ALLAN G. SHEPARD
Attorney General
State of Idaho

December 1, 1966

Hon. Robert E. Smylie
Governor, State of Idaho
Capitol Building
Boise, Idaho

Dear Governor Smylie:

Pursuant to statutory requirement I present for your consideration, and the consideration on the Thirty-ninth Session of the Legislature, the biennial report for the Office of Attorney General.

Respectfully submitted,

ALLAN G. SHEPARD
Attorney General

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<th>ATTORNEYS GENERAL</th>
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The various departments of state during the course of their business transactions have outstanding debts owed them by various corporations, associations and persons with whom they do business. Many times these outstanding debts must be referred to this office for collections, even to the extent of litigation. Principally these collections consist of:

1. Tax collections such as income taxes, estate taxes, numerous license taxes for many departments and taxes to agricultural commissions. All of which are either unpaid or paid with bad checks.

2. Payments due on state timber sales.

3. Payments due for state land sales or condemnations.

4. Brush disposal and forest protection payments due.

5. Service fees due to either the Department of Health for patient care or to the Department of Agriculture for inspections and inoculations of animals, etc.
ATTORNEY GENERAL'S OPINIONS

The office of Attorney General has separated opinions into two general classifications, *formal* and *letter*.

The formal opinions concern matters which this office considers to be of interest to all public authorities throughout the state, and because of such import are distributed to these interested persons.

The following compilation refers only to the formal opinions of statewide concern issued by this office.

Letter opinions are issued by this office directed toward specific local problems and not matters this office considers to be of statewide interest. Letter opinions are of such volume that it is impracticable to include them in this report.

64-9

*Mr. J. Blaine Anderson*  
*Attorney at Law*  
*Blackfoot, Idaho*

Under Section 33-507, *Idaho Code*, where the spouse of a teacher is elected to the Board of Trustees of a school district subsequent to the renewal of the teacher's contract of employment, the teacher may not receive any of the benefits of the contract because of the pecuniary interest of the board member-spouse in that contract.

64-10

*Mr. Dwaine L. Welch*  
*Prosecuting Attorney*  
*Payette County*

1. The term of office of an appointee to a vacancy on the Board of County Commissioners in Payette County expires at the next general election.

2. In order for a political party to have a candidate for the office of County Commissioners in Payette County printed on the next general election ballot, the county central committee must fill the vacancy before the sixtieth day prior to the next general election.
October 30, 1964

Mrs. Doris L. Kenney
County Auditor
County of Bonner

A new resident is not required to prove that he was a qualified elector in his former state, or that he would have been eligible to vote at the election had he remained, but must swear that he is a citizen of the United States and that he resided at a certain location in his former state.

December 23, 1964

Mr. James J. May
Prosecuting Attorney
Twin Falls County

The length of terms for sheriffs elected in the 1964 general election is two years. However, the legislature is authorized to amend Section 34-202, Idaho Code, in the future to provide for the election of sheriffs every four years. Until the general election following any such amending legislation, the term of sheriff continues to be two years.

February 1, 1965

Mr. H. F. Garrett
Executive Director
Employment Security Agency

The Governor of the State of Idaho may survey the proposed programs under the Economic Opportunity Act of 1964 which arise in Idaho under Titles I and II of the Act and may approve or disapprove such proposals; that the administrative expenses incurred by the Governor’s office in so doing may be partially defrayed by Federal Funds as provided under said Act.

April 14, 1965

Mrs. Alice I. Snook
Payette County Clerk

1. A person need not be a registered voter to be author-
ized to sign a referendum petition.

2. One may not register with the County Clerk after the registration books are closed on the last Saturday next preceding the general election and the day they are opened again unless such electors intend to be absent from his precinct during the periods when registrars are registering electors, or such electors have not heretofore been registered in the precinct in which they reside.

Mr. W. L. Robison, Commissioner
Department of Labor

First class cities can probably do all their construction repair and maintenance work either by contract or through their own employees as they choose. Second class cities and villages are more restricted and must contract where possible or where bids are received in relation to sewer work, and local improvement district work, but do not need to contract, and can do the work themselves if no bids are received in either sewer work or local improvement district work. They do not need to contract in relation to highway work within the city or village which is not done under the local improvement district law.

The Commissioner of Labor has the power to determine prevailing wage rates in relation to the specifications for any contracts which are let by all cities or villages, but does not have the power to determine such rates in relation to work that is not done by contract. Section 44-1101, Idaho Code, applies to all persons employed as laborers, workmen, mechanics or other persons similarly employed on behalf of a city or village, and requires that these employees be paid not less than the current rate of per diem wages in the locality where the work is done. The current rate of per diem wages would be determined between the city or village and the employee as the contracting parties.
commonly considered of a higher rank do, or at least are empowered, to take an “active” part in political organization “management”.

2. July 1, 1965 is the ultimate deadline in which a state employee presently holding a prohibited party office must resign. Failure to do so could result in a misdemeanor prosecution.

September 29, 1965

Mr. James J. May
Prosecuting Attorney
Twin Falls, Idaho

The County Commissioners may authorize expenditures under Section 31-1608, Idaho Code, if the Board is convinced that the facts constitute an emergency and that the budget of the assessor is not sufficient to make the expenditures required and meet the obligations imposed. Determination of emergency must be made by the County Commissioners of each county after considering the specific situation existing in their county.

November 18, 1965

Mr. Mark H. Lundy
Chief Electrical Inspector
Idaho State Electrical Board

Any person, firm or corporation which enters into contracts of maintenance and service with private individuals but does not become an employee of the person receiving the services, is an electrical contractor under definitions set down in Idaho Code Section 54-1003A, and all work done by person, firm or corporation shall be subject to the inspection provided in Idaho Code Section 54-1004.

December 16, 1965

Mr. James L. Schoenhut
Prosecuting Attorney
Cascade, Idaho

A registered surveyor or engineer should check the plat when the subdivision is not within a town, village or
city. The plat should not be recorded until it has been accepted and approved by the governing body and no plat shall be approved unless a registered surveyor or engineer shall check the plat.

66-1

April 6, 1966

Honorable L. E. Clapp
Secretary of State

The Secretary of State's Office should accept for filing petitions of candidates containing not less than 200 and not more than 300 signatures, in the case of candidates for Justice of the Supreme Court, and not less than 100 nor more than 200 signatures in the case of candidates for District Judge. Petitions bearing the above specified number of signatures and otherwise valid and sufficient should be accepted for filing during the period of at least 45 days and not more than 75 days prior to the date fixed for holding the nominating elections.

66-2

April 16, 1966

Honorable Robert E. Smylie
Governor of the State of Idaho

This opinion dealt with the construction and interpretation of House Bill 15, Third Extraordinary Session of the Thirty-eighth Session of the Legislature. This bill was concerned with election laws and was passed in the Third Extraordinary Session. Because of complexity of the election laws and the problems encountered therein, a discussion of that opinion is impractical.

66-3

April 27, 1966

M. K. Cline
Auditor and Recorder
Latah County

Offices of County Auditors should be held open May 7th for the purpose of filing declaration of candidacy.
SUPREME COURT OF THE UNITED STATES

CIVIL ACTIONS

Pending

Docket No.


UNITED STATES COURT OF APPEALS

CIVIL ACTIONS

Pending


UNITED STATES DISTRICT COURT

CIVIL ACTIONS

Pending


ATTORNEY GENERAL'S REPORT

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2842  Dryden M. Hiler, Plaintiff, vs. Ralph R. Harding, et al., Defendants.

2859  In re Rocky Mountain Chemical Corporation, debtor.

2993  Charles E. Smith, Petitioner, vs. State of Idaho, Defendant.


4059  Alvin Settler, Plaintiff, vs. Yakima Indian Tribal Council, et al., Defendant.

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4102  United States of America vs. 9,103.87 Acres of Land, et al., in Clearwater County, Idaho.

SUPREME COURT — STATE OF IDAHO

CIVIL ACTIONS

Pending

Docket No.


2705  Floyd Eaton, Plaintiff, vs. Latah County Commissioners, Defendants.


2792  Paul A. Mahaffey, Plaintiff-Petitioner, vs. State of Idaho, Defendant-Respondent.

2837  H. Fred Garrett, Plaintiff, vs. M. K. Cline, Defendant.
Board of Trustees of Joint Class A School District No. 151, et al., Plaintiffs, vs. Board of County Commissioners of Cassia County, et al., Defendants.


Alvis Wilson, Petitioner, vs. L. E. Clapp, Warden, Idaho State Penitentiary, Defendant.


Allan G. Shepard, Attorney General of the State of Idaho, and James E. Hunt Prosecuting Attorney for Bonner County, Plaintiffs, vs. James Mickelson, Leonard Harbison, and Homer Smith, Board of County Commissioners of Bonner County, Idaho, Defendants.


State of Idaho, Plaintiff, vs. John Dee Larsen, Defendant.

Wendell H. Mathison, Applicant, vs. Honorable Tom Felton and Roy E. Mosman, Respondents.

State of Idaho, Plaintiff, vs. Doris Lucille Anstine, Defendant.


State of Idaho, Plaintiff, vs. Edward Albert King, Defendant.

George Olson, Appellant, vs. State of Idaho, Respondent.
Docket No.


2994 Orvil D. Atkinson vs. State of Idaho.


2999-A Lewis A. Lott, Petitioner, vs. State of Idaho, Defendant.


4016 State of Idaho, Plaintiff, vs. Frank J. Martinez, Defendant.

4019 State of Idaho, Appellant, vs. George Olson, Respondent.


4034 Dennis Pharris, Petitioner, vs. State of Idaho, Respondent.


4043 Fairl S. Haddon, Plaintiff, vs. State of Idaho, Defendant.

4046 State of Idaho, Plaintiff, vs. Arthur Hancock, Defendant.
Docket No.

2673 In re petition of Paul Andrew Mahaffey for Writ of Habeas Corpus.


2724 Milot, Plaintiff, vs. E. R. Hopper, Defendant.

2820 In the Matter of the Application of David R. Fenton, Marvin K. Miller and Glen D. France for Writs of Habeas Corpus, Petitioners.

2836 In re Application of Darole Carpenter for Writ of Habeas Corpus.

2845 Ted LaVoie, Plaintiff-Respondent, vs. Commissioner of Law Enforcement, Defendant-Appellant.


2857 Allen Steel Supply Company, Plf.-Respondents vs. Guy R. Bradley, Def.-Appellant.

2858 In re application of Joseph J. Johnson for Writ of Habeas Corpus.


Docket No.


2893 In the matter of the Application of George Olson for Writ of Habeas Corpus and George Olson, Petitioner, vs. District Court of the Eleventh Judicial District of the State of Idaho, in and for the County of Twin Falls, and Each and Every Judge thereof, Respondents.

2943 State of Idaho, Plaintiff, vs. Robert L. Martinez, Defendant.

2946 State of Idaho, Plaintiff, vs. Jacob McGonigal, Defendant.

2952 Frank J. Martinez, Plaintiff, vs. State of Idaho, Defendant.

2967 In the matter of the Failure of V-1 Oil Company to Comply with Section 61-8028, Idaho Code.

2970 State of Idaho, Plaintiff, vs. Robert L. Martinez, Defendant.


4020 City of Lewiston, Plaintiff, vs. Thomas L. Anderson, Frances W. Frary, and Raymond E. Grider, Defendant.


CRIMINAL ACTIONS

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2740 State of Idaho, Plaintiff, vs. Lewis A. Lott, Defendant.
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2670 State of Idaho, Plaintiff, vs. Elwin M. Hall, Defendant.


2716 State of Idaho, Plaintiff, vs. Clyde Gish, Defendant.


2839 State of Idaho, Appellant, vs. Linda M. Snyder, Respondent.


2889 State of Idaho, Plaintiff, vs. Dillard Junior Haggard, Defendant.

Docket No.

2906 State of Idaho, Plaintiff, vs. Clyde Gish, a/k/a Roy Albert King, Defendant.

2908 State of Idaho, Plaintiff, vs. Marion V. Overby, Defendant.


2938 State of Idaho, Defendant, vs. Claude Stokes, Plaintiff.

2965 State of Idaho, Plaintiff, vs. Chester R. Lewis, Defendant.

2987 State of Idaho, Plaintiff, vs. George Lovell, Defendant.

4041 State of Idaho, Plaintiff, vs. James Brauburger, Defendant.

DISTRICT COURT — STATE OF IDAHO

CIVIL ACTIONS

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2573 In the matter of the Estate of S. R. Spencer, Deceased.

2662 In the matter of the proposed merger of Old West Life Insurance Company and Union Trust Life Insurance Company, et al., Petitioners.


2699 State of Idaho, Plaintiff, vs. John Harris, Defendant.
Docket No.


2717 Alice A. Soden, Plaintiff, vs. Thomas B. Carr, et al., Defendants.

2719 Vida Thompson, Petitioner, vs. State Board of Health.

2721 Nellie Baker, Plaintiff, vs. Merrill A. Wright, et al., Defendants.


2909-A Earl E. Austin, Plaintiff, vs. Mr. Louis E. Clapp, Defendant.

2760 Richard L. Black, Plaintiff, vs. Commissioner of Law Enforcement, Defendant.

2766 State of Idaho, Plaintiff, vs. Marvin F. Olson, Jr., Defendant.

2822 Vern Savage, Plaintiff, vs. City of Pocatello, et al., Defendants.


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2871 In the matter of the Status of the Idaho Public Livestock Market Charter No. 16 held by Bill H. Silson d/b/a Salmon River Livestock Auction.


2877 Paul Andrew Mahaffey, Plaintiff, vs. State of Idaho, Defendant.

2884 Theodore John Starkey, Plaintiff, vs. State of Idaho, Defendant.


2896 In re the Estate of Felipe Yribar, Deceased, Ralph Yribar, et al., Contestant, Plaintiff-Appellant, vs. H. B. Fitzpatrick and Oliver Davis, Proponents of the Last Will and Testament of Felipe Yribar, Deceased, Defendants-Respondents.


2913 In the matter of the Application of Western Air Lines, Inc., for authority to engage in air transportation in the Northwest-Southwest area.

2916 Charles P. Brewer, doing business under the firm name and style of Brewer Pest Control vs. State Board of Health.

2918 Earl David Boan, Petitioner, vs. State of Idaho, Defendant.
Docket No.

2920 Felicia Nichols, Plaintiff, vs. Willis Godfrey and State of Idaho, Defendant.

2926 State of Idaho, ex rel Stanley I. Trenhaile, Commissioner of Agriculture, Plaintiff, vs. Hairl P. Johnson and Darlene Johnson, husband and wife, and Jerry Johnson, d/b/a Johnson's Packing Plant, Defendant.


2934 Alice Clegg, Don W. Clegg and Lucille Clegg, Laura Clegg, Joseph Collins, Robert Young, and Donnette Young, Petitioners, vs. Carl Tappan, State Reclamation Engineer, and the Reclamation Department of the State of Idaho, Respondent.


2940 In re application of Harold H. Hanson for an Outfitter's License vs. Idaho State Outfitters and Guides Board.

2941 In the interest of David Soto, a child under eighteen years of age.


2947 In the matter of the Assessed Valuation of Certain Real Property, to wit: Lots 1 to 4 Inclusive, etc. Assessed Against C. C. Anderson Stores Company for the Year 1964.


2951 Leonard Dean Gardner & Wayne Carter Peterson, Plaintiffs, vs. Warden L. E. Clapp, Defendant.

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4008 Wesley E. Coffelt, Petitioner, vs. State of Idaho, Respondent.


4015 Theodore John Starkey vs. State of Idaho.


4025 In the matter of the Multi-Line Insurance Rating Bureau.


4029 Duane Hall, Petitioner, vs. State of Idaho, Respondent.

ATTORNEY GENERAL'S REPORT

Docket No.

4036 A. L. Gurley, Doing business under the firm name and style of Western Music Company, Plaintiff, vs. Floyd West, Tax Collector of the State of Idaho, Defendant.


4050 John W. Pruett, Plaintiff, vs. Western Paving Company and Marshall Haney Corporation, Defendant.

4051 Union Pacific Railroad Company, Plaintiff, vs. South Bannock Free Library District, Defendant.


4053 Francis Lloyd Schwartz, Petitioner, vs. State of Idaho, Defendant.

4054 Dennis Pharris, Petitioner, vs. State of Idaho, Respondent.


4060 John Frances Nester, Petitioner, vs. State of Idaho, Respondent.

4062 Jack Gibbs, Reed Budge, Vern Moser, Caribou County, Idaho Citizens Grazing Association, Plaintiffs, vs. Robert E. Smylie, Allan G. Shepard, Joe R. Wil-
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Williams, Arnold Williams, D. F. Engelking, O. J. Buxton, Defendants


4074 Harold G. McDonald vs. State of Idaho.

4075 C. W. Mulhall vs. John Nielson and Jane Doe Nielson, his wife, if married, et al.


4078 Harriett M. Jones, a widow, vs. Mrs. R. E. Lenox, a/k/a Mrs. Dixon M. Lenox, a/k/a Dixie Dow, et al.

4079 Richard Clayton vs. Everett L. Jensen, et al.

4080 Cecil Jenkins vs. Delbert Jenkins, et al.


4081 State of Idaho, on the relation of W. D. Stearns, Director of the Unfair Sales Act for the Department of Commerce and Development, Plaintiff, vs. Jay Davis, d/b/a Jay's Sav-on Foods, Defendant.

4082 Caribou County, a political subdivision of the State of Idaho, vs. Carl Tappan, State Reclamation Engineer, State of Idaho.


4084 Jean E. Solomon, et al., vs. Department of Public Assistance.

4089 Edward L. Purser vs. State of Idaho.

4091 Jose Martinez vs. State of Idaho.
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4092 In the matter of the Application of Caryl Fuchs, for a Writ of Habeas Corpus.
4109 Henry W. Goff vs. State of Idaho.
4121 In re Plans of Gem State Mutual Life Association, Inc.
4150 In the matter of Ebco (Troy Capital Building).
4151 In the matter of Ebco (Owyhee Hotel).
4152 In the matter of Boise Hotel.

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2526 Mike Jimeniz, Plaintiff, vs. Commissioners of Bingham County, Defendants.
2610 Clarence Frasure, Plaintiff, vs. Commissioner of Law Enforcement, Defendant.
2663 State of Idaho, Plaintiff, vs. Mary Crosby, Defendant.
2675 First Federal Savings & Loan Association of Twin Falls, Plaintiff, vs. Paul M. McClure, et ux., et al., Defendants.
2688 Evelyn Major Matteson, Plaintiff, vs. Don Briscoe, Defendant and many Cross-Defendants.
2715 Ralph H. Smith, Plaintiff, vs. The Regents of the University of Idaho, et al., Defendants.
Docket No.

2724 In the matter of the Suspension of State Retail Beer License No. 710 of Harold Milot d/b/a 1916 Barr, Stites, Idaho County, Idaho, Petitioner, vs. E. R. Hopper, Defendant.


2728 In re Suspension of State Retail Beer License No. 655 of F. S. Johnston, d/b/a Smoke Shop, City of Grangeville.

2729 In re Suspension of State Retail Beer License No. 1760 of V. S. Willey, d/b/a Vern Grocery, City of Grangeville.


2739 Rufus Wm. Freeman, Petitioner, vs. State of Idaho, Respondent.


2751 In the matter of the Application for the Appointment of a Water Master for McMillan La'eral, Ada County.


2754 In the matter of the Application of Paul Andrew Mahaffey for a Writ of Habeas Corpus.
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<td>2832</td>
<td>In the interest of Edwin L. Cosner, a child under 18 years of age.</td>
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<td>2846</td>
<td>Panfili Brothers &amp; Byers, Plaintiffs, vs. Jay Taylor, et al., Defendants.</td>
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<td>2851</td>
<td>Robert D. Remington, Plaintiff, vs. Outfitters &amp; Guides Board, Defendant.</td>
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<tr>
<td>2861</td>
<td>State of Idaho, Plaintiff, vs. Fitzpatrick, Defendant.</td>
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Docket No.


2881 Western River Expeditions, Inc., vs. Al Tice, Martin Capps and Jim Renshaw, Members of and constituting the Idaho Outfitters and Guides Board.

2888 Michael Donahue, Plaintiff, vs. State of Idaho, Defendant.

2891 In the matter of the Application of David L. Orris for a Writ of Habeas Corpus.


2894 Marvin F. Roach vs. State of Idaho.

2899 Horace J. Knowlton, Plaintiff, vs. Department of Reclamation of the State of Idaho and George N. Carter, State Reclamation Engineer, Defendant.

2901 David Lemons, Plaintiff, vs. Chester Hillman, Defendant.

2911 Michael Donohue, Petitioner, vs. State of Idaho, Defendant.

2912 Jerry D. Moore, Petitioner, vs. L. E. Clapp, Defendant.

2914 In the matter of the Application of Thomas Reese for a Writ of Habeas Corpus.

2915 In the matter of the Application of Joseph J. Johnson for a Writ of Habeas Corpus.

2922 In the matter of the Application of Donald LeRoy Schoonover for a Writ of Habeas Corpus.

2924 In the matter of the Petition of Fred E. McCormick for a Writ of Habeas Corpus.

2925 In the matter of the Election of the Sheriff of Cassia County, State of Idaho.
Docket No.


2929 State of Idaho, on relation of W. D. Stearns, Director of Unfair Sales Act for Department of Commerce & Development, Plaintiff, vs. George McKelvey d/b/a Combination Foodliner, Defendant.

2930 State of Idaho, relation of W. D. Stearns, Director of Unfair Sales Act for Department of Commerce & Development, Plaintiff, vs. Fred C. Contamessa d/b/a Thrift Food Center, Defendant.


2932 State of Idaho, on relation of W. D. Stearns, Director of Unfair Sales Act for Department of Commerce & Development, Plaintiff, vs. Stein Brothers, Inc., an Idaho Corporation, Defendant.


2939 Ernest Faris, Plaintiff, vs. State of Idaho, Defendant.


2962 Leonard L. Kensley, plaintiff, vs. State of Idaho Defendant.


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2981  David Lee Walters, Plaintiff, vs. State of Idaho, Defendant.


2983  Willard R. Jacobson, Petitioner, vs. Earl Winter, Sheriff of Elmore County, Defendant.


4023  Freddie R. Darden, Plaintiff, vs. State of Idaho, Defendant.

4027  Donnell Hoyt, Petitioner, vs. State of Idaho, Respondent.


4061  Carl Pierce, Plaintiff, vs. State of Idaho, Defendant.


4085  Elwood Rainey vs. State of Idaho.

4086  Charles P. Sagmoen vs. State of Idaho.

4088  Peter J. Martin vs. State of Idaho.
PROBATE COURTS

CIVIL ACTIONS

Pending

Docket No.

2883 In the matter of the Termination of the Parental Rights of Kathryn Jean Koford.

2942 In the matter of the Estate of James W. Giezentanner.

2966 In the matter of the Estate of Arthur Pellegram.

2725 In the matter of the Hospitalization of John W. Hunt, Incompetent.

2860 In the matter of the Termination of the Parental Rights of Alta Lee Thompson.

4069 State of Idaho, ex rel, Potato and Onion Commission, Plaintiffs, vs. W. W. Newcomb, Defendant.

4070 State of Idaho, ex rel, Potato and Onion Commission, Plaintiffs, vs. Albert Moser, Defendant.

4095 In the matter of Application of R. Grant Jemmett and Vendla M. Jemmett, his wife, to adopt Kerry Thompson.

Closed

2900 In re the Estate of George Slethei, Deceased.