of Chapter 159 of 1927 S. L.). See opinion to C. J. Hahn, No. 311 this report.

(2) When the purchaser at the first sale received a deed of conveyance to the property, he received title to

the property subject, however, to the taxes for the intervening years. If he failed to pay such taxes the county had the right to sell the property again for such delinquent taxes and upon sale to a second party, such second party, upon receiving a deed of conveyance, acquired an interest in the property superior to the interest of the holder of the first conveyance.

F. E. Cottingham. 10-14-27.

TAX NOTICE

Tax Numbers in Lieu of Descriptions.

313. QUESTION:

(1) May tax notices be sent out containing tax numbers in lieu of descriptions of property?

(2) May the property be advertised for sale by tax numbers rather than by full description of the property.

OPINION:

(1) Tax notices should contain full descriptions of the property.

(2) It is necessary to fully describe the property when advertising property for sale on account of delinquent taxes, and the use of tax numbers in lieu of full descriptions does not meet the requirements of law.

D. J. Murdock. 9-6-28.

TAX SALE

Expense of.

314. QUESTION:

May the board of county commissioners employ an auctioneer to auction land at tax sale, and pay him for such services?

OPINION:

Under the provisions of Section 3423 C. S. as amended by Chapter 159 of the 1927 Session Laws, the duty of selling, or offering for sale at public auction, any property belonging to the county not necessary for its use, is imposed upon the board of county commissioners. There

is no statutory authority giving the board the right to employ an auctioneer to conduct a tax sale. It being one of the official duties of the board to conduct the sale, the board may not employ an auctioneer at public expense to perform one of the official duties of the board.

Andrew G. Sathre. 9-30-27.

Purchaser Acquires Clear Title.

315. QUESTION:

What is the effect of a sale of property for delinquent taxes under the provisions of Chapter 159 of the 1927 Session Laws?

OPINION:

When property is sold on account of the delinquent taxes, under the provisions of the foregoing law the purchaser thereof obtains title to the property free and clear of all liens attaching thereto by reason of assessments of taxes for years subsequent to the year in which the tax was assessed on which the sale was based.

George E. Gilderoy. 9-30-27.

Redemption : Deed : To Whom Made.

316. QUESTION:

When real property is redeemed from tax sale to the county, to whom shall the redemption deed be made?

OPINION:

If redemption is made by the successor or successors of the person in whose name the property stands, the redemption deed should be made to the successor or successors. If redemption is made by the heirs, executors or administrators of the person in whose name the property stands, the redemption deed should be made to the person in whose name the property stands or to his estate. If redemption is made by a mortgagee or any other lien holder, the redemption deed should be made to the person in whose name the property stands.

Harry Palmer. 4-4-27.

Redemption : Must Pay All Delinquent Taxes.**317. QUESTION:**

(1) Where taxes assessed against property have become delinquent for more than one year, may the owner pay the delinquent taxes for one year, or must he pay all delinquent taxes against the property?

(2) Upon redemption of property since 1923, should the County Treasurer charge a 2% penalty and 10% interest on delinquent taxes?

OPINION:

(1) The taxpayer must pay all taxes which have been assessed against the property and which have become delinquent and are unpaid, with the exception that redemption may be made separately for the years 1920, 1921, 1922. (Authority: Section 3254 C. S.; Chapter 161, of 1923 S. L.; and *Washington Co. v. Paradis*, 38 Idaho, 364, 222 Pac. 775.).

(2) A penalty of 2% and interest at the rate of 10% must be charged on delinquent taxes for 1923 and subsequent years. Redemption may be made from sales for delinquent taxes for 1922 and prior years without the payment of penalty by paying the taxes together with interest at the rate of 7% per annum. (Authority: Chapter 161 of 1923 S. L.).

Merle Drake. 7-27-28.

TIMBER**Logs : Measurement of.****318. QUESTION:**

What scale is used in measuring logs in Idaho?

OPINION:

Unless otherwise agreed upon, the Scribner Decimal C rule shall be the standard rule for scaling or measuring logs. (Authority: Section 2348 C. S.).

Charles E. Carson. 4-7-27.

TRANSFER TAX**Appointment of Tax Appraiser.****319. QUESTION:**

1. In what cases may the Probate Judge appoint a tax appraiser under Section 3384, C. S.?

2. If, after an appraiser has been appointed and has made his report to the probate court, it appears from such report, and the probate court, therefore, finds that the value of the property of such decedent distributed to the heirs or the legatees and devisees of the decedent does not exceed the exemptions provided for by Section 3375, C. S., to the respective heirs or legatees and devisees, how may such appraiser be paid his fees provided for by said Section 3384?

OPINION:

1. The Probate Judge may appoint a tax appraiser under Section 3384, C. S., in every case in which probate proceedings of a decedent's estate are pending, where the probate court is uncertain as to whether or not the value of any inheritance, devise, bequest or other interest is greater than the amount of exemptions provided by Section 3375, C. S.

2. It should not be assumed that the appraiser's fee provided for by Section 3384 must be paid out of the tax produced by the estate in which the appraiser is appointed. The appraiser's fee is to be paid by the County Treasurer out of any funds he may have in his hands on account of the transfer tax collected by him, regardless of what estate said funds were received from.

Hon. John Jackson. 11-21-27.

Community Interest.**320. QUESTION:**

Where proceedings are brought under Chapter 118 of the 1923 Session Laws, and the Probate Court renders a decree under and in pursuance of said statute, is the deceased wife's one-half of the community property subject to the transfer tax to the State of Idaho?

OPINION:

Yes. (Authority: Section 3371 C. S.).

Hon. E. L. Parker. 10-3-28.

Deductions.

321. QUESTION:

In the probating of community property, community debts are allowed and paid by decedent's executor. What portion of the community debts may be deducted from the value of decedent's half of the community property in arriving at the amount of decedent's property subject to transfer tax?

OPINION:

Only one-half of the community debts should be deducted from the value of the decedent's half of the community property in arriving at the value of his property subject to transfer tax. Section 7803, C. S., as amended by Chapter 165, 1927 Session Laws, provides upon the death of either husband or wife one-half of all the community property shall go to the survivor subject to community debts. And in case no testamentary disposition is made of decedent's half of the community property, it shall go to the survivor subject to the community debts. Since the entire community property is subject to the community debts, the decedent's half of the community property should be subject only to half of the community debts.

Edward C. Butler. 9-7-28.

Life Insurance Policy, Proceeds of.

322. QUESTION:

Are proceeds of a life insurance policy of a decedent payable to beneficiaries specified in the policy, subject to a transfer tax to the State of Idaho?

OPINION:

The proceeds of such policy are not subject to a transfer tax since neither the will of the deceased nor

the intestate laws of this State are required to be invoked to pass title to such proceeds. Section 3371 C. S. imposes a tax only upon "all property which shall pass by will, or by the intestate laws of this State."

If however, such life insurance policy is payable to the estate of the decedent, the proceeds of such policy are taxable.

Scatterday & Stone. 7-25-28.

Property Subject : Bonds : Situs.

323. QUESTION:

1. A person domiciled in Idaho died testate leaving bonds of foreign nations and of municipalities of other states, which bonds were physically located in a bank in another state at the time of his death. Are such bonds subject to a transfer tax to the State of Idaho?

2. Where the state in which such bonds are physically located at the time of decedent's death imposes a tax upon such bonds, does the imposition of a tax by the State of Idaho constitute double taxation?

OPINION:

1. Yes. All property passing by will from any person who may die seized or possessed of the same while a resident of this state is subject to a transfer tax. (Authority: Section 3371 C. S.; *Bullen v. Wisconsin*, 240 U. S. 625; 36 Sup. Ct. Rep. 473; 60 L. Ed. 830; *in re Hodges Estate*, 170 Cal. 492, 150 Pac. 344; *Blodgett v. Silberman*, decided April 16, 1928, 48 Sup. Ct. Rep. 410, found in Sup. Ct. Rep. advance sheets of May 1, 1928.).

2. No. (Authority: *in re Hodges Estate, supra*; *Blackstone v. Miller*, 188 U. S. 189, 204, 23 Sup. Ct. Rep. 277.

Edward C. Butler. 6-8-28.

Rate of Tax : Computation : Exemptions.

324. QUESTION:

1. A decree of distribution decreed \$47,843.81 to each of two of the decedent's minor children. What exemption is allowable to each of such distributees?

2. Is it proper to deduct the \$10,000.00 exemption to each distributee from the \$47,843.81 decreed to each distributee and then figure a tax of one per cent on the first \$25,000.00 of the balance and one and one-half per cent upon the remainder of such balance?

OPINION:

1. Section 3375 C. S., provides for an exemption of \$10,000.00 of the clear value of property transferred to a minor child of the decedent.

2. The \$10,000.00 exemption to each distributee should be deducted from the first \$25,000.00 of the said sum decreed to each distributee. Then figure a tax of one per cent upon \$15,000.00. Then figure a tax of one and one-half per cent upon the balance of \$37,843.81 after deducting \$25,000.00. (Authority: Section 3373 C. S.; *Steehler v. Riley* (Cal.) 233 Pac. 972.).

Edward C. Butler. 9-25-28 and 10-19-28.

Value of Transfer : Appointment of Tax Appraiser.

325. QUESTION:

How may the value of a decedent's property be determined where the decedent died testate, having devised unto a trustee all of his property in trust:

(a) To his nephew for the use and benefit of the nephew during the nephew's life;

(b) Upon the death of the nephew, if the nephew died prior to deceased's brother, then to the deceased's brother for his use and benefit during the brother's life;

(c) Upon the death of said nephew and brother, then to two other nephews?

OPINION:

In such a case, under the authority of Section 3376 and 3384, C. S., the probate court should appoint a tax appraiser who should make an appraisalment and report and such report should be sent to the Department of Finance, under the 1921 Laws, page 233, in place of the Department of Commerce and Industry. The Department of Finance should then determine the value of the different estates created by such will and certify the same to the probate court, and such certificate is conclusive

evidence that the method of computation adopted by such Department is correct. When said Department has determined such values and certified them to the probate court, the Probate Judge should then assess and fix the market value, as of the date of the death of said decedent, of the different estates so created.

John E. Sherrard. 11-19-27.

TRAVELING CARNIVALS

Operation of.

326. QUESTION:

May traveling carnival companies operate in Idaho?

OPINION:

No. They are prohibited from operating in this State by the provisions of Chapter 142 of the 1921 Session Laws.

George T. Scott. 3-17-27.

UNITED STATES SENATOR

Vacancy : Appointment.

327. QUESTION:

Hon. H. C. Baldrige,
Governor of the State of Idaho,
Boise, Idaho.

Sir:

You have this day requested an opinion from this office interpreting the provisions of Section 463 of the Compiled Statutes of the State of Idaho.

OPINION:

The section above referred to provides for the filling of a vacancy occurring in the office of United States Senator from Idaho. A vacancy now exists in the office of United States Senator from this State by reason of the demise of Senator Frank R. Gooding. Under the provisions of said section, the Governor of Idaho is authorized and empowered to fill the vacancy by appointment and the person so appointed shall hold such office until his successor, who shall be elected at the General Election in November of this year to fill the unexpired term of Senator Gooding, qualifies by virtue of such election.

June 28, 1928.

UNIVERSITY OF IDAHO**Appropriations for Improvements, etc.****328. QUESTION:**

Is it necessary for the University of Idaho to submit proposals to the Commissioner of Public Works under the provisions of Chapter 97 of the 1921 Session Laws, when the University is about to make improvements such as walks and driveways on and about the campus and improvements on University buildings?

OPINION:

When expenditures are to be made on behalf of the University of Idaho, it is not necessary for the University to submit proposals to the Commissioner of Public Works under the provisions of Chapter 97 of the 1921 Session Laws unless the expenditures are to be made from moneys appropriated by the legislature, and to which the legislature has attached a condition or limitation giving the Department of Public Works supervision.

Hon. J. D. Wood. 12-12-27.

Board of Regents : Control of University Funds.**329. QUESTION:**

Under the provisions of Chapter 100 of the 1927 Session Laws, authority is given the State Board of Education, acting as the Regents of the University of Idaho, to select the State Treasurer as the Treasurer of the Regents of the University; and the same act authorizes the State Treasurer to act as such treasurer. If the State Treasurer is selected, pursuant to the provisions of said Chapter 100, to act as Treasurer of the Regents of the University, does the Board of Regents thereby waive any of its constitutional rights as to the management and control of certain funds belonging to the University?

OPINION:

Prior to the enactment of Chapter 100 of the 1927 Session Laws, there was no express statutory provision for the State Treasurer's acting as Treasurer of the Board

of Regents of the University. The laws setting forth his duties as State Treasurer did not contemplate his acting as Treasurer of the Board of Regents. Prior to that chapter's becoming effective, the State Treasurer did not perform any duties as Treasurer of the Board of Regents. The Board of Regents elected its own treasurer, as it had a right to do, and such treasurer was held responsible to the Regents. The duties he was required to perform were in no way related to the duties required of the State Treasurer. There was no relation, whatsoever, between the two offices.

Perhaps, prior to the enactment of Chapter 100 of the 1927 Session Laws, it would have been regular for the Board of Regents to elect the person filling the office of State Treasurer to the position of Treasurer of the Board of Regents, and for the person occupying the office of State Treasurer to act as Treasurer of the Board of Regents, for the duties of the two offices are not incompatible. In order, however, to obviate any question which might arise as to the right of the State Treasurer to act as Treasurer of the Board of Regents, the Legislature enacted Chapter 100. The Board of Regents intends to take advantage of the provisions of said Chapter 100, and select the Honorable Byron Defenbach, State Treasurer, to act as Treasurer of the Board of Regents from and after July 1, 1927. In performance of his duties as Treasurer of the Board of Regents, he will act solely in that capacity and not in the capacity of State Treasurer.

The State Treasurer has always had certain duties to perform with regard to moneys appropriated by the Legislature for the University. Those duties he will continue to perform as State Treasurer. Neither the provisions of Chapter 100 nor the action of the Board of Regents in naming the State Treasurer as Treasurer of the Board of Regents will, in any way, affect any duties devolving upon him as State Treasurer. On the other hand, the duties which have heretofore been performed by the Treasurer of the Board of Regents, who has been a person other than the State Treasurer, will not, in any way, be affected by the action of the Regents in selecting the State Treasurer as treasurer of the board. In other words, the funds over which the Board of Regents has exclusive control will be handled by the newly elected Treasurer of the Board of Regents in the same manner as other treasurers of said board have handled such

funds, and in the handling of those particular funds, he will act solely as the Treasurer of the Board of Regents. In handling the funds appropriated by the state for University purposes, he will act as State Treasurer.

By selecting the State Treasurer to act as Treasurer of the Board of Regents, the board will not surrender any of its right to exclusively supervise and control the University funds not appropriated by the Legislature. The board will not waive, nor can it waive, any of its constitutional rights with regard to the control or management of the University funds, given it under the constitution.

L. F. Parsons. 6-28-27.

VILLAGES

Motion Pictures : Right to License.

330. QUESTION:

May a village require picture shows and theatres to pay license fees?

OPINION:

Section 3906 C. S. provides that the board of trustees of a Village shall have power to pass by-laws and ordinances to provide for licensing and regulating theatrical and other amusements within the Village. A moving picture show would come within the definition of "theatrical and other amusements" and the power to regulate and license the same being specifically granted to Villages, it is within its right to enact an ordinance requiring the payment of a license fee.

Lubin Jones. 10-24-27.

Trustees : Appointment of Attorney.

331. QUESTION:

Is it compulsory for the Board of Trustees of an incorporated village to appoint a regular Village Attorney at a fixed salary?

OPINION:

Section 3907 C. S. provides that the Trustees shall

appoint a Village Attorney. Section 3908 C. S. provides that the compensation of Officers other than the Trustees shall be fixed by ordinance. Section 4065 C. S. prescribes the duties of the Village Attorney. It is manifest from a consideration of Section 3907 C. S. that the legislature intended to classify the Village Clerk, Treasurer and Attorney as "necessary" officers, as distinguished from the night watch and police officers. The statutory provision regarding the appointment of a Village Attorney is mandatory.

A. L. Hager. 5-19-27.

Trustees : Ineligibility of.

332. QUESTION:

May the board of trustees of a village appoint one of its members to the office of village clerk, fix his compensation, and may the member so appointed receive the compensation so fixed for his services as such clerk?

OPINION:

Public policy forbids a village trustee holding the office of village clerk. The duties of the two offices are incompatible.

P. A. Bueckler. 5-10-28.

Trustees : Qualifications.

333. QUESTION:

May a resident of a village whose name does not appear on the tax roll hold the office of village trustee?

OPINION:

Section 3902 C. S. prescribes as one of the qualifications of a village trustee that he shall be a taxpayer of the village. Article 1, Section 20 of the Constitution of Idaho provides that no property qualification shall ever be required for any person to vote or hold office, except in school elections or elections creating indebtedness. The property qualifications in the statute is unconstitutional. A resident of a village whose name does not appear on the tax roll may hold the office of village trustee.

C. E. Clovis. 5-11-27.

VETERINARY**Non-graduate Veterinarians.****334. QUESTION:**

May one who has successfully passed the examination for a veterinarian but who is not a graduate of some authorized veterinary college, school or university use the word "Doctor" or the abbreviation "Dr." prefixed to his name in advertisements?

OPINION:

Under the provisions of Section 130, Chapter 62 of the 1921 Session Laws, a non-graduate is prohibited from using the word "Doctor" or the abbreviation "Dr." prefixed to his name in advertisements for the reason that the use of such titles presupposes the holding or possessing of a doctor's degree.

Fred E. Lukens. 5-28-27.

Surgeons : Licensed Non-graduate.**335. QUESTION:**

May the bureau of animal industry permit licensed non-graduate veterinarians to use hog cholera virus and tuberculin?

OPINION:

The practice of veterinary medicine, surgery, or dentistry, is defined in Section 2, Chapter 62, of 1921 Session Laws. Section 14 of said Act authorizes persons not possessing diplomas from legally chartered veterinary colleges or universities, and not holding diplomas from the veterinary department thereof, to receive licenses from the Department of Law Enforcement, and to practice as non-graduate veterinarians and to prescribe for sick domestic animals needing medical or surgical aid, or both, or dental attention, and may charge and receive therefor money or other compensation. Hence, non-graduate veterinarians, duly licensed by the Department of Law Enforcement may use hog cholera virus and tuberculin in the treatment of domestic animals.

Dr. A. J. Dickman. 6-9-27.

WATER MASTERS

Right to Enter Land to Read Water Gauges.

336. QUESTION:

Where the water master of a stream in the State of Idaho has installed measuring devices across the stream and upon patented land, has the owner of the land the right to refuse to allow the water master the right of entry for the purpose of reading the water gauges?

OPINION:

While there is no statutory provision specifically authorizing a water master to enter privately owned land for the purpose of measuring water or reading water gauges, it is fundamental that authority from the government to do an act is a justification for what would, in the absence thereof, constitute a trespass. In view of the fact that water masters are required by statute and frequently by court decrees to establish measuring devices upon streams, after the measuring devices in question have been lawfully placed in the streams, the water master has the right of entry for the purpose of reading the gauges. The water master is not, however, justified in causing any damages to the property entered.

Paul S. Haddock. 9-14-27.

WORKMEN'S COMPENSATION

Applicable to Supreme Court Justices and District Judges.

337. QUESTION:

Do the Supreme Court Justices and District Court Judges, and all employees working under their direction, come within the provisions of Chapter 106 of the 1927 Session Laws, which chapter is amendatory of the Workmen's Compensation Law, and if so, how should the premiums for their insurance be paid?

OPINION:

Under the provisions of the foregoing statute, the Workmen's Compensation Law is made applicable to Justices of the Supreme Court and District Court Judges,

and the premiums for their insurance should be paid out of appropriations made by the State for their departments.

Hon. F. E. Fisk. 4-16-27.

Water Masters.

338. QUESTION:

Are a water master and his deputies excluded from the operation of the Workmen's Compensation Law, under the provisions of Section 6216 C. S., and if not, who should provide compensation insurance for their protection?

OPINION:

A water master and his deputies do not come within the excluded occupations enumerated in Section 6216 C. S. Compensation insurance should be provided by the district.

Industrial Accident Board. 7-7-27.

WAREHOUSEMEN

Receipts.

339. QUESTION:

(1) Must a warehouseman, who conducts a warehouse partly for public and partly for his own use, in which no specific portions of the warehouse are dedicated to public or private use, issue receipts covering his own produce in storage?

(2) Must a warehouseman procure a license and post a bond if he accepts agricultural products for storage free of charge?

OPINION:

(1) Where a warehouseman dedicates only a portion of his warehouse to the public use and retains the remainder of the warehouse for his private business, it is not necessary to issue receipts for the storage of his own products in the portion not dedicated to public use. However, where no specific portion of the warehouse is reserved for private use, the warehouseman must issue

receipts covering his own produce when stored in any part of the warehouse.

(2) The Bonded Warehouse Law applies only to warehouses wherein agricultural products are stored for compensation. (Authority: Section 6179 C. S.).

Hon. John S. Welch. 7-9-27.

WORKMEN'S COMPENSATION

Insurance Agents.

340. QUESTION:

Are agents, who solicit insurance business within the State of Idaho for life insurance companies, and who work strictly on a commission basis, to be classed as employees of such companies, and are such companies required to provide compensation for such agents?

OPINION:

If an agent of a life insurance company is an independent contractor, that is, chooses his own time, place, and manner of seeking prospective policy holders, pays his own expenses, and is not subject to the control of the company, he would not properly come within the term "employee", as used in the Workmen's Compensation Law; and in such case, the company would not be required to procure compensation for him. However, where the company has general supervision and control over his actions, he would properly be classed as an "employee" within the meaning of that law. (Authority: Chapter 236 C. S.).

Industrial Accident Board. 10-27-27.

Irrigation Districts : Employees of.

341. QUESTION:

Where a laborer is employed by an irrigation district, but, under the terms of employment, he is not to receive cash for his labor, and is to receive credit upon the purchase price of capital stock in the company, is such

employment covered by the Workmen's Compensation Law?

OPINION:

Yes. The fact that he is to receive credit on a debt due the company from him, rather than cash, does not except him or his employment from the operation of that law. (Authority: Chapter 236 C. S.).

Industrial Accident Board. 4-14-27.

Interstate Carriers : By Motor Vehicle.

342. QUESTION:

The Auto Interurban Company is engaged in interstate commerce, operating auto stages on the public highways between Spokane, Washington and Coeur d'Alene, Idaho, and maintains an office in Coeur d'Alene. Is the Workmen's Compensation Law of Idaho applicable to the employees of the Auto Interurban Company engaged in such interstate commerce?

OPINION:

The Federal Employers' Act supersedes the law of this state in the field of employers' liability to employees in interstate transportation by rail. However, the above named Federal Act has no application to the instant case. There is no Federal Law covering injuries to employees engaged in interstate commerce by auto transportation upon the public highways. The enactment of the Workmen's Compensation Law of Idaho was a legitimate exercise of the police power of the state. It is elementary that laws enacted under the legitimate exercise of the police power of the state, even though indirectly affecting interstate commerce, constitute a valid exercise of such power, until Congress, by affirmative legislation occupies the field by regulating such interstate commerce. The Idaho Workmen's Compensation Law was not enacted for the purpose of controlling or attempting to control interstate commerce. However, in its application, it may incidentally affect interstate commerce and in that respect it is proper and legal.

The Workmen's Compensation Law of Idaho applies to employees of interstate carriers by motor vehicles, on

public highways, insofar as such employees may be injured within the limits of the State of Idaho. (Authority: Chapter 236 C. S.; Federal Employers' Liability Act of 1908, 8 Fed. Stat. Anno. 2d Ed., pp. 1217 and cases cited; Act of April 22, 1908, Chapter 149, 35 Stat. at Large 65; *Erie Railroad Co. v. Jacobus*, 221 Fed. 335, 137 C. C. A. 151; *Southern Pacific Co. v. Jensen* (1917) 224 U. S. 205, 37 Sup. Ct. Reporter 524, 61 U. S. (L. Ed.) 1086; *O. W. R. & N. R. R. Co., v. State of Washington*, 70 L. Ed. 482; *Asbell v. State of Kansas*, 52 L. Ed. 778.

Industrial Accident Board. 4-17-28.

Corporation Executives Exempt.

343. QUESTION:

Do the president and vice-president of a corporation, who give their full time to the business of such corporation, and who are paid regular salaries, and the secretary of such corporation, who is a practicing attorney and renders legal services to the corporation upon request, come within the purview of the requirements of the Workmen's Compensation Act?

OPINION:

By the Workmen's Compensation Act, the Legislature of Idaho sought to cover those persons engaged in private employment in a trade or occupation. The terms "workman," "wage earner," and "employee" are used in designating the class or classes of persons engaged in private employment covered by the Workmen's Compensation Act. When the executive officers of a corporation perform the executive functions devolving upon their offices, exclusively, such officers do not come within the classification of "workman", "wage earner", or "employee" and the Workmen's Compensation Law would not be applicable to such executive officers under the foregoing circumstances. If an executive officer of the corporation performs services for the corporation not strictly executive, he would come within the terms "workman", "wage earner" or "employee", as used in the act in question. In the latter case, it would be necessary for the corporation to carry insurance covering such person or persons.

Industrial Accident Board. 12-10-27.

Idaho National Guard.**344. QUESTION:**

Do members of the Idaho National Guard during armory drills or summer training camp, come within the provisions of the Workmen's Compensation Law?

OPINION:

No. They are not protected by the Workmen's Compensation Law.

Col. M. G. McConnel. 9-4-28.

DOCKET 1927-1928

UNITED STATES SUPREME COURT

Chicago, Milwaukee & St. Paul Railroad Co., v. Public Utilities Commission of Idaho—Rate Case. Ruling of the commission and lower court reversed. 71 L. Ed. 1085.

State v. George—Application for Writ of Certiorari denied. 72 L. Ed.—.

United States v. State of Idaho—To cancel certification of certain lands by the United States to the State of Idaho, and to remove cloud from title. Judgment for the petitioner. 72 L. Ed.—.

UNITED STATES COURT OF APPEALS

Idaho Power Company v. Public Utilities Commission of Idaho—Appeal from judgment of the United States District Court, District of Idaho, Eastern Division. Dismissed on appellant's motion.

Sanger v. Lukens—Action testing the application of the Motor Transportation Act of Idaho to private carriers. Petitioner appealed from the judgment of the District Court dismissing the petition. Reversed and remanded with directions. 24 Fed. (2d.) 226.

UNITED STATES DISTRICT COURT

Green Stage Line v. Jeter—Action testing the validity of the Auto Bus Law. Order dismissing suit.

Missouri Valley Bridge & Iron Company v. Associated Employers Reciprocal—Industrial accident Board Case. Judgment for the State.

Must Hatch Incubator Co. v. H. C. Baldridge, Governor—Action to test the right of State to regulate the importation of baby chicks into Idaho. Action dismissed after compromise.

Natwick v. Jeter—Action testing the validity of the Auto Bus Law. Dismissed.

Nelson-Ricks Creamery Co. v. Kjosness—Action testing the constitutionality of the dairy discriminating act. Case dismissed.

Oregon Short Line Railroad Co. v. County Highway District—Action testing the validity of highway district bonds. Judgment for the defendant.

Sanger v. Lukens—Action testing the application of the Auto Transportation Law to private carriers. Action dismissed by stipulation of parties.

United States v. State of Idaho—Condemnation Suit. Closed as to State.

HEARINGS BEFORE FEDERAL BOARDS AND COMMISSIONS

GENERAL LAND OFFICE

State v. Ayotta—Application of Fred Ayotta for survey of lands adjoining Fernan Lake. Application denied by the Department of Interior.

LAND OFFICE BLACKFOOT

Never Sweat Mining Company v. State of Idaho—Contest on mining claim. Pending.

FEDERAL POWER COMMISSION

Public Utilities Commission of Idaho, et al—Petition for modification of order setting aside public lands on Snake River as power sites. Pending.

INTERSTATE COMMERCE COMMISSION

Public Utilities Commission of Idaho v. Oregon Short Line Railroad Company—Application for reduction in rates to California points by way of Rogerson-Wells cut-off. Pending.

Public Utilities Commission of Idaho v. Oregon Short Line Railroad Company—Application for reduction in rates on salt. Pending.

Public Utilities Commission of Idaho v. Oregon Short Line Railroad Company—Application for reduction of rates on oils, road oil, etc. Adjusted by Railroad Company filing amended rates.

Public Utilities Commission of Idaho v. Oregon Short Line Railroad Company—Action for reduction in rates on deciduous fruits. Pending.

Public Utilities Commission of Idaho v. Oregon Short Line Railroad Company—Application for reduction of rates to points in Idaho and Utah. So ordered by the Utilities Commission.

Public Utilities Commission of Idaho, et al. v. Union Pacific Railroad Company—Application asking for the construction of an extension of a line from Homestead, Oregon, to Lewiston, Idaho, down Snake River. Pending.

SUPREME COURT OF IDAHO

(Original Proceedings.)

In the matter of the application of *John H. Bottjer for a Writ of Habeas Corpus*—Petition denied. 45 Idaho 168, 260 Pacific 1095.

Corey v. Hartson—Application for Writ of Prohibition in test of the Idaho Eugenics Law. Pending.

In the matter of the application of *Karl Erickson for a Writ*

of *Habeas Corpus*—Demurrer to the Writ sustained and petition denied. 46 Idaho—, 260 Pac. 160.

In the matter of the application of *Herbert O. Niccolls* for a Writ of *Habeas Corpus* to secure the freedom of Herbert O. Niccolls from the Northern Idaho Sanitarium—Writ referred to the District Court of Latah County. Dismissed.

SUPREME COURT OF IDAHO

(Civil Appeals Closed)

Burley Independent School District v. Cordell, District Court, Cassia County—Action to restrain assessor from collecting automobile tax. From judgment in favor of district, County appeals. Dismissed. (Unreported).

Burns v. Lukens, District Court, Clearwater County—An action testing the constitutionality of the Transportation Act in its application to private carriers. Judgment for the plaintiff affirmed. 46 Ida., 269 Pac. 596.

Capital Water Company v. Public Utilities Commission of Idaho—Application for order fixing rates. Appeal from the order of the Commission. Order set aside. 44 Ida. 1, 262 Pac. 836.

Chambers v. McCulloh, District Court, Clearwater County—From judgment for collection of costs for an enforced patrol of timber land, defendant appeals. Judgment of the lower court affirmed. 46 Idaho, Pac.

Department of Law Enforcement v. Myers, District Court, Ada County—Action to restrain Department from revoking dental license. From decision in favor of Myers, Department appeals. Appeal dismissed. (Unreported).

In the matter of *Melvin Farnsworth, a Juvenile Delinquent*, District Court, Bannock County. Appeal from order dismissing an appeal from an order of commitment of the Probate Court. Judgment of the District Court reversed. 46 Ida., 266 Pac. 421.

Gem Irrigation District v. Gallet, District Court, Ada County—Mandamus. Order quashing writ reversed. Writ issued as prayed for. 43 Ida. 519, 253 Pac. 128.

In the matter of the Application of *Leslie Grove* for a Writ of *Habeas Corpus*, District Court, Ada County. Writ granted. 43 Ida. 775, 254 Pac. 518.

Hamilton v. Swendsen, District Court, Custer County—Appeal from order of District Court denying State's right to file expense claim for survey in a water suit. Judgment affirmed. 46 Ida., 267 Pac. 229.

Idaho County v. Fenn Highway District—Action to compel highway district to repair highway. Judgment for plaintiff; reversed and remanded. Rehearing denied. 43 Ida. 233, 253 Pac. 377.

Marshall v. Department of Agriculture, District Court, Twin Falls County—Action testing the constitutionality of statute authorizing potato regulations and branding of sacks. Demurrer to complaint sustained. Reversed and remanded. 44 Ida. 440, 258 Pac. 171.

Northern Pacific Railroad Co. v. Cole—Closed as to State.

Stark, et al. v. McLaughlin, District Court, Elmore County—Suit to recover highway district taxes paid under protest and to determine the constitutionality of the highway validating acts. From judgment for the defendant, plaintiff appeals. Affirmed. 45 Ida. 112, 261 Pac. 244.

State v. Taylor, District Court, Bannock County—Action to abate public nuisance. Judgment for plaintiff. Defendant appeals. Affirmed. 44 Ida. 353, 256 Pac. 953.

Smith v. Canyon County, District Court, Canyon County—Action to restrain tax levy. Judgment for county. Reversed. 44 Ida. 187, 255 Pac. 642.

SUPREME COURT OF IDAHO

(Civil Appeals Pending)

Adams County v. Meadows Valley Bank, District Court, Adams County. Action to collect money deposited with the defendant bank.

Arkoosh v. Big Wood Canal Company, District Court, Blaine County—Action to determine the date of the commencement of the irrigation season.

Cassia County v. Bauer, District Court, Cassia County—Construction of personal property tax statutes.

Federal Land Bank v. Stewart, District Court, Lemhi County—Suit to remove lien of personal property taxes from realty. Bank appeals from judgment in favor of county.

Lemhi County, et al., v. Boise Livestock Loan Company, District Court, Lemhi County—Action to collect personal property tax.

State v. Clearwater Timber Company, District Court, Nez Perce County—Action to collect compensation on account of the death of Myron Pierce. Appealed by State from decision of the District Court.

Stoner v. Carter, District Court, Twin Falls County—Application for Writ of Mandamus in irrigation matter.

State v. Reed, District Court, Blaine County—Action to enjoin County Treasurer from issuing tax deed to certain State owned property.

In the matter of the estate of *Anne Falk Rothchild, deceased*—Judgment of the District Court, Ada County, affirming decision of the Probate Court, denying petition for final distribution and

settlement of first and final account, on the ground that the final account did not show payment of transfer tax. Appealed from by executors.

In the matter of the estate of *Samuel Marx Rothchild, deceased*—Judgment of the District Court, Ada County, affirming decision of the Probate Court denying petition for final distribution and settlement of first and final account, on the ground that the final account did not show payment of transfer tax. Appealed from by executors.

SUPREME COURT OF IDAHO

Criminal Appeals Submitted

State v. Adams, District Court, Bonner County, violation of the Prohibition Act—Appeal dismissed and conviction affirmed. (Unreported).

State v. Alvord, District Court, Madison County—Furnishing liquor to a minor. Judgment of conviction affirmed. 46 Idaho, 271 Pac. 322.

State v. Andreason, District Court, Bannock County—Assault with intent to commit rape. Judgment of conviction affirmed. 44 Idaho 396, 257 Pac. 370.

State v. Applegate, District Court, Canyon County—Unlawful sale of intoxicating liquor. Judgment of conviction affirmed. 45 Ida., 260 Pac. 167.

State v. Arregui, District Court, Ada County—Unlawful possession of intoxicating liquor. Judgment of conviction reversed. 44 Ida. 43, 254 Pac. 788.

State v. Basinger, District Court, Butte County—Grand Larceny. Judgment of conviction affirmed. 46 Ida., 271 Pac. 325.

State v. Dunn, District Court, Latah County—Persistent violator of prohibition law. Judgment of conviction reversed. 44 Ida. 636, 258 Pac. 553.

State v. Foyte, District Court, Shoshone County—Murder in the first degree. Judgment of conviction reversed. 43 Ida. 459, 252 Pac. 673.

State v. Garney, District Court, Madison County—Statutory Rape. Judgment of conviction reversed. 45 Ida. 768, 265 Pac. 668.

State v. George, District Court, Twin Falls County—Interfering with irrigation ditch headgate. Judgment of conviction affirmed. 44 Ida. 173, 258 Pac. 551. (Note: Application to the Supreme Court of the United States for Writ of Certiorari denied. 72 L. Ed. —.).

State v. Gibbs, District Court, Oneida County—Statutory Rape. Judgment of conviction reversed. 45 Ida. 760, 265 Pac. 24.

State v. Healey, District Court, Canyon County—Placing poison

in food and drink. Judgment of conviction reversed. 45 Ida. 73, 260 Pac. 694.

State v. Hines, District Court, Twin Falls County—Statutory Rape. Judgment of conviction reversed. 43 Ida. 713, 254 Pac. 217.

State v. Jackett, District Court, Jefferson County—Larceny of Cattle. Judgment of conviction affirmed. 45 Ida. 720, 264 Pac. 875.

In the matter of the application of *H. C. Jennings* for Writ of Habeas Corpus—Appeal from the order of the court below in ruling on said Writ. Judgment affirmed. 46 Ida., 267 Pac. 227.

State v. Jester, District Court, Canyon County—Embezzlement of Irrigation District funds. Judgment of conviction affirmed. 46 Ida., 270 Pac. 417.

State v. Kimery, District Court, Canyon County—Statutory Rape. Appeal dismissed on stipulation. Motion for new trial granted by District Court.

State v. Larsen, District Court, Bannock County—Statutory Rape. Judgment of conviction reversed. 44 Ida. 270, 256 Pac. 107.

State v. Leavitt, District Court, Nez Perce County—Forced Rape. Judgment of conviction affirmed. 44 Ida. 739, 260 Pac. 164.

State v. Lockie, District Court, Twin Falls County. Embezzlement. Judgment of conviction affirmed. 43 Ida. 580, 253 Pac. 618.

State v. Mason, District Court, Canyon County—Transportation of intoxicating liquors. Appeal dismissed and judgment of conviction affirmed. (Unreported).

State v. Marks, District Court, Nez Perce County—Burglary. Judgment of conviction affirmed. 45 Ida. 92, 260 Pac. 697.

State v. Moultrie, District Court, Canyon County—Involuntary manslaughter. Judgment of conviction reversed. 43 Ida. 766, 254 Pac. 520.

State v. Muguerza, District Court, Cassia County—Assault with a deadly weapon. Judgment of conviction affirmed. 46 Ida., 268 Pac. 1.

State v. Murray, District Court, Twin Falls County—Unlawful possession of intoxicating liquor. Judgment of conviction affirmed. 43 Ida. 762, 254 Pac. 518.

State v. Noorlander, et al., District Court, Bannock County—Murder in the first degree. Appeal dismissed and judgment of conviction affirmed. (Unreported).

State v. Pasta, District Court, Bingham County—Violation of the road laws. Judgment of conviction affirmed. 44 Ida. 671, 258 Pac. 1075.

State v. Pate, District Court, Twin Falls County—Burglary. Judgment of conviction reversed. 43 Ida. 648, 253 Pac. 623.

State v. Payton, District Court, Bannock County—Furnishing intoxicating liquors to a minor. Judgment of conviction affirmed. 45 Ida. 668, 264 Pac. 875.

State v. Peters, District Court, Twin Falls County. Embezzlement. Judgment of conviction affirmed. 43 Ida. 564, 253 Pac. 842.

State v. Petrogalli, District Court, Latah County—Violation of the Prohibition Act. Appeal dismissed and judgment affirmed. (Unreported).

State v. Poglianich, District Court, Clearwater County—Murder in the first degree. Judgment of conviction reversed. 44 Ida. 409, 252 Pac. 107.

State v. Roby, District Court, Canyon County—Exhibiting a deadly weapon. Judgment of conviction reversed with directions. 43 Ida. 724, 254 Pac. 210.

State v. Shelton, District Court, Franklin County—Adultery. Judgment of conviction reversed. 46 Ida., 267 Pac. 950.

State v. Smith, District Court, Franklin County—Statutory Rape. Judgment of conviction affirmed. 46 Ida., 265 Pac. 666.

State v. Smith, District Court, Bingham County—Unlawful possession of intoxicating liquors. Judgment of conviction affirmed. 44 Ida. 298, 256 Pac. 1118.

State v. Steele, District Court, Lemhi County. Manslaughter. Appeal dismissed and conviction affirmed. (Unreported).

State v. Stewart, District Court, Kootenai County. Furnishing intoxicating liquor to a minor. Judgment of conviction reversed. 46 Ida., 270 Pac. 140.

State v. Wansgaard, District Court, Blaine County. Grand Larceny. Judgment of conviction affirmed. 46 Ida., 265 Pac. 671.

State v. Webster, District Court, Bannock County—Selling intoxicating liquors. Judgment of conviction affirmed. 46 Ida., Pac.

State v. White, District Court, Bannock County—Embezzlement. Judgment of conviction reversed. 46 Ida., 266 Pac. 415.

State v. Williamson, District Court, Twin Falls County—Unlawful possession of intoxicating liquor. Appeal dismissed and conviction affirmed. (Unreported).

State v. Whitney, District Court, Ada County—Obtaining money under false pretenses. Judgment of conviction reversed. 43 Ida. 745, 254 Pac. 525.

SUPREME COURT OF IDAHO

CRIMINAL APPEALS PENDING

State v. Alvord, District Court, Madison County—Statutory Rape.

State v. Autheman, District Court, Bannock County—Murder in the second degree.

State v. Bradley, District Court, Twin Falls County—Persistent violator of the prohibition act.

State v. Bull, District Court, Minidoka County—Burglary.

State v. Dowell, District Court, Ada County—Statutory Rape.

State v. Farris, District Court, Canyon County—Transportation of intoxicating liquor.

State v. Fong Wee, District Court, Ada County. Practicing medicine without a doctor's license.

State v. Gee, District Court, Ada County—Manslaughter.

State v. Hagan, District Court, Ada County—Receiving stolen property.

State v. Abbott & Jensen, District Court, Ada County—Conspiracy.

State v. Knutson, District Court, Lewis County—Furnishing intoxicating liquor to a minor.

State v. McCarty, District Court, Bannock County—Appeal by the State on ruling of the trial court directing a verdict of acquittal.

State v. Parker, District Court, Bonner County—Violation of the prohibition act.

State v. Severns, District Court, Bonner County—Violation of the prohibition act.

State v. Thomas, District Court, Twin Falls County—Assault with intent to commit rape.

State v. Vail, District Court, Canyon County—Statutory Rape.

State v. Walter Van Eaton, District Court, Twin Falls County—Assault with intent to commit murder.

State v. Buck Van Eaton, District Court, Twin Falls County—Unlawful possession of intoxicating liquor.

State v. Yancy, et al., District Court, Canyon County—Injuring and destroying jail property. Judgment of conviction affirmed. Petition for rehearing pending. (Unreported).

DISTRICT COURTS OF IDAHO

(Cases Closed.)

Beck, Trustee v. Porter, et al., District Court, Ada County—Suit for return of securities posted with defendants. Judgment in favor of defendants.

Boise Association of Credit Men, Ltd., v. Seawell, District Court, Payette County—Suit involving collection of a promissory note. Closed as to State.

DeMary v. Blincoe, District Court, Minidoka County—Action to foreclose mortgage wherein State was made a party. Disclaimer of any interest filed by the State.

DeMary v. Blincoe, District Court, Minidoka County—Action to foreclose a mortgage wherein the State is made a party. Disclaimer of any interest filed by the State.

Davis v. Lukens, District Court, Ada County—Action to compel issuance of license for the practice of dentistry. Dismissed by agreement.

Griffin, et al., v. Lukens, District Court, Ada County—Action contesting the validity of the Barbers' License Law. Dismissed by agreement of parties. Closed.

Hill v. Clark, et al., District Court, Ada County—Action to quiet title. Disclaimer of any interest filed by the State.

Hopkins, et al., v. Royalty, et al., District Court, Nez Perce County—Action for foreclosure of mortgage where the State was made a party. Closed as to the State.

Insurance Finance Corporation v. Phoenix Securities Corporation, District Court, Ada County—Action for possession and to quiet title to securities held by the Director of Insurance. Closed.

Jeffery v. Bunker Hill & Sullivan Mining & Concentrating Co., District Court, Shoshone County—State of Idaho Intervenor. Appealed from the Industrial Accident Board. Action to compel payment of compensation. Payment made April 30, 1928, to State in the amount of \$1,000.00.

McBurney v. Thomas, et al., District Court, Ada County—Action claiming proceeds of sale of beaver skins. Closed.

Merrifield v. Harkness, et al., District Court, Bannock County—Foreclosure of Mortgage. State's interest appears from a lease on the premises. Closed as to State.

Nampa Highway District v. State of Idaho, District Court, Canyon County—Action condemning right of way through State land. Closed.

National Laundry v. W. F. Burgy, et al., District Court, Twin Falls County—Suit to quiet title. Closed as to State.

Romney, v. Wilbert Mining Company, District Court, Butte County—Appealed from the Industrial Accident Board. State of

Idaho Intervenor. Action to compel payment of compensation. Payment made to State in the amount of \$1,000.00 on August 1st, 1928.

In the matter of the application of *Robert P. Smith for a Writ of Habeas Corpus*, District Court, Fremont County—Application dismissed.

State v. Clearwater Timber Co., District Court, Nez Perce County—Action to compel payment of compensation on account of the death of John Archer. Appealed by employer from Industrial Accident Board. Decision of the board reversed.

State v. Utah Construction Co., District Court, Power County—Action to compel payment of compensation on account of the death of Gus Jabes. Claim of the state dismissed.

State v. Western Mutual Benefit Association, District Court, Washington County. Action testing the Blue Sky Statutes. Closed.

State v. Horsley, District Court, Ada County—Suit to collect on surety bond. Settlement by Surety company. Closed.

State v. Sanger, District Court, Ada County—Suit to collect license fees. Dismissed after settlement.

United States v. State Board of Land Commissioners, District Court, Power County—Condemnation proceedings. Closed by a stipulation and payment in full of all charges.

Yocum v. Hecla Mining Co., District Court, Shoshone County—Action to compel payment of compensation on account of the death of Raymond Vinson. Appealed from State Industrial Accident Board. Employer ordered to make payment.

DISTRICT COURTS OF IDAHO

(Cases Pending.)

Aberdeen-Springfield Canal Company v. McConnell, District Court, Power County—Action to collect delinquent water assessments.

Aberdeen-Springfield Canal Company v. King, District Court, Bingham County—Action to collect delinquent water assessments.

Aberdeen-Springfield Canal Company v. Humphrey, District Court, Power County—Suit to collect delinquent water assessments.

Anderson v. Lynch-Canon Engineering Co., State of Idaho, Intervenor. Action compelling payment of compensation on account of the death of O. C. Anderson. District Court, Power County.

Griffith v. Bunker Hill & Sullivan Mining & Concentrating Company, District Court, Valley County—State of Idaho, Intervenor. Action compelling payment of compensation on account of the death of Charles W. Griffith, which was appealed from the Industrial Accident Board.

King v. Idaho Fire Insurance Company, et al., District Court, Ada County—Suit for the annulment of a contract covering capital stock sale.

Lewis v. Pitzer, District Court, Cassia County—Action for foreclosure of mortgage.

Nelson v. Welch, et al., District Court, Ada County—Action against Commissioner of Agriculture based upon his failure to eradicate orchard pests.

State v. Brown, District Court, Clearwater County—Action for collection of forestry charges incurred by disposal of slash.

State v. Fegles Construction Co., District Court of Nez Perce County—Action to compel the payment of compensation on account of the death of James O'Neil, which was appealed from the Industrial Board by employer.

State v. Dotson, et al., District Court, Ada County—Action to collect money by the defendants in error for services rendered.

State v. Salisbury, District Court, Ada County—Action to recover on bond of Assistant Chief Deputy Fish & Game Warden.

State v. Winton Lumber Company. District Court, Shoshone County—Action to compel the payment of compensation on account of the death of Peter John Lavin, which was appealed from the Industrial Accident Board by employer.

White v. Garrett, District Court, Boise County. State of Idaho Intervenor. Original action to foreclose mortgage. State appears by complaint in intervention.

White Lumber Company v. Coons, et al., District Court, Bonner County—Action to recover forestry tax paid under protest.

MORTGAGE FORECLOSURES IN DISTRICT COURTS

(Closed)

Loan No.

- 1157 *State v. Booth, et al.*, Ada County, Judgment taken, property sold.
- 1158 *State v. Johanson, et al.*, Ada County, Judgment taken, property sold.
- 3226 *State v. McNeil*, Ada County, Judgment taken, property sold.
- 3694 *State v. Clark, et ux.*, Ada County, Judgment taken, property sold.
- 3969 *State v. Cell*, Ada County, Judgment taken, property sold.
- 4095 *State v. Bayles, et al.*, Ada County, Interest paid, loan reinstated, Action dismissed.
- 835- *United States v. Nelson, et al.*, State of Idaho, United
- 3338 States District Court. Action by plaintiff in condemnation proceedings. Loan of State of Idaho paid under judgment.

Loan No.

- 2719 *State v. Hancock, et al.*, Adams County, Judgment taken, property sold.
- 3369 *State v. Ellis, et al.*, Adams County, Judgment taken, property sold.
- 3812 *State v. Schroeder, et ux.*, Adams County, Judgment taken, property sold.
- 4136 *State v. Robinson, et al.*, Adams County, Judgment taken, property sold.
- 4283 *State v. Lynch, et ux.*, Adams County, Judgment taken, property sold.
- 2627 *State v. Aitken, et al.*, Bannock County, Judgment taken, property sold.
- 3194 *State v. Kelly*, Bannock County, Judgment taken, property sold.
- 4045 *State v. Call, et al.*, Bannock County. Judgment taken, property sold.
- 4118 *State v. Jenkins*, Bannock County, Interest paid, loan reinstated, Action dismissed.
- 4238 *State v. Jenkins*, Bannock County, Interest paid, loan reinstated, Action dismissed.
- 2159 *State v. Spencer, Jr., et al.*, Bear Lake County, Interest paid, loan reinstated, action dismissed.
- 2381 *State v. Howell, et al.*, Bear Lake County, Judgment taken, property sold.
- 2428 *State v. Howell, et al.*, Bear Lake County, Judgment taken, property sold.
- 2624 *State v. Tippets, et ux.*, Bear Lake County, Judgment taken, property sold.
- 2695 *State v. Richards, et al.*, Bear Lake County, Judgment taken, property sold.
- 2947 *State v. Broomhead, et al.*, Bear Lake County, Judgment taken, property sold.
- 3365 *State v. Wright, et al.*, Bear Lake County, Judgment taken, property sold.
- 3689 *State v. Rich, et al.*, Bear Lake County, Judgment taken, property sold.
- 4309 *State v. Smith, et ux.*, Bear Lake County, Judgment taken, property sold.
- 4558 *State v. Rich, et ux.*, Bear Lake County. Judgment taken, property sold.
- 2180 *State v. Smith, et al.*, Benewah County. Judgment taken, property sold.
- 4232 *State v. Leland, et al.*, Benewah County. Interest paid, loan reinstated. Action dismissed.
- 2830 *State v. Kendall, et al.*, Bingham County. Deed accepted. Action dismissed.

Loan No.

- 3377 *State v. Jackson, et ux.*, Bingham County. Judgment taken, property sold.
- 3419 *State v. Teney, et ux.*, Bingham County. Judgment taken, property sold.
- 3461 *State v. Capson, et al.*, Bingham County. Deed accepted. Action dismissed.
- 3544 *State v. McBride, et ux.*, Bingham County. Deed accepted. Action dismissed.
- 3772 *State v. Fargo et al.*, Bingham County. Judgment taken, property sold.
- 3904 *State v. Swanson, et al.*, Bingham County. Judgment taken, property sold.
- 4092 *State v. Hutchinson, et al.*, Bingham County. Judgment taken, property sold.
- 4139 *State v. Wareing, et ux.*, Bingham County. Interest paid, loan reinstated. Action dismissed.
- 4497 *State v. Moses, et al.*, Bingham County. Judgment taken, property sold.
- 8 *State v. Byrne, et al.*, Blaine County. Judgment taken, property sold.
- 2258 *State v. Shaw, et al.*, Blaine County. Judgment taken, property sold.
- 2442 *State v. Irvin, et al.*, Blaine County. Judgment taken, property sold.
- 2519 *State v. Lark, et al.*, Blaine County. Judgment taken, property sold.
- 2536 *State v. Buckler, et al.*, Blaine County. Judgment taken, property sold.
- 2575 *State v. Jones, et al.*, Blaine County. Judgment taken, property sold.
- 2666 *State v. Smith, et al.*, Blaine County. Judgment taken, property sold.
- 2823 *State v. Cahoon, et al.*, Blaine County. Judgment taken, property sold.
- 2824 *State v. Cahoon, et al.*, Blaine County. Judgment taken, property sold.
- 3379 *State v. Osborn, et al.*, Blaine County. Judgment taken, property sold.
- 3411 *State v. Hollenbeck, et ux.*, Blaine County. Judgment taken, property sold.
- 3607 *State v. Weber, et ux.*, Blaine County. Judgment taken, property sold.
- 3743 *State v. Cook, et al.*, Blaine County. Judgment taken, property sold.
- 4257 *State v. Malcolm, et al.*, Blaine County. Judgment taken, property sold.

Loan No.

- 2565 *State v. Jensen, et al.*, Boise County. Judgment taken, property sold.
- 1667 *State v. Williams, et al.*, Bonneville County. Judgment taken, property sold.
- 3289 *State v. Lawrence, et al.*, Bonneville County. Judgment taken, property sold.
- 3605 *State v. Ryset, et al.*, Bonneville County. Judgment taken, property sold.
- 3648 *State v. Larsen, et al.*, Bonneville County. Interest paid, loan reinstated. Action dismissed.
- 3713 *State v. Ricks, et al.*, Bonneville County. Judgment taken,
- 3714 property sold.
- 3878 *State v. Larsen, et al.*, Bonneville County. Interest paid, loan reinstated. Action dismissed.
- 912 *State v. Eitelbuss, et al.*, Boundary County. Taxes and interest paid, loan reinstated. Action dismissed.
- 2184 *State v. Ferbrache, et ux.*, Boundary County. Judgment taken, property sold.
- 2992 *State v. Shultis, et al.*, Boundary County. Interest paid, loan reinstated. Action dismissed.
- 3254 *State v. Warberg, et al.*, Boundary County. Judgment taken, property sold.
- 3421 *State v. Hoagland, et al.*, Boundary County. Judgment taken, property sold.
- 4013 *State v. Fry, et ux.*, Boundary County. Interest paid, loan reinstated. Action dismissed.
- 4049 *State v. Erving, et al.*, Boundary County. Judgment taken, property sold.
- 750 *State v. Montgomery, et al.*, Butte County. Judgment taken, property sold.
- 2862 *State v. Turner, et al.*, Butte County. Judgment taken, property sold.
- 3893 *State v. Bassett, et al.*, Butte County. Judgment taken, property sold.
- 2584 *State v. Matthews, et al.*, Camas County. Judgment taken, property sold.
- 2873 *State v. Larson, et al.*, Camas County. Judgment taken, property sold.
- 3357 *State v. Harris, et al.*, Camas County. Judgment taken, property sold.
- 3358 *State v. Harris, et al.*, Camas County. Judgment taken, property sold.
- 3360 *State v. Jesness, et al.*, Camas County. Judgment taken, property sold.
- 3761 *State v. Pahl, et al.*, Camas County. Judgment taken, property sold.

Loan No.

- 3467 *State v. Vaught, et al.*, Camas County. Judgment taken, property sold.
- 3984 *State v. Metcalf, et al.*, Camas County. Judgment taken. Loan placed in good standing subsequent to taking of judgment. Judgment unsatisfied.
- 1783 *State v. Moore, et al.*, Canyon County. Interest paid, loan reinstated. Action dismissed.
- 2295 *State v. Pascoe, Jr., et al.*, Canyon County. Judgment taken, property sold.
- 2494 *State v. Darling, et ux.*, Canyon County. Interest paid, loan reinstated. Action dismissed.
- 2514 *State v. Riddle, et al.*, Canyon County. Judgment taken, property sold.
- 2569 *State v. Meyers, et al.*, Canyon County. Judgment taken, property sold.
- 2570 *State v. Ruby, et al.*, Canyon County. Judgment taken; property transferred by mortgagors; purchaser assuming judgment.
- 2637 *State v. Wood, et al.*, Canyon County. Judgment taken, property sold.
- 2685 *State v. Dotson, et al.*, Canyon County. Judgment taken, property sold.
- 2693 *State v. LeClere, et al.*, Canyon County. Judgment taken, property sold.
- 2703 *State v. Ruby, et al.*, Canyon County. Judgment taken, property sold.
- 2740 *State v. Stinson, et ux.*, Canyon County. Interest paid, loan reinstated. Action dismissed.
- 2859 *State v. Potter, et al.*, Canyon County. Judgment taken, property sold.
- 2865 *State v. Bolitho, et al.*, Canyon County. Judgment taken. Closed by adjustment of loan made by Department of Public Investments.
- 2900 *State v. Bolitho, et al.*, Canyon County. Judgment taken. Closed by adjustment of loan made by Department of Public Investments.
- 2902 *State v. Claybaugh, et al.*, Canyon County. Judgment taken, property sold.
- 3145 *State v. Kelly, et ux.*, Canyon County. Interest paid, loan reinstated. Action dismissed.
- 3176 *State v. Bailey, et ux.*, Canyon County. Judgment taken, property sold.
- 3485 *State v. Allen, et al.*, Canyon County. Interest paid, loan reinstated. Action dismissed.
- 3532 *State v. Allen, et ux.*, Canyon County. Interest paid, loan reinstated. Action dismissed.

Loan No.

- 11 *State v. Patterson et al.*, Cassia County. Judgment taken, property sold.
- 926 *State v. Condit, et al.*, Cassia County. Judgment taken, property sold.
- 1049 *State v. Clayton, et al.*, Cassia County. Judgment taken, property sold.
- 1061 *State v. Stevens, et al.*, Cassia County. Judgment taken, property sold.
- 1112 *State v. Strong, et al.*, Cassia County. Judgment taken, property sold.
- 1445 *State v. Gholson, et al.*, Cassia County. Judgment taken, property sold.
- 1612 *State v. Cook, et al.*, Cassia County. Judgment taken, property sold.
- 1666 *State v. Taylor, et al.*, Cassia County. Judgment taken, property sold.
- 2033 *State v. Lewis, et al.*, Cassia County. Judgment taken, property sold.
- 2275 *State v. Latham, et al.*, Cassia County. Judgment taken, property sold.
- 2827 *State v. England, et al.*, Cassia County. Judgment taken, property sold.
- 3208 *State v. Bull*, Cassia County. Judgment taken, property sold.
- 3448 *State v. Parr, et al.*, Cassia County. Judgment taken, property sold.
- 3735 *State v. McBride, et al.*, Cassia County. Judgment taken, property sold.
- 3798 *State v. Ellerby, et al.*, Cassia County. Payment in full. Action dismissed.
- 4106 *State v. Parish, et al.*, Cassia County. Interest paid, loan reinstated. Action dismissed.
- 2336 *State v. Belnap, et al.*, Clark County. Judgment taken, property sold.
- 2807 *State v. Ellis, et al.*, Custer County. Judgment taken, property sold.
- 2949 *State v. Ellis, et al.*, Custer County. Judgment taken, property sold.
- 3459 *State v. Caldwell, et al.*, Custer County. Judgment taken, property sold.
- 1995 *State v. Francis*, Elmore County. Interest paid, loan reinstated. Action dismissed.
- 2966 *State v. Kissinger, et al.*, Elmore County. Judgment taken, property sold.
- 3070 *State v. Roler, et al.*, Elmore County. Deed accepted. Action dismissed.

Loan No.

- 3140 *State v. Flagler, et ux.*, Elmore County. Judgment taken, property sold.
- 3693 *State v. Brown, et al.*, Elmore County. Judgment taken, property sold.
- 3696 *State v. Evans, et al.*, Elmore County. Judgment taken, property sold.
- 3739 *State v. Rice, et al.*, Elmore County. Judgment taken, property sold.
- 2857 *State v. Mason, et al.*, Franklin County. Judgment taken, property sold.
- 3109 *State v. Evans, et al.*, Franklin County. Interest paid, loan reinstated. Action dismissed.
- 3240 *State v. Olson, et al.*, Franklin County. Judgment taken, property sold.
- 3538 *State v. Robinson, et al.*, Franklin County. Interest paid, loan reinstated. Action dismissed.
- 3703 *State v. Henderson, et al.*, Franklin County. Judgment taken, property sold.
- 1143 *State v. Curtis, et al.*, Fremont County. Judgment taken, property sold.
- 2523 *State v. Johnson, et al.*, Fremont County. Judgment taken, property sold.
- 2841 *State v. Staker, et al.*, Fremont County. Judgment taken, property sold.
- 3005 *State v. Martin*, Fremont County. Judgment taken, property sold.
- 3021 *State v. Pemble, et al.*, Fremont County. Judgment taken, property sold.
- 3469 *State v. Merrill, et al.*, Fremont County. Interest paid, loan reinstated. Action dismissed.
- 3516 *State v. Hargis*, Fremont County. Interest paid, loan reinstated. Action dismissed.
- 3628 *State v. Smart*, Fremont County. Interest paid, loan reinstated. Action dismissed.
- 4083 *State v. Niendorf, et al.*, Fremont County. Interest paid, loan reinstated. Action dismissed.
- 3322 *State v. Tappan, et al.*, Gem County. Judgment taken, property sold.
- 3337 *State v. Look, et al.*, Gem County. Judgment taken, property sold.
- 3353 *State v. Field, et al.*, Gem County. Loan adjusted with Department of Public Investments. Action dismissed.
- 3539 *State v. Burns, et al.*, Gem County. Judgment taken, property sold.
- 3570 *State v. Bissell, et ux.*, Gooding County. Judgment taken, property sold.

Loan No.

- 818 *State v. Parry, et al.*, Idaho County. Judgment taken, property sold.
- 2679 *State v. McMahon, et al.*, Idaho County. Judgment taken, property sold.
- 2909 *State v. Platt, et al.*, Idaho County. Judgment taken, property sold.
- 3309 *State v. Wilkin, et al.*, Idaho County. Judgment taken, sale pending.
- 3309 *State v. Wilkin, et al.*, Idaho. Old action dismissed; new action filed.
- 3382 *State v. Taylor, et al.*, Idaho County. Judgment taken, property sold.
- 4156 *State v. Brown, et ux.*, Idaho County. Judgment taken, property sold.
- 4199 *State v. Putman, et al.*, Idaho County. Paid in full. Action dismissed.
- 3384 *State v. Williams, et al.*, Jerome County. Judgment taken, property sold.
- 3385 *State v. Williams, et al.*, Jerome County. Judgment taken, property sold.
- 1592 *State v. Gruell, Jr., et al.*, Latah County. Judgment taken, property sold.
- 2319 *State v. Byrne, et al.*, Lincoln County. Judgment taken, property sold.
- 2483 *State v. Bates, et al.*, Lincoln County. Judgment taken, property sold.
- 2486 *State v. Elliott, Sr., et al.*, Lincoln County. Judgment taken, property sold.
- 2649 *State v. Fender, et al.*, Lincoln County. Judgment taken, property sold.
- 3451 *State v. Serpa, et al.*, Lincoln County. Judgment taken, property sold.
- 3937 *State v. McIntyre, et al.*, Lincoln County. Deed accepted. Action dismissed.
- 4192 *State v. Albers, et al.*, Lincoln County. Interest paid, loan reinstated. Action dismissed.
- 2358 *State v. Baker, et al.*, Madison County. Judgment taken, property sold.
- 2413 *State v. Webster, et ux.*, Madison County. Interest paid, loan reinstated. Action dismissed.
- 1852 *State v. Christean, et al.*, Minidoka County. Judgment taken, property sold.
- 2876 *State v. Neibaur*, Minidoka County. Judgment taken, property sold.
- 3054 *State v. Rigg, et al.*, Minidoka County. Judgment taken, property sold.
- 3055 *State v. Rigg, et al.*, Minidoka County. Judgment taken, property sold.

Loan No.

- 3187 *State v. Todd, et ux.*, Minidoka County. Judgment taken, property sold.
- 3298 *State v. Davis, et al.*, Minidoka County. Judgment taken, property sold.
- 3362 *State v. Neibaur, et al.*, Minidoka County. Judgment taken, property sold.
- 3552 *State v. Heck, et al.*, Minidoka County. Judgment taken, property sold.
- 2261 *State v. Weese, et al.*, Oneida County. Judgment taken, property sold.
- 2328 *State v. Peck, et al.*, Oneida County. Interest paid, loan reinstated. Action dismissed.
- 3022 *State v. Parry, et al.*, Oneida County. Judgment taken, property sold.
- 3121 *State v. Richards, et al.*, Oneida County. Judgment taken, property sold.
- 3509 *State v. Austin, et al.*, Oneida County. Judgment taken, property sold.
- 3592 *State v. Ekstrom, et ux.*, Oneida County. Interest paid, loan reinstated. Action dismissed.
- 4345 *State v. Jenkins, et al.*, Oneida County. Interest paid, loan reinstated. Action dismissed.
- 528 *State v. Altschul, et al.*, Owyhee County. Judgment taken, property sold.
- 836 *State v. Rock, et al.*, Owyhee County. Judgment taken, property sold.
- 1486 *State v. Ross, et al.*, Owyhee County. Judgment taken, property sold.
- 2200 *State v. Pfeiffer, et al.*, Owyhee County. Judgment taken, property sold.
- 3290 *State v. Cross, et al.*, Owyhee County. Judgment taken, property sold.
- 3666 *State v. Freitag, et al.*, Owyhee County. Judgment taken, property sold.
- 3755 *State v. Jessup, et al.*, Owyhee County. Deed accepted. Action dismissed.
- 4189 *State v. Moss, et al.*, Owyhee County. Interest paid, loan reinstated. Action dismissed.
- 4278 *State v. Lee, et al.*, Owyhee County. Judgment taken, property sold.
- 2656 *State v. Lynn, et al.*, Payette County. Judgment taken, property sold.
- 1558 *State v. Kosanke, et al.*, Power County. Judgment taken, property sold.
- 2285 *State v. Eliassen, et al.*, Power County. Judgment taken, property sold.

Loan No.

- 2488 *State v. Evans Bros. L. & L. Co., et al.*, Power County. Judgment taken, property sold.
- 2559 *State v. Walker, Jr.*, Power County. Interest paid, loan reinstated. Action dismissed.
- 3050 *State v. Morris, et al.*, Power County. Judgment taken, property sold.
- 3160 *State v. Radke, et al.*, Power County. Judgment taken, property sold.
- 3243 *State v. Bethke, et al.*, Power County. Judgment taken, property sold.
- 3294 *State v. Creasey, et al.*, Power County. Paid in full. Action dismissed.
- 3366 *State v. Ogden, et al.*, Power County. Judgment taken, property sold.
- 3407 *State v. Fredrich*, Power County. Judgment taken, property sold.
- 3536 *State v. Rdener, et al.*, Power County. Judgment taken, property sold.
- 3658 *State v. Anderson, et al.*, Power County. Interest paid, loan reinstated. Action dismissed.
- 3697 *State v. Evans, et al.*, Power County. Judgment taken, property sold.
- 3719 *State v. Walworth, et al.*, Power County. Judgment taken, property sold.
- 3768 *State v. Wraspir, et al.*, Power County. Judgment taken, property sold.
- 4017 *State v. Farnham, et al.*, Power County. Judgment taken, property sold.
- 4109 *State v. Sedina, et al.*, Power County. Judgment taken, property sold.
- 4160 *State v. Scrimsher*, Power County. Interest paid, loan reinstated. Action dismissed.
- 3684 *State v. Maxwell*, Power County. Interest paid, loan reinstated. Action dismissed.
- 4503 *State v. Minear, et al.*, Power County. Interest paid, loan reinstated. Action dismissed.
- 4406 *State v. Isaak, et al.*, Power County. Interest paid, loan reinstated. Action dismissed.
- 2870 *State v. Griggs*, Teton County. Deed accepted. Action dismissed.
- 3205 *State v. Little, et al.*, Teton County. Judgment taken, property sold.
- 3214 *State v. Harris, et al.*, Teton County. Judgment taken, property sold.
- 3378 *State v. Johnson, et al.*, Teton County. Judgment taken, property sold.

Loan No.

- 3559 *State v. Letham, et al.*, Teton County. Interest paid, loan reinstated. Action dismissed.
- 3595 *State v. Harris, et al.*, Teton County. Judgment taken, property sold.
- 3596 *State v. Harris, et al.*, Teton County. Judgment taken, property sold.
- 3601 *State v. Kirk, et al.*, Teton County. Judgment taken, property sold.
- 3646 *State v. Jacob, et ux.*, Teton County. Judgment taken, property sold.
- 3647 *State v. Jorgensen, et ux.*, Teton County. Judgment taken, property sold.
- 3705 *State v. Keatley, et ux.*, Teton County. Judgment taken, property sold.
- 3757 *State v. Little, et ux.*, Teton County. Deed accepted. Action dismissed.
- 3820 *State v. Daniels, et al.*, Teton County. Judgment taken, property sold.
- 3835 *State v. Schlarbaum, et al.*, Teton County. Judgment taken, property sold.
- 3850 *State v. Griggs, et al.*, Teton County. Interest paid, loan reinstated. Action dismissed.
- 3870 *State v. McCracken, et al.*, Teton County. Interest paid, loan reinstated. Action dismissed.
- 3925 *State v. Linseman, et ux.*, Teton County. Judgment taken, property sold.
- 3947 *State v. Jorgensen, et al.*, Teton County. Judgment taken, property sold.
- 4073 *State v. Crandall, et al.*, Teton County. Interest paid, loan reinstated. Action dismissed.
- 4216 *State v. Swanstrum, et ux.*, Teton County. Interest paid, loan reinstated. Action dismissed.
- 2283 *State v. Alsterberg, et al.*, Washington County. Judgment taken, property sold.
- 2658 *State v. Saling, et al.*, Washington County. Judgment taken, property sold.
- 3211 *State v. Paradis, et al.*, Washington County. Judgment taken, property sold.
- 3270 *State v. Galloway, et al.*, Washington County. Judgment taken, property sold.
- 3436 *State v. Miller, et ux.*, Washington County. Judgment taken, property sold.
- 3512 *State v. Cate, et al.*, Washington County. Judgment taken, property sold.
- 3762 *State v. Pease, et ux.*, Washington County. Judgment taken, property sold.

Loan No.

- 3906 *State v. Wulff, et ux.*, Washington County. Judgment taken, property sold.
- 3906 *State v. Wulff, et al.*, Washington County. Interest paid, loan reinstated. Action dismissed.
- 3942 *State v. Cooley, et al.*, Washington County. Judgment taken, property sold.
- 3957 *State v. Ross, et al.*, Washington County. Judgment taken, property sold.

MORTGAGE FORECLOSURES IN DISTRICT COURTS

(Pending)

Loan No.

- 2995 *State v. VanGilse, et al.*, Ada County. Service incomplete.
- 3048 *State v. Hebard, et al.*, Ada County. Service incomplete.
- 3732 *State v. Jarrett, et al.*, Ada County. Judgment taken, pending sale.
- 2193 *State v. Nate, et al.*, Bear Lake County. Judgment taken, further proceedings withheld at request of Department of Public Investments.
- 3992 *State v. Spencer*, Bear Lake County. Default entered. Further proceedings withheld at request of Department of Public Investments.
- 2598 *State v. Pinkerton, et al.*, Bingham County. Default entered. Ready for trial.
- 4170 *State v. Gibson, et al.*, Blaine County. Service incomplete.
- 1402 *State v. Henry, et al.*, Blaine County. Service incomplete.
- 2520 *State v. Larsen, et al.*, Blaine County. Pending on demurrer.
- 1706 *State v. Moulton, et al.*, Boise County. Service complete. Ready for trial.
- 2205 *State v. Richards, et al.*, Bonneville County. Service incomplete.
4. *State v. Weeks, et al.*, Canyon County. Default entered; ready for trial; Further proceedings withheld at request of Department of Public Investments.
- 3051 *State v. Nagel, et al.*, Canyon County. Pending on appeal.
- 426 *State v. Critchfield, et al.*, Cassia County. Service incomplete.
- 1283 *State v. Wilson, et al.*, Cassia County. Ready for trial.
- 1283 *State v. Wilson, et al.*, Cassia County. Pending on demurrer.
- 729 *State v. Workman, et al.*, Cassia County. Pending on demurrer.
- 860 *State v. Zilkey, et al.*, Custer County. Judgment taken, sale pending.
- 4836 *State v. McKeegan, et al.*, Elmore County. Service incomplete.

Loan No.

- 3119 *State v. Nelson, et al.*, Franklin County. Pending on demurrer.
- 3624 *State v. Lavery*, Fremont County. Default entered; ready for trial. Further proceedings withheld at request of Department of Public Investments.
- 4224 *State v. Isenburg, et al.*, Fremont County. Judgment taken, sale pending.
- 4225 *State v. Isenburg, et al.*, Fremont County. Judgment taken, sale pending.
- 4226 *State v. Merrill, et al.*, Fremont County. Judgment taken, sale pending.
- 4344 *State v. Lloyd, et al.*, Fremont County. Service complete, ready for trial.
- 4697 *State v. Blanchard, et al.*, Fremont County. Judgment taken, sale pending.
- 3143 *State v. Gerber, et al.*, Gem County. Judgment taken, sale pending.
- 944 *State v. Colburn, et al.*, Gem County. Pending on demurrer.
- 672 *State v. Hartley, et al.*, Gem County. Pending on demurrer.
- 4096 *State v. Church, et al.*, Gem County. Judgment taken, sale pending.
- 3309 *State v. Wilkin, et al.*, Idaho County. Judgment taken, sale pending.
- 195 *State v. Heirs of John E. Beede, deceased*, District Court, Idaho County. Action to quiet title pending, service incomplete.
- 4259 *State v. Lundsten, et al.*, Lincoln County. Pending on demurrer.
- 3521 *State v. Silvester, et ux.*, Madison County. Judgment taken, sale pending.
- 3092 *State v. Maynard, et al.*, Minidoka County. Service incomplete.
- 999 *State v. Brunzell, et al.*, Owyhee County. Service incomplete.
- 3209 *State v. Wicher, et al.*, Owyhee County. Service incomplete.
- 3210 *State v. Wicher, et al.*, Owyhee County. Service incomplete.
- 2441 *State v. Enberg, et al.*, Payette County. Service incomplete.
- 2726 *State v. Gladish, et al.*, Payette County. Writ of Assistance for land sold under mortgage foreclosure. Pending on appeal to Supreme Court.
- 1961 *State v. Jacobs, et al.*, Power County. Service incomplete.
- 3650 *State v. Mikesell, et al.*, Teton County. Judgment taken; further proceedings withheld at request of Department of Public Investments.
- 2795 *State v. Rutledge, et ux.*, Twin Falls County. Judgment taken, sale pending.
- 3472 *State v. Swain, et al.*, Twin Falls County. Service complete, pending on demurrer.
- 3473 *State v. Swain, et al.*, Twin Falls County. Service complete, pending on demurrer.

FARM LOANS SUBMITTED FOR COLLECTION AND CLOSED WITHOUT SUIT

Loan No.

1016	<i>Harris.</i>	Closed by payment of interest.
1178	<i>Stevens.</i>	Closed by payment of interest.
1318	<i>Lewis.</i>	Closed by acceptance of deed.
1386	<i>Allen.</i>	Closed by payment of interest.
1662	<i>Barsalow.</i>	Closed by payment of interest.
2159	<i>Spencer.</i>	Closed by payment of interest.
2188	<i>Hillhouse.</i>	Closed by payment of interest.
2297	<i>Barker.</i>	Closed by acceptance of deed.
2302	<i>Barben.</i>	Closed by acceptance of deed.
2413	<i>Webster.</i>	Closed by payment of interest.
2415	<i>Webster.</i>	Closed by payment of interest.
2444	<i>Lewis.</i>	Withdrawn by Department of Public Investments.
2495	<i>Allen.</i>	Closed by payment of interest.
2578	<i>Hanson.</i>	Closed by payment of interest.
2591	<i>Silva.</i>	Closed by payment of interest.
2623	<i>Tucker.</i>	Paid in full.
2699	<i>Ricks.</i>	Closed by payment of interest.
2735	<i>Hudson.</i>	Closed by payment of interest.
2760	<i>Bosworth.</i>	Closed by extension of loan.
2761	<i>Martin.</i>	Closed by payment of interest.
2820	<i>Sessions.</i>	Closed by payment of interest.
2830	<i>Kendall.</i>	Closed by acceptance of deed.
2841	<i>Staker.</i>	Closed by payment of interest.
2910	<i>Turnbull.</i>	Closed by acceptance of deed.
2913	<i>Josephson.</i>	Closed by acceptance of deed.
2995	<i>Van Gilse.</i>	Closed by partial payment of interest.
3042	<i>Rich.</i>	Closed by payment of interest.
3060	<i>Quick.</i>	Closed by acceptance of deed.
3061	<i>Robbins.</i>	Closed by acceptance of deed.
3157	<i>Wooley.</i>	Closed by payment of interest.
3162	<i>Allen.</i>	Closed by payment of interest.
3186	<i>Robbins.</i>	Closed by payment of interest.
3218	<i>Thomas & Stephens.</i>	Closed by payment of interest.
3300	<i>Bolitho.</i>	Closed by payment of interest.
3304	<i>Josephson.</i>	Closed by payment of interest.
3319	<i>Lewis.</i>	Closed by acceptance of deed.
3335	<i>Kruger.</i>	Withdrawn by Department of Public Investments.
3343	<i>Engleman.</i>	Closed by payment of interest.
3359	<i>Hyde.</i>	Closed by payment of interest.
3364	<i>Wright.</i>	Closed by acceptance of deed.
3373	<i>Vanairsdale.</i>	Closed by payment in full.
3457	<i>White.</i>	Closed by payment of interest.
3465	<i>Isenburg.</i>	Closed by payment of interest.
3469	<i>Merrill.</i>	Closed by payment of interest.
3530	<i>Wilson.</i>	Closed by acceptance of deed.
3532	<i>Allen.</i>	Closed by payment of interest.
3533	<i>Bosworth.</i>	Closed by extension of loan.

Loan No.

- 3534 *Lundy*. Closed by renewal of loan.
- 3580 *Schlichting*. Closed by payment of interest.
- 3590 *Bosworth*. Closed by extension of loan.
- 3650 *Mikesell*. Closed by payment of interest.
- 3685 *Page*. Closed by payment of interest.
- 3687 *Pugmire*. Closed by payment of interest.
- 3688 *Pugmire*. Closed by payment of interest.
- 3690 *O'Malley*. Closed by payment of interest.
- 3701 *Hardman*. Closed by payment of interest.
- 3786 *Requa*. Closed by payment of interest.
- 3789 *Walker*. Closed by payment of interest.
- 3790 *Webster-Sewell Farm*. Closed by payment of interest.
- 3791 *Webster*. Closed by payment of interest.
- 3792 *Webster*. Closed by payment of interest.
- 3798 *Ellerby*. Closed by payment of interest.
- 3816 *Carter*. Closed by payment of interest.
- 3831 *Dunn Estate*. Closed by payment of interest.
- 3834 *Ripplinger*. Closed by payment of interest.
- 3840 *Finney*. Closed by payment of interest.
- 3842 *Ryder*. Paid in full; closed.
- 3846 *Campbell*. Closed by payment of interest.
- 3876 *Hawkins*. Closed by payment of interest.
- 3886 *Scanlan*. Closed by payment of interest.
- 3887 *Scheuss*. Paid in full; closed.
- 3890 *Scanlan*. Closed by payment of interest.
- 3897 *Hunter*. Interest paid; extension granted.
- 3960 *Thompson*. Closed by payment of interest.
- 3970 *Cook*. Closed by payment of interest.
- 4005 *Plumer*. Closed by payment of interest.
- 4013 *Fry*. Closed by payment of interest.
- 4027 *Fackrell*. Withdrawn by Department of Public Investments.
- 4037 *Lawson Bros*. Closed by payment of interest.
- 4054 *Lusk*. Closed by payment of interest.
- 4062 *Findley*. Closed by payment of interest.
- 4069 *Fischer*. Closed by payment of interest.
- 4077 *Hargis*. Closed by payment of interest.
- 4103 *Brower*. Closed by payment of interest.
- 4111 *Bagwell*. Closed by payment of interest.
- 4112 *Carpenter*. Closed by payment of interest.
- 4130 *Monson*. Closed by payment of interest.
- 4131 *Sweeney*. Closed by payment of interest.
- 4139 *Waring*. Closed by payment of interest.
- 4142 *Burgman*. Closed by payment of interest.
- 4160 *Scrimsher*. Closed by payment of interest.
- 4189 *Moss*. Closed by payment of interest.
- 4215 *Taylor*. Closed by payment of interest.
- 4232 *Leland*. Closed by payment of interest.
- 4236 *Finch*. Closed by payment of interest.
- 4253 *Bumgarner*. Closed by payment of interest.
- 4284 *Madsen*. Paid in full; closed.
- 4282 *Jensen*. Closed by payment of interest.

- 4299 *Carrigan*. Closed by payment of interest.
4302 *Hardiman*. Closed by payment of interest.
4323 *Collins*. Closed by payment of interest.
4332 *Rees*. Closed by payment of interest.
4378 *Kissner*. Closed by payment of interest.
4432 *Peterson*. Closed by payment of interest.
4437 *Wylie*. Closed by payment of interest.
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4564 *Hanson*. Closed by payment of interest.

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State, Claimant, v. Ajax Mining Co., Employer—Re: *Ivar Janderson, deceased*. Claim by State Auditor. Employer ordered to pay State \$1,000.00. Payment made February 24, 1927.

State, Claimant v. Charles W. Bardmore, Employer—Re: *Patrick Hart, deceased*. Claim by State Auditor. Employer ordered to pay State \$1,000.00. Payment made December 14, 1926.

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