

BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

TO THE

GOVERNOR OF THE STATE OF COLORADO,

FOR THE YEARS 1877-8.

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DENVER.  
DAILY TIMES PRINTING HOUSE AND BOOK MANUFACTORY.  
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STATE OF COLORADO,  
ATTORNEY GENERAL'S OFFICE,  
DENVER, December 20, 1878.

*His Excellency, John L. Routt, Governor of Colorado :*

SIR—I have the honor to submit herewith the biennial report for the years A. D. 1877-'78, required by law, of this department.

Very Respectfully,  
A. J. SAMPSON,  
Attorney General.

## REPORT OF THE ATTORNEY GENERAL.

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Entering upon the discharge of the duties of this office at the time I did, with neither predecessor or precedent, and when a construction of many of the most important laws of the State was necessary, the duties of the office have not only been very important but very laborious.

I have found the laws inadequate for the purposes intended, in many instances, or sections of one act in conflict with those of another. Were it not for the fact that the law designates certain officials who shall report defects in existing laws to the General Assembly, and does not include in that number the Attorney General, I would venture to make suggestions as to amendments necessary to be made. These are numerous. I will suggest that the law prescribing the duties of this branch of the executive department be so amended as to make it the duty of the Attorney General to report to the General Assembly, the first day of each session, such amendments as he may deem important.

### “OFFICIAL OPINIONS.”

The amount of collections made on suits on behalf of the State attended to by me have not been many, but the calls for “official opinions” have been very numerous. In many instances, not being authorized by law to do so, I have refused to give such an opinion, but answered the call by giving what was, perhaps, regarded as a semi-official opinion. I answered about three hundred communications of this character, and, for further information, advised the inquirers to seek the counsel of their respective county attorneys. I

was informed that in certain counties they had no attorney, and in such cases continued to give information called for.

In other cases, where the information sought was purely of a private character, I recommended the inquirers to seek the advice of some competent attorney, who, for a reasonable compensation, would furnish them the desired information.

I have given one hundred and twenty written legal opinions, which are of record, and very many more verbal opinions, of which no record is kept. Those written I transmit to my successor in office.

#### STATE INSTITUTIONS.

##### UNIVERSITY OF COLORADO.

It is made my duty to advise the Board of Regents of the State University, at Boulder, which I have done from time to time, when requested so to do.

An act of the last General Assembly made it my duty to see that the Board of Trustees of the University of Colorado properly conveyed to the Board of Regents the title to the real estate held by the Trustees for said University, and to see that all other property should be properly transferred to said Regents. This duty I performed, and made report of the same to the State Auditor.

##### AGRICULTURAL COLLEGE.

In compliance with an act of the last General Assembly I made examination of the title of "the real estate known as the Agricultural College of Colorado," and saw that the fee simple title thereof was properly vested in the "State Board of Agriculture," and reported this fact to the State Auditor.

##### SCHOOL OF MINES.

I found the title to this property defective, but proper deeds were procured to vest the title in the Trustees of the School of Mines, when a similar report to the two preceding was furnished the State Auditor, as by law required.

## MUTE AND BLIND INSTITUTE.

It was also made my duty, by an act of the last General Assembly, to see that the fee simple title to the real estate held by the "Institute for the Education of Mutes" should be properly vested in the "Institute for the Education of the Mute and Blind." After deeds were properly executed, this, too, was reported to the State Auditor as a proper subject to receive the aid of State taxation.

## STATE PENITENTIARY.

By order of the Board of Commissioners certain accounts belonging to this institution were turned over to me for collection. I soon ascertained that all of these were worthless, or the money was paid direct to the Warden, hence no suits on that account have been brought. One account yet remains in my hands uncollected, with promise of early settlement.

The convict labor was first leased during the year. The bankruptcy of the securities on the bond of the lessee and his inability to furnish a new and satisfactory bond, necessitated a change.

Through the energy and business tact of the efficient warden, litigation or bankruptcy, that seemed imminent for some time, was averted, and the State received payment in full of all her demands. A new lease of the convict labor under much more favorable conditions, has been effected. I have advised the warden and commissioners from time to time, and prepared necessary legal documents, contracts and leases.

## OTHER DUTIES.

Numerous other duties have devolved on me, such as advising the different members of the Executive Department, the Adjutant-General, Fish Commissioner, State Board of Health, State Board of Education, and preparing various contracts, leases, and bonds for the State.

In three instances the use of the name of the State was sought in injunction proceedings and refused, for reasons

assigned, and in one instance permission was granted, as the interest of all the parties demanded an immediate settlement of the matter in controversy.

The State Board of Land Commissioners, State Board of Equalization, and State Board of Railroad Assessors, of which boards the Attorney General is a member, have had difficult and responsible duties to discharge.

New and important questions have arisen, some of which have been determined by judicial decisions. The most important of these is that affecting the authority and power of the State Board of Equalization to increase the aggregate value of the property of the State, as returned by the various assessors, for purposes of state taxation, when, in the opinion of the board the assessment shall not be on the basis of a "just valuation," as the constitution of the State requires, or of a "full cash value," as the revenue law of the State demands. The position assumed by this board, in favor of such right, was taken, after full consultation with several of the recognized leaders of the Colorado bar, because of its importance to the State, but has been held by the Supreme Court to be erroneous. This decision will very materially lessen the responsibilities and duties of this board in the future.

#### CASES.

The law makes it the duty of the Attorney-General to attend to and prosecute all criminal cases, on appeal to the Supreme Court, and to attend to all other cases in which the State is interested.

Following you will find a list of all such cases attended to by me, and the disposition made of the same. This report concludes with the fiscal year 1878, or November 30, 1878, hence does not include the cases now pending and to be determined at the present session of the Supreme Court.

No. 337. August Schneider vs. The People, &c., assault and battery. Appeal from Clear Creek County. Dismissed at cost of appellant.



No. 342. James Hetzer vs. The People. Revenue law violation. Error to Boulder county. Submitted on Briefs. Reversed. See 4th Colo. (Hon. Hugh Butler and Judge Hardenbrook were associated with me in this case.)

No. 351. Fred Geisler and J. Wicham vs. The People. Cattle stealing. Error to Douglas county. Dismissed at costs of plaintiffs in error.

No. 408. George Christ vs. The People. Cattle stealing. Error to Jefferson county. Argued and submitted. Affirmed. 3 Colo. 394.

No. 367. Malachi Moynahan vs. The People. Murder. Error to Fremont County. Submitted on briefs. Reversed. 3 Colo. 367.

(Note.—Defendant has since been re-convicted and sentenced to the penitentiary for life.)

No. 417. Ezekial M. Wilson vs. The People. Shooting with intent to kill. Error to Jefferson County. Argued and submitted. Affirmed. 3 Colo. 325.

No. 430. Daniel Davidson vs. The People. Murder. Error to El Paso County. Submitted on briefs. Reversed. See 4th Colo.

No. 436. Edward Dunn vs. The People. Forgery. Error to Arapahoe County. Argued and submitted. Affirmed. See 4th S. Colo.

No. 452. W. H. J. Miller vs. The People. Grand larceny. Error to Summit County. Submitted. Reversed. See 4th Colo.

(Note.—In this case abundant proof was furnished, that could not be had at the trial below, showing that the defendant took the property charged, under written orders from the owners. He was prosecuted by a party having a mortgage interest in the property.)

No. 457. The People ex rel. State Auditor vs. County Clerk of Arapahoe County. Mandamus. Demurrer to answer filed. Argued and submitted. Demurrer sustained

in part and over ruled in part. The People elected not to farther prosecute. Dismissed. 3 Colo. 428.

No. 472. William Conner et al. vs. The People. Suit on bond. Appeal from Bent county. Submitted on briefs. Reversed. See 4th Colo.

No. 476. James Clelland et al. vs. The People. Suit on bond. Appeal from Fremont county. Submitted on briefs. Reversed. See 4th Colo.

No. 506. Timothy Boyle and Eugene Boyle vs. The people. Cattle stealing. Error to Elbert county. Argued and submitted. Affirmed. See 4th Colo.

No. 528. The People, ex rel. James Rice et al. vs. Wm. Keeling et al. Usurpation of office. Argued and submitted. Relief prayed for denied. See 4th Colo.

(NOTE.—This case is elsewhere referred to. Messrs. Richmond and Stanton, attorneys for complainants.)

SUMMARY.

Judgments affirmed,.....	5
Judgments reversed,.....	5
Cases dismissed on motion,.....	3
Reliefs prayed for denied,.....	2
Written legal opinions given,.....	120
Letters asking for "official opinions" answered,.....	300
No record of verbal opinions.	

Respectfully submitted,

A. J. SAMPSON,  
Attorney General.