

# Attorney General's Biennial Report



STATE OF IDAHO



1939—1940



J. W. TAYLOR  
*Attorney General*

## ATTORNEY GENERAL'S DEPARTMENT

J. W. TAYLOR.....	ATTORNEY GENERAL
R. W. BECKWITH.....	Assistant Attorney General
E. G. ELLIOTT.....	Assistant Attorney General
LAWRENCE B. QUINN.....	Assistant Attorney General
D. W. THOMAS.....	Assistant Attorney General
*Marjory Landsborough.....	Secretary to Attorney General
Pearl Evans.....	Secretary to Attorney General
*Melba Brown.....	Stenographer
*Mildred Clare.....	Stenographer
*Margaret Severson.....	Stenographer
*Helen Auberman.....	Stenographer
*Pearl Evans.....	Stenographer
Ila Droz.....	Stenographer
Dorothy Elliott.....	Stenographer

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\*Resigned.

**PROSECUTING ATTORNEYS FOR COUNTIES OF IDAHO**  
**1939-1940**

County	Name	Address
Ada.....	Kenneth O'Leary. ✓	Boise
Adams.....	Carl H. Swanstrom. ✓	Council
Bannock.....	C. M. Jeffery.....	Pocatello
Bear Lake.....	D. E. Haddock.....	Paris
Benewah.....	Wm. D. Keeton.....	St. Maries
Bingham.....	H. Wm. Furchner.....	Blackfoot
Blaine.....	Roy Van Winkle.....	Hailey
Boise.....	Claude V. Marcus. ✓	Idaho City
Bonner.....	Allen H. Asher.....	Sand Point
Bonneville.....	Geo. W. Edgington.....	Idaho Falls
Boundary.....	W. J. Nixon.....	Bonnors Ferry
Butte.....	F. J. Cowen.....	Arco
Camas.....	Charles Scoggin. ✓	Fairfield
Canyon.....	Donald Anderson. ✓	Caldwell
Caribou.....	R. J. Dygert.....	Soda Springs
Cassia.....	Adonis H. Nielson.....	Burley
Clark.....	William W. Renfrew. ✓	Dubois
Clearwater.....	Edward T. Johnson.....	Orofino
Custer.....	Merle L. Drake.....	Challis
Elmore.....	Perce Hall. ✓	Mountain Home
Franklin.....	Ben B. Johnson. ✓	Preston
Fremont.....	Herbert Skalet.....	St. Anthony
Gem.....	T. Y. Gwilliam. ✓	Emmett
Gooding.....	M. F. Ryan.....	Gooding
Idaho.....	Harry J. Hanley.....	Grangeville
Jefferson.....	Wm. P. Hemminger.....	Rigby
Jerome.....	Frank M. Rettig. ✓	Jerome
Kootenai.....	Wm. S. Hawkins. ✓	Coeur d' Alene
Latah.....	Murray Estes.....	Moscow
Lemhi.....	E. W. Whitcomb.....	Salmon
Lewis.....	G. C. Pennell.....	Nezperce
Lincoln.....	Charles C. Shaw.....	Shoshone
Madison.....	C. W. Poole.....	Rexburg
Minidoka.....	H. A. Baker.....	Rupert
Nez Perce.....	Ray E. Durham.....	Lewiston
Oneida.....	T. E. Ray.....	Malad
Owyhee.....	Milo Axelsen. ✓	Murphy
Payette.....	John T. Kenward. ✓	Payette
Power.....	Frank L. Benson.....	American Falls
Shoshone.....	Albert J. Graf.....	Wallace
Teton.....	S. H. Atchley.....	Driggs
Twin Falls.....	Everett M. Sweeley.....	Twin Falls
Valley.....	Randall Wallis. ✓	Cascade
Washington.....	John J. Peacock. ✓	Weiser

## ATTORNEYS GENERAL OF THE STATE OF IDAHO

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### Since Statehood

*George H. Roberts.....	1891-1892
*George M. Parsons.....	1893-1896
*Robert E. McFarland.....	1897-1898
*Samuel E. 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.....	1929-1930
Fred J. Babcock.....	1931-1932
Bert H. Miller.....	1933-1936
J. W. Taylor.....	1937-1940

\*Deceased

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## JUSTICES OF THE SUPREME COURT

1939-1940

James F. Ailshie, Chief Justice.....	Coeur d'Alene
Edwin M. Holden, Justice.....	Idaho Falls
Alfred Budge, Justice.....	Pocatello
Raymond L. Givens, Justice.....	Boise
William M. Morgan, Justice.....	Boise



## REPORT OF THE ATTORNEY GENERAL

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December, 1940

Honorable C. A. Bottolfsen  
Governor of Idaho  
Boise, Idaho

Dear Governor:

In compliance with statutory requirements I submit my report for the biennium ending December 1, 1940.

A review of almost four years of my incumbency in the office of Attorney General leads to the conclusion that there has been, and probably always will be, in state government, a conflict between those who are interested in government to attain for the people laws and business practices conducive to the betterment of the state as a whole on the one hand and, on the other hand those who, while holding political office, favor for the purpose of perpetuating themselves in office special interests and privileges for persons or combinations who desire an inside track on state contracts and other state business; and with these conflicting interests, a great portion of my administration has been concerned. It is my belief that the overwhelming majority of citizens in this state are interested in economic, honest and efficient government without special privileges to any individual or group, either connected with the state officially or having a business relationship with it; and while I have received violent criticism for this attitude, it is, to my mind, essential that such a concept be upheld at every turn in order that we may have a strong and stable democratic government. Having this thought in mind, I desire to call particular attention of the legislature to some few matters which merit their special consideration; this for the purpose of making clear-cut, precise and definite certain laws regarding the letting of contracts and the conduct of other state business, which laws are now so uncertain as to permit evasion of poorly expressed legislative intent.

### Legislative

There is an absolute necessity, in my mind, that the legislative arm of the government be strengthened by giving to the legislators a greater opportunity to consider proposed legislation prior to its passage. This might be accomplished by an interim legislative drafting committee established for the purpose of considering the mechanical problems encountered in the preparation of bills for passage. Such a committee would receive bills before the beginning of the legislative session and prepare them in such form that their meaning would be clearly and accurately expressed, an accomplishment which is difficult in the necessary confusion incident to the opening days of any legislative body. The legislators could then give their time and attention to a consideration of measures already in proper shape for passage.

An alternative to this method would be a divided meeting of the legislative body. That is, a preliminary meeting for the preparation and introduction of bills followed by an adjournment of several days or weeks during which committees appointed by the legislature might do the work of mechanical drafting and preparation for the careful consideration of the legislators reconvened for that purpose.

The system under which the legislature now operates imposes on the members a task that is humanly impossible of satisfactory performance, in that no individual is capable of reading, digesting and analyzing 400 or 500 proposed bills in the space of thirty or forty days. Ordinarily the first few weeks of the session are consumed in organization and in the introduction of bills, leaving insufficient time to correct, amend and understand thoroughly even the major bills before that body. It is perhaps due to such conditions that we find laws passed in conflict with previously enacted legislation in the same field, and sometimes with acts passed at the same session.

Such a change of procedure could not be operative during the 1941 legislature. It is possible, however, that steps be taken in 1941 to prevent an overlapping of effort such as the introduction of bills on the same subject matter in both houses at the same time, such bills not being identical but in some respects conflicting in some detail though they may have the same general object in view. As a consequence of such overlapping effort, it sometimes appears

that both bills on the same subject are passed and submitted to the Governor for his signature perhaps a week or a day or even an hour apart, thus passing on to the Governor a very difficult task of discriminating between two such bills and deciding what would be the effect if he should sign them in the order they were submitted or in reverse order. This very thing happened in the 1939 legislature and great confusion resulted in some cases because it was almost impossible to determine which law was in effect.

As an illustration of the confusion which sometimes arises there is the case of an appropriation for a certain department *from continuing appropriations*, "not otherwise appropriated." What the legislature intended was that the special appropriation which was intended, no doubt, as a budgetary or specific limit on the particular fund, should be paid, but because all the funds in that department had previously been set aside as a continuing appropriation by some prior legislature, there were no funds "not otherwise appropriated," and thus the specific appropriation was defeated.

### State Contracts

A need which is imperative, in my estimation, in order that the public be protected, is a clarification and simplification of those statutes pertaining to the awarding of contracts to the lowest and most responsible bidder. This applies primarily to public construction contracts, including highways and public building, as well as the purchase of supplies, equipment, tools, etc., by the state. The present system of competitive bidding leaves too much discretion in the particular officers charged with this duty, and I would suggest that the legislature limit this discretionary power and set up a clearly defined procedure whereby all persons dealing with the state will be given an equal opportunity to bid on public works contracts and the furnishing of supplies, equipment, etc., rather than the present system by which personal preference is too often the guide in the awarding of state business.

As a specific illustration, attention is called to the purchasing agent act (Ch. 143 of 1939 Session Laws), which grants, in the estimation of certain individuals, at least, almost unlimited authority to the purchasing agent to purchase supplies, equipment, etc., without the protection of *public bids*. I would suggest that this law be amended so

that the officer charged with the purchase of commodities set forth in that statute, be required to submit any proposed purchases to the *public* and be compelled to accept the lowest and best bid therefor; and that a specific definition of "emergency" be written into the law rather than to continue allowing the officer in question to determine what constitutes an "emergency" such as to permit awarding of contracts without any bids at all.

Another suggestion which, I believe, should be given consideration by the legislature in this field, is that the constitutional officers of the state, in charge solely of the work in their departments, be exempted by statute, as I believe they already are by the constitution, from submitting their day-by-day requirements to a statutory officer for the purchase of those supplies necessary to operate their offices.

### State Land Leases

A suggestion is made relative to the Land Department—that the legislature consider the statutes relating to the leasing of state land, so that that department, operating under the control of the State Board of Land Commissioners, may be apprized definitely and positively of their power and authority in leasing grant lands either for cash or crop rental. I call attention in this connection to Section 56-304 I.C.A. as amended by the Session Laws of 1933, Chapter 114, and Section 56-305 I.C.A. These statutes have caused a great deal of discussion and by reason of the ambiguities therein, it has not been possible to advise definitely, without a test case in the Supreme Court, as to the right of the Land Board to rent for cash in advance or to rent on a crop basis. Attention is further called to Section 56-306 I.C.A., which, in my estimation, should be clarified so that the state would definitely know whether the lien for rent in the event of an extension of time for payment, covers the crops for the full term of the lease, or only for one year. In a recent district court decision the court held that the state had a lien on each year's crop for no more than the rental due for that particular year; and in case there had been a crop failure for several years past the lien for the rental for such poor years would not run against subsequent crops. The debt would remain, but would have to be collected by court action as any other unsecured debt. This has the obvious result of limiting the state's ability to collect rentals which are in arrear,

because usually renters of state land have no other property from which the rental could be realized.

### Farm Mortgage Fund

Attention is further called to Chapter 9, Title 55 I.C.A. which, as now written, requires all rental of state lands taken by the state on foreclosure of mortgages to be turned in to the State Treasurer, as follows:

"55-903. Rentals of lands taken under foreclosure—Moneys placed in fund—Appropriations.—From and after the passage and approval of this chapter all moneys collected by the state from the rental of lands taken by the state on foreclosure of mortgages which secured state loans shall be placed in the 'farm mortgage fund' by the state treasurer and the same is hereby perpetually appropriated for the purpose of paying delinquent taxes, water assessments, fire insurance and expenses of foreclosure of mortgages on lands and premises securing farm loans held by the State of Idaho."

This has the effect of diverting the earnings of these lands away from the endowment funds and into a sterile fund, and thus depleting the public school income fund. To that extent I would suggest that this chapter be amended, particularly in view of the recent amendment of the constitution, forbidding loans on farm lands of the state. It is my information that as of November 16, 1940, there was in the Farm Mortgage Fund \$207,352.19, which should be transferred back to the public school income fund for the benefit of the common schools of the state.

### Fish And Game

The laws now on the statute books affecting fish and game give rise to some confusion, inasmuch as the initiative act creating the Fish and Game Commission repeals all acts in conflict therewith, while leaving in the statute books all previous legislation covering this field. To illustrate, Section 8 of the initiative Fish and Game Act, reads in part as follows:

"Sec. 8. The statutes of the State of Idaho now governing the fish and game department, and regulation of fish and game in the State of Idaho, **except where the same conflict** with this act, shall continue in full force and effect, **except as altered or modified** by the rules and regulations promulgated by the commission."

Section 10 of the initiative Act reads as follows:

"Sec. 10. All acts, whether general, local, special or private,

or parts of such acts, in conflict with or which are inconsistent with the provisions of this act are hereby repealed."

The situation thus created renders it difficult to determine just what parts of the law may have been repealed or may have been altered by rules and regulations of the commission or may be in conflict with the initiative Act or such rules and regulations. Persons acting in good faith and with no intent to violate the fish and game law may by reason of the maze of conflicting provisions nevertheless innocently violate the law. I suggest that the initiative Act and other statutory provisions be harmonized by legislative action.

### **State Board of Examiners**

It has been my experience as a member of the Board of Examiners that under present conditions that Board is unable to function properly for lack of adequate information upon which to base its decision on some claims. While it is constitutionally the duty of this Board to pass on all claims filed against the state, the Board does not have the necessary appropriation to supply personnel for this work, and must depend solely upon the investigation made by the Auditor's office. In this respect I would suggest that a direct appropriation be made for the State Board of Examiners, to be utilized by it in the examination and consideration of claims coming before it for consideration. The Supreme Court has held that this Board is a tribunal with the power to pass on any claims arising against the state, yet as a practical matter, lack of appropriation prevents proper investigation of any disputed claim which arises.

### **State Board of Equalization**

The same suggestion is made regarding the State Board of Equalization. It is suggested, because of the great responsibility reposed in this Board, that it be given a specific appropriation in order that the authority vested in it may be intelligently and effectively exercised, and that the property of the state may be, through an investigation and appraisal under that Board, fairly and intelligently equalized for the benefit of the taxpayer.

In conclusion, it is my belief that the consideration of the above problems by the legislature will give to that body a more comprehensive knowledge of the difficulties at-

tending the exercise of the powers vested in selected state officials, and that such consideration may result in beneficial and needful legislation.

### **The Cabinet Form of Government**

The "cabinet form of government" was established by the 1919 legislature. It consisted of an attempt to transfer to the Governor, by legislative act, in violation of the state Constitution, fundamental powers belonging to other constitutional officers. Included in the transfer were powers which were divided into several "departments" or "bureaus," among them the Department of Agriculture, Department of Finance, Department of Law Enforcement, Department of Public Investments, Department of Reclamation, together with other functions of state government. The appointment of several thousand officers and employees of these departments was thereby taken from other state constitutional offices and vested in the Governor.

The result of this enactment was to place the Governor in position to build a strong political machine through his numerous appointments; and there followed the establishment of a number of additional employees, boards and commissions, until at the present time the State House is inadequate to house them. The system is a device to defeat the will of the people and turn over to the Governor concentrated power not contemplated by the state Constitution.

Attention is particularly called to the fact that in accord with the operation of the state "cabinet form" of government the Governor has been given, by legislative acts, authority to appoint attorneys for various departments and bureaus without regard to the fact that, under the Constitution, the Attorney General has the sole authority to appoint legal advisers for the state. In fact, for some years there have been more so-called state's attorneys employed by departments and bureaus than there have been in the Attorney General's office. Such attorneys have been giving advice and rendering opinions in connection with state law and state business and have recognized no responsibility to any constituted authority other than the Governor who appointed them. Not infrequently some of these attorneys have rendered opinions without careful briefing and the result has produced cross-purposes and confusion in the conduct of the state's business. When,



as a result, litigation becomes necessary, the Attorney General is often placed in the awkward position of having to defend and uphold legal advice which he knows to be erroneous, or else to antagonize departments which have acted upon the same. Several times it has happened that these so-called state's attorneys have appeared in court in opposition to the side represented by the Attorney General, thus producing further confusion. In this, as in other respects, there should be a return to the Constitution, and the Attorney General, who has been duly elected by the people, should have full control over the legal department for which he, and he alone, is responsible.

The final legislative step in the attempt to destroy "a state government of dignity, not for any one man" as established by the Constitutional Convention, was taken by the 1939 legislature by the enactment of what is known as the Comptroller law (Chapter 113, p. 191, S.L. 1939). By this law the supervision of the fiscal affairs of the state, which the Constitution vests in the State Auditor, was transferred to an appointee of the Governor, known as the Comptroller. I advised the State Auditor, on his request for an opinion, that said law was void as being an unconstitutional usurpation of the State Auditor's duties. Suit was instituted in the District Court of Ada County to enjoin the Comptroller from assuming his duties on the ground that the legislature could not, by statute, amend the Constitution and thereby deprive the State Auditor of his duties. Judge C. F. Koelsch in making this decision stated in part as follows:

" \* \* \* The principle involved in this act opens the door to a species of political manipulation and fraud, not entirely unknown in the political history of this country. Thus, if the legislative department should be in the control of one political party, while some or all of the elective executive or administrative offices were filled by members of another political party, as not infrequently happens under our bi-partisan system of election, acts like the one under consideration would offer an effective device by which designing political manipulators could acquire control of the state's official business notwithstanding the contrary verdict of the people as expressed at the polls. \* \* \*

"If the legislature can by an act like the one under consideration take away as many of the important duties, powers and functions from one office in the executive department, as this one takes from the Auditor, and attach such duties to an office of its own creation, and thus emasculate one office, what is there to prevent similar action as regards other offices in the executive department? If the legislature can thus deprive



one officer elected by the voters, of duties and powers historically and by statute belonging to his office, and confer such duties and powers upon an appointive officer, they not only thwart the voice of the people, but, in my opinion, they violate the specific provision of the constitution."

An appeal was taken to the Supreme Court, which upheld the District Court.

The Comptroller law was based upon the same theory as the cabinet form of government, and was in fact merely an extension of that system. It is, therefore, evident that the cabinet form of government in its entirety must fall with the decision in the Comptroller case. The Supreme Court has thus clearly indicated the course which the State government must follow and it remains for the incoming administration to apply the court's decision to state government by returning it to the Constitution.

### School Law

Section 1, Article 9 of the Idaho Constitution reads as follows:

"The stability of a republican form of government depending 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."

The importance of education in our government makes it imperative that the school law be clearly and definitely written so as to avoid confusion that might impair the efficiency of the educational system. The school laws of Idaho are in such shape that the task of interpreting many of its provisions is a real penance. There have been a number of complete "codes" enacted, repealed, reenacted, re-repealed, in whole or in part until numerous contradictions, incongruities and uncertainties have arisen which ought to be corrected. I recommend that some proper action be taken to re-state our school law in a clear and definite manner.

One of the important purposes of public education is to foster patriotism in its citizens. The foundation of the national government is the Federal Constitution and the foundation of the state is the State Constitution. In these times when there have been so many assaults upon our form of government from without and insidious movements against it from within, it would appear reasonable that our course of study should require some instruction in our

national and state Constitutions. It is inevitable that in the coming decade the American people will be called upon to justify and defend their form of government and the best way to prepare them for this patriotic task is to fortify them with a knowledge of the principles upon which it rests. Consequently in the upper grades of our public schools at least there should be careful and thorough instruction that would familiarize the rising generation with the great documents which gave rise to our government and will, we hope, enable it to survive. Such education, if thoroughly conducted, will furnish a defense against many half-baked and subversive ideas which seem to take hold in the minds of college students, largely because there is nothing there to combat them. In the Civil War a certain Union officer when entering battle always had the national flag raised in the rear of his troops where they could always see it. He instructed the soldiers that so long as they could see the flag their position was secure, and that whenever conditions made a retreat necessary the flag would be lowered. The result was that his men, if they became alarmed, could determine for themselves whether or not their fears were well founded. The Constitution should be the refuge of all citizens and should be recognized as the bulwark of their safety. An understanding of this document will give new strength and courage to the citizens of our state and will enable them to go forward with confidence in the defense of our system of government.

### **Criminal Law**

Experience on the board of pardons reveals the fact that a great many inmates of the penitentiary have been convicted of forgery, generally involving small sums of money. The punishment for this offense regardless of amount is imprisonment in the state penitentiary for a term of not less than one year and not more than fourteen years. In many cases it developed that the real basis for a number of these offenses is the extreme willingness, and indeed in many cases the anxiety, of the person accepting the check to enter into business deals with strangers for fear they may lose a customer. Many merchants take checks from utter strangers when it would readily be possible for them to get information from the bank on which the check is drawn before the transaction is entered into. In fact

it might almost be said that in numerous cases the person who accepts the forged instrument is almost as guilty as the person who executed it.

The crowded condition of the state penitentiary and the fact that in many cases of forgery involving small amounts the punishment is excessive, seems to indicate that there should be a change in the law in such cases. A person who steals anything less than \$60.00 in value is guilty of a misdemeanor (except in certain cases such as the larceny of hogs, sheep, cows, etc.) and for a misdemeanor the imprisonment cannot be more than six months in the county jail in addition to a fine. I recommend for the consideration of the legislature a change in the law of forgery so that the punishment for that offense will be the same as for larceny of the same amount. Possibly a second offense might be made a felony. Certainly the present severe penalty does not seem to check the number of forgeries, and there is a question whether a diminution of the penalty would increase such offenses. There is no question that in many cases, especially where the amount of the forged instrument is small, punishment in the penitentiary is excessive as compared with the theft of similar amounts.

### Alibi Defense Law

In the trial of criminal cases the prosecution is often seriously handicapped by the defense of alibi, which means simply that the defendant was at some place other than the scene of the crime for which he is being tried. The state, after submitting its case, is confronted with witnesses who declare that the defendant was at some place perhaps several hundred miles removed from the scene of the crime, and of course the trial cannot be interrupted for the prosecutor to make investigation as to the truth of such testimony. In the trial of such crimes as burglary, arson, assault, robbery, etc., where the identity of the defendant can be established by perhaps only one witness, or by circumstantial evidence, the defense of alibi is often very effective, even though untrue, since it cannot be rebutted.

Because of such conditions, it is recommended that a statute be enacted providing that a defendant who intends to submit such a defense shall be required to give notice to the prosecutor of such intention five days before the date fixed for hearing the case, together with a statement

of where he claims to have been at the time the offense was committed, and the witnesses by whom he intends to establish such claim. If the defense is made in good faith the rights of the defendant would not be sacrificed; otherwise such a defense would not be made, since the investigation would reveal its falsity. Such a law has become necessary for the proper enforcement of our criminal laws.

### **Fresh Pursuit Law**

In case an Idaho police officer pursues a fugitive across the state line into a neighboring state and makes an arrest there, such arrest would be unlawful and the officer would probably be liable for damages in the foreign state. This fact is well known to law violators, who are accustomed to take advantage of it. Proper protection of law abiding citizens would be promoted if steps were taken to secure the enactment of laws in Idaho and adjoining states whereby each would recognize the authority of the pursuing officer under the circumstances stated above, so that the arrest in one state by an officer from another state in immediate pursuit of the fugitive would be lawful. This would solve a problem which peace officers frequently have to meet. Such a law, of course, would not be intended to interfere with extradition of fugitives previously charged with crime.

### **Penitentiary**

There has been much criticism, mostly by people unfamiliar with the subject of conversation, regarding the conduct of the penitentiary. I wish to make the following suggestions, based upon my experience on the Board of Pardons:

The Idaho parole officer is seriously handicapped by lack of sufficient money to carry on his work, and indeed I might truthfully say that lack of funds reduces this officer to a name only. Unless the appropriation for his activities is greatly increased the position might almost as well be abolished. There is not sufficient money for him to travel or to maintain contact with the various parolees turned to his charge. The office should have a stenographer, also several deputies to be located at convenient places in the state for the purpose of keeping contact with the men who have been released subject to certain conditions imposed for their own protection.

A parole officer properly equipped for his important duties could be both a restraint and an inspiration to his proteges in an effort at rehabilitation. When, however, these persons know that their supervisor cannot, for financial reasons, exercise the authority which he is supposed to have, their respect for him and for the conditions they are expected to meet will become less or even disappear, and they will be more inclined to revert to the practices which caused their downfall. The present parole officer, Mr. Fails, has shown a very keen interest in his work and a willingness to be of the greatest possible assistance, but has seen his efforts too often frustrated and his influence nullified because he did not have the money necessary to prosecute his work as he would have liked to do it.

### Prison Activities

There is not enough work to employ all the inmates of the penitentiary and a large number of them are required to spend their time in idleness, which itself is one of the important breeders of crime. Plans have been discussed during the past four years for some method of furnishing employment for all the inmates. It has been suggested that machinery be installed for the manufacture of car licenses, for the making of corrugated culvert pipe from sheet metal, as corrugated pipes are not shipped as pipes because of the likelihood that they would be injured, the material being made up into pipe after delivery, as well as the manufacture of other articles which would not be in conflict with Idaho industry. However, the proposed projects had to be discarded because there were no funds available from which the necessary machinery could be purchased.

It seems to me that our legislature might give serious consideration to prison activities. Moreover, any plan suggested should involve the payment of a reasonable sum to the inmate for his services, a portion of which could be set aside for the support of those legally dependent upon him. Such projects could be made to pay their own costs and leave a surplus to be used for payment of the initial expense and for the conduct of the penitentiary. In addition to this the effect upon the inmates themselves would be beneficial. The foundation of self-respect and the respect of others is the payment of just obligations in all walks of life. Character is built by honest effort and the reward of productive toil; and a man who works for a

fixed remuneration sufficient to sustain him and his dependents and to lay aside a surplus, is more likely to reform and become a useful citizen than one who passes his time in idleness, meditating revenge or new offenses. Living like honest men, performing the duties and receiving the rewards of honest effort, will direct character into the channels of good citizenship.

### **Labor**

In some respects the laws for the protection of labor should be improved. This is particularly true with respect to men employed by mining concerns for development work. Numerous cases have been brought to the attention of this office in which men have moved with their families to remote locations and worked for months while their wages were held up on one pretext or another. Finally with the approach of winter their employers disappeared and these laborers and their families were left penniless.

Such instances are so frequent as to merit the attention of the legislature. It would seem practical to require that when men are employed for such work the employer be compelled to deposit with some depository on the first of each month, sufficient money to pay all their employees for the ensuing month, and that the names of all employees and the amount of their compensation should be submitted with the deposit. Provision should be made that in case of default by the employers, such funds should be paid to the workmen without the expense of litigation. Sufficient penalty should be imposed to insure effective observance of any law thus enacted. There should be provision also whereby the prosecuting attorney would be authorized to enjoin any defaulting concern from operating until compliance has been made with such depository law.

### **PREFERENCE OF VETERANS**

Chapter 152 of the 1937 Session Laws requires that in all state, county and municipal work and employment of any kind or character whatsoever, excluding technical and professional work, the person in charge of such work must give preference to service-connected disabled war veterans and to war veterans who are totally and permanently disabled from non-service connected disabilities, who are honorably discharged and who establish by official records that they come under the above classes. This law has

been very generally disregarded, principally because no penalty has been provided for its violation. The legislature might well voice the appreciation of Idaho for the services and sacrifices of her veterans by providing a penalty for those in authority who are inclined to forget the nation's debt of gratitude to her defenders.

In addition to his duties as legal adviser of the State of Idaho, the Attorney General serves as a member of the following boards and commissions:

Board of Examiners  
 Board of Equalization  
 State Board of Land Commissioners  
 State Cooperative Board of Forestry  
 State Board of Prison Commissioners  
 State Board of Pardons  
 State Board of Paroles  
 State Library Commission  
 State Board of Canvassers

### Appropriations

Salaries & Extra Help.....	\$43,740.00
Services Other Than Personal.....	2,900.00
Supplies.....	800.00
Equipment.....	1,200.00
Fixed Charges.....	165.00
<b>TOTAL .....</b>	<b>\$48,805.00</b>

### DISBURSEMENTS AND BALANCES

	EXPENDED	BALANCE
Salaries & Extra Help.....	\$37,481.69	\$6,258.31
Services Other Than Personal.....	1,655.14	1,244.86
Supplies.....	693.75	106.25
Equipment.....	917.68	282.32
Fixed Charges.....	96.36	68.64

(87½% of Biennium Elapsed)

## SELECTED OPINIONS

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Opinions are rendered by the Attorney General's Office upon receipt of written request. The following synopses do not cover all opinions rendered during the biennium, but give some indication of the scope of such requests. The Attorney General has made some effort to reduce the number of opinions rendered to other than State Departments and Prosecuting Attorneys. Precedent has permitted advice to private individuals, so that correspondence in that respect threatened to occupy our time unjustifiably. While the practice has not been eliminated, considerations of time require that it be at least reduced to a minimum.

Public Works contracts entered into on the part of the proper state officials on the eve of a new administration, hence obligating an incoming administration to meet such expenditures incurred on the judgment of an administration which knows that it is going out of power, definitely offends against sound public policy. 2-7-39 C. A. Bottolfsen, Governor.

A citizen may inspect lists of those receiving pensions under the Public Assistance Act, as such records are public in nature. 7-11-39 Harold E. Wayne.

City ordinance which definitely fixes the minimum price for barber services is unconstitutional, such service not being an article for sale which is impressed with a general public interest. 3-4-40 H. I. Hansen.

A note and mortgage given to a county by a recipient of old age pension is in violation of the state constitution in that such action creates the relationship of debtor and creditor, in which the county is principal loaning its credit to an individual. 5-27-40 R. A. Crump.

The 1940 census, released upon authority of the Federal Act by district supervisors, from time to time, may be used as the basis of the last federal official census, from which a determination may be made of the number of representatives the respective counties are entitled to nominate and elect in 1940. 8-5-40 W. L. Brewrink.

Federal contracts, let to independent contractors on a cost-plus-a-fixed-fee-basis, under the National Defense program, whereby the contractor is reimbursed for all costs of



material, supplies, equipment, etc., used on the job, and the government first approves of such purchases, and after the completion of the contract acquires title thereto, are not subject to the State Motor Fuel Tax because the exaction of such tax under such contracts would operate to tax the Federal government and hence violate the absolute immunity which the Federal government enjoys. Tax Commissioner.

Chapter 113 of the 1935 Session Laws of Idaho, which is known as the Idaho Agricultural Adjustment Act and also as the "Little N. R. A." which authorized the setting up of code authorities to fix, regulate and control the price of agricultural commodities and the food derivatives thereof (including bread and other related bakery products) through a board of the particular industry's creation, offends several provisions of the state constitution. The code authority of the bakery industry filed a code with the Secretary of State of Idaho on June 18, 1935, fixing the price of a loaf of bread to the consuming public at 10c. The price has never been changed in more than five years, irrespective of the known fluctuation of the price of grain.

The practical operation of this act, pregnant with high sounding and benevolent objectives, has resulted in the consumers of bread paying a tribute to the large bakeries, a vast majority of which prepare the bread and other bakery products outside of the State of Idaho, hence employing out-of-state labor and quite likely using wheat grown in other states. The practical effect of this act has impaired and discouraged home industry, kept the price of bread at an arbitrary level, failed even slightly to brace or improve the price of wheat for the Idaho farmers, and has resulted in a suspension of one of Idaho's more fundamentally humanitarian laws—the Anti-Trust Statute, and constitutional provision against monopolies or combinations for the purpose of "fixing the price or regulating the production \* \* of produce of the soil, or of consumption by the people;" (Art. 11, Sec. 18). 7-19-40 Fred Harrington.

Some encouragement for the correction of this vicious and unjustifiable legislation appears on the horizon since I note that the Federal government is now making a thorough investigation into price-fixing practices, affecting bakery products, throughout the United States, and it is hoped that such laws will soon lose their place on the statute books of Idaho, either by affirmative legislative action or by decree of the court.

A legal question of major importance arose during the past biennium as to whether the statute of limitations, generally applicable to the state, could be applied to obligations arising from investments made out of the Public School Endowment Fund. This question was before the district court of the Eleventh Judicial District early in the biennium and a favorable decision was secured therein. The same question was before the United States District Court, Idaho division, resulting in a favorable decision, and finally the matter was before the district court of the Third Judicial District in the case of State vs. Otto Peterson, concerning a mortgage loan from the permanent educational funds of the state, in which case the Hon. Charles E. Winstead rendered a decision opposed to the other two lower courts mentioned and upon judgment being rendered upholding the application of the statutes of limitations, this office took an appeal to the Supreme Court, which reversed the decision in said case. (97 Pac. 2d. 603.) The court held in the opinion that the legislature could not enact any legislation which would tend to deplete the permanent educational fund and held that the statute of limitations would not apply to this field of endeavor, stating the law thus:

"1. Schools and school districts.

Public school endowment funds are "trust funds" of the highest order. Act Cong. Feb. 18, 1881, 21 Stat. 326; Const. art. 9.

"3. Limitation of actions.

As respects public rights or property held for public use upon trusts, states as well as municipalities are not within the operation of a statute of limitations.

"4. Limitation of actions.

An action by the state to foreclose a mortgage executed to secure a loan of money out of public school endowment fund was not barred by five-year statute of limitations, even though that statute is made applicable by another statute to actions brought by the state, and even if those statutes be considered, as though passed after the adoption of the Constitution which declares that the public school fund shall forever remain inviolate and intact, since the state in handling that fund acts as a "trustee" performing a high constitutional public duty. Code 1932, pp. 5-216, 5-225; Act Cong. Feb. 18, 1881, 21 Stat. 326; Act Cong. July 3, 1890, p. 21, 26 Stat. 219; Const. art. 9, pp. 3, 11; art. 21, p. 2."

The final determination of this question by the Supreme Court of this state, establishing the principle of law enunciated therein, fully protects the endowment funds of the state in loans or investments made out of the same, and as

a declaration of principle, was greatly needed in this field of law.

A civil action was brought by the State of Idaho on the relation of Harry C. Parsons, State Auditor, Plaintiff, vs. J. H. Stemmer, G. E. McKelvey, R. L. Bair and W. J. Smith, co-partners under the firm name and style of Triangle Construction Company, involving the construction of a state highway contract wherein the state contended that the work had not been done in accordance with the terms of the contract and was brought on the theory that the defendants were joint tort feorsors and liable, jointly and severally, for the violation of the provisions of a highway contract entered into between the state and the contractor by and through the construction company's officials and the officials of the highway department, resulting in a compromise cash settlement of \$4,250.00. Numerous other contracts were questioned during this same period of time on the same theory, as indicated in the highway audit made by the Special Audit Act of 1937 but by reason of lack of available appropriation to investigate the work performed, this office was unable to proceed against these presumed violators, and the cases could not be either commenced or prosecuted to completion by this office, as in matters of this nature it would have been essential to supplement the brief information given by an actual field check.

Two other cases of importance are the cases of State of Idaho on the relation of Calvin E. Wright, State Auditor, vs. Charles C. Gossett, et al, and the estate of Troy D. Smith, Dec., et al, involving the construction of certain provisions of the constitution of the State of Idaho as to the right of the Lieutenant-Governor and the Speaker of the House of Representatives to receive additional compensation for so-called "clean-up" work after the legislature had adjourned. Upon presentation of the constitutional questions involved, to the Judicial Court of the Third Judicial District, the court held that such officials were not entitled to any additional compensation and judgment was entered in favor of the state, in an aggregate principle amount of \$645.00, together with interest. Thus a question of fundamental constitutional import was construed by judicial decision, upholding the opinion of this office that such individuals could not be paid extra compensation in addition to that set forth in the constitution, for duties in the legislative field. These cases are now on appeal to the Supreme Court of the state.

The state has recovered by action for the benefit of the Idaho Fruit and Vegetable Advertising and Development Fund, delinquent accounts owing for the excise tax imposed on growers of potatoes, onions, apples and prunes by the 1937 act, to the extent of thousands of dollars, necessitating approximately thirty-five suits in district courts of the state.

### **State vs. Gamble-Skogmo, Inc.**

This is the first suit brought to have an interpretation of our Chain Store Tax Act (Ch. 113, 1933 S. L.). Judgment has been recovered in the district court in the amount of \$41,791.32. Appeal is now pending in the Supreme Court.

### **State vs. Robinson et al**

Suit was instituted to determine whether or not the Unemployment Compensation Fund is state moneys to be expended as other state moneys. The Supreme Court held moneys in such fund to be moneys of the State of Idaho, which must be expended by claims presented to and approved by the State Board of Examiners (59 Ida. 485, 83 P. 2d 983).

### **State vs. Amalgamated Sugar Company**

This is a suit pending in the district court on the income tax return of this company filed for the fiscal year 1937. The suit involves points of law under our Income Tax Act which have never been interpreted by our Supreme Court. The suit involves approximately \$26,000.00.

### **Century Distilling Company vs Wedgwood, Tax Commissioner**

In this case the Supreme Court held that liquor companies selling liquor to the Idaho Liquor Control Commission must pay an income tax to the state. (99 P. 2d 56).

### **State vs. Independent School Dist. No. 1, Twin Falls County**

The district court held that school district bonds, purchased with endowment school funds of the state, should be paid by the school district, and that the statute of limi-

tations does not run against the endowment school funds of the State of Idaho.

### **State vs. Duncan McD. Johnston**

This case was reversed and new trial ordered. At second trial this office participated. The trial lasted from March 25 to April 10, 1940, resulting in verdict of guilty of murder in the first degree, with judgment of life imprisonment. This case is now pending on appeal to the Supreme Court.

### **Andy Anderson vs. Rayner**

Andy Anderson vs. Rayner (60 Ida. 706), held that no claims for repayment of motor fuel tax shall be allowed where the fuel was consumed in a vehicle required to be or registered under the Uniform Registration Act, irrespective of whether the consuming vehicle was operated upon private property or the public highways at the time of the consumption. This pronouncement materially limited refund payments and has resulted in a benefit to the fund and checked the payment of false claims which were extremely difficult, if not impossible, to detect.

### **Public Utilities Commission**

The office of the Attorney General has rendered service to the Public Utilities Commission in an advisory capacity and in addition thereto has appeared before the Courts and State and Federal regulatory bodies some twenty-nine times in the past two years. Some of these matters become extremely involved and hence require a great deal of time and attention.

### **A Few Important Cases:**

The Pacific Telephone and Telegraph Co., which operates in the Lewiston and Grangeville area, made an application to increase its rates, and this case, which is of substantial concern to the people affected, required two extended hearings at Lewiston, argument on re-hearing at Boise and after appeal to the Supreme Court was again recently heard on argument before that body at Lewiston.

In the abandonment of the Gilmore and Pittsburgh Railroad Co. at Salmon, Idaho, hearings were twice held at Salmon followed by a hearing before the State District

Court at Salmon, Idaho; subsequently moved to the State Federal Court for argument at Moscow, Idaho, and finally argued before the Interstate Commerce Commission, at Washington, D. C.

Recently, it was necessary to represent the State of Idaho and the Public Utilities Commission of this state, before a three-man Federal statutory court at Kansas City, Missouri, in a grain-rate case in which the final determination will materially affect the grain growers and small millers of Idaho. This is an extremely complicated and important case for the agricultural interests of Idaho.

#### **AUDITOR**

9-5-39—State Auditor. State employee may not assign salary to be earned in future.

9-1-39—State Auditor. State Auditor must pay claim allowed by State Board of Examiners even though head of Department has not signed same nor filed Certificate of Appointment of individual making claim.

9-14-40—State Auditor. Prison Board may incur reasonable indebtedness in excess of appropriated funds in order to maintain State Penitentiary, the appropriation being insufficient to meet necessary expenses. Court decision advisable.

4-29-40—State Auditor. State may not pay interest on claims delayed in payment.

6-21-40—State Auditor. Claims may not be paid unless filed within statutory period.

1-31-39—State Auditor. Liquor Commissioners may collect salary as de facto officers after expiration of their terms and until new Commissioners have qualified.

6-24-40—State Auditor. Premium on bond covering Donald Callahan, Comptroller, during period such office was in litigation, not a proper claim against the state.

3-23-39—State Auditor. Comptroller Bill passed by 1939 legislature is unconstitutional.

#### **BEER**

4-21-39—Commissioner of Law Enforcement. H.B. 179 (1939 Ses.) does not transfer administration of beer law from Department of Law Enforcement to Tax Commissioner.

1-10-39—W. E. Tomlinson. Retail beer dealer must have a separate license for each place of business.

2-18-39—Commissioner of Law Enforcement. Chinese non-citizen is eligible to sell beer at retail.

2-29-39—Commissioner of Law Enforcement. Display of beer signs outside retailer's premises.

6-8-39—Commissioner of Law Enforcement. Transfer from Commissioner of Law Enforcement to Tax Commissioner certain duties (beer law enforcement) not mentioned in title of act is unconstitutional.

7-11-39—United States Brewers' Association. Retail beer dealer who sells bottled or canned beer for consumption on the premises must pay a license fee not to exceed \$50.

9-5-39—Commissioner of Law Enforcement. Department of Law Enforcement may refuse to grant permission to any brewer, dealer or wholesaler to use beer container differing from sizes specified in Ch. 242, 1939 Session Laws.

9-27-40—J. L. Balderston. An incorporated social club cannot dispense or sell beer to its members without obtaining a retail beer license.

1-12-40—D. E. Haddock. County Commissioners may refuse to grant retail beer license.

3-22-40—Nellie L. Jenkins. Retail beer license fee may be returned to applicant if no license is granted.

### BRANDS

2-20-39—Department of Agriculture. Use of special brand on livestock.

5-6-39—Department of Agriculture. Department of Agriculture should not furnish brand inspection certificates at state expense.

2-29-40—Commissioner of Agriculture. Branding of potato bags and use of word "Idaho" on same.

7-10-39—Department of Agriculture. Only one brand may be used on sheep.

8-15-39—Earl E. Burke. It is unlawful to use an unrecorded brand, but failure to record same does not constitute a specific crime.

5-27-40—State Brand Inspector. Separate bond is required to cover each place of business even though there are several stores in one county.

### CITIZENSHIP

4-7-39—Bureau of Occupational Licenses. Alien may not take examination to practice medicine in Idaho.

3-27-40—Veterans Welfare Commission. Alien who is honorably discharged from U. S. Army and is Idaho resident is entitled to relief through Veterans Welfare Commission.

3-27-40—J. J. Lynch. U. S. citizenship is not requirement toward becoming registered pharmacist in Idaho. Pharmacy Board does not have power to determine qualifications of applicant to become pharmacist.

1-30-39—Governor Bottolfsen. Citizenship of applicant for old age pension may be determined by administration of public assistance law.

### **CORPORATIONS**

3-25-40—Commissioner of Finance. Foreign corporation doing business in this state may secure permit from Department of Finance to sell its preferred stock containing provision that holders may not vote at shareholders' meeting.

6-26-39—Tax Commissioner. Method of reinstatement of foreign corporation.

### **COUNTIES**

1-31-39—J. Roy Orme. Incoming Board of County Commissioners has exclusive power to establish budget for ensuing fiscal year.

7-9-40—State Auditor. Property sold by county on contract after first Monday in January should be assessed in all future years in name of purchaser while contract is in full force and effect.

8-7-39—Sam V. Tunks. Disposition and apportionment of county gas tax funds.

11-9-39—Dr. Joseph Clothier. County Commissioners must be petitioned by 30% of the voters before holding bond election to obtain hospital site and construct buildings.

1-23-40—Harry J. Hanley. Board of Land Commissioners have power of deciding whether or not highway may be built and maintained across school endowment lands.

5-31-40—Grayce Pease. May an elective county official be removed from office on account of inefficiency and failure to perform duties provided by law?

1-6-39—E. B. Steele. County Commissioners may fix salaries of county officers at regular session in April following election.

2-18-39—W. A. Lansberry. Comments on publication of county commissioners minutes.

4-7-39—Sam V. Tunks. Expenses of County Commissioners in attending State Convention are lawful charges against county.

4-13-39—W. L. Brewrink. Changing of salaries of County Commissioners after reclassification of county.

5-12-39—State Forester. Counties may not be compelled to pay cost of fire protection furnished by State Forester, on tax deeded timber land.

11-1-39—Alvina M. Wilson. Officer who follows in good faith, advice of Prosecuting Attorney, is protected against penalties and criminal prosecution. He is not protected against civil liability.

11-1-39—Ralph L. Sommers. County Auditor and County Treasurer must publish quarterly a summary of statements as to county finances. County Commissioners have power to make purchases for all county officers.



5-24-40—Allen Browning. Purchasing of property by Board of County Commissioners from relative of Board members.

6-12-40—W. H. Hoover. County candidates shall pay as filing fee 1% of salary provided by County Commissioners for ensuing term of office.

9-18-40—P. M. Condie. County Recorder may not prepare abstracts of title and have same certified to by bonded abstractor even though work is done outside of office hours.

10-13-39—State Auditor. 1939 payment of \$300,000 gas tax money to counties should be made in January, 1939, and not January, 1940.

2-14-39—Charles C. Shaw, Prosecuting Attorney. Shoshone County Assessor need not issue distraint warrant immediately after personal property tax becomes due.

5-29-40—H. B. Kinnear. Property acquired by tax deed is subject to lien of subsequent years and should be assessed in name of purchaser and taxes collected for year in which sale is made.

### ELECTION

5-1-40—State Superintendent. Qualified elector for school district election need not be registered to vote at general election.

5-6-40—Mrs. Louis H. Sanborn. Right of C.C.C. enrollees to vote at either general or school district elections.

8-5-40—H. C. Baldrige. Resident of municipal corporation who pays personal property tax is qualified voter at municipal bond election.

2-24-40—Arthur W. Hart. Herd District must comprise at least one voting precinct.

5-7-40—Mrs. Celesta Briggs. Patients at Veteran's Hospital may vote only in the county and precinct which was their home at the time they entered said Hospital.

8-5-40—W. L. Brewrink. May the 1940 Census be used as basis for "nominating and electing" representatives in the several counties?

9-14-40—W. A. Brodhead. Does vacancy exist in nomination for office of prosecuting attorney where party nominated as write-in candidate tendered filing fee and later requested its return but did not file written declination?

7-27-39—E. V. Boughton. Procedure for election for organization of Junior College District.

### FAIR TRADE

12-12-38—Thos. F. Beech. Retailer must sell at price allowing 6% profit, using as a base either replacement cost or invoice cost, according to formula given.

**FISH & GAME**

7-29-39—Fish & Game Department. Game Commission had no authority to create or abolish office of Chief Conservation officer and Biologist. Game Department employee may not be dismissed and salary stopped until he can be officially notified.

3-23-39—George W. Edgington. Game warden may not stop and search auto for violation of game laws without search warrant.

4-3-39—Game Department. Establishment of Civil Service in Game Department.

4-7-39—Game Department. Persons employed in Game Department at time Civil Service rules went into effect need not be required to take examination.

4-20-39—Secretary, Game Department. Minutes of Fish & Game Commission are not necessarily public records.

5-12-39—Fish & Game Department. Price to be charged for sale of printed pamphlet (rate per folio).

5-18-39—Wm. S. Hawkins. Must Indians living on a reservation comply with Idaho Fish & Game laws?

5-20-39—Fish & Game Department. Use of Blanket Type Public Official Bond in Fish & Game Department is permissible.

6-2-39—Fish & Game Department. Game Department may furnish all those who are charged with enforcement of game laws with copies of Fish & Game laws but such copies shall remain state property.

6-2-39—Fish & Game Department. There is no prohibition against Game Commission holding meetings on Sunday though it is recommended that they be held on other days.

6-22-39—Fish & Game Department. Revocation of license of convicted game law violator may be made by judicial officer before whom he is convicted.

6-23-39—Fish & Game Department. Beavers may not be taken anywhere in Idaho unless action is taken by Fish & Game Commission.

6-26-39—Fish & Game Department. Game Commission is entitled only to transportation and not living expenses while traveling from homes to Boise.

6-28-39—Fish & Game Department. Fish & Game Commission is entitled to transportation to and from meetings recessed from Sunday to Sunday.

7-11-39—Fish & Game Department. Field men of Biological Survey may not be appointed as ex-officio game wardens.

7-11-39—Fish & Game Department. Budgetary requirements and powers under Initiative Fish & Game Commission Act.

8-2-39—Fish & Game Department. Appointive officer may not demand as a matter of right to have his books and records audited at the termination of his employment.

8-7-39—Fish & Game Department. It is poor public policy to allow state employees, outside office hours, to compile lists from information in their department for private individuals, and to receive money therefor.

9-25-39—Fish & Game Department. Right of Justice of Peace or Probate Judge to remit portion of fine imposed for violation of game law.

12-15-39—Hugh A. Baker. State courts are not authorized to enforce federal regulations re: migratory birds.

1-10-40—Director, Game Department. Idaho Fish & Game Department may not enter into reciprocal agreement with Wyoming Fish & Game Commission whereby those with Wyoming licenses may hunt in Idaho and those with Idaho licenses may hunt in Wyoming.

6-21-40—Fish & Game Department. Re: Amount of salary which can be paid conservation officers.

7-5-40—Fish & Game Department. Re: Capturing of beaver (fur-bearing animals) for propagation purposes, found on premises of private individuals.

### GAMBLING

4-14-39—Director, Bureau of Dairying. Use of "free sticks" in ice cream confections constitutes lottery.

9-25-39—Al Josephson. Slot machines, unless they give value for value, are gambling devices and may not be operated.

9-25-39—Al Josephson. Slot machines, unless they give value for value, are gambling devices and may not be operated. No notice is necessary before ordering removal. Machines may be confiscated by complying with statutory requirements.

### GARNISHMENT

7-11-39—State Auditor. Money due from the State to any person other than an elective official may be garnished.

6-20-40—M. F. Ryan. Can salary of elected county officer be garnished?

3-23-40—Ira W. Larkin. Whether or not W. P. A. checks are subject to garnishment must be decided by courts.

### GOVERNOR

2-25-39—Governor Bottolfsen. Opinion on H. B. No. 153 re: deductions from net income and taxes imposed by Federal Government.

3-30-40—Governor. Duties formerly performed by Bureau of Public Accounts are duties of State Auditor. Duties performed by Budget Bureau are under control of the Governor.

1-19-39—Governor Bottolfsen. Opinion on proposed Housing Cooperation Law and proposed Housing Authority Law.

2-7-39—H. J. Hull. Governor's right to designate district judge to preside over court in another district.

5-29-39—Earl Burke. Subject to written order by Governor, Commissioner of Law Enforcement may deputize private citizens to enforce laws re: theft of cattle and horses.

7-11-39—Governor Bottolfsen. Governor may not transfer Indian from county jail to Indian jail at Fort Hall reservation without permission of Federal authorities.

1-19-39—Governor. Appointment of member of Liquor Commission just prior to end of Governor's term.

6-22-39—Governor Bottolfsen. Supplement to opinion of May 25, 1939, addressed to Bureau of Budget. Continuing appropriation provided for in Ch. 46, 1933 Session Laws, is available for collection of excise tax on motor fuels.

### INSTITUTIONS

4-30-49—State Superintendent. Status of children committed to Industrial Training School and as to extradition when escaped and found outside the state.

6-21-39—State Superintendent. Convicts may manufacture shoes and other goods and sell them to other state institutions.

7-12-39—Commissioner of Public Welfare. Paroled patient of insane asylum is not entitled to the \$100 to which a discharged patient is entitled.

4-7-39—Commissioner of Law Enforcement. Penitentiary and State Reformatory are not subject to gross receipts tax and \$50 license fee for athletic bouts.

9-13-39—Dr. Charles R. Scott (Div. Charitable Institutions). Inmate of State Training School at Boulder, Montana, a minor, whose mother now resides in Idaho may not be transferred to State School & Colony at Nampa, but if released from Montana institution, may be committed to Idaho institution by following Idaho statutory procedure.

### INSURANCE

3-20-39—State Forester. State Blister Rust workers should be insured against accident in the State Insurance Fund.

12-16-39—Director of Insurance. Duty of Director of Insurance in securing bonds for Board of Regents of University of Idaho and for elective officers of state.

3-27-40—Commissioner of Public Welfare. Department of Public Welfare has power to require all employees to furnish surety company bond, same to be paid for by department and not by employee.

6-22-40—Director of Insurance. Money paid by life insurance companies to policy holders as cash values for surrender of policies does not constitute a cancellation, and in determining gross premiums such companies should not deduct therefrom such payments.

11-6-39—Inspector of Mines. Lease holders of mining property are primarily responsible for taking Workmen's Compensation.

### IRRIGATION

11-2-39—Lena Bolin. Irrigation companies are excepted from provisions of Unemployment Compensation Law.

5-1-39—Land Commissioner. Purchase of supplemental water for State Land under lease near Weiser .

3-4-40—Ernest Anderson. Opinion on resolution and petition to State Land Board to annex certain state lands to Black Canyon Irrigation District.

3-4-40—Department of Reclamation. Irrigation District may not allow one person to fill offices of both secretary and treasurer.

4-2-40—Commissioner of Reclamation. Water users within a water district are required to pay their portion of the cost of the distribution of the water within the district.

5-16-40—Commissioner of Reclamation. Watermaster's right to withhold water under ruling of water users in district until delinquent charges are paid.

### JUSTICE OF THE PEACE

9-25-39—William Hinckley. Jurors in justice courts are entitled only to \$2 per day in either civil or criminal cases.

2-20-40—Alfred Clark. A special constable may act only on special matters for which he is appointed, and not in matters of law violations generally.

5-2-40—Wilford G. Jones. Defendant's witnesses are entitled to fees and mileage, with or without subpoenas, in Justice Court.

### LICENSES

1-16-39—Finance Department. Store license not necessary for warehouse maintained to supply retail stores.

8-22-39—Director, Occupational Licenses. Licensing of Chiropractors—reciprocity with other states.

8-28-39—Director, Occupational Licenses. Licensed osteopath may not practice surgery in any form. Department of Law Enforcement may not institute injunction action against an osteopath who is practicing minor surgery.

4-18-39—Director, Game Department. Game Department should not sell books of licenses to vendors for cash in advance.

2-16-39—James L. Straight. All athletic exhibitions under Chapter 5, I.C.A., are to be conducted under supervision of commission whether or not admission fees are charged and sponsor who secures license must also have permit from commission.

4-6-39—Commissioner of Law Enforcement. Truck used exclusively to transport forest or mine products is entitled to receive farm truck license, whether or not it is operated "for hire."

4-27-39—W. H. Herrick. Items to be considered in classifying a vehicle as "farm truck."

5-12-39—Commissioner of Law Enforcement. Potato dealers who buy and haul potatoes in own trucks are not subject to commercial license.

6-1-39—Commissioner of Law Enforcement. Type of truck license depends on use of truck—not occupation of owner. Definition of lumber as “forest product.”

6-26-39—Department of Law Enforcement. Truck used in hauling cement from plant to market is not engaged in hauling a mining product.

7-10-39—Department of Law Enforcement. Registration certificates and license plates on car registered in name of man's wife but operated by him when arrested on drunken driving charge may not be suspended.

8-16-39—Patterson Market. Re: License as sausage manufacturer.

9-18-39—Bureau of Occupational Licenses. Alien medical doctors who have failed to pass medical examination may rewrite the examination at next date without payment of additional fee.

9-27-39—Calkins Motor Company. Car dealer may not purchase dealer's license for less than one full year.

12-12-39—Mel Jukich. Truck operating on W.P.A. projects for hire must have commercial license.

1-6-40—John W. Howard. City council may not appoint as city engineer one who has only a surveyor's license.

5-1-40—Commissioner of Law Enforcement. When driver's license is revoked for drunken driving, proof of financial responsibility must be filed when making application for reinstatement.

9-12-40—H. H. Barton. Driver may charge passenger for transportation without paying a higher license fee, if not engaged primarily in hauling passengers for hire.

9-14-40—Bureau of Occupational Licenses. Plans drawn by unlicensed draftsmen may not be approved and stamped with architect's seal by licensed architect.

6-29-39—Garrett Transfer & Storage Co. Driver's license may not be reinstated until outstanding judgment has been satisfied and public liability insurance furnished.

### MOTOR VEHICLE

4-27-39—Murphy Favre & Co. License moneys derived from operation of motor vehicles must still be used for payment of bonds and interest within counties, highways, and road districts.

9-1-39—Commissioner of Law Enforcement. Every vehicle must be equipped with prescribed lights even though some vehicles may be operated only in the daytime.

1-23-40—Commissioner of Law Enforcement. Federal-owned and -operated vehicles in Idaho need not comply with our lighting device statute.

2-23-40—J. L. Donaldson. Rear reflectors are required on both vehicles when trailer is attached to truck.

4-4-40—R. D. Bradshaw & Sons. Beekeepers are classified as agriculturalists for purposes of motor vehicle registration.

### NAVIGATION

8-7-39—State Forester. One owning property fronting on navigable waters may construct private dock if it does not interfere with public rights Re: navigation.

7-12-39—Interstate Telephone Company. An electric company may construct lines and erect poles over any waters in Idaho if same do not interrupt navigation of waters.

### PROBATE COURT

7-9-40—John Jackson. 1. All debts of decedent owing at date of death, including mortgage indebtedness, to be deducted from property transferred, i. e., decedent's half of the community. 2. Administrators' and Attorneys' fees to be deducted from decedent's half of community property.

5-15-40—Probate Judge or Justice of the Peace may suspend execution or withhold judgment.

1-26-39—Thomas B. Kelly. 1. Probate Judge has power of appointment of probation officer, subject to approval of County Commissioners. 2. Independent School Districts shall report truancy or delinquency directly to probate court. 3. Probate Judge must appoint person to take delinquent child to Industrial Training School.

### PUBLIC FUNDS

2-7-39—State Treasurer. State Treasurer may not transfer funds from State Highway Fund into separate or trust fund for purpose of constructing office building.

6-27-39—Director, Public Accounts. Payment of salary to Secretary of Senate for work done after adjournment of Legislature.

8-14-39—State Insurance Fund. No transfer of funds may be made from any other classification into Salaries and Wages.

1-10-40—Commissioner of Finance. Are deposits of public funds in banks trust funds with preference right to payment where said deposits have been made by public officials without complying with the public depository laws of this state?

7-7-39—State Board of Examiners. Board of Examiners may not authorize revolving fund for Liquor Commission to be used to pay salaries of "special investigators."

3-22-39—Department of Agriculture. Advertising Commission may expend portion of 10% of funds set aside for investigation and securing of Federal funds to develop commercial alcohol plants.

6-20-39—Commissioner of Public Investments. Endowment funds may not be used to purchase Twin Falls Toll Bridge bonds or treasury notes.

6-29-39—Commissioner of Public Welfare. State Treasurer or Commissioner of Public Welfare may receive federal funds.

7-11-39—Tax Commissioner. Allocation of revenue from Mine License Tax.

11-6-39—Jack McQuade. Highway District may not use Motor Fuels Tax Fund to aid in development of airport.

5-14-40—State Auditor. 50% of liquor funds may be apportioned to general fund. (Amendment to opinion dated 10-16-39).

8-23-40—Department of Public Welfare. Method of setting up revolving fund for purchase of surplus commodities under Food Stamp plan.

7-11-39—Department of Public Investments. Option provision to pay for bonds in advance of maturity date may be exercised by payment out of proceeds of refunding bonds.

10-16-39—State Auditor. 25% of surplus in liquor fund should be allocated to general fund and 25% to public school income fund.

#### **PUBLIC UTILITIES**

5-12-39—Public Utilities Commission. Motor boat operated in Idaho carrying persons or property for compensation is subject to P.U.C. regulations as common carrier.

7-12-39—Public Utilities Commission. Operator transporting milk and dairy products to creamery where they are manufactured into cheese, and who then transports same to cheese company, must meet requirements of Auto Transportation Act.

7-12-39—Public Utilities Commission. P.U.C. may make a rule relative to posting and filing of schedules or tariffs relative to truck lines .

9-25-39—Public Utilities Commission. Engineer employed by P.U.C. must furnish certificate under Ch. 231, 1939 Session Laws .

4-19-39—State Auditor. State Auditor, not Tax Commissioner, is required to furnish certain blanks to operators of public utilities.

#### **PUBLIC WORKS**

1-18-40—State Board of Examiners. Department of Public Works may purchase land to secure therefrom road-building materials, but subsequent rental or sale of such land must be handled by Land Board.

2-7-39—C. A. Bottolfsen. Entering into public works contracts on eve of new administration would offend against public policy.

6-1-39—Commissioner of Public Works. Bids for purchase of testing equipment for Department of Public Works should be called for through State Purchasing Agent.



**SCHOOLS**

8-14-39—State Superintendent. Disposition of unencumbered balance in school district general funds.

11-1-39—State Superintendent. Pupils attending common schools may be required to salute National Flag and pledge allegiance thereto.

11-2-39—State Superintendent. Board of Regents of University of Idaho may not lease a pilot field and airport in State of Washington for use in Air Training Course.

12-8-39—Willis Wright. \$350 may not be included in school budget to be paid as compensation for injuries of child received on school grounds.

12-18-39—State Superintendent. State Board of Education must apportion money to counties on basis of Classroom Unit Worksheet, which apportionment becomes final and unaffected by later filing of an amended worksheet.

1-12-40—Bertha Noel. A lapsed district annexed to two districts combined to become rural High School district becomes part of rural High School district.

1-17-40—State Superintendent. Rate of interest payable on school district warrants.

1-20-40—State Superintendent. Various matters pertaining to temporarily combined school districts.

3-4-40—State Superintendent. County Treasurer is not obligated to keep High School fund separate from general school fund, but County Superintendent is required to do so.

8-27-40—State Superintendent. Children of residents of Federal Farm Labor Camps may be allowed to attend public schools.

9-14-40—State Superintendent. Newly created school district must be validated before bond election may be held.

4-6-39—Judge Jay L. Downing. Legal right of Land Board to issue certificates of sale of school grant lands in lieu of the original.

6-22-39—Commissioner of Public Investments. Payment by school district of premium to a bonding firm for the purpose of preparing a refunding issue.

7-10-39—Commissioner of Law Enforcement. Sec. 48-1101, re: passing school bus transferring passengers, applies to approaching as well as overtaking vehicles.

8-23-39—Hazel Haddock. School Board may accept bid higher than lowest bid for transporting children if they believe better service will be rendered.

11-1-39—Mrs. Emma B. Harris. State Life Certificate issued in 1920 is not affected by subsequent legislation and holder may teach in all schools and grades of Idaho.

3-27-40—Clyde Dawald. Prosecuting Attorney is not the legal advisor of school districts and school districts have power to employ private counsel.

5-24-40—State Superintendent. Payment of honorarium to members of State Board of Education—lack of sufficient appropriation therefor.

9-20-40—George W. Edgington. Electors of school district and not school board, have power to make special levy exceeding ten mills.

2-29-40—State Superintendent. School Districts must furnish text books free of charge to students.

3-1-40—State Superintendent. School District which continues refusal to furnish text books to student after notice from State Superintendent, may not receive school moneys derived from state or county.

#### SECRETARY OF STATE

3-22-40—Secretary of State. Charges to be mde by Secretary of State for filing of instruments.

3-22-40—Secretary of State. Fees chargeable by Secretary of State for furnishing copies of documents.

6-24-40—Secretary of State. Benefit organizations cannot be formed for purpose of carrying on benefit activities but must comply with Ch. 110 of 1933 Session Laws.

4-3-39—Secretary of State may not have session laws printed without a contract having been entered into for such printing.

4-4-39—Secretary of State. Printing, as laws, certain bills vetoed by Governor but sent late to Secretary of State.

#### TAYLOR GRAZING ACT

1-26-39—M. C. Claar. Method of expenditure of moneys provided for under Taylor Grazing Act.

#### TAXATION

1-28-39—Income Tax Department. Method of returning overpayment of income tax paid in two installments.

1-30-39—Income Tax Department. Sums received from Unemployment Compensation Fund are not deductible from income tax returns.

1-19-39—Commissioner of Finance. Corporation is not entitled to refund of store license tax where said corporation failed to offset taxes paid on real property.

5-6-39—Commissioner of Finance. Federal officers and employees need not pay state income tax for years prior to January 1, 1939.

8-15-39—State Superintendent. Property owned by State Board of Education is exempt from taxation.

3-5-40—Tax Commissioner. 1. Federal employee, resident of Idaho, domiciled in District of Columbia, is not subject to Idaho Income Tax laws. 2. Federal employee, not an Idaho resident, employed in Veterans' Hospital and living at Boise Barracks is not subject to Idaho Income Tax Law.

5-4-40—Tax Commissioner. Amounts paid as federal inheritance and transfer estate taxes should be deducted from the half interest of the decedent in the community property which is transferred.

5-16-40—Tax Commissioner. 1. Employees of army, navy and aviation corps who are registered from Idaho but located in various parts of the world, and civil service employees appointed by the Federal Government from Idaho are not subject to Idaho Income Tax. 2. Non-resident Federal employees employed in Idaho are taxable. 3. Non-resident movie actors who establish business situs in Idaho should file return. 4. Employees living at Boise Barracks (Federal reservation) are not subject to state Income Tax.

5-18-40—Tax Commissioner. Inheritance Tax should be computed from deceased's share of community property.

5-27-40—Tax Commissioner. State Auditor is head of all state tax collection agencies. State Board of Equalization is not required to make an annual report and has no authority to pay for same.

7-9-40—State Auditor. Building & Loan associations subject to Idaho Income Tax.

2-8-39—Idaho Fruit & Vegetable Advertising Commission. Responsibility of Advertising Commission in collection of advertising tax.

4-7-39—Veterans Welfare Commission. Question of exemption of American Legion's unimproved property from state tax should have judicial decision.

7-24-39—State Auditor. Segregation of state taxes on tax notices and receipts.

9-27-39—Paul Braune. Property of State (Highway Department) is exempt from city special improvement taxes.

11-8-39—E. W. Whitcomb. Collection of taxes on personal property of Gilmore & Pittsburgh R. R. which has abandoned train service, and which is now removing said property from state.

1-2-40—W. Joe Harris. Methods of payment of delinquent taxes.

1-22-40—Merle L. Drake. Situs of personal property for taxation purposes when location of said property is changed during year.

4-29-40—State Department of Agriculture. Manufacturer or importer, and not retailer, is required to pay tonnage tax provided in Section 22-605 and 22-606.

3-6-39—Director, Kilowatt Tax Bureau. Power company furnishing wholesale power to farmers' cooperative is responsible for kilowatt tax.

4-13-39—Director, Motor Fuels Bureau. Motor fuels used in airplanes are not subject to the 1 mill excise tax under Toll Bridge Act.

4-27-39—Farm Credit Administration. Taxation of property taken over by Farm Credit Administration in satisfaction of indebtedness.

7-11-39—Idaho Refining Company. Tax should not be imposed on motor fuels sold for exportation to another state.

7-14-39—Director, Bureau Motor Fuels. Dealer or distributor may not receive refund of motor fuel tax on any motor fuel sold by him to ultimate consumer.

7-26-39—Ward C. Howard. Power of municipality to levy taxes to maintain airport located outside boundaries of municipality.

4-30-40—E. V. Boughton. State may not collect tax on motor fuels in excess of 20 gals. brought into state in regulation tank for personal use.

6-21-40—Adjutant General. Federal Government vehicles exempt from motor fuels tax for gas used in construction of armory.

#### UNFAIR SALES

6-15-39—Harry Benoit. Opinion on various matters pertaining to Unfair Sales Act. (Ch. 209, 1939 Session Laws.)

2-23-40—H. D. McCain. How to consider fraction of a cent in computing cost price under Unfair Sales Act.

3-26-40—W. W. Thomas. May establishment open business and immediately cut prices far below established rates in that town?

7-19-40—Fred Harrington. Declaring bread price-fixing act void and of no effect.

#### MISCELLANEOUS

6-8-39—Anderson, Bowen & Anderson. Petit jurors are entitled to per diem compensation only for those days actually attended in court.

8-10-39—Commissioner of Law Enforcement. Promissory note may not be accepted in payment of retail account under Ch. 242, 1939 Session Laws.

11-2-39—State Auditor & Bureau of Public Accounts. Claims must be filed with Board of Examiners within 2 years after accrual. Another State department may not be considered agent for Board of Examiners for purpose of paying a claim filed with said Department but not with Board of Examiners, within 2-year period.

2-10-39—Supt. of Public Instruction. State is not obliged to pay postage on payrolls, vouchers, etc., transmitted from one state department to another.

4-14-39—Commissioner of Public Welfare. Granting of easement to Washington Water Power Co. across state land at Orofino.

2-25-39—E. B. Christian. Permit fee for keeping wild mink and tax on same as domesticated animals are both legal assessments.

3-24-39—Director, Bureau of Plant Industry. Method of publication of rules and regulations by Department of Agriculture is in discretion of administration.

5-13-39—Department of Agriculture. Powers and duties of warehousemen under Bonded Warehouse Act.

5-29-39—Commissioner of Agriculture. Interpretation of "broker" as defined in Ch. 139, 1935 Session Laws. Approved bond form.

6-26-39—Noxious Weed Commission. Individual members of Noxious Weed Commission may not travel about state and charge expenses to appropriation.

6-26-39—Commissioner of Agriculture. Shipment of potatoes under Federal Law.

6-27-39—Noxious Weed Commission. Ch. 236, 1939 Session Laws, does not authorize transfer of funds to counties, nor does it authorize purchase of equipment for use by counties.

7-8-39—State Treasurer. Validity of Toll Bridge Acquisition Act and proceedings under it.

7-14-39—E. J. Daly. One who leaves a certain branch of state service and is employed immediately by another state department may be allowed vacation only in proportion to his service in the department in which he is now employed.

3-22-40—Frank Knight. There is no public domain left in Idaho on which Two Mile Limit Law may operate.

3-23-40—Department of Agriculture. Validity of negotiable warehouse receipt containing provision that holder of receipt or depositor of grain shall demand delivery of grain not later than one year from date of receipt.

5-11-40—Associated General Contractors. Letting of work by contract after bid.

6-1-40—Public welfare. Public Health Director of Vital Statistics may not accept appointment as Special Agent for Social Security Board at specified salary per month. Department may enter into contract with Federal agency by which fees would become property of state.

7-6-40—Ellsworth Buchanan. Not necessary for all or majority of precincts to be represented at meeting of precinct committeemen in order to constitute quorum, providing due notice was given of such meeting.

8-3-40—Raymond Briggs, Secretary Engineering Examiners.  
 1. Illegal to let contracts for construction purposes if plans and specifications do not bear seal and signature of an engineer. 2. Illegal to engage in construction on force account without services of licensed engineer. 3. Illegal for owner to permit contractor to perform work awarded him by contract when no licensed engineer has been engaged to supervise and approve construction. 4. Is owner, contractor, political subdivision or bondsman liable? 5. Are county surveyors required to be licensed surveyors?

1-26-39—Charles R. Crowley. Licensed collector may not file suit in his own name as claimant in small claims assigned to him for collection.

1-27-39—C. A. Attridge. Any claimant may file complaint in small claims court if sum involved is not in excess of \$50 and if defendant resides in the precinct where the small claims department is set up.

1-31-39—B. Penfold. Village may sell land to state without advertising.

2-16-39—Board of Land Examiners. Disposition of notes executed to cover payment of delinquencies under certificate of sale subsequently forfeited.

3-13-39—Secretary of State. Purchasing Agent may not lease from state, state land for oil and gas purposes.

4-21-39—Tax Commissioner. H. B. 179 (1939 Ses.)—Powers, duties and appropriations of State officers transferred to Tax Commission.

4-26-39—Dr. O. M. Drake. Village ordinance requiring fee of \$25 per day from traveling opticians and optometrists is unconstitutional.

5-8-39—Idaho Statesman. No state commission, bureau, or department may contract for advertising space unless there is statutory or constitutional provision and appropriation.

5-25-39—Governor Bottolfson. State police officers may assist local officers, or assume full responsibility in enforcement of liquor law.

6-1-39—J. W. Van Karner. Rights of citizens to carry revolvers or gas guns.

6-2-39—D. L. Holmberg. Legislature may regulate but not prohibit bearing of arms for protection of person or property.

6-8-39—Edgar Heap. Vendor or special distributor appointed by Liquor Commission must be a resident of at least two years of municipality where store is located.

7-11-39—Harold E. Wayne. A citizen may inspect lists of those receiving pensions under the public assistance act.

7-11-39—Director, Occupational Licenses. Medical Examining Board need not have a homeopathic or an eclectic as members.

7-12-39—V. K. Jeppesen. Appointment of civil service commission by Mayor is permissive rather than mandatory.

8-4-39—Department of Law Enforcement. Interpretation of phrase "primarily for hire" under Sec. 48-127, I.C.A.

8-10-40—Commissioner of Law Enforcement. Matter of discretion with Commissioner of Law Enforcement whether he accept certificate of title showing release thereon and issue new title where the lienholder has orally said his release of lien was made in error.

9-26-39—American Packing & Provision Co. Meat or sausage casings may not contain dye or ink. Stamp or trademark may be stamped on or attached to outside wall of casing.

9-26-39—Bureau of Occupational Licenses. Chiropractic Board of Examiners may not control or regulate any practices under general healer's statute.

12-8-39—H. S. Hanna. Juror is not entitled to mileage in going to court more than once during his term.

12-18-39—Director, Motor Fuels Division. Invoices older than 90 days may or may not be considered in connection with claims for motor fuels tax refunds, in discretion of Commissioner of Law Enforcement.

1-2-40—Thornton J. Davis. Opinion on certain methods of collecting debts.

1-12-40—Gardner Middleton. Social club may not charge fee in payment of liquor served to stockholders and friends.

1-12-40—Secretary of State. A mine is not a "productive mine" when value of ore taken out does not cover cost of transportation to smelter.

1-17-40—R. J. Lemmon. Drivers of pick-up trucks need not display red flags at front and back of truck when parked at roadside during daylight hours.

2-12-40—Olive A. Witters. Tax exemption is not permitted a divorcee.

2-13-40—A. M. Esson. Marital status of person who remarries 4 months subsequent to divorce decree.

3-4-40—H. I. Hansen. City ordinance fixing mining price for barber services is unconstitutional.

3-23-40—Thomas D. McDougall. 1. Special chartered cities may set up local Housing Authority, using funds from U. S. Housing Authority. 2. City Council must determine need or absence of need for Housing Authority.

4-3-40—Tax Commissioner. Licensee is entitled to refund of overpayment of Mine License Tax only after legislative appropriation therefor.

4-4-40—Dave Clemmens. Members of Cemetery Board need not be real property taxpayers.

3-6-39—Max E. Salesky. 1. Village trustee must be resident of the village. 2. Village trustee may not act as village attorney.

3-15-39—Land Commissioners. Interest of lessee of state land may be attached, levied on and sold under execution.

4-29-40—Frank Wilson. Abandonment of herd district to relieve livestock owners from liability for damages to persons traveling on highways through said district.

8-3-39—Commissioner of Reclamation. Validity of certain contract between Department of Reclamation and U. S. Geological Survey.

1-16-39—George O. Virgin. Idaho National Guard member injured during rifle practice may receive state compensation if legislature determines that appropriation is for "public purpose."

**DOCKET****Civil****INTERNATION JOINT COMMISSION (closed)**

- 300—Application of West Kootenay Power and Light Company, Ltd. Permission to construct and operate certain permanent works in and adjacent to the channel of the Kootenay River, for storage purposes.

**Civil****BEFORE THE P.U.C. OF THE STATE OF IDAHO  
(closed)**

- 831—State of Idaho ex rel. J. W. Taylor, Attorney General, vs. Union Pacific Railroad Company, a corporation, and Oregon Short Line Company, a corporation.

**Civil****PROBATE COURT (pending)**

- 705—In the Matter of C. S. Flint, Mental Incompetent, Everett E. Hunt, Guardian. Re: Proceeding to recover for maintenance.
- 893—State of Idaho, on the relation of J. L. Balderston, Commissioner of Law Enforcement, vs. Henry H. Estill, sometimes known as H. H. Estill. Re: Collection of overpayment of refund gas tax.
- 930—In the matter of the estate of Henry Meyer, deceased.
- 1028—In the matter of the guardianship of the estate of Clara B. Austin, an incompetent person.

**Civil****PROBATE COURT (closed)**

- 1013—In the Matter of the Estate of Callahan McCarthy, also known as Cal McCarthy, deceased.
- 1015—In the Matter of the guardianship of the estate of Hortense Wickham, an insane person.

**Civil****U. S. DISTRICT COURT (pending)**

- 891—United States of America vs. State of Idaho & members of the State Board of Land Commissioners. Re: Condemnation of lands.
- 1024—The Board of Trade of Kansas City, Mo., et al, Complainants vs. United States of America and Interstate Commerce Commission, Defendants and Public Utilities Commission of Idaho, et al, Interveners.



## Civil

## U. S. DISTRICT COURT (closed)

- 595—In the Matter of Kountze Brothers, Bankrupts. Re: Claim of State of Idaho.

## Criminal

## U. S. DISTRICT COURT (closed)

- 818—United States of America, vs. Floyd W. Hall, sometimes known as F. W. Hall, and Gladys Hall, his wife; The State of Idaho, a body politic and corporate; John W. Condie, Barzilla W. Clark, Ira H. Masters, J. W. Taylor and Harry C. Parsons, et al. Re: Right of Eminent Domain.

## Civil

## SUPREME COURT OF THE STATE (pending)

- 992—State of Idaho, on relation of Byron Defenbach, Tax Commissioner of the State of Idaho, and Calvin E. Wright, State Auditor of the State of Idaho, vs. Gamble-Skogmo, Inc., a corporation.
- 997—In the matter of the application of the Pacific Telephone and Telegraph Company for authority to increase rates, as set forth in exchange service schedules, P.U.C.I. No. 9, attached to said application and marked Exhibit "F".
- 1006—State of Idaho, on relation of Calvin E. Wright, State Auditor, vs. Harry C. Parsons & United Casualty Insurance Company, a corporation, and the Fidelity & Deposit Company of Maryland, a corporation, and Augusta Smith, Administratrix of the estate of Troy D. Smith, deceased.
- 1007—State of Idaho, on relation of Calvin E. Wright, State Auditor, vs. Charles C. Gossett, Harry C. Parsons, and United Pacific Casualty Insurance Company, a corporation, and the Fidelity and Deposit Company of Maryland, a corporation.
- 1026—Lee A. Wheeler, on behalf of himself and on behalf of all persons similarly situated, vs. Harry M. Rayner, as Commissioner of Law Enforcement of the State of Idaho.
- 1027—Fred M. Taylor vs. State of Idaho.

## Civil

## SUPREME COURT OF THE STATE (closed)

- 730—Geo. B. Wallace, Inc., a corporation, Wentworth & Irwin, Inc., a corporation, Raymer Motor Company, a corporation, and D. E. Wallace, doing business under the trade name and style of Wallace Brothers, for and in behalf of themselves and all others similarly situated, vs. Emmitt Pfost, as Commissioner of Law Enforcement of the State of Idaho.

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- 741—State of Idaho on the relation of Emmitt Pfost, Commissioner of Law Enforcement, vs. Boise City, a municipal corporation.
- 811—W. L. Robison, G. W. Suppiger and Frank Langley, constituting and acting as the Industrial Accident Board of the State of Idaho, vs. Myrtle P. Enking, State Treasurer, and Harry C. Parsons, State Auditor. Re: Transfer of funds.
- 813—State of Idaho vs. Gust Paris. Re: Revocation of barber license.
- 903—State of Idaho ex rel. J. W. Taylor, Attorney General of the State of Idaho, vs. W. L. Robison, G. W. Suppiger and Frank Langley, constituting and being the Industrial Accident Board of the State of Idaho, and Myrtle P. Enking, State Treasurer. Re: Writ of Prohibition to prohibit funds drawn from workmen's Compensation Fund in violation of the Constitution.
- 915—Ada County, a municipal subdivision of the State of Idaho, in relation of C. C. Kendall, Chairman of the Board of County Commissioners of Ada County, and C. C. Kendall, as a taxpayer of said Ada County in behalf of himself and all other taxpayers similarly situated vs. Barzilla W. Clark, Governor of the State of Idaho; Ira H. Masters, Secretary of State; J. W. Taylor, Attorney General; Harry C. Parsons, Auditor; Myrtle P. Enking, Treasurer, as members of the State Board of Equalization of the State of Idaho. Re: Writ of Prohibition to enjoin State Board of Equalization from assessing lands.
- 944—Murtaugh Highway District vs. Allen C. Merritt, Commissioner of Public Works of the State of Idaho and J. H. Stemmer, Director of Highways of the State of Idaho. Re: Condemnation of land.
- 971—Industrial Accident Board of the State of Idaho, vs. Myrtle P. Enking, State Treasurer.
- 972—Ada County, a political subdivision of the State of Idaho vs. Calvin E. Wright, State Auditor of the State of Idaho.
- 975—Harry Snoderly et al, vs. State of Idaho.
- 982—H. Albrethsen vs. State of Idaho .
- 988—Ada County et al, vs. C. A. Botttolfson, J. W. Taylor, George H. Curtis, Calvin Wright, Myrtle Enking (Board of Equalization). Re: Writ of Review.
- 990—Floyd W. Lyons vs. C. A. Botttolfson, as Governor of the State of Idaho and as Chairman of Toll Bridge Committee created by Chapter 223 of Laws of 1939, et al.
- 996—State of Idaho vs. Otto F. Peterson and Marie M. Peterson, his wife. Re: Foreclosure.
- 1011—Montgomery Ward & Co., Incorporated, a corporation, vs. The Board of County Commissioners of Ada County, State of Idaho, sitting as a Board of Equalization.

**Criminal****SUPREME COURT OF THE STATE (pending)**

- 949—State of Idaho vs. Duncan McD. Johnston. Re: Murder.  
991—State of Idaho vs. J. Britt Hardgraves, Jr. Re: Murder.  
999—State of Idaho vs. Riley Hayes.  
1000—State of Idaho vs. Ora W. Sprouse. Re: Murder.  
1017—State of Idaho vs. Wilford H. Wilson. Re: First degree burglary.  
1019—State of Idaho vs. J. W. Jones.  
1020—State of Idaho vs. James R. Sedam. Re: Issuing check without funds.

**Criminal****SUPREME COURT OF THE STATE (closed)**

- 742—In the Matter of the Application of Floyd Sandusky for a Writ of Habeas Corpus. Re: Murder.  
787—State of Idaho vs. Van Antwerp.  
805—State of Idaho vs. Earl Goldizen. Re: Involuntary manslaughter.  
815—State of Idaho vs. Martin Venek and Charles Venek. Re: Burglary.  
838—State of Idaho vs. Paul Martin Boyatt. Re: Manslaughter.  
899—State of Idaho vs. Charles C. Patterson.  
904—State of Idaho vs. Clarence Craner and Melvin Craner.  
941—State of Idaho vs. Douglas Hix. Re: Assault with a deadly weapon.  
945—State of Idaho vs. Clarence Darrah.  
969—State of Idaho vs. William H. Lovejoy and Jack Owens. Re: Burglary.  
974—State of Idaho vs. Jack Marshall.  
976—State of Idaho vs. Jones Frank. Re: Murder.  
978—State of Idaho vs. George Walters. Re: Voluntary manslaughter.  
979—State of Idaho vs. T. O. Neeley. Re: Driving while intoxicated.  
987—State of Idaho vs. O. A. Hintz. Re: Involuntary manslaughter.  
994—State of Idaho vs. James Randolph. Re: Voluntary manslaughter.  
998—State of Idaho vs. Jack W. Mead.

## Civil

## DISTRICT COURT (pending)

- 318—Twin Falls North Side Investment Company vs. Henry O. Kissinger, (Alias H. O. Kissinger) and Mrs. Henry O. Kissinger, his wife, et al. Re: Foreclosure of mortgage.
- 696—First Trust Company of St. Paul, Minnesota, a corporation, vs. M. H. Woods and Belle J. Woods, his wife, et al. Re: Bonds.
- 845—State of Idaho, ex rel. Harry C. Parsons, State Auditor, vs. Angus Pond, doing business as Pond Auto Company, and Dairy Finance Company, a co-partnership composed of T. B. Smith and J. K. Smith. Re: Foreclosure.
- 939—State of Idaho vs. Ira J. Taylor. Re: Bond suit.
- 940—Wesley Cruickshank vs. Ralph Davis, Inc., a corporation, and Ralph Davis, W. H. Puckett, Elva Lowry and W. H. Langroise. Re: Title of land.
- 947—State of Idaho on the relation of Griffith Jenkins, Tax Commissioner of the State of Idaho vs. Milo Axelson. Re: Income tax exasion.
- 958—State of Idaho ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. F. H. Hogue. Re: Failure to pay Idaho Fruit and Vegetable Tax.
- 960—State of Idaho ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho vs. Harold E. Nagle. Re: Failure to pay Idaho Fruit and Vegetable Tax.
- 961—State of Idaho ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho vs. W. W. Newcomb and W. T. Newcomb, a Co-partnership. Re: Failure to pay Idaho Fruit and Vegetable Tax.
- 973—Percy Anderson vs. Frank G. Burroughs, Lester F. Albert, William McKinney, Neil R. Fitch, Paris Martin, Jr., constituting the Veterans' Welfare Commission of the State of Idaho.
- 985—State of Idaho, on the relation of Byron Defenbach, Tax Commissioner, and Calvin E. Wright, State Auditor, of the State of Idaho, vs. The Amalgamated Sugar Company, a corporation.
- 986—David Somerville vs. State of Idaho; Owyhee County, a legal subdivision of the State of Idaho; Jack Deary and P. B. Deary.
- 989—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, and Calvin E. Wright, State Auditor of the State of Idaho, vs. Idaho Sales Company, a corporation. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 993—State of Idaho, et al (State Board of Land Commissioners) vs. Robert R. Ricks, R. R. Archibald, Yvette Parkinson, Fred D. Parkinson, Jane E. Widderson, Robert Widderson, Newell Widderson, and R. P. Widderson.

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- 995—Ray J. Lyman vs. Conrad G. Munro, James Spofford, Commissioner of Reclamation of the State of Idaho, Myrtle P. Enking, State Treasurer of the State of Idaho, and Calvin E. Wright, State Auditor of the State of Idaho.
- 1004—W. E. Henke vs. Harry M. Rayner, Commissioner of Law Enforcement for the State of Idaho.
- 1005—Utah-Idaho Sugar Company, a corporation vs. County of Jefferson, State of Idaho.
- 1010—Anna Binnard Goldstone vs. Frank W. Boggess; Hinda Wax; Birka Binnard; Beatrice Francis; M. J. Wax; A. H. Goldstone; Birk Binnard; the unknown heirs of Amelia Binnard Davis Boggess, deceased; the unknown devisees of Amelia Binnard Davis Boggess, deceased; and State of Idaho.
- 1012—State of Idaho, on the relation of J. O. Jordan and J. Cecil Jordan, co-partners doing business under the firm name and style of J. O. Jordan & Son vs. Calvin E. Wright, Auditor of the State of Idaho.
- 1014—State of Idaho, on relation of the Industrial Accident Board of the State of Idaho vs. Marvin Maddock, Dr. E. Benson, and A. R. Morris, doing business under the firm name and style of King Tut Mining Company, and Jim Gillette.
- 1016—Vestal P. Coffin vs. J. W. Taylor.
- 1018—State of Idaho, on relation of the Industrial Accident Board of the State of Idaho vs. C. A. Dye, doing business under the firm name and style of Tendoy Copper Queen Syndicate.
- 1021—State of Idaho, on the relation of Calvin E. Wright, State Auditor of the State of Idaho, vs. Arthur Polson and E. A. Cox, doing business under the firm name of Cox and Polson, a partnership. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1022—State of Idaho, on the relation of Calvin E. Wright, State Auditor of the State of Idaho vs. Vance P. Brown, doing business under the firm name of Vance P. Brown & Sons. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1023—State of Idaho, on the relation of Calvin E. Wright, State Auditor vs. Tom Harris. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1025—State of Idaho, ex rel Calvin E. Wright, Auditor of the State of Idaho, and for and on behalf of the Forester's Special Fund of the State of Idaho; the Clearwater Forest Protective District of the State of Idaho; and A. B. Curtis, State Fire Warden vs. Warren Lane & Oscar Alding, co-partners doing business under the name and style of Kooskia Cedar Company, & National Pole & Treating Company, a corporation.
- 1029—State of Idaho, on relation of J. W. Taylor, Attorney General, vs. N. M. Knudson, Elwood Henstock, Ora Jones, R. C. Henstock, Virgil Jewett, and M. P. Corak, Trustees of Independent School District No. 6 of Twin Falls County, Idaho;

George R. Hart, C. B. Lindsey, and Ben E. Potter, County Commissioners of Twin Falls County, Idaho.

- 1030—Edward E. McLaren and Samuel J. McLaren, Jr. vs. State of Idaho.
- 1031—State of Idaho, on relation of Calvin E. Wright, State Auditor, vs. Dora M. Conn, Administratrix of the Estate of Elmer U. Philbrick, deceased.
- 1032—State of Idaho, on relation of Calvin E. Wright, State Auditor, vs. Melvin Gresky. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1033—Coeur d'Alene Country Club, a corporation, vs. Byron Defenbach, Tax Commissioner of the State of Idaho.
- 1034—State of Idaho, on relation of Calvin E. Wright, State Auditor of the State of Idaho, vs. L. E. Stephens. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1035—State of Idaho, on the relation of Calvin E. Wright, State Auditor of the State of Idaho, vs. L. Bailey. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1036—State of Idaho, on the relation of Calvin E. Wright, State Auditor of the State of Idaho, vs. H. R. Campbell. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1037—State of Idaho, on the relation of Calvin E. Wright, State Auditor of the State of Idaho, vs. M. C. Hinshaw. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1038—State of Idaho, on the relation of Calvin E. Wright, State Auditor of the State of Idaho, vs. A. F. Talcott. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1039—State of Idaho, on the relation of Calvin E. Wright, State Auditor of the State of Idaho, vs. J. F. Carnefix. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1040—State of Idaho, on the relation of Calvin E. Wright, State Auditor of the State of Idaho, vs. O. W. Bunten. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1041—State of Idaho, on the relation of Calvin E. Wright, State Auditor of the State of Idaho, vs. C. H. Stewart. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 1042—State of Idaho, on the relation of Calvin E. Wright, State Auditor of the State of Idaho, vs. McBirney Fruit Co. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.

#### Civil

#### DISTRICT COURT (closed)

- 535—Standard Oil Company of California, a corporation, vs. Idaho Community Oil Company, a corporation, et al. Re: Collection of motor fuels tax due State.

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- 544—E. J. McKinley and E. H. Hillman vs. R. W. Faris, Commissioner of the Department of Reclamation of the State of Idaho. Re: Commissioner's refusal to correct Permit No. R-482, and application for Writ of Mandate.
- 571—Boise Trust Company, a corporation, vs. Ada County, R. D. Leonardson, as Assessor and Tax Collector of personal property of Ada County, Idaho, and Janet A. Ketchen, as County Treasurer of Ada County, Idaho. Re: Bank tax case.
- 637—Nampa & Meridian Irrigation District vs. William E. Welsh, Watermaster of Water District 12-A of the State of Idaho, and Drainage District No. 4 of Ada County, Idaho, and its Board of Commissioners. Re: Summary adjudication.
- 659—Department of Public Works of the State of Idaho, Department of Finance of the State of Idaho and Frank Hall vs. Tom Watson. Re: Condemnation.
- 666—State of Idaho, ex rel. Bert H. Miller vs. The Family Mutual Benefit Association, Inc., a defacto corporation. Re: Quo Warranto Proceedings.
- 731—Ed M. Clark vs. Franklin Investment Co., a corporation, et al. Re: Action to quiet title.
- 732—Florence Cowley vs. Nicholas Lamberson, et al. Re: Action to quiet title.
- 736—F. A. Randall vs. The Butte and Market Lake Canal Co., a corporation, J. D. Kennedy, Lawrence Poitevin, H. B. Sheppard, individual and as director and trustee of the Farm Credit Corporation, a defunct corporation, State of Idaho, and R. W. Faris, Commissioner of Reclamation.
- 740—Red Fir Mining Corporation, a corporation, vs. S. M. McKee and Mary McKee, husband and wife; and Steward McKee and R. W. Faris, as Commissioner of Reclamation of the State. Re: Water Adjudication.
- 755—Peterson Motor Company, a corporation, vs. Emmitt Pfost, as Commissioner of Law Enforcement of the State of Idaho. Re: Injunction against Caravan Tax.
- 771—J. B. Ploeger and J. E. Durant vs. H. N. Woodard, Mary A. Woodward and the State of Idaho. Re: Action to quiet title.
- 773—State of Idaho, on the relation of Ben Diefendorf, Commissioner of Finance, and Harry C. Parsons, State Auditor, vs. Jack McQuade, Assignee for the benefit of Creditors of W. L. Michelson of Moscow, Idaho. Re: Failure to remit sales tax.
- 778—Hugh E. Howard vs. Irwin C. Cook and Ina R. Cook, husband and wife, and State of Idaho. Re: Action to quiet title.
- 788—Ellen Nugent, et al. vs. State of Idaho, et al. Re: Action to quiet title.
- 791—State of Idaho, on the relation of Harry C. Parsons, State Auditor of the State of Idaho, and J. W. Taylor, Attorney General of the State of Idaho, vs. J. F. Martin, G. E. Mc-

- Kelvey, Aetna Casualty and Surety Company, a corporation, and United Pacific Casualty Insurance Company, a corporation.
- 794—State of Idaho, ex rel. Harry C. Parsons, State Auditor, and J. W. Taylor, Attorney General, vs. J. F. Martin, G. E. McKelvey and Aetna Casualty and Surety Company, a corporation.
- 796—The People of the State of Idaho, ex rel. J. W. Taylor, Attorney General, vs. J. H. Stemmer.
- 803—Robert W. Peterson, as Administrator with will annexed of the Estate of N. Williamson, deceased, vs. The State Board of Education and Board of Regents of the University of Idaho, a body corporate. Re: Quieting title.
- 816—Irving W. Bonbright, Irving W. Bonbright, Jr., O. B. Perry and R. F. Lewis, doing business under the firm name and style of Jordan Creek Placers, vs. John L. Balderston, Commissioner of Law Enforcement of the State of Idaho, and J. W. Taylor, Attorney General of the State of Idaho. Re: License tax on mining.
- 820—Ora Roselle vs. J. L. Balderston, as Commissioner of Law Enforcement of the State of Idaho. Re: Violation of Beer Act.
- 821—Sperry Flour Company, a corporation, vs. J. A. Sorensen. Re: Levy on real estate.
- 822—E. A. M. Mitchell, for herself and of all other persons similarly situated and united in interest, vs. State of Idaho and George W. Wedgwood, Commissioner of Public Investments. Re: Declaratory Judgment.
- 823—State of Idaho, ex rel. J. W. Taylor, Attorney General, vs. Idaho Mutual Benefit Association, Inc., a corporation. Re: Assessment dues.
- 825—J. W. Taylor vs. George Wedgwood, as Commissioner of Public Investments of the State of Idaho. Re: 10% interest case.
- 827—State of Idaho, on the relation of Harry C. Parsons, State Auditor, and J. W. Taylor, Attorney General, vs. Landes Tractor & Equipment Company, a corporation, G. E. McKelvey, J. H. Stemmer, Columbia Casualty Company, a corporation, United Pacific Casualty and Insurance Company, a corporation. Re: Lease purchase agreements.
- 828—State of Idaho, on the relation of Harry C. Parsons, State Auditor, and J. W. Taylor, Attorney General, vs. Landes Tractor and Equipment Company, a corporation, G. E. McKelvey, J. H. Stemmer, Columbia Casualty Company, a corporation, United Pacific Casualty and Insurance Company, a corporation. Re: Lease purchase agreements.
- 832—The State of Idaho vs. Ronald V. Cranston and Ford C. Cliff. Re: Sunday closing law.
- 833—P. C. O'Malley, vs. Harry C. Parsons, State Auditor of the State of Idaho.
- 835—George Vogt, et al. vs. Myrtle P. Enking, Treasurer, Harry C. Parsons, Auditor, Guy Graham, Commissioner of Agriculture, et al. Re: Declaratory Judgment.



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- 938—Century Distilling Company, a corporation, vs. George Wedgwood, as Tax Commissioner of the State of Idaho. Re: Income tax on liquor.
- 846—State of Idaho, ex rel. George W. Wedgwood, Tax Commissioner of the State of Idaho, vs. Mesa Sheep Company. Re: Failure to file income tax.
- 861—United States of America vs. T. G. Somermeier, et al. and State of Idaho. Re: Title of lands.
- 862—State of Idaho vs. The Boise Club, a non-profit corporation, and Dan Bilbao, its manager, and Lloyd M. Willis, Florence Holland Farnsworth, Franklin K. Vernoy, Trustees of and for the heirs of the Broadbent Estate, and Harry K. Fritchman, their agent. Re: Writ of Injunction.
- 866—In the Matter of the application of Walter Miller, sometimes known as Walter Mathis, for Writ of Habeas Corpus. Re: Application for pardon, life imprisonment.
- 873—State of Idaho, ex rel. Harry C. Parsons, State Auditor, vs. J. H. Stemmer, G. E. McKelvey, and E. L. Bair and W. J. Smith co-partners under the firm name and style of Triangle Construction Company.
- 886—State of Idaho, ex rel. George W. Wedgwood, Tax Commissioner of the State of Idaho, vs. Laurence B. Lyman. Re: Income tax collection.
- 887—State of Idaho, ex rel. George W. Wedgwood, Tax Commissioner of the State of Idaho, vs. Roger Murphy and Katherine Murphy. Re: Income tax collection.
- 888—State of Idaho, ex rel. George W. Wedgwood, Commissioner of Public Investments of the State of Idaho, vs. Independent School District No. 1, County of Twin Falls, State of Idaho. Re: Bond interest collection.
- 896a—Ora Roselle, Floyd Sorenson, George Paskins, Nick Lese-kotas, Steve Cacavas, Forrest Stipe, Kelly Kinnersley, Richard Tufts, and Leland Tufts vs. J. L. Balderston, Commissioner of Law Enforcement. Re: Violation of Beer Act.
- 897—E. S. Stallings vs. J. L. Balderston, Commissioner of Law Enforcement of State of Idaho. Re: Violation of Beer Act.
- 898—C. H. Criddle vs. J. L. Balderston, Commissioner of Law Enforcement of the State of Idaho. Re: Violation of Beer Act.
- 901—Herman Nordby vs. Department of Public Works, a corporation, Allen C. Merritt, Commissioner and E. A. Johnston, District Engineer.
- 902—State of Idaho on the relation of Harry C. Parsons, State Auditor, vs. Frank E. Leeright, H. R. Toomer, and Thomas Lauridsen.
- 915—Ada County, a municipal subdivision of the State of Idaho, in relation of C. C. Kendall, Chairman of the Board of County Commissioners of Ada County, and C. C. Kendall, as

- taxpayer of said Ada County in behalf of himself and all other taxpayers similarly situated vs. Barzilla W. Clark, Governor of the State of Idaho; Ira H. Masters, Secretary of State; J. W. Haylor, Attorney General; Harry C. Parsons, Auditor; Myrtle P. Enking, Treasurer; as members of the State Board of Equalization of State of Idaho. Re: Writ of prohibition to enjoin State Board of Equalization from assessing lands.
- 932—State of Idaho, ex rel. J. W. Taylor, Attorney General of the State of Idaho, vs. Ira H. Masters, Secretary of State of the State of Idaho, and Harry C. Parsons, State Auditor of the State of Idaho.
- 933—Ernest A. Logan, Jr., Administrator of the Estate of H. J. Schwarze, deceased, vs. George F. Schwarze and State of Idaho on relation of George W. Wedgwood, Commissioner of Finance of the State of Idaho. Re: Setting aside of realty deed.
- 935—Idaho Candy Company, a corporation, and Charles A. Adams, vs. J. L. Balderston, Commissioner of Law Enforcement of the State of Idaho. Re: Violation of Beer Act.
- 936—Chris A. Hagan and Alfred E. Hagan vs. William S. Clyde, Etta M. Clyde, Earl H. Clyde, Lola Clyde, Allen C. Merritt, Commissioner of Public Works of the State of Idaho; E. A. Johnston, District Engineer, Department of Public Works of the State of Idaho; the State of Idaho, Highway District No. 1, Latah County, State of Idaho; and William O. Borgen, O. M. Anderson and B. L. Keatts, Commissioners of Highway District No. 1, Latah County. Re: Quieting title.
- 942—State of Idaho, on relation of Andy Anderson, on behalf of himself and on behalf of all persons similarly situated vs. J. L. Balderston, as Commissioner of Law Enforcement of the State of Idaho. Re: Refund of tax on motor fuels.
- 946—State of Idaho, on relation of Guy Graham, Commissioner of Agriculture vs. Nels Slindee, doing business under the firm name and style of Slindee Produce Company. Re: Failure to file return and pay excise tax.
- 951—State of Idaho vs. Oregon Short Line Railroad Company. Re: Condemnation suit.
- 952—Jose Montejano vs. Harry Rayner, Commissioner of Law Enforcement of Idaho, and C. M. Jeffery, Prosecuting Attorney of Bannock County, Idaho.
- 953—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho vs. Phineas Ball, doing business under the fictitious name and style of Ammon Produce Company. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 954—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. F. A. Burkhalter. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.

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- 955—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho vs. Marion Christensen. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 956—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. Melvin Gresky. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 957—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. W. H. Havens. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 959—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. John E. Mansfield.
- 962—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. Robert Pence. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 963—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. W. C. Pond. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 964—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. S. W. Porter. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 965—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. Lew W. Davis and B. T. Remington, a co-partnership. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 966—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. Charles Sessions. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 967—State of Idaho, ex rel. E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. Albert Vail and Sam Porter, a co-partnership. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.
- 968—State of Idaho, on relation of Calvin E. Wright, State Auditor, vs. Donald Callahan. Re: Writ of prohibition.
- 970—State of Idaho, ex rel. J. W. Taylor and Public Utilities Commission of the State for and on behalf of State, vs. Gilmore & Pittsburgh Railroad Co. Ltd., a domestic railroad corporation, and Northern Pacific Railroad Co., a foreign railroad corporation. Re: Abandonment of railroad.
- 977—State of Idaho, on Relation of J. W. Taylor, Attorney General, vs. A. L. Morgan, District Judge.
- 981—State of Idaho, on relation of the Industrial Accident Board of the State of Idaho, vs. Leo. A. Maxwell, doing business under the firm name and style of Capitol Sash and Door Factory.
- 983—State of Idaho on relation of E. N. Pettygrove, Commissioner of Agriculture of the State of Idaho, vs. W. D. Cashman. Re: Failure to pay Idaho Fruit and Vegetable Advertising Tax.

- 984—The Federal Land Bank of Spokane, a corporation, vs. Annie M. Hanson, et al.
- 1001—State of Idaho, on relation of Calvin E. Wright, State Auditor, vs. Larry Knight, Principal; J. M. Riley and Fred Hyland, Sureties.
- 1002—State of Idaho, on the relation of Calvin E. Wright, State Auditor, vs. R. A. McDonald, Principal, and D. A. Crawford and Dr. R. T. Witty, Sureties.
- 1003—State of Idaho, on the relation of Calvin E. Wright, State Auditor, vs. Ray Ennis, Principal, Wm. H. Kloefer and E. E. Olson, Sureties.
- 1008—Oud-Shields Hardware Co., a corporation, vs. Chapin Cedar Co., a corporation, and A. W. Tenglund, receiver of the said Chapin Cedar Co.
- 1009—State of Idaho, on the relation of Calvin E. Wright, State Auditor, vs. Frank E. Webb, Virgil E. Neyman and Morris C. Bell.

### Criminal

#### DISTRICT COURT (closed)

- 764—State of Idaho vs. W. F. McMahan. Re: Manslaughter.
- 783—State of Idaho vs. Kenneth Kouni. Re: Violation of Driver's License Act.
- 786—State of Idaho vs. George Woodward. Re: Assault and battery.
- 787—State of Idaho vs. Van Antwerp. Re: Reckless driving.
- 789—State of Idaho vs. Letcher P. Neil. Re: Involuntary manslaughter.
- 800—In the matter of Revocation of License of Dr. Russell Rufus Craft.
- 852—State of Idaho vs. Ira J. Taylor. Re: Misuse of public funds.
- 856—State of Idaho vs. A. D. Stanley, James Jewell and G. E. McKelvey. Re: Making a false certificate on a voucher.
- 857—State of Idaho vs. J. H. Stemmer, G. E. McKelvey and James Jewell. Re: Making a false certificate on a voucher.
- 858—In the Matter of the Application of Andrew Pomerinke, for Writ of Habeas Corpus. Re: Commutation of sentence.
- 859—In the Matter of the Application of James McLlelland for Writ of Habeas Corpus. Re: Burglary.
- 860—State of Idaho vs. Ira J. Taylor.
- 863—State of Idaho vs. L. L. Miller. Re: Operation of motor vehicle while under the influence of intoxicating liquor.

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- 864—**State of Idaho vs. W. S. Robbins.** Re: Retailing beer without county license.
- 867—**State of Idaho vs. E. A. Johnston.** Re: Obtaining money under false pretenses.
- 868—**State of Idaho vs. R. L. Bair.** Re: Obtaining money under false pretenses.
- 869—**State of Idaho vs. J. H. Stemmer.** Re: Obtaining money under false pretenses.
- 870—**State of Idaho vs. T. F. Edwards.** Re: Obtaining money under false pretenses.
- 871—**State of Idaho vs. G. E. McKelvey.** Re: Obtaining money under false pretenses.
- 872—**State of Idaho vs. G. E. McKelvey.** Re: Perjury.
- 877—**State of Idaho vs. G. E. McKelvey.** Re: Misuse of public moneys.
- 878—**State of Idaho vs. J. H. Stemmer.** Re: Misuse of public moneys.
- 879—**State of Idaho vs. G. E. McKelvey.** Re: Misuse of public moneys.
- 880—**State of Idaho vs. J. H. Stemmer.** Re: Misuse of public moneys.
- 881—**State of Idaho vs. G. E. McKelvey.** Re: Misuse of public moneys.
- 882—**State of Idaho vs. J. H. Stemmer.** Re: Misuse of public money.
- 883—**State of Idaho vs. W. R. Cameron.** Re: Illegal sale of liquor.
- 884—**State of Idaho vs. William H. Gess.** Re: Failure to keep and pay over public moneys.
- 885—**State of Idaho vs. Henry Thomey.** Re: Maintaining public nuisance.
- 889—**State of Idaho vs. Eugene Conner.** Re: Violation of liquor act.
- 892—**State of Idaho vs. James Jewell.** Re: Presentation of fraudulent voucher.
- 895—**State of Idaho vs. J. D. Dunshee.** Re: Using state money for a purpose not authorized by law.
- 896—**State of Idaho vs. J. D. Dunshee and Echo Dell Watson.** Re: Misuse of public moneys belonging to the State of Idaho.
- 900—**In the Matter of the Application of William Blades for Writ of Habeas Corpus.**
- 902—**State of Idaho, ex rel. Harry C. Parsons, State Auditor of the State of Idaho, vs. Frank E. Leeright, H. R. Toomer and Thomas Lauridsen.** Re: Collection of fish and game licenses.

- 917—**State of Idaho vs. Max J. Kuney.** Re: Making a false certificate on a voucher.
- 921—**State of Idaho vs. J. H. Stemmer and Richard Pearson.** Re: Making a false certificate on a voucher.
- 922—**State of Idaho vs. J. H. Stemmer and Richard Pearson.** Re: Making a false certificate on a voucher.
- 923—**State of Idaho vs. J. H. Stemmer and Richard Pearson.** Re: Making a false certificate on a voucher.
- 924—**State of Idaho vs. Max J. Kuney.** Re: Perjury.
- 925—**State of Idaho vs. J. H. Stemmer, E. A. Johnston and Frayne L. McAtee.** Re: Making a false certificate on a voucher.
- 926—**State of Idaho vs. G. E. McKelvey.** Re: Presentation of a fraudulent voucher.
- 927—**State of Idaho vs. Charles R. Lowe.** Re: Perjury.
- 948—**State of Idaho vs. Homer Baker.** Re: Rape.
- 950—**State of Idaho vs. Jess Dunn.** Re: Obtaining money under false pretenses.
- 980—**In the Matter of the Application of Harvey S. Hale for Writ of Habeas Corpus.**

#### INDUSTRIAL ACCIDENT BOARD

November 1, 1940

(closed)

- I-100—**State, claimant, vs. W. W. Brown and H. B. Way.** Re: Orson Williams, deceased.
- I-110—**State, Claimant, vs. Tesemini Timber Protective Association.** Re: Howard Puckett, deceased.
- I-130—**State, claimant, vs. St. Joseph Lead Co.** Re: Francis M. Nixon, deceased.
- I-142—**State, claimant, vs. Chris Christensen.** Re: Sam Hult, deceased.
- I-145—**State, claimant, vs. Edwin M. Smith Sawmill.** Re: Bobby Lew Horsley, deceased.
- I-146—**State, claimant, vs. Lafferty Transportation Co.** Re: William P. Mitchell, deceased.
- I-148—**State, claimant, vs. Charles Clark.** Re: Jack Cook Beaker deceased.
- I-149—**State, claimant, vs. Consumer's Water Company, a corporation.** Re: Tom Henry Hoffman, deceased.
- I-152—**State, claimant, vs. Highway District No. 1, Power County.** Re: Clyde Johnson, deceased.

- I-153—State, claimant, vs. Department of Public Works on the relation of Allen C. Merrit.** Re: George L. Morris.
- I-154—Mr. and Mrs. T. L. Brown and State, claimants, vs. Garfield-Lead Silver Mines.** Re: Harold Brown, deceased .
- I-155—State, Claimant, vs. Hallack & Howard Lumber Co., Inc.** Re: William Joseph Burchfield, deceased.
- I-156—Laverne Mauldin and State, claimants, vs. Sunshine Mining Company, a corporation.** Re: John L. Mauldin, deceased.
- I-157—State, claimant, vs. B. J. Carney & Company.** Re: Grover Henry Fallon, deceased.
- I-158—State, claimant, vs. Weyerhaeuser Pole Company.** Re: Adolph Halverson, deceased.
- I-159—State, claimant, vs. Potlatch Forests, Inc.** Re: Matt E. Salo, deceased.
- I-160—State, claimant, vs. Equities, Incorporated.** Re: James B. Allen, deceased.
- I-161—State, claimant, vs. Pecos Valley Alfalfa Mill Company, a corporation.** Re: George Walter Hirning, deceased.
- I-162—State, claimant, vs. W. L. Boutillier.** Re: John Carlson, deceased.
- I-163—Ruth Thacker vs. Jerome Cooperative Creamery, a corporation.** Re: Harold W. Thacker.
- I-164—State, claimant, vs. Hecla Mining Company.** Re: Pearl C. Dodd, deceased.
- I-166—Thomas G. Schuster and State, claimants, vs. Frank Kimball.** Re: Frank Schuster, deceased.
- I-167—State, claimant, vs. Milo W. Zook.** Re: Melvin J. Phillips, deceased.
- I-171—Elda U George Pagel, claimants, vs. E. B. Williams, Contractor for Roddy & Schwab.** Re: Earl Pagel, deceased.

#### **INDUSTRIAL ACCIDENT BOARD**

**November 1, 1940**

**(pending)**

- I-108—State, claimant, vs. Roy Lilya.** Re: William D. Bates, deceased.
- I-169—Morrison vs. Sunshine Mining Company.** Re: Chester Lee Morrison, deceased.
- I-170—In the Matter of the Death of Raymond Carl Wiley, deceased.**

**INDUSTRIAL ACCIDENT BOARD****November 1, 1940****Supreme Court**

- I-165—Sunshine Mining Company, a corporation, vs. Harry Skeen.**  
Re: Injury of Harry Skeen.
- I-168—C. G. Close vs. General Construction Company.** Re: Injury  
of C. G. Close.
- I-172—John J. McLean vs. Hecla Mining Company.**

**MORTGAGE FORECLOSURES (pending)**

- 1867—State vs. Mary Morgan, Owyhee County.**
- 2761—State vs. Frank Martin, Ada County.**
- 3115—State vs. Frank Martin, Ada County.**
- 3353—State vs. J. R. Field, Gem County.**
- 3816—State vs. D. L. Carter, Washington County.**
- 3897—State vs. Clara Hunter, Lincoln County.**
- 4599—State vs. Geo. Thorsted, Fremont County.**
- 4646—State vs. Everett Heseman, Fremont County.**
- 4936—State vs. Serge C. Ballif, Franklin County.**
- 5012—State vs. Painter Bros., Bear Lake County.**
- 5272—State vs. Emma E. Brown, Canyon County.**
- 5338—State vs. Waldemar Weddle, Twin Falls County.**
- 5369—State vs. Roy Hawley, Butte County.**
- 5527—State vs. Frank M. Brown, Canyon County.**
- 4421—State vs. Paul Hodges, Custer County.**

**MORTGAGE FORECLOSURES (closed)**

- 3359—State vs. Robert P. Hyde, Benewah County.** Property sold.
- 3349—State vs. Emma Willitts, Canyon County.** Property sold.
- 4323—State vs. Geo. S. Collins, Boundary County.** Property sold.
- 4647—State vs. Paul Obendorf, Canyon County.** Property sold.
- 4470—State vs. Robert W. Cook, Clearwater County.** Property sold.
- 3239—State vs. G. S. Matthews, Cassia County.** Property sold.
- 2958—State vs. Edith Maxwell, Power County.** Property sold.
- 3684—State vs. Amy Maxwell, Power County.** Property sold.



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- 4644—State vs. Leland Nelson, Power County. Property sold.
- 5405—State vs. Henry Florin, Valley County. Property sold.
- 5458—State vs. F. D. Jones, Blaine County. Property sold.
- 4571—State vs. Sarah Williams, Bingham County. Property sold.
- 5008—State vs. Imogene Carlile, Bannock County. Property sold.
- 4383—State vs. S. A. Tanner, Cassia County. Property sold.
- 5183—State vs. Geo. Knudson, Fremont County. Property sold.
- 4967—State vs. P. L. Robison, Franklin County. Property sold.
- 4473—State vs. Cowles Andrus, Custer County. Property sold.
- 3886—State vs. J. J. Scanlan, Boise County. Property sold.
- 4005—State vs. Margaret Plummer, Blaine County. Property sold.
- 4427—State vs. Joseph A. Golar, Benewah County. Property sold.
- 4799—State vs. Martin Benson, Bonner County. Property sold.
- 4430—State vs. Hogo Olson, Camas County. Property sold.
- 4722—State vs. Hugo Olson, Camas County. Property sold.
- 4875—State vs. Clarence Wheeler, Gooding County. Property sold.
- 5029—State vs. Frank Prewett, Gooding County. Property sold.
- 5099—State vs. Iverson Livestock Co., Cassia County. Property sold.
- 3650—State vs. Edna R. Mikesell, Teton County. Property sold.
- 5121—State vs. Geo. R. Swainston, Teton County. Property sold.
- 5062—State vs. Sarah L. Jenkins, Bannock County. Property sold.
- 5436—State vs. E. M. Beaus, Caribou County. Property sold.
- 4476—State vs. Burt Rands, Camas County. Property sold.
- 5194—State vs. Burt Rands, Camas County. Property sold.
- 4619—State vs. Geo. R. Carpenter, Caribou County. Property sold.
- 5091—State vs. F. A. Reed, Bannock County. Property sold.
- 4536—State vs. Otto Peterson, Ada County. Property sold.
- 5242—State vs. Geo. D. Hansen, Oneida County. Property sold.
- 4841—State vs. Chas. Indermuhl, Owyhee County. Deed taken by State.
- 5015—State vs. Florence Fowler, Gooding County. Deed taken by State.
- 4822—State vs. Geo. Spencer, Bear Lake County. Deed taken by State.

- 5519—State vs. Chas. Reffner, Adams County. Deed taken by State.
- 4296—State vs. M. T. Woodhouse, Cassia County. Deed taken by State.
- 5235—State vs. Anna Sang Gillon, Boundary County. Deed taken by state.
- 4147—State vs. Betty Jewett, Benewah County. Deed taken by State.
- 4927—State vs. David Tracy, Cassia County. Deed taken by State.
- 5449—State vs. H. H. Koplin, Bingham County. Deed taken by State.
- 5438—State vs. W. J. Lavery, Fremont County. Deed taken by State.
- 5359—State vs. Edgar Wells, Boundary County. Deed taken by State.
- 2802—State vs. E. W. Byington, Blaine County. Deed taken by State.
- 3992—State vs. S. H. Spencer, Bear Lake County. Deed taken by State.
- 5329—State vs. W. J. Davis, Caribou County. Deed taken by State.
- 5084—State vs. E. G. Johnson, Canyon County. Deed taken by State.
- 4707—State vs. L. L. Sparks, Lemhi County. Deed taken by State.
- 4977—State vs. Mary F. Galloway, Adams County. Deed taken by State.
- 5023—State vs. Indian Creek Res. Co., Ada County. Deed taken by State.
- 4302—State vs. Mary Hardiman, Owyhee County. Deed taken by State.
- 4574—State vs. Fred Stutzneggar, Bingham County. Deed taken by State.
- 5401—State vs. J. L. Niday, Canyon County. Deed taken by State.
- 4437—State vs. H. K. Wiley, Bingham County. Deed taken by State.
- 4319—State vs. John W. Morton, Elmore County. Deed taken by State.
- 5574—State vs. John W. Morton, Elmore County. Deed taken by State.
- 4464—State vs. Maude S. Morton, Lincoln County. Deed taken by State.
- 4113—State vs. Norman B. Adkison, Idaho County. Deed taken by State.

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**DEPARTMENT OF PUBLIC WORKS****DISTRICT COURT (closed)**

**State of Idaho, ex rel. H. R. Flint, Acting Commissioner of Public Works, vs. Western American Company, a corporation, et al.** Re: Condemnation.

**State of Idaho, ex rel. E. W. Sinclair, Commissioner of Public Works, vs. Randall L. Anderson and Edna Anderson, husband and wife.** Re: Condemnation.

**Chris A. Hagan and Alfred A. Hagan vs. William S. Clyde, Etta M. Clyde, Earl H. Clyde, Lola Clyde, Allen C. Merritt, Commissioner of Public Works of the State of Idaho, et al.** Re: Action to quiet title.

**U. S. DISTRICT COURT (closed)**

**United Pacific Insurance Company, a corporation, vs. Calvin E. Wright, State Auditor of the State of Idaho, et al.** Re: Action to recover proceeds of public works contract.

**U. S. DISTRICT COURT (pending)**

**United States of America vs. Austin, et al.** Re: Condemnation.