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BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF COLORADO

1923-1924

WAYNE C. WILLIAMS
ATTORNEY GENERAL

Biennial Report

OF THE

Attorney General

OF THE

State of Colorado

Years 1923 and 1924

WAYNE C. WILLIAMS
Attorney General

THE BRADFORD-ROBINSON PTG CO
DENVER, COLORADO
1925

ATTORNEYS GENERAL OF COLORADO

From the Organization of the State

Name	Years
A. J. Sampson	1877-1878
Charles W. Wright	1879-1880
Charles H. Toll	1881-1882
David F. Urmy	1883-1884
Theodore H. Thomas	1885-1886
Alvin Marsh	1887-1888
Samuel W. Jones	1889-1890
Joseph H. Maupin	1891-1892
Eugene Engley	1893-1894
Byron L. Carr	1895-1898
David M. Campbell	1899-1900
Charles C. Post	1901-1902
Nathan C. Miller	1903-1906
William H. Dickson	1907-1908
John T. Barnett	1909-1910
Benjamin Griffith	1911-1912
Fred Farrar	1913-1916
Leslie E. Hubbard	1917-1918
Victor E. Keyes	1919-1922
*Russell W. Fleming	1923
Wayne C. Williams	1924

* Mr. Fleming died in office December 25, 1923, and Mr. Williams was appointed December 29, 1923, to fill the vacancy thus created.

STATE OF COLORADO LEGAL DEPARTMENT

ATTORNEY GENERAL

Russell W. Fleming, 1923
Wayne C. Williams, 1294

DEPUTY ATTORNEY GENERAL

Charles Roach

ASSISTANT ATTORNEYS GENERAL

Riley R. Cloud
Oliver Dean
Joseph P. O'Connell
Harold Clark Thompson
Charles M. White
F. S. Caldwell

INHERITANCE TAX COMMISSIONER

Winton M. Ault, 1923
George Hetherington, 1924

DEPUTY INHERITANCE TAX COMMISSIONERS

Charles A. Eaton
Arthur M. Morris

INHERITANCE TAX APPRAISERS

G. W. Moscript
O. S. Brinker

STENOGRAPHIC AND CLERICAL ASSISTANTS

Miss Margaret E. Fallon
Mrs. Christean M. Crafts
Miss Jessie Lamoreaux
Mrs. Jeanne M. Gale
Miss Alice Creighton
Miss Rita Fox
Miss Margaret Tierney
Mrs. M. L. Schneider

BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF COLORADO

To His Excellency

WILLIAM E. SWEET,
Governor of Colorado.

Sir :—

In accordance with the provisions of law, I have the honor to transmit herewith to you, my Report for the biennial term of the office of Attorney General of the State of Colorado, beginning January 9, 1923, and ending January 13, 1925. This report contains the following:

Schedule I. Preliminary summary and report of the Attorney General.

Schedule II. List of cases pending and disposed of in all Courts.

Schedule III. List of Workmen's Compensation Cases now pending.

Schedule IV. Certain opinions and syllabi of opinions rendered during the biennial term.

Following the usual custom, I have extended some opinions and printed them in full because of their importance in the work of the Attorney General and as guiding the work of the departments of the State. Many of the opinions on minor and purely departmental matters are not printed in full, but are merely summarized.

At the outset of this report, I am obliged to call official attention to the unfortunate death of Hon. Russell W. Fleming, my predecessor in this office. Mr. Fleming was elected along with your Excellency at the General Election in November, 1922. He took office on January 9, 1923, and held the same until the day of his death, Christmas Day, December 25, 1923. The present incumbent was appointed on December 29, 1923, and has served until the end of the biennial term

There was no mistaking the deep and widespread grief which accompanied the regrettable and unfortunate death of Mr. Fleming. He had, during his one year in the office of Attorney General, shown legal ability of the highest order. It is, indeed, rare that the State can command such eminent legal talent for its services. His death was sudden and shocking and altogether unexpected and left a great void which can never be filled.

It is always difficult to step into the middle of the term of any elected official and carry out his duties for the remainder of that term, but my difficulties have been greatly lessened and the path made easier by the excellent work he had already done. Chief among the many things which Mr. Fleming had accomplished was the selection and appointment of a very able staff. Upon coming into the office of Attorney General and accepting the appointment at the hands of your Excellency, I announced that the entire staff, as selected by Mr. Fleming, would be retained for the remainder of the biennial term. I have never regretted this step, for its wisdom has been demonstrated during the entire year of my incumbency of this office. I can pay only the highest tribute to the loyalty and ability of the men selected for Mr. Fleming's staff. Their work has been of a very high order and they are all men of high civic interest and ideals and lawyers of unusual ability. This is true of the entire staff without a single exception and the State has been very fortunate to have their services. The same may be said of the stenographic staff of this department, which for loyalty and efficiency cannot be surpassed in the State's service.

The year 1924 proved to be one of the most important years from the standpoint of the office of Attorney General that our State government has ever known. An unusual number of large and important questions confronted the office. These have all been disposed of, insofar as they could be, within the limit of a year, and, we trust, to the interest and benefit of the people of Colorado, whom we all serve.

THE RIO GRANDE CASE

The immediate matter confronting the Attorney General in January of 1924 was the attempted reorganization of the Denver & Rio Grande Railroad Company. This case had already been decided by a Division of the Interstate Commerce Commission and had been lost by the State of Colorado. The State had protested against the proposed reorganization on very substantial grounds. With the able assistance of the Hon. James Marsh, former City Attorney of Denver and one of the eminent lawyers of the State, we secured a rehearing of the case before the entire Commission. The legal contest over the reorganization and its various phases occupied five months of time and involved numerous and protracted hearings, preparation of briefs, valuation data and extended negotiations.

As a result of the strong opposition of the State of Colorado to the reorganization scheme as proposed by the bondholders in Wall Street, an important modification was made in the plan by which a sum exceeding seven million dollars was saved to the railroad and taken from the bonded indebtedness which the railroad must assume under the plan. The final plan of reorganization was approved by the Interstate Commerce Commission and the reorganization has now been consummated.

It is greatly to be regretted that the State did not prevail, for while the railroad is still nominally an independent road, it is in fact the mere creature and servant of two other roads, the Missouri Pacific and the Western Pacific, and the Rio Grande Railroad as a separate operating entity, as a Colorado railroad, has substantially passed into history. The State will have nothing but rejoicing if the new arrangement proves beneficial to the stockmen, shippers and the people in general. The rehabilitation work which has been done upon the system under the direction of the receiver and Federal Judge J. Foster Symes was vitally needed and has been of great value to the transportation interests of our State.

FREIGHT RATE CASES

Early in the year it became apparent to the Attorney General that something should be done in the matter of a readjustment of freight rates for all Colorado shippers and all the business interests of the State. While there may be found here and there some conflicting interests in the matter of freight rates, yet, broadly speaking, the people of Colorado are suffering from unfair and unjust discrimination in the matter of freight rates. This discrimination is of various kinds and involves not only comparative rates with the shipping points in the Mississippi Valley but rates to the Gulf and the Pacific Coast and the general operation of the long- and short-haul clause of the Interstate Commerce Act.

After consulting the various interests involved, the Attorney General prepared and filed with the Interstate Commerce Commission a suit to reduce the rates on grain shipped from Colorado common points to the Gulf of Mexico. The Attorney General had previously been advised that the grain shippers of northern and eastern Colorado had long since given up shipping grain to the Gulf, partly by reason of this prohibitory rate, and that some of them were anxious to resume shipments to the Gulf if the rate were properly lowered. It was also pointed out that the rates from Colorado to the Gulf are, in many cases, 50 per cent higher than the rates for even shorter distances from Mississippi River points to the Gulf. This suit is now pending before the Interstate Commerce Commission.

The lettuce growers and the western fruit growers also petitioned for help and the Attorney General's office was able to assist them in adjusting their difficulties with the railroads. One

suit is now pending against the American Express Company involving fruit shippers from the Western Slope. Hearings will be had on this the early part of the year 1925.

Upon the petition and representation of practically all the potato and cabbage growers of the State, the Attorney General's office has begun suits for each of these sets of growers involving rates from Colorado to the Gulf and from Colorado to competing points in the Mississippi Valley. These two suits, together with the grain rate suit, have been filed against forty-nine different railroads and are now pending before the Interstate Commerce Commission. Hearings will be held upon all of these suits early in the year 1925. These suits are of vital importance to our shippers and growers and should be prosecuted vigorously to a successful conclusion. The power of the Attorney General as the State's legal representative and chief law officer to act on behalf of the people in matters of this sort has too long been neglected. It should be exercised for the benefit and the welfare of all the interests—commercial, industrial and agricultural—within the State of Colorado. The State Utilities Commission, through a majority of its members, have co-operated most heartily with the Attorney General in the institution and prosecution of the freight rate suits.

COLORADO PRODUCTS STATUTE

A matter of vital importance to the people of the State arose recently under the Colorado Products Act. This statute was passed in 1919 and is found in the Session Laws of 1919, p. 333, chap. 98. By its title it is mandatory upon the officials of State, county and municipal institutions to purchase and use Colorado products in the erection of all structures and in all possible ways that products are purchased and used by these departments.

The State Highway Commission had under consideration the question of letting bids for several miles of highway on the Colorado Springs road. They asked the Attorney General's office for an opinion as to whether they should follow this act or whether they could let a contract to a firm outside the State which manufactured asphalt surfacing. The opinion of the Attorney General is on file directing them to follow the act, which they did. Thereafter, the asphalt company brought suit through some of its friends within the State to compel the Highway Department to accept their bid and to have the act declared unconstitutional. This case is now pending in one of the divisions of the District Court of Denver and will be heard some time in the month of January, 1925. This case is of great importance to the people of the State, to her merchants, manufacturers and all of the business interests of Colorado. The clear purpose of the Legislature was to make a patriotic and thorough use of Colorado materials wherever it could be done, consistent with the exceptions and qualifica-

tions in this statute. This statute should be explicitly followed and obeyed.

MUNICIPAL LIGHT PLANTS

During the year 1924 a controversy arose between the City of Loveland and a privately owned gas and light plant. The City of Loveland had terminated its relations with the private plant and had begun the construction of a municipal light plant. The controversy reached an acute stage when the Utilities Commission called upon the Attorney General to act on its behalf and asked in the District Court for an injunction restraining the City of Loveland from continuing the construction of its own municipal light plant. The Utilities Commission heretofore had ordered the City of Loveland not to construct its own municipal plant. After a careful consideration of the authorities and of the entire situation, the Attorney General in an opinion, which has been generally quoted, advised that the Commission had no such power; that under the decisions of the Supreme Court of this State any municipality under like circumstances could construct its own municipal light plant and that no municipality should be interfered with in the exercise of these broad and vitally important home rule powers. This opinion was followed by the City of Loveland and the Commission thereafter sought by a suit in court to enjoin the City from proceeding with the work. The District Court of that District and later the Supreme Court of the State of Colorado unanimously sustained the position this office had taken, and, in our judgment, forever vindicated the power of home rule cities to construct their own light plants and the right of the people to do so in acting for their own welfare.

COAL MINERS' WAGES

The Attorney General during the year 1924 has been confronted by a very distressing situation in some of the coal mines of the State. Delegation after delegation of coal miners visited the Industrial Commission and the Attorney General's office complaining of situations that in every case proved to be identical. It appears that lessees of coal mines would go in under the lease, hire the men, have the coal mined, sell the coal, keep the money and not pay the miners' wages.

Unfortunately, there is no law covering an act of this character, although such an act is morally reprehensible in the highest degree. In some instances we were able to secure the wages for the miners, but in many cases it proved impossible. I earnestly recommend that the Governor and the Legislature co-operate in passing a law which will forever prohibit practices of this character by unscrupulous mine operators. It is a practice that cannot be too severely condemned and does more to engender class hatred and induce strife than any other practice that is conceivable.

NEW MEXICO-COLORADO BOUNDARY CASE

The State of New Mexico brought a suit against the State of Colorado in the fall of 1919 in the Supreme Court of the United States asking for a resurvey of the boundary line between the two states and for a decree giving the State of New Mexico a considerable strip of territory now belonging to the State of Colorado. The evidence in the case was taken by my predecessor, Attorney General Victor E. Keyes, and members of his staff. The case was prepared, briefed and came on for final argument on December 3, 1924, before the Supreme Court of the United States. The briefs on the final argument were prepared by Hon. Delph E. Carpenter, Hon. Charles Roach and Hon. Fred S. Caldwell, with the other members of the Attorney General's staff participating. The oral argument was made before the Supreme Court of the United States on December 3, 1924, the case for Colorado being presented by Mr. Carpenter, Mr. Dean and the Attorney General.

Special thanks are due Mr. Carpenter for his assistance on the brief and in the case generally. It was found that the testimony had been carefully taken by previous attorneys representing the State of Colorado and that the record was in excellent shape for the final presentation of the case. The Supreme Court now has the case under advisement and a decision may be expected at any time.

Mr. Oliver Dean handled the facts in the case and made a clear and impressive argument before the Supreme Court of the United States.

INTERSTATE WATER CASES

The immediate direction and control of all matters affecting the interest of Colorado in interstate streams was given by the Legislature to the Governor and the Hon. Delph E. Carpenter has been in charge of law suits and negotiations affecting these matters. He has, however, courteously consulted this office and advised with the Attorney General from time to time.

One matter should receive special attention from the incoming Governor and also the Legislature. This is the final disposition of the Colorado River Compact. Your Excellency will recall that six states have ratified the Compact as agreed to and that the State of Arizona alone refuses to ratify it. Unfortunately, the question became a political football in the State of Arizona and the present legislature in that state does not show a disposition to ratify it. The failure of Arizona to ratify would probably render any ratification of the Compact impossible. With this situation in view, the interest of Colorado in this interstate stream which rises within her borders becomes a question of paramount importance. The danger is that some lower state will commence work upon a dam or will appropriate water to such an extent that the State of Colorado will sit idly by and lose her rights.

It was with this immediate and pressing danger confronting us that Hon. Fred S. Caldwell contributed an original suggestion for the solution of this problem. This suggestion was made in the form of a written letter and memorandum to the Attorney General in May of 1924, and thereafter transmitted to your Excellency and acted upon in so far as it could be before the termination of this biennial term. The plan is that the State of Colorado and the five other consenting states join in a suit in the Supreme Court of the United States asking that Court to take original juridiction and adjudicate the rights of the seven states in this interstate stream. If the states go in as parties, plaintiff or defendant, consenting that their rights may be adjudicated upon the basis of the Compact, then the Supreme Court has a clear field to render a final decision determining the rights of Arizona and, in effect, giving a judicial ratification to the Compact. Unless the legislature of Arizona will now ratify the Compact, the proposed suit of Mr. Caldwell is the only recourse left to the State of Colorado and the other five states concerned. The proposal has been endorsed by such eminent authority as the Hon. L. Ward Bannister, President of the Denver Chamber of Commerce and Lecturer on Irrigation Law at Harvard University. So far, some preliminary work has been done and a brief and complaint prepared.

I earnestly recommend that this matter receive the immediate attention of the Governor, the Attorney General and the Legislature to the end that the rights of Colorado in this interstate stream may be conserved to future generations.

BOND SUITS

Hon. Oliver Dean brought to a successful conclusion the suits brought heretofore upon bonds of State Treasurers for defalcations of employees in the State Treasurer's office. Suits had been pending over three years and came to trial during the present biennial term.

In the preceding administration three suits were instituted and in the present administration two suits were brought on State Treasurer's bonds for shortages occurring between 1901 and 1910 and aggregating over forty-one thousand dollars. In January, 1924, two of these suits were tried and judgments obtained in favor of the People. Since that time these two suits have been settled by payment to the State of the full amount of the shortage; and two of the remaining three suits have also been settled on the same basis. One suit is still pending with negotiations for settlement in progress.

Great credit must be given to Mr. Dean for his successful handling of these cases.

Special mention should also be made of the work of Mr. Charles M. White, handling departmental matters for the Land Board and passing on purchases of bond issues and other matters

relating to the sacred funds held in trust for the schools of Colorado, and of the work of Mr. Harold C. Thompson and Mr. Joseph P. O'Connell, who, in their respective departments, have displayed ability beyond their years and, while young men, have shown rare judgment and legal ability of a very high order.

INHERITANCE TAX DEPARTMENT

I wish to call special attention to the splendid work done in the Inheritance Tax Department during the biennial term. Hon. Winton M. Ault, a prominent attorney of Fort Collins, was named by Mr. Fleming as the Inheritance Tax Commissioner and served until March of 1924, at which time he felt obliged to return to his private practice. I named to succeed him former State Senator George Hetherington of Gunnison, Colorado, and Mr. Hetherington continued the highly efficient record of Mr. Ault.

During the biennial period these two men and the efficient staff working with them collected $1,567,891.86. This is the largest sum ever collected in a biennial period and is due, in part, to careful, efficient business methods and not merely to automatic collections under the statute.

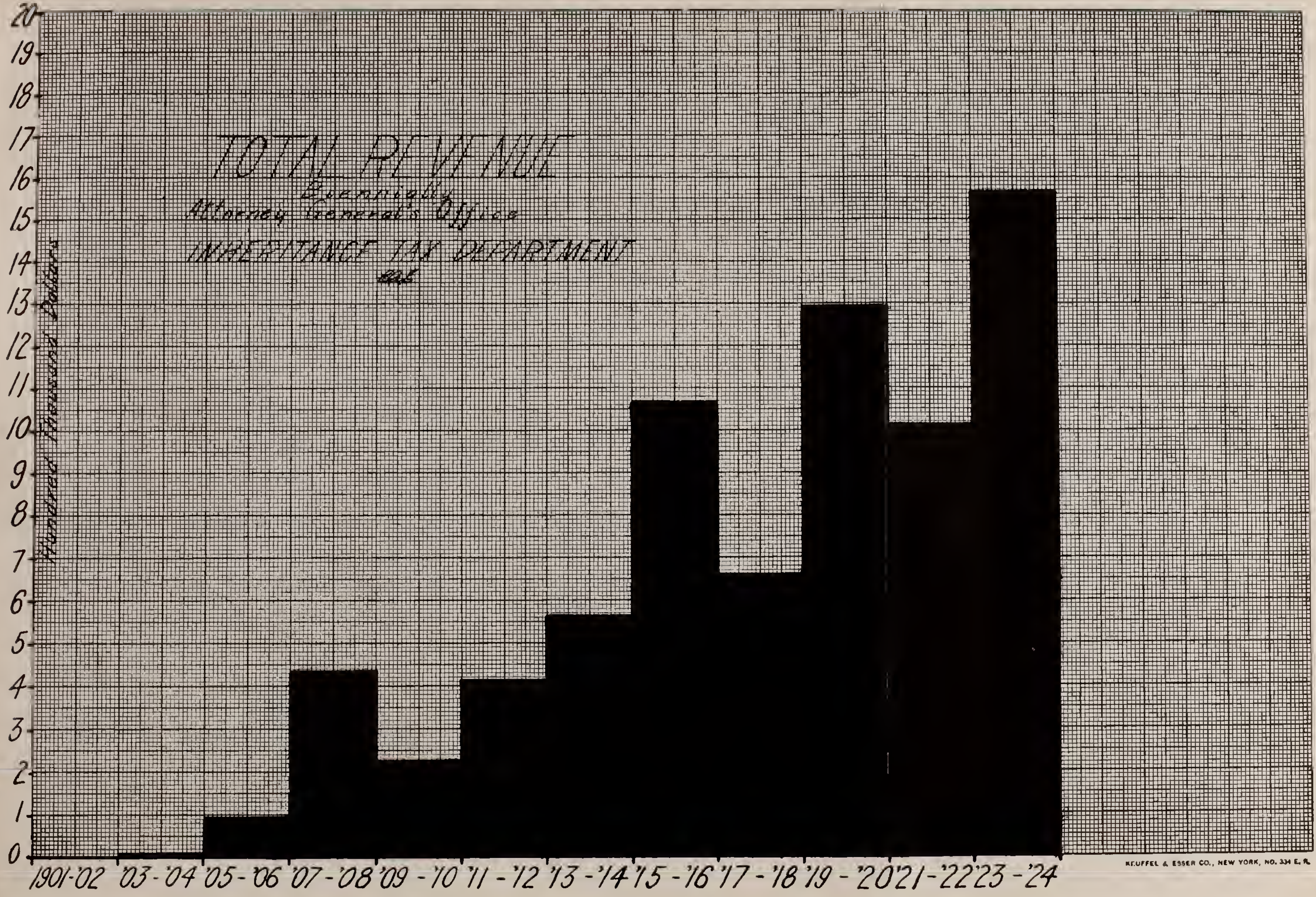
By reason of this splendid record the State Board of Equalization found it possible to reduce the tax levy .23 of a mill, thereby saving over $400,000 in taxes to the people of Colorado for the year 1925.

The surprising part of the work of the Inheritance Tax Department is that so large a volume of collections is made with such a small overhead and with such a small working force. The highest tribute must be paid to Commissioners Ault and Hetherington and to their efficient staff.

The tax collected during the fiscal years of 1923 and 1924 amounts to $1,567,891.86. The cost of collecting this sum was $50,305.59, which is only 3.3 per cent of the amount collected. The cost of handling each estate through the department was $7.67. Total fees of all kinds collected, $22,656.00. Total taxes, $1,545,-235.86. The average tax collected on the 1,154 tax estates handled was $1,340.00.

Number of estates handled	6,906
Number of estates paying tax	1,154
Number of estates paying $1.00 fee	4,283
Number of estates paying $5.00 fee	1,457
Number of estates paying $4.00 add. fee	2
Number of estates paying $10.00 examination fee separately	10
Number of estates paying $10.00 examination fee	1,098

(These are included in certain of the $5.00 and $100 fee estates above listed.)


TOTAL REVENUE
Biennially
Attorney General's Office
INHERITANCE TAX DEPARTMENT
Hundred Thousand Dollars
20
19
18
17
16
15
14
13
12
11
10
9
8
7
6
5
4
3
2
1
0
1901-02
'03-'04
'05-'06
'07-'08
'09-'10
'11-'12
'13-'14
'15-'16
'17-'18
'19-'20
'21-'22
'23-'24
KEUFFEL & ESSER CO., NEW YORK, NO. 334 E. R.

ABANDONMENT OF RAILROADS

Colorado is confronted with a determined effort on the part of certain railroads to abandon mountain and narrow gauge lines wherever possible. While there may be extreme cases where this is justified, yet there are nearly always two sides to this question of abandonment. The railroad, having assumed certain public service duties and having been given a franchise to operate with all powers of eminent domain and having taken the cream of business for many years, should not now be allowed to lightly escape its franchise duties and tear up its lines.

In the case of the Romley-Buena Vista line, this office has aided the people of Chaffee County in resisting the attempt of the Colorado & Southern Railroad Company to abandon that branch line. The case was tried in the Federal District Court in Denver and the decision there was for the railroad. The case is being appealed to the Supreme Court of the United States to finally test this question.

PROHIBITION

At the outset of my term I felt it would greatly facilitate the work of law enforcement, especially as related to Prohibition, if a Special Deputy were placed in charge of this work, representing the office of the Attorney General. I, therefore, named Hon. Fred S. Caldwell of Monte Vista to this position and the choice proved to be a wise one in every respect. Mr. Caldwell proved to be precisely the right man for this delicate and difficult work and he has won the confidence of Bench and Bar and of the people generally. He is especially fitted for this line of legal work and has manfully and courageously stood for absolute enforcement of the Prohibition Law.

We found it necessary, under the direction of your Excellency, to proceed in one county and remove a sheriff from office. In another county of the State, the County of Larimer, a special Grand Jury was called at the instance of your Excellency and the Attorney General and his assistants made prosecutors to investigate charges by prominent citizens of official dereliction of duty in the matter of Prohibition enforcement. The Grand Jury brought in a number of indictments, one against the sheriff and one against the District Attorney, and a number of trials were had. While no convictions resulted, the trials had a profound effect upon public opinion in that community because the evidence on the stand revealed the serious nature of the conditions existing and justified the calling of the special Grand Jury and justified further the petition of prominent citizens of that county to your Excellency.

This office has left nothing undone to further the enforcement of Prohibition. We have co-operated with the Federal and State Prohibition departments, and I cannot pay too high a tribute

to Hon. John F. Vivian and Hon. John R. Smith, the respective heads of these departments, for their valued and efficient service. We have not lost a single case that has been appealed to the Supreme Court involving the sentence of a bootlegger. We have in every way, through every department, at all times co-operated to effectively enforce this law.

We have found it necessary to prevent the abuse of the sacramental wine privilege and have prevented the abuse of the right of churches to use sacraments in restricting that use to bona fide, regularly established churches. I recommend that the Legislators safeguard the weak spots in our State Prohibition Law providing strict regulations for the procurement of sacramental liquors and defining what character of church may purchase and use them.

In my judgment, the most serious obstacle to the efficient and effective enforcement of Prohibition lies in the tendency of some judges to fine the bootleggers instead of sending them to prison. The bootlegger has very little objection to fines. His revenues are too large to make the fine a serious matter. Unless, therefore, judges of all ranks and grades in this State will cease the practice of fining bootleggers and send the bootleggers to jail, we cannot expect rapid progress in the enforcement of Prohibition. I am not passing upon particular cases and gladly concede that these matters should lie within the discretion of our judges, but the time for adopting a permanent policy of fining the bootleggers by any judge in this State has passed away. The time has come to send bootleggers to jail. That is where society intends they should go, especially upon a second offense. In my judgment, also, no person who drives an automobile when intoxicated should be fined, but such person should be imprisoned and the automobile should be impounded and the license taken away from the offending person. A drunk man driving an automobile is more dangerous than a drunk man with a revolver and usually does more damage.

Of course, we must recognize the fact that we are dealing with erring human nature and that no law can dry up appetite in a generation, much less in five or six years, but the progress made has been truly remarkable and there is every reason to be hopeful for the future.

OIL TAX CASES

The Attorney General's office was confronted with several suits by large oil and gasoline companies testing the constitutionality of the gasoline tax. Hon. Riley R. Cloud, First Assistant Attorney General, handled this litigation from its beginning to its successful conclusion. He successfully maintained the constitutionality of the tax and won a decision from the Supreme Court of the State of Colorado thereon.

In particular, I mention the case of the Navy Gas & Supply Company vs. the State Inspector of Oils. This case settled the legality of the 1923 two-cent gasoline tax. Mr Cloud also repre-

sented the State in the cases of the People vs. Allen and the People vs. Miller, wherein the Supreme Court finally held that the tax can be collected by the State when the gasoline comes within the State from either the wholesale or retail dealer.

TAX CASES

In March, 1921, about twenty of the banks of Weld County brought suits to recover refunds of taxes assessed against their capital stock and paid by them under protest and alleged to be excessive. These suits arose out of the horizontal raises in valuations made in the various counties of the State by the Colorado Tax Commission in the years 1913 and 1914, respectively.

The case of the First National Bank of Greeley against the Weld County Board was brought in the Federal District Court in Denver while the other cases were brought in the District Court of Weld County.

This office intervened, pursuant to law, in behalf of the Tax Commission and aided in defending these suits. The case of the First National Bank of Greeley vs. the County Board was determined in favor of the County and the Tax Commission in the Federal District Court and was afterwards taken by the Bank to the Supreme Court of the United States. That Court, in an opinion handed down April 7, 1924, affirmed the judgment of the Federal District Court, dismissing the action of the Bank (44 Sup. Ct. Reporter, 385). Meanwhile, the case of the Union National Bank of Greeley vs. the Weld County Board was tried in the District Court of Weld County and decided on demurrer in favor of the County and the Tax Commission. A test case was taken by the Bank to our State Supreme Court, which, on April 7, 1924, affirmed the judgment of the trial court (225 Pac., 851). These two decisions in favor of the County and the Tax Commission resulted in the dismissal of all the remaining cases. The result was the saving to the taxpayers of Weld County of upwards of $50,000 and the establishment of valuable precedents in tax cases.

The chief credit for the successful conclusion of these cases is to be given to the Deputy General, Hon. Charles Roach, who made a very able presentation of the State's legal position in his argument before the Supreme Court of the United States.

SURPLUS

This office was able to turn back to the General Revenue Fund approximately the sum of five thousand dollars, which money had been unused and unexpended during the biennial period. It would not have been possible to turn back this sum to the taxpayers had not it first been saved by the Attorney General Russell W. Fleming, and he must first be given credit for the surplus.

CONCLUSION

I could not conclude this biennial report without again testifying to the faithfulness and efficiency and loyalty of the lawyers on the staff of the Attorney General. No better or abler staff could be assembled in the office of Attorney General than that chosen by Russell W. Fleming. Their names are:

Charles Roach.
Riley R. Cloud.
Oliver Dean.
Joseph P. O'Connell.
Harold C. Thompson.
Charles M. White.

Included in this statement of appreciation must be:

Miss Margaret E. Fallon.
Mrs. Christean M. Crafts.
Miss Jessie Lamoreaux.
Mrs. Jeanne M. Gale.

It has been a pleasure to associate with the heads of departments, with all those employed in various departments with whom we have come in contact and with State officials. I have been deeply impressed by the fact that State officials disregard politics and all other considerations and are moved by a desire to serve the people well. My relations have been harmonious and pleasant and I feel that a common motive, a common desire to serve the people of this great commonwealth, has animated all departments of state. We very frequently hear it said or written that the State departments are filled with tax-eaters who are riding upon the public shoulders, enjoying fat salaries and doing very inefficient work. This charge is absolutely unfounded. It ought never to be made again by a sensible man of civic spirit who will inquire into the facts. The fact is that most State employees are underpaid and that, with here and there an exception, every one of them are giving loyal, efficient service to the State. I know it to be true in the Attorney General's office, for I have personally observed the work of the staff. No group of lawyers could work more ably or industriously for any private client than the men of the present staff have worked for the State of Colorado to conserve her legal rights and to guide well her legal destiny. Our aim has been to give your Excellency full and efficient co-operation in all departments and I must conclude this biennial report with a statement of my appreciation of the support and co-operation your Excellency has given our office and to express the hope that our year of labor may abide and prove a blessing to future generations of the State which we all love.

Most respectfully yours,

WAYNE C. WILLIAMS,
Attorney General.

SCHEDULE II

List of Cases, Civil and Criminal, Pending and Disposed of in All the Courts

CASES PENDING IN THE UNITED STATES SUPREME COURT

Weiland, et al. vs. Pioneer Irrigation Company.

Diversion of waters in Colorado for application outside of state.

State of New Mexico vs. State of Colorado.

Original proceedings to establish southern boundary of Colorado and northern boundary of New Mexico.

First National Bank of Greeley vs. County Commissioners of Weld County.

Suit to recover taxes alleged to be excessive.

Judgment for defendants affirmed May 7, 1924.

In the Matter of the Application of the Colorado & Southern Ry Co. for leave to abandon line from Buena Vista to Romley.

Appeal from decision of the Interstate Commerce Commission.

Pending.

Van Auken vs. Smith.

Application for Writ of Habeas Corpus.

Pending.

CASES PENDING IN THE UNITED STATES DISTRICT COURT

District of Colorado

The Western Irrigation Company vs. The Riverside Irrigation District.

Interstate water rights.

Case settled.

State of Colorado v. Roger W. Toll, as Superintendent, etc.

Injunction.

In re: Use of roads in the Rocky Mountain National Park.

Pending on petition for leave to appeal to U. S. Supreme Court.

Colorado Power Company v. Halderman, et al. (Public Utilities Commission.)

Constitutionality of Colorado Public Utilities Act upheld.

No. 7732. Bankers Life Company v. Cochrane.

Suit to recover sum of $4,213.06.

Pending.

CASES PENDING BEFORE THE INTERSTATE COMMERCE COMMISSION

ICC No.

No. 15072. Colorado & Southern Abandonment Case.

Decision for Colorado & Southern. Appealed to U. S. Supreme Court. Transcript of the record filed Nov. 4, 1924.

No. 15079. The Hunter Mercantile Company v. American Railway Express Company. Public Utilities Commission, Intervenor.

Suit to reduce Express rates. Pending.

No. 3169. The Denver & Rio Grande Western R. R. Co., reorganization.

Petition for leave to issue certain stocks and bonds. Order granting petition, December 12, 1923. Petition of Colorado for rehearing and reargument. Order granting rehearing, dated Jan. 19, 1924. Order modifying and affirming original order, June 9, 1921.

No. 3515. Application of Missouri Pacific R. R. Co. for authority to acquire stock of The Denver & Rio Grande Western Ry. Co.

Order entered authorizing acquisition of said stock, entered June 9, 1924.

No. 16294. State of Colorado and Public Utilities Commission v. Missouri Pacific R. R. Co. and other railroad companies.

For reduction of grain rates from Colorado to Gulf and eastern points. Pending.

No. 16614. State of Colorado and Public Utilities Commission v. The Atchison, Topeka & Santa Fe Railway Co., et al.

For reduction of freight rates on potatoes. Pending.

No. 16613. State of Colorado and Public Utilities Commission v. The Atchison, Topeka & Santa Fe Ry. Co., et al.

For reduction of freight rates on cabbage etc. Pending.

CASES PENDING IN U. S. LAND OFFICE

Parker v. State of Colorado and United States.

Suit to determine whether certain school lands of the State are subject to recovery by the U. S. on the ground that they were known mineral lands.

Pending on re-hearing before Secretary of Interior.

CRIMINAL CASES IN SUPREME COURT OF COLORADO

No.	Title of Cause	Offense
10296	Turner vs. People	Liquor Law
10311	O'Chiato vs. People	Rape
10359	People vs. Casias	Liquor Law
10380	Lonjers vs. People	Cattle Stealing
10391	Willis vs. People	Malpractice
10401	Hoffman vs. People	Violating Liquor Law
10412	La Shar vs. People	False Pretenses
10422	McConnell vs. People	Violating Liquor Law
10425	Stitt vs. People	Murder
10448	Cargill vs. People	Burglary
10457	Morton vs. People	False Pretenses
10479	Edwards vs. People	Manslaughter
10483	Miller and Reinhold vs. People	False Pretenses
10498	Baker et al vs. People	Threats and Intimidation
10524	Southard vs. People	Suit on Criminal Bond
10531	Byrd vs. People	Violating Liquor Law
10570	Dively vs. People	Violating Liquor Law
10575	Turley vs. People	Murder
10582	Rogers vs. People	Violating Plumbing Law
10588	Hamilton vs. People	Rape
10590	McGonigal vs. People	Murder
10593	Sarno vs. People	Rape
10605	Schraeder vs. People	Malfeasance in Office
10625	Markey vs. People	Cont. Juven. Delinq.
10630	Ashcraft vs. People	Embezzlement
10632	Flor vs. People	Murder
10639	Buschy vs. People	Violating Liquor Law
10656	Pepper vs. People	False Pretenses
10669	Wagey vs. People	Issuing Fraudulent Check
10686	Lowe vs. People	Murder
10708	Dockerty vs. People	Taking Indecent Liberties
10710	Patton vs. People	Murder
10735	Crosswell vs. People	Robbery
10743	Whalen et al vs. People	Malfeasance in Office
10749	Allison et al vs. People	Bunko Cases
10753	Galvino vs. People	Violating Liquor Law
10766	Goodhue vs. People	Forgery
10802	Blanchard vs. People	Forgery
10807	Ware vs. People	Murder
10822	Polochio vs. People	Assault to Rape
10869	Taylor vs. People	Murder
10870	White vs. People	Embezzlement
10871	Sherrill vs. People	Larceny
10880	Goodfellow vs. People	Receiving Stolen Goods
10915	Shepherd vs. People	Larceny
10920	Marchi vs. People	Violating Liquor Law
10923	People vs. McPherson	Violating Migratory Stock Law
10928	Garcia vs. People	Violating Liquor Law
10943	Mitchell vs. People	Murder
10961	Shuman vs. People	Violating Liquor Law
10958	Voris vs. People	Robbery
10969	Kinselle vs. People	Rape
10999	Mandell vs. People	Conspiracy to Defraud
10994	Masters vs. People	Violating Liquor Law
11023	Wilson vs. People	Abortion
11011	Waelchi vs. People	Assault to Rape
11015	Halfyard vs. People	Rape
11029	Magwire vs People	Rape
11031	Rogers vs. People	False Pretenses
11053	Massantonio vs. People	Violating Liquor Law
11068	Brindsi vs. People	Murder
11070	Dorr vs. People	Violating Liquor Law
11098	Whipp vs. People	Assault on Child
11112	Briola vs. People	Rape
.....	Davis vs. People	Murder
11130	Robinson vs. People	Murder
11134	Carnes vs. People	Murder
11135	Griffin vs. People	Murder
11116	Briggs vs People	Embezzlement, etc.

CRIMINAL CASES IN SUPREME COURT OF COLORADO

Supersedeas	Status
Allowed	Judgment Affirmed
Allowed	Judgment Reversed
	Judgment Reversed
Denied	Dismissed
Allowed	Judgment Affirmed
Denied	Judgment Affirmed
Allowed	Judgment Reversed
Allowed	Judgment Affirmed
	Judgment Reversed
Allowed	Judgment Reversed
Allowed	Judgment Reversed
Allowed	Judgment Affirmed
Denied	Affirmed December 4, 1922
Denied	Affirmed November 6, 1922
Allowed	Affirmed October 1, 1923
Denied	Affirmed February 3, 1923
	Affirmed December 3, 1923
Denied	Affirmed June 4, 1923
	Reversed February 5, 1923
Denied	Affirmed March 1, 1923
Denied	Affirmed December 3, 1923
Denied	Affirmed February 4, 1924
	Reversed May 7, 1923
Granted	Reversed June 4, 1923
Denied	Dismissed January 7, 1924
Denied	Affirmed May 7, 1923
Denied	Affirmed June 4, 1923
Allowed	Affirmed May 5, 1924
Denied	Dismissed December 7, 1923
Denied	Pending
	Reversed October 1, 1923
	Affirmed November 5, 1923
	Affirmed February 4, 1924
	Reversed January 7, 1924
Denied	Affirmed October 11, 1923
	Affirmed March 3, 1924
Denied	Dismissed
Denied	Affirmed January 7, 1924
Granted	Reversed October 6, 1924
Granted	Pending
Granted	Pending
Granted	Reversed November 10, 1924
Denied	Affirmed May 5, 1924
Denied	Affirmed April 7, 1924
Denied	Affirmed April 7, 1924
Denied	Affirmed April 7, 1924
	Affirmed January 5, 1925 (Law held to be unconstitutional)
	Motion to Dismiss
Denied	Affirmed December 1, 1924
Denied	Affirmed June 2, 1924
Denied	Affirmed June 2, 1924
Denied	Affirmed June 2, 1924
	Affirmed December 1, 1924
Denied	Affirmed July 7, 1924
	Pending
Denied	Pending
	Pending
Granted	Pending
	Affirmed October 6, 1924
	Pending
Denied	Affirmed November 10, 1924
Denied	Affirmed October 6, 1924
Granted	Pending
	Affirmed January 5, 1925
	Pending
	Affirmed January 5, 1925
	Pending
	Affirmed January 5, 1925
	Pending

CIVIL CASES IN SUPREME COURT OF COLORADO

No.

10123. West Pueblo Ditch v. Bessemer Irrigation Ditch.
Suit affecting water rights of Colorado State Hospital. Judgment affirmed Nov. 6, 1922. Petition for rehearing filed and denied.

10139. McFerson v. National Surety Company and Louisville State Bank.
Affirmed January 8, 1923.

10155. Williams v. Robinson.
District Attorney's case. Judgment reversed January 8, 1923.

10212. Board of Regents v. Wilson, Executor.
Judgment reversed Nov. 6, 1922. Petition for rehearing filed and denied.

10289. People v. Apostolos, et al.
Unlawful combination. Judgment reversed, March 5, 1923.

10290. People v. Crissey & Fowler Lumber Co., et al.
Unlawful combination. Judgment reversed March 5, 1923.

10291. People v. Fontuccio.
Unlawful combination. Judgment affirmed May 7, 1923.

10427. People v. Ida Bell Eliff, Executrix.
Construction of Inheritance Tax Law. Judgment affirmed October 1, 1923.

10515. People ex rel. Thomas v. Roberts, et al. (Civil Service Commission.)
Mandamus. Judgment for respondents, April 2, 1923.

10547. People ex rel. v. Lee, Nuckolls, et al.
Suit brought to test validity of Conservancy Act. Information in Quo Warranto dismissed Feb. 27, 1923.

10554. People ex rel. Kelly, et al. v. Milliken, et al.
Mandamus. Judgment affirmed Nov. 5, 1923.

10701. People ex rel. Quereau v. Hamrock.
Mandamus. Decision for defendant, Jan. 7, 1924.

10727. Griffith et al. v. The People.
Contempt of court proceedings. Judgment reversed Nov. 5, 1923.

10747. Stong v. The People ex rel. Curran, et al.
Mandamus. Judgment affirmed Dec. 3, 1923.

CIVIL CASES IN SUPREME COURT OF COLORADO

No.

10750. The Union Bank of Greeley v. County Commissioners.
Suit to recover alleged excessive taxes. Judgment for defendant in error. Affirmed April 7, 1923.

10754. Milliken v. O'Meara, et al.
Mandamus. Judgment reversed Jan. 27, 1924.

10764. People ex rel. Fairall v. Sabin.
Quo Warranto. Judgment that Mayor of Denver appoints Public Trustee. June 2, 1924.

10790. Marie Dieteman, Executrix, Estate of Anton Schindelholtz, v. The People.
Suit to collect delinquent inheritance tax. Reversed January 5, 1925 with instructions to dismiss.

10839. People ex rel. v. Southern Surety Company.
Suit on bond. Judgment affirmed July 7, 1924.

10846. Stong v. Milliken, et al.
Injunction. Pending. Briefs all in.

10856. McCarthy, et al. v. School Dist. No. 9, La Plata County.
Mandamus. Judgment reversed April 7, 1924.

10893. Van Gilder v. The People.
Suit on bond. Judgment affirmed May 5, 1924. Pending on petition for rehearing.

10935. The People v. Pirie.
Pending.

10997. The People ex rel. Cruz v. Judge Morley.
Writ of prohibition. Rule discharged July 7, 1924.

10999. The People ex rel. Mandell v. Means.
Habeas corpus. Writ denied. Action dismissed.

11127. Atchison, Topeka & Santa Fe Ry Co. v. Public Utilities Commn.
Motor line case. Pending.

11066. Cochrane v. National Life Insurance Co.
Injunction. Pending.

11159. Fellows, O. O., v. The Grand Junction Sugar Co.
Suit to recover alleged excessive taxes. Pending.

CIVIL CASES IN THE DISTRICT COURTS OF COLORADO

Adams County

People ex rel. Kelly, et al. v. Milliken, et al.
Mandamus. Judgment for respondents. Appealed to Supreme Court. No. 10554.

Chaffee County

People, et al., v. Colorado Co-operative Lettuce Growers' Association.
Application for receiver and accounting. Report of Receiver filed. Receiver discharged.

City and County of Denver

No.

74444. People v. Gebhard, et al.
Action on official bond. Judgment on verdict for plaintiff for $8,379.63 and interest entered January 25th, 1924.

74445. People v. Galligan, et al.
Action on official bond. Pending.

74446. People v. Keeley, et al.
Action on official bond. Judgment on verdict for plaintiff for $21,041.25 and costs entered August 5, 1924.

80359. The Omar Land & Cattle Co. v. State Board of Stock Inspection Commissioners.
Money demand. Judgment vacated Feb. 11, 1924.

83207. O'Meara, et al. v. Milliken.
Mandamus. Judgment for plaintiffs. Appealed to Supreme Court. No. 10754.

83231. People ex rel. v. Stong.
Mandamus. Judgment for petitioner. Appealed to Supreme Court. No. 10747.

84028. Milliken, et al. v. Strong, et al.
Injunction. Judgment for plaintiff. Appealed to Supreme Court. No. 10846.

84078. Sabin v. Sweet.
Certiorari, petition for. Write issued.

81113. Colorado Life Ins. Co. v. Cochrane.
Suit to recover deposit. Securities delivered; receipt taken. Case closed.

81296. People ex rel. Mountjoy & Frewen v. Stong.
Mandamus. Settled. Dismissed March 23, 1923.

No.

81297. People ex rel. Mountjoy & Frewen v. Mulnix.
Mandamus. Settled. Dismissed March 23, 1923.

81554. Gallegos and 131 Others v. Metropolitan State Bank, et al.
Mandamus. Demurrer filed in behalf of State Bank Commissioner and case dismissed as to him.

81584. The People ex rel. Qureau v. Hamrock.
Mandamus. Judgment for defendant. Appealed to Supreme Court. No. 10701.

82164. The People ex. rel. Western Acceptance Co. v. Southern Surety Company.
Suit on bond. Judgment for plaintiff. Appealed to Supreme Court. No. 10839. Judgment affirmed.

82458. People ex rel. Fairall v. Sabin.
Quo warranto. Judgment for defendant. Appealed to Supreme Court. No. 10764.

82752. Northwestern National Ins. Co. v. Cochrane.
Mandamus. Dismissed.

83220. The Navy Gas & Supply Co. v. Duce, et al.
Injunction. Dismissed. Judgment of Court upheld validity of the 1923 Gasoline Tax Law.

85497. National Life Insurance Company v. Cochrane.
Injunction to restrain cancellation of certificate of authority to do business. Judgment for plaintiff. Appealed to Supreme Court. No. 11066.

85973. Susie M. Donavan v. State of Colorado and others.
Suit to quiet title. Pending.

86474. People v. Penrose, et al.
Suit on official bond. Judgment for plaintiff for $8,007.25 and costs Oct. 14, 1924.

86476. People v. Brown, et al.
Suit on official bond. Pending.

87472. State Highway Department v. Gibson Lumber Company.
Suit on contract. Claim paid in full and case dismissed.

87801. DeSollar v. Blauvelt, State Highway Engineer.
Injunction. Pending.

87298. Hoage, et al. v. Milliken.
Election law. Mandamus against Secretary of State. Judgment for plaintiff.

Dolores County

The Rio Grande Southern Lumber Company v. County Commissioners of Dolores County.
Suit to recover taxes. Pending.

Larimer County

Williams v. State Board of Agriculture.
Suit for damages for injury. Pending.

People v. The Loveland Farmers' Co-operative Produce Co.
Suit for collection of oil tax. Money demand, $373.08. Pending.

People ex rel. Public Utilities Commission v. City of Loveland.
Injunction (to enjoin erection of municipal light plant). Pending.

Mesa County

The Grand Junction Sugar Company v. Fellows.
Tax case. Pending in Supreme Court.

Montezuma County

The Rio Grande Southern Lumber Company v. County Commissioners of Montezuma County.
Suit to recover taxes. Pending.

Pueblo County

Holly Sugar Company v. County Commissioners of Otero County.
Tax case. Judgment for defendant.

Washington County

Murray, as Bank of Akron, v. County Commissioners of Washington County.
Suit to recover alleged excessive taxes. Pending.

CRIMINAL CASES IN DISTRICT COURTS

Larimer County Grand Jury Cases—District Court

No.

2474. The People v. Frank Smith.
Indicted for carrying intoxicating liquor. Defendant acquitted July 11, 1924.

2475. The People v. Frank Smith.
Indictment for carrying intoxicating liquor. Defendant acquitted July 11, 1924.

2476. The People v. Louis B. Reed, et al.
Indictment for conspiracy to commit a misdemeanor. Defendants acquitted Oct. 16, 1924.

2477. The People v. Frank Smith.
Indictment for accepting a bribe indirectly. Dismissed.

2478. The People v. Frank Smith.
Indictment for bribery. Consolidated with No. 2480. Verdict of acquittal in both cases.

2479. The People v. Frank Smith.
Indictment for assault and battery. Defendant acquitted Nov. 1, 1924.

2480. The People v. Frank Smith.
Indictment for bribery. Consolidated with No. 2478. Verdict of acquittal in both cases July 25, 1924.

2481. The People v. Reed, Louis B.
Indictment for violation of liquor law. Dismissed.

2482. The People v. Pete Perez.
Indictment for violation of liquor laws. Dismissed.

2483. The People v. Pete Perez.
Indictment for bribery. Dismissed.

2484. The People v. Pete Perez.
Indictment for bribery. Dismissed.

2485. The People v. Worth Seamans.
Indictment for violation of liquor laws. Dismissed.

2486. The People v. Leonard Kennedy.
Indictment for violation of liquor laws. Dismissed.

2487. The People v. Antonio Romano.
Indictment for violating liquor laws. Dismissed.

2488. The People v. Juan Bacca.
Indictment for violation of liquor laws. Dismissed.

CIVIL CASES—COUNTY COURT

Washington County

Murray, as Bank of Akron v. Board of County Commissioners of Washington County.
Suit to recover taxes. Judgment for plaintiff Sept. 19, 1924.

Pueblo County

In re: Susanna F. Musser, Insane.
Judgment affirmed.

ESCHEAT CASES AND PROBATE CASES—COUNTY COURTS

Boulder County

Estate of John Lane.

Application for order on State Treasurer to pay out certain moneys. Pending.

Estate of Nicholas Stoloroff.

Application for an order on State Treasurer to pay out certain moneys. Pending the taking of depositions in the Kingdom of Bulgaria.

Costilla County

Estate of George Francis Daly.

Application for an order on the State Treasurer to pay out certain moneys. Pending.

Denver County

Estate of Martin O'Brien.

Application for an order on the State Treasurer to pay out certain moneys. Order granting application May 8, 1923.

Estate of Anton Schindelholtz.

Suit to collect delinquent inheritance tax. Appealed to Supreme Court. No. 10790. Reversed with directions to dismiss January 5, 1925.

22011. Estate of John Chomnyzinski.

Application for an order on State Treasurer to pay out certain moneys. Granted.

27988. Estate of Christian Muller.

Application for an order on the State Treasurer to pay out certain moneys. Pending.

21519. Estate of Ann Ivory.

Determination of heirship. Pending.

31967. Estate of Louis Evay.

Notice of escheat served on Attorney General. Funds of estate amounting to $62.84 paid into State Treasury.

25505. Estate of George Bernstein.

Application for an order on State Treasurer to pay out certain moneys. Pending.

31288. Estate of John Conlon.

Funds of the estate paid into the State Treasury.

Eagle County

160. Estate of William Paschal.

Application for an order on the State Treasurer to pay out certain moneys. Pending.

El Paso County

22552. Estate of Alex. Boston McConnell.

Application for an order on the State Treasurer to pay out certain moneys. Granted.

Las Animas County

Estate of Aaron A. Beal.

Application for an order on the State Treasurer to pay out certain moneys. Pending.

Park County

Estate of Josephine Kelly.

Application for an order on the State Treasurer to pay out certain moneys. Order granted June, 1923.

Pueblo County

3166. Estate of Theros P. Gavtos.

Application for an order on the State Treasurer to pay out certain moneys. Pending.

Weld County

Estate of Charles I. Lindeberg.

Estate of Theddy Moynihan.

Pending.

Estate of Edward Morgan.

Application for an order on State Treasurer to pay out certain moneys. Granted August 11, 1924.

OIL TAX CASES

Adams County

People v. J. A. Forsythe.
Suit filed. Defendant paid in full. Case dismissed.

People v. J. A. Forsythe.
Suit filed. Case settled.

People v. J. A. Forsythe.
Suit filed. Case settled.

Boulder County

7845. People v. V. S. Allen.
Suit filed. Judgment for People in Supreme Court.

8012. People v. V. S. Allen.
Suit filed. Judgment for People in Supreme Court.

Denver County

People v. Apex Refining Co.
Suit filed. Defendant paid after demurrer to complaint overruled.

79094. People v. Harold Johnston.
Judgment for plaintiff.

83220. The Navy Gas & Supply Co. v. Duce, et al.
Injunction. Suit to enjoin enforcement of the 1923 gasoline tax law. Judgment for defendant. Case dismissed.

Larimer County

4517. People v. V. S. Allen.
Judgment for People in Supreme Court.

4289. People v. Frank C. Miller, doing business as Northern Garage.
Suit filed. Judgment for People in Supreme Court.

4343. People v. Frank C. Miller, doing business as Northern Garage.
Suit filed. Judgment for People in Supreme Court.

Logan County

3542. People v. J. A. Forsythe.
Suit filed. Settled

SCHEDULE III

List of Workmen's Compensation Cases

REPORT OF WORKMEN'S COMPENSATION CASES

January 9, 1923—January 11, 1925

1.

J. H. Holcomb v. Industrial Commission of Colorado and Ollie Smith; District Court of Saguache County.

Award of the Commission set aside.

2.

Ben Creizler v. Industrial Commission of Colorado and Walter T. Andrew; Denver District Court.

Award of the Commission affirmed by District Court. Case appealed to the Supreme Court and award affirmed.

3.

Amelia A. Ellerman v. Industrial Commission of Colorado; Denver District Court.

Upon petition for rehearing granted Dec. 6, 1922, the award of the Industrial Commission reversed.

4.

Travelers Insurance Company v. Industrial Commission of Colorado and Carolina Di Orio; Denver District Court.

By stipulation the case was remanded to the Industrial Commission with instructions to affirm the award without penalty.

5.

Industrial Commission of Colorado v. Travelers Insurance Company; Denver District Court.

This was a penalty suit for failure to comply with the rules of the Commission. Upon the payment of $500.00 penalty by the insurance company the case was dismissed with stipulations.

6.

United States Fidelity and Guaranty Company et al. v. Industrial Commission of Colorado and Fannie Martz; Denver District Court.

Award of the Commission affirmed by the District Court of the City and County of Denver. Case appealed to the Supreme Court and remanded to the Commission for specific findings. The award was again affirmed by the District Court of the City and County of Denver, and in October, 1924, the award was affirmed by the Supreme Court.

7.

Industrial Commission of Colorado v. Metropolitan Window Cleaning Company; Denver District Court.

Case dismissed on motion of plaintiff, as defendant had complied with the rules of the Industrial Commission.

8.

Colorado Fuel and Iron Company v. Industrial Commission of Colorado and John Cundy; Denver District Court.

February 27, 1923, award affirmed.

9.

Maryland Casualty Company v. Industrial Commission of Colorado and Rose Lewis; Denver District Court.

Award of the Commission reversed by the District Court and the case appealed to the Supreme Court. February, 1923, the Supreme Court reversed the judgment of the District Court and affirmed the award of the Industrial Commission.

10.

M. C. Crawford et al. v. Industrial Commission of Colorado et al.; Denver District Court.

Award of the Commission affirmed by the District Court. Appeal taken to the Supreme Court, where the award of the Industrial Commission was again affirmed.

11.

Colorado Fuel & Iron Company v. Industrial Commission of Colorado and Katherine Brautigan; Denver District Court.

Case appealed to the Supreme Court. Award of Industrial Commission affirmed.

12.

Colorado Fuel & Iron Company v. Industrial Commission of Colorado and Lawrence E. Burge; Denver District Court.

Award of Commission affirmed.

13.

Jerry Hughes v. Industrial Commission of Colorado; Denver District Court.

Case pending.

14.

J. F. Depew v. Industrial Commission of Colorado; Denver District Court.

Case pending.

15.

Globe Indemnity Company v. Industrial Commission of Colorado and Charles L. Walker Denver District Court.

Award of Industrial Commission set aside by the District Court. Case appealed to the Supreme Court, where the judgment of the District Court was reversed and the award of the Industrial Commission affirmed with instructions.

16.

Edna May Hunter v. Industrial Commission of Colorado; District Court, Pueblo County.

Award of the Industrial Commission set aside by the District Court. Case appealed to the Supreme Court, where the judgment of the District Court was affirmed and the award set aside.

17.

Columbine Laundry Co. v. Industrial Commission of Colorado and Anna Pederson; Denver District Court.

Award of Industrial Commission affirmed by District Court. Case appealed to the Supreme Court, where judgment of the District Court was affirmed.

18.

James H. Andrews v. Industrial Commission of Colorado and Elmer Bachman; Denver District Court.

Award of the Industrial Commission affirmed by the District Court. Case appealed to the Supreme Court, where the judgment of the District Court was affirmed.

19.

Industrial Commission of Colorado v. Aetna Life Insurance Co.; Denver District Court.

Penalty suit for failure to obey rule of the Commission. Case dismissed by stipulation upon the payment by the insurance company of $500.00 as a penalty to the Industrial Commission.

20.

R. A. McAlpine v. Industrial Commission of Colorado and Mary E. Hartley; District Court of Archuleta County.

Award of Industrial Commission affirmed.

21.

Industrial Commission of Colorado and Mary E. Hartley v. R. A. McAlpine; District Court of Archuleta County.

Suit to set aside certain transfers by R. A. McAlpine. Suit dismissed upon payment of $1,000.00 to Mary E. Hartley on award.

22.

Aetna Life Insurance Company and J. V. Stryker v. Industrial Commission of Colorado and Gilbert Gurbrea; Denver District Court.

Case remanded to the Industrial Commission by stipulation. Award paid.

23.

Royal Indemnity Company v. Industrial Commission of Colorado and J. Herman; Denver District Court.

Award of the Industrial Commission affirmed.

24.

McPhee & McGinnity v. Industrial Commission of Colorado; Denver District Court.

Case remanded to the Industrial Commission with instructions to take further testimony.

25.

Domka Elkas v. Industrial Commission of Colorado; Denver District Court.

Award of Industrial Commission set aside by District Court. Case appealed to the Supreme Court. Judgment of the District Court affirmed.

26.

Aetna Life Insurance Company and Magnus Metal Company v. Industrial Commission of Colorado and E. Borg; Denver District Court.

Case remanded to the Industrial Commission by stipulation. Award paid.

27.

Broderick Mining & Milling Co. and Ocean Accident & Guarantee Company v. Lucia Povinelli and Industrial Commission of Colorado; Denver District Court.

Award of Industrial Commission affirmed.

28.

Travelers Insurance Company and Westinghouse Electric Company v. Industrial Commission of Colorado and B. J. Row; Denver District Court.

Case remanded to the Industrial Commission by stipulation. Award paid.

29.

Travelers Insurance Company and J. M. Pike v. Industrial Commission of Colorado and G. W. Brockman; Denver District Court.

Case remanded to the Industrial Commission by stipulation. Award paid.

30.

Colorado Fuel & Iron Company v. Industrial Commission of Colorado and Selia S. Sebastian; Denver District Court.

Award affirmed by the District Court. Appealed to the Supreme Court, where judgment of the District Court was reversed and the award set aside.

31.

Clinton Barth v. Industrial Commission of Colorado; Denver District Court.

Award of the Industrial Commission affirmed.

32.

Employers Mutual and Rocky Mountain Fuel Co. v. Industrial Commission of Colorado and Filipi Acosta; Denver District Court.

Award of Industrial Commission affirmed by the District Court. Case appealed to the Supreme Court, where the judgment of the District Court was reversed and the award set aside with instructions.

33.

Aetna Life Insurance Company and Hardesty Manufacturing Company v. Industrial Commission and William Robertson; Denver District Court.

Case remanded to the Industrial Commission by stipulation and award paid.

34.

D. C. Wanamaker v. Industrial Commission of Colorado and Ajax Mine Leasing Company; District Court of Teller County.

Award set aside and the case remanded with instructions.

35.

Colorado Construction Company and Southern Surety Company v. Industrial Commission and Gladys Smith; Denver District Court.

Award of the Commission affirmed, case appealed to the Supreme Court, where the award was affirmed.

36.

Aetna Life Insurance Company and V. E. Carson v. Industrial Commission of Colorado and H. F. Sutliff; Denver District Court.

Award of the Commission set aside by the District Court. Case appealed to the Supreme Court. Dismissed in the Supreme Court by stipulation. Remanded to the Industrial Commission and award paid.

37.

Harry Reidi v. Industrial Commission of Colorado and C. T. Evans; District Court of Adams County.

Award of the Industrial Commission affirmed.

38.

M. I. Amerman v. Industrial Commission of Colorado and J. A. Gomaz; Denver District Court.

Award of the Industrial Commission affirmed.

39.

London Accident & Guaranty Co. and Great Western Sugar Co. v. Annie L. Jenkins and Industrial Commission of Colorado; Denver District Court.

Award of the Industrial Commission affirmed.

40.

Aetna Life Insurance Co. and Electric Auto Appliance v. T. G. Aldrich; Denver District Court.

Award of the Industrial Commission affirmed.

41.

Nora Peterson v. Industrial Commission of Colorado and Western Light & Power Co. and London Guarantee & Accident Co.; Denver District Court.

Case dismissed for want of jurisdiction. Complaint not filed within the statutory period.

42.

Sarah Zook v. London Guarantee & Accident Co. and the Industrial Commission of Colorado; Denver District Court.

Award affirmed by the District Court. Case appealed to the Supreme Court, where the judgment of the District Court was affirmed.

43.

Globe Indemnity Company and the Loop Market v. Industrial Commission of Colorado and Lena M. Lloyd; Denver District Court.

Award of the Industrial Commission affirmed.

44.

Employers Mutual Insurance Company and the Rocky Mountain Fuel Co. v. Industrial Commission of Colorado and J. M. Ratliff; Denver District Court.

Award set aside by the District Court. Case appealed to the Supreme Court, where the award of the Industrial Commission was modified by reducing the amount of compensation.

45.

London Guarantee & Accident Co. and Blue Seal Coal Co. v. Industrial Commission of Colorado and Charles Reese; Denver District Court.

Award of the Industrial Commission affirmed Denver District Court.

46.

Longmont Farmers Milling & Elevator Co. v. D. M. Fee and Industrial Commission of Colorado; Denver District Court.

Award of the Industrial Commission affirmed.

47.

London Guarantee & Accident Co. and Great Western Sugar Co. v. L. B. Tucker and Industrial Commission of Colorado; Denver District Court.

Award of Industrial Commission affirmed by District Court. Case appealed to the Supreme Court, where the judgment of the

District Court was reversed and the case remanded to the Industrial Commission with instructions to modify the amount of the award.

48.

J. Mosko v. C. F. Leas and Industrial Commission of Colorado; Denver District Court.

Award of the Industrial Commission affirmed.

49.

S. P. Silver Mining Co. v. Ben McGuire and Industrial Commission of Colorado; Denver District Court.

Pending.

50.

Industrial Commission of Colorado v. Turkey Creek Stone, Clay & Gypsum Co.; Denver District Court.

Penalty suit. Dismissed upon payment of costs and payment of award entered by Industrial Commission.

51.

Industrial Commission of Colorado v. Turkey Creek Stone, Clay & Gypsum Co.; Denver District Court.

Penalty suit for failure to pay an award. Suit dismissed upon payment of costs by defendant and payment of award.

52.

Industrial Commission of Colorado v. Turkey Creek Stone, Clay & Gypsum Co.; Denver District Court.

Penalty suit for failure to pay an award. Case dismissed upon payment of costs and payment of award.

53.

Industrial Commission of Colorado v. Blue Flag-Silverton Gold Mining Co.; Denver District Court.

Penalty suit for failure to pay an award. Case dismissed upon payment of costs and payment of the award.

54.

G. A. Dahlgren v. Industrial Commission of Colorado and John Hinderman; District Court of Bent County.

Case pending.

55.

State Compensation Insurance Fund v. Industrial Commission of Colorado, Colorado Power Co. and James J. Connell; Denver District Court.

Case pending.

56.

D. C. Wanamaker v. Industrial Commission of Colorado and Ajax Gold Mining Co.; District Court of Telluride County.

Award of Industrial Commission affirmed.

57.

Employers Mutual Insurance Co. and Canon Reliance Coal Co. v. Industrial Commission of Colorado and Robert Bunten; Denver District Court.

Award of Industrial Commission set aside.

58.

B. A. Hohmann v. Employers Liability Insurance Co., J. M. Simpson Woodwork Co. and Industrial Commission of Colorado; Denver District Court.

Award of Commission affirmed by the District Court. Case appealed to the Supreme Court. Pending.

59.

Alamo Coal Co. and Employers Mutual Insurance Co. v. Industrial Commission of Colorado and J. E. Sanchez; Denver District Court.

Award of Industrial Commission affirmed by the District Court. Case appealed to the Supreme Court, where the judgment of the District Court was affirmed.

60.

U. S. Fidelity & Guaranty Co. and Poudre Valley Gas Co. v. Industrial Commission of Colorado and Fannie Martz; Denver District Court.

Award of the Industrial Commission affirmed by the District Court. Case appealed to the Supreme Court, where the judgment of the District Court was affirmed.

61.

Laura Stockdale v. Industrial Commission of Colorado, Girardet & Hotchkiss and the Ocean Accident & Guarantee Co.; District Court of Montrose County.

Award of Industrial Commission affirmed. Appealed to the Supreme Court. Award affirmed.

62.

Employers Mutual and Temple Fuel Co. v. Industrial Commission of Colorado; Denver District Court.

Award of Industrial Commission set aside.

63.

John C. Jenkins v. James C. Vernon and Industrial Commission of Colorado; Denver District Court.

Award of Industrial Commission affirmed.

64.

B. J. Hammond v. Industrial Commission of Colorado and Josie E. May; District Court of Saguache County.

Award of the Industrial Commission set aside by the District Court. Case appealed to the Supreme Court. Pending.

65.

John G. Jenkins v. Industrial Commission of Colorado and W. W. Clark; Denver District Court.

Award of Industrial Commission affirmed.

66.

F. G. Bonfils and H. H. Tammen v. Industrial Commission of Colorado and Martha Sprigg; Denver District Court.

Case remanded to the Industrial Commission with instructions.

67.

State Compensation Fund v. Industrial Commission of Colorado and Lera A. Todd; Denver District Court.

Pending.

68.

Globe Indemnity Co. and St. Anthony's Hospital v. A. M. Thompson; Denver District Court.

Award of Commission set aside. Appealed to the Supreme Court. Pending.

69.

U. S. Fidelity & Guaranty Co. and Myers Pulp & Paper Co. v. Claude Hollenbaugh and Industrial Commission of Colorado; Denver District Court.

Award of Industrial Commission affirmed.

70.

Lindsay & Dolan and Federal Surety v. Industrial Commission of Colorado and Vollie Gonce; Denver District Court.

Award of Industrial Commission affirmed.

71.

C. W. Kettering Mfg Co. and Ocean Accident and Guarantee Co. v. W. H. Fox and Industrial Commission of Colorado; Denver District Court.

Award of Industrial Commission affirmed. Case appealed to the Supreme Court. Pending.

72.

Ida May Vaughan v. Industrial Commission of Colorado and Ernest Stenger; Denver District Court.

Files remanded to the Industrial Commission with instructions to make further findings on the question of dependency.

73.

American Radiator Company and Ocean Accident & Guarantee Company v. Adolph Franzen, Metropolitan Window Cleaning Co. and Industrial Commission of Colorado; Denver District Court.

Pending.

SCHEDULE IV

Opinions and Syllabi of Opinions

Rendered During the Biennial Term

1923-1924

NOTE: These syllabi are reported herein in the chronological order of the dates of the opinions rendered. A copy of each opinion is on file under a number corresponding with that of the syllabus.

Opinions and Syllabi of Opinions

1. SCHOOLS

Mr. T. E. Dunshee, Supt. of Schools, Fruita, Colo., Jan. 12, 1923.

(1) A school district is not liable for injuries received by students while riding in a school bus.

(2) School districts are governed by the Workmen's Compensation Law, and therefore a teacher who is injured while in the discharge of her duties should file her claim for compensation as provided in the act, and the school board should keep records of such accidents to comply with the provisions of the act.

2. SCHOOLS

Mrs. Lou C. Beaman, County Supt. of Schools, Silver Cliff, Colo., 1-17-23.

(1) Where a bond issue election held for the purpose of voting bonds to erect school houses does not carry, the school board of such district has no other recourse than rental for acquiring buildings in which to hold school.

(2) The question of bonds may be submitted at any time to the people of such school district, provided the provisions of the statute with respect to the filing of petitions, etc., are complied with.

(3) The first election on such question may be at any time, provided it is legally called in accordance with the provisions of the statute.

3. APPROPRIATIONS

Hon. A. M. Stong, Auditor of State, Denver, Colo., Jan. 19, 1923.

Salaries of employees of General Assembly cannot be paid until appropriation is made therefor.

4. FEES AND SALARIES

S. R. Berkley, Sheriff, Jan. 19, 1923.

Under Ch. 123, Sec. 2, p. 325, S. L. 1921, all deputy sheriffs in counties of the second class, Div. B, are entitled to the salaries therein provided, even though the sheriff employs such deputies as jailers.

5. SCHOOLS—GARNISHMENTS

Mr. H. M. Tanner, Pres. School Board, Golden, Colo., Jan. 19, 1923.

School districts are not subject to garnishment, and that portion of Sec. 1, Ch. 143, S. L. 1911, which makes school districts

subject to garnishment is unconstitutional because said act amended an act the title of which referred only to municipal corporations.

6. FEES AND SALARIES

Royal R. Graham, Judge County Court, Jan. 20, 1923.

Ch. 88, S. L. 1921, relating to fees charged by clerks of courts of record, does not repeal or modify Sec. 2536, R. S. 1908, insofar as fees of judges are concerned.

6-a COUNTY OFFICERS

To County Commissioners, Pitkin County, Jan. 20, 1923.

A *county judge* may not also hold the office of *county attorney.* Sec. 248, R. S. 1908.

7. HIGHWAY DEPARTMENT—CONTRACT

L. D. Blauvelt, State Highway Engr., Denver, Colo., Jan. 22, 1923.

The State Highway Department, after having advertised for bids on alternate types of highway improvement and after having selected a particular type, may negotiate with the low bidder for that type, to reduce his bid and may accept such bid as reduced.

8. SCHOOLS—TAXATION

Robert H. Swinney, Assessor, Jan. 23, 1923.

The residents of any district wherein a union high school is maintained may exempt themselves from the payment of taxes for the support of the county high school by vote of a majority of the residents of such district.

(See Sess. Laws 1921, Ch. 207.)

9. SCHOOLS

R. C. Yarnell, Jan. 23, 1923.

(1) A director of a school district has no right to vote upon the allowance of his own claim against the school district.

(2) A school director who does work for the school district, such as the repairing of buildings, conveyances or the hauling of coal, is not entitled to compensation therefor.

10. SCHOOLS

R. R. Bartholomew, Jan. 23, 1923.

School directors cannot draw on the general fund for salaries of teachers in excess of $75 per month for each teacher.

11. COUNTY OFFICERS

Mr. B. N. Weinsheim, Sedgwick, Colo., Jan. 24, 1923.

County Surveyors

The bond of the county surveyor should run to the board of county commissioners.

12. SOLDIERS' AND SAILORS' HOME

(Compensation of Commissioners)

A. M. Stong, State Auditor, Jan. 24, 1923.

Members of the Board of Commissioners of the Soldiers and Sailors' Home are not entitled to a per diem allowance for their services. They are only entitled to reimbursement for certain actual expenses incurred by them in the performance of their duties.

13. SCHOOLS—TEACHERS' CONTRACTS

Mr. L. P. Breeden, Jan. 25, 1923.

(1) Discount on teachers' warrants cannot be met by the school board.

(2) School directors have the right to enter into new contracts with teachers with the consent of both parties, but cannot exceed the sum of $75 per month per teacher out of the general fund.

14. CONTRACTS—COUNTIES

Hon. Geo. W. Lane, District Attorney, Jan. 30, 1923.

Collection of Taxes on Percentage

County commissioners have no authority to make or enter into a contract with private citizens to collect taxes on a percentage basis.

15. SCHOOLS

C. A. Linkins. House of Representatives, Jan. 31, 1923.

(1) Teachers' Minimum Salary Law of 1921 repeals Secs. 5893-4. R. S. 1908. Sec. 5895, R. S. 1908, as amended, S. L. 1911, p. 585. and Sec. 5896, R. S. 1908, are still in force.

(2) Repeal of Ch. 214, S. L. 1921, would not permit county commissioners to levy any general school tax.

16. GENERAL ASSEMBLY

Officers and Employes of

Hon. Arthur M. Stong. Auditor. Feb. 2, 1923.

Ch. 84, S. L. 1915, limits the number of officers and employees of the General Assembly, and the Senate cannot by resolution authorize the employment of more than are in that act provided for.

Citation of authorities.

17. CORPORATION LICENSE TAX

Hon. Carl S. Milliken, Secretary of State, Feb. 3, 1923.

A mutual ditch company is exempt from payment of corporation license tax, although it owns an item of real estate other than its ordinary corporate property, which it was compelled to take under foreclosure proceedings.

18. CIVIL SERVICE

Clifton H. Wilder, Feb. 3, 1923.

Prohibition Agents

Agents of the Governor appointed under Sec. 23, Ch. 98, S. L. 1915, should be appointed pursuant to Civil Service Rules and Regulations.

An agent not so appointed has no standing in the classified Civil Service.

19. FEES AND SALARIES

Hon. A. M. Stong, Auditor, Feb. 3, 1923.

Courts of Record

Sec. 2 of Ch. 88, S. L. 1921, is constitutional, even though it applies to cases pending at the time the act went into effect. Said act, however, does not apply to funds containing deposits on costs for cases decided before the act went into effect.

20. SCHOOLS—MILITARY RESERVATIONS

Mrs. M. C. C. Bradford, Supt. Pub. Inst., Feb. 5, 1923.

(1) School districts operating on military reservations cannot pay out of the general fund salaries of teachers working on the reservation. It is optional with the school board as to whether tuition shall be charged for children living on the reservation who attend school in adjoining districts.

(2) It is optional with the commissioners of school districts operating on military reservations whether tuition shall be charged for children living on the reservation who attend school in adjoining districts.

21. TAXES

Miss Anna Norberg, County Treasurer, Feb. 6, 1923.

County commissioners have no power to prescribe the manner in which the county treasurer shall collect taxes, as his duties are prescribed by statute.

22. COUNTY OFFICERS

John C. Vivian, Feb. 8, 1923.

Sheriff

Sheriff of fourth-class counties is not entitled to additional compensation for acting as jailer.

23. TAXATION

Mark R. Bunting, County Treasurer, Feb. 9, 1923.

The purchaser of real estate cannot be compelled to pay the tax on personal property belonging to a former owner of the real estate.

24. PROHIBITION LAW

John R. Smith, Feb. 15, 1923.

Duty of Officer Making Seizure—Disposition of Articles Seized

In all activities under the Prohibition Law the law-enforcing officer should place himself under the guidance of the district prosecuting officer and co-operate with the sheriffs of the district. If these officers are not performing their duty, he should bring that fact to the attention of the Governor and act under the law.

The liquors and articles seized should be taken before the judge when case is tried and should not be removed from the county where seized, except as a matter of last resort.

The judgment entered by the court shall direct the destruction of the liquor seized, and that the other articles seized shall be sold as personal property is sold under execution, and the proceeds therefrom applied as directed by Sec. 3712, Comp. Laws 1921.

25. GROUP INSURANCE—MUNICIPALITIES

Jackson Cochrane, Insurance Commissioner, Feb. 16, 1923.

The statute relating to group insurance does not prohibit municipalities from taking out such insurance on the lives of their employees.

The question of the power of such municipalities to carry such insurance, discussed, but not decided.

26. FEES AND SALARIES

To Daniel Sanchez, Clerk and Recorder, Feb. 17, 1923.

The per diem allowed by Sec. 2, Ch. 122, S. L. 1921, to the county clerk and recorder for services as clerk of board of county commissioners is part of his regular salary and not in addition thereto.

27. SOLDIERS' AND SAILORS' HOME

To A. W. Hogle, Commandant, Feb. 19, 1923.

Since Sec. 695, Comp. Laws 1921, provides no method of procedure to prove eligibility for admission to the Soldiers and Sail-

ors' Home, a certain amount of latitude is allowed those in charge of the institution.

28. CIVIL SERVICE

To State Civil Service Commission, Feb. 19, 1923.

Budget Commissioner's assistants are in the classified Civil Service.

29. BOARD OF CAPITOL MANAGERS

Hon. William E. Sweet, Governor, Feb. 24, 1923.

It is unlawful for a member of any public board who shall have a vote in the awarding of any contract for the State to take or receive any part of the moneys specified in such contract. (Sec. 7994, Comp. Laws 1921.)

The penalty for violation: Imprisonment not exceeding six months and fine of not exceeding $2,000 and removal from office

It is not necessary for the Governor to institute prosecutions for removal from office, but he may remove after due notice and hearing, if he is satisfied that the law has been violated.

30. CORPORATIONS

To Carl S. Milliken, Secretary of State, Feb. 28, 1923.

The Secretary of State should not accept for filing any annual report by a corporation that is delinquent in the payment of its corporation license tax.

31. PUBLIC HEALTH—VACCINATION

State Board of Health, Feb. 28, 1923.

It is not a criminal offense to counsel and advise disobedience to the orders of the Board of Health.

32. CIVIL SERVICE

Civil Service Commission, March 1, 1923.

There is no such classification as "confidential clerks." Appointments of clerks should be made from the Civil Service eligible list and provisional appointments may be made only in the absence of such a list.

33. DEPARTMENT OF SAFETY

To Harry Cassaday, Budget and Efficiency Commr., March 1, 1923.

If a ranger is injured while performing his duties as a ranger, it is the duty of the superintendent of his department to furnish necessary medical and hospital attention, and upon approval of the Governor the bills should be paid if there is sufficient money in the State treasury.

34. FINES

Mr. Birger Tinglof, Boulder, Colo., March 3, 1923.

All fines collected for violation of the prohibition laws should be paid into the General County School Fund.

This office is of the opinion, as stated in previous communications, that all fines not otherwise provided for shall be paid into the General County School Fund, and not to the General County Fund. The sections to which you refer, namely, Sections 2140 and 2141, Mills' Ann. Stat., 1912, are the sections that were in force at the time of the admission of Colorado to the Union. They were adopted by the constitutional provision which provided that all laws then in force in the Territory should remain and become the laws of the State of Colorado. In 1877, subsequent to the admission of the State to the Union, the law providing that all fines collected for the violation of penal statutes should be paid into the General County School Fund was passed. This act, being later than the former one, controls.

There is no doubt but that the two are in conflict.

35. PENSIONS—STATE

Hon. S. W. DeBusk, March 1, 1923.

The General Assembly has the power to enact laws providing for Old Age Pensions, Bonus to ex-Soldiers, Pensions to Firemen and Policemen in cities, and Mothers' Pensions, and such laws would probably be held to be constitutional. (Citation of authorities.)

In your letter of the 2nd inst. you ask my opinion as to whether or not the General Assembly has "authority of law to grant pensions along the following lines:

1. Old Age Pensions.
2. Soldiers' Bonus, or rather bonus to ex-soldiers.
3. Pensions to Firemen in Cities.
4. Pensions to Policemen in Cities.
5. Mothers' Pensions."

Our State Supreme Court has repeatedly held that it will not declare an act of the General Assembly unconstitutional unless the fact of its invalidity is beyond reasonable doubt. Naturally, I would feel a similar reluctance in saying that any act the General Assembly might desire to pass would be unconstitutional unless I was clearly convinced that such was a fact. Moreover, I wish to point out that your questions are very general and have no reference to any particular bill now pending before the General Assembly. It might well be that any particular bill the General Assembly might enact upon either of the mentioned subjects would be wholly or in part unconstitutional because of some peculiar feature of the act, even though the General Assembly had the authority to legislate upon the general subject. With the above considerations in mind, I will now answer your questions specifically.

OLD AGE PENSIONS

I have found no judicial decisions upon the right of a legis lature to provide for old age pensions. In view, however, of the universally recognized obligation resting upon the state to provide for its indigent citizens who become proper subjects for public charity, I am of the opinion that a statute providing old age pensions for citizens of the state who are wholly destitute would be upheld by our courts. A statute providing such pensions merely by reason of age and without regard to physical or financial ability of the beneficiary, would, of course, be held invalid.

SOLDIERS' BONUS OR BONUS TO EX-SOLDIERS

There is a strong tendency among the courts of last resort in states having constitutional limitations upon legislative power similar to those contained in our State Constitution, to uphold statutes providing for the payment of a bonus to ex-soldiers. The Wisconsin, South Dakota, Washington and Minnesota statutes awarding a bonus to soldiers who were citizens of those states respectively, were upheld in the following cases, viz:

State ex rel Atwood vs. *Johnson,* 175 N. W. 589, and 176 N. W. 224 (Wis.);
State ex rel Morris vs. *Handlin,* 162 N. W. 279 (S. D.);
State ex rel Hart vs. *Clausen,* 194 Pac. 763 (Wash.);
Gustafson vs. *Rhinow,* 144 Minn. 415.

In New York, however, a statute awarding a bonus to soldiers from that state was held invalid upon the ground that the statute amounted to the gift or loan of credit to the beneficiaries, contrary to a provision of the state constitution prohibiting the legislature from giving or loaning its credit to any individual or corporation.

People vs. *Westchester Natl. Bank,* 231 N. Y. 465.

This decision, however, seems to be contrary to the weight of authority, as already pointed out.

PENSIONS FOR FIREMEN AND POLICEMEN IN CITIES

The subjects of pensions to firemen and to policemen are considered together because the courts have drawn no distinction be tween the right of a legislature to award pensions in these respective cases. Although there is some conflict among court decisions on the question of the right of a legislature to award pensions to policemen and firemen, the weight of authority seems to support legislation of that kind. From 5 McQuillin on Municipal Corporations, Section 2422, we quote:

"Pensions for officers, on retiring after a fixed number of years of service, or when disabled, are provided for by statute or charter in many jurisdictions,

> especially in case of policemen and firemen. Such pensions, generally, are not considered as *donations or gratuities,* within the rule of law forbidding municipalities to donate moneys, and the better rule seems to be that the *legislature has power to require* municipalities to pension firemen and to pay such pensions from the funds of the fire department."

In *Nebraska ex rel Haverlan* vs. *Love,* 131 N. W. 196, 34 L. R. A. (N. S.) 607, the Supreme Court of Nebraska held that an act of the legislature requiring cities of the first and second classes in that state to pension their superanuated firemen was valid, and that such a statute did not violate a provision of the Nebraska constitution that "the legislature shall not impose taxes upon municipal corporations or the inhabitants or property thereof for corporate purposes"; or a provision of the state constitution that "the legislature shall never grant any extra compensation to any public officer, agent, servant or contractor after the services shall have been rendered or the contract entered into."

In *People ex rel Kroner* vs. *Abbott,* 274 Ill. 360; 113 N. E. 696; Ann. Cases, 1918D, 450, the Supreme Court of Illinois upheld a similar statute requiring certain cities of the state to pension policemen who shall have served for at least twenty years. The court there held that such pensions are not additional compensation for services already rendered, and that the awarding thereof is not lending the credit of the state within the meaning of a provision of the state constitution similar to Section 1, Article XI of our Constitution.

See also to the same general effect:

Cobbs vs. *Home Ins. Co.,* 91 So. 627, and
Phoenix Assurance Co. vs. *Fire Dept. of Montgomery,* 117 Ala. 631.

I am of the opinion that our courts would uphold a statute requiring or authorizing the cities of the State to provide pensions for its policemen and firemen after they shall have served a stated number of years. Such an act, however, could not apply to cases where the period of service was completed and the officer had retired before the statute took effect.

MOTHERS' PENSIONS

I am of the opinion that a statute providing pensions for mothers who have minor children to support and who are in such indigent circumstances that they cannot properly support the children without public aid, would be sustained by our courts. Several of the states aside from Colorado have such statutes and they appear to have been universally upheld. See:

Denver & Rio Grande Ry Co. vs. *Grand County,* 170 Pac. 74 (Utah);

Cass County vs. *Nixon*, 161 N. W. 204 (N. D.);
In re Rumsey, 167 N. W. 66 (Nebr.);
State ex rel Stearns vs. *Klasen*, 143 N. W. 984 (Minn.);
People ex rel Stuckart vs. *Chicago L. S. & E. R. Co.*, 110 N. E. 720 (Ill.);
Buster vs. *Marion County*, 165 Pac. 1168 (Ore.);
DeBrot vs. *Marion County*, 145 N. W. 467 (Ia.);
Commonwealth ex rel Mothers' Assistance Fund vs. *Powell*, 100 Atl. 964 (Pa.).

See also an exhaustive note on this subject in 3 A. L. R. 1233.

There is a marked distinction between pensions for firemen and policemen and old age pensions and mothers' compensation allowances.

The former are provided for those who perform a public service considered hazardous. They are designed to encourage men to enter such service and to a certain extent to compensate them for the use of the best years of their lives in such service. The latter are not pensions at all; they are nothing but public charity dispensed under new names and are allowable only to the indigent or helpless.

In my opinion too easy pensions or public allowances may have a tendency to promote in some of our citizens a too ready dependence upon them and the false idea that the world owes them a living, and to that extent do more harm to the fiber of the people than can be reckoned.

36. BUILDING AND LOAN ASSOCIATIONS

To Hon. A. M. Stong, Auditor of State, March 6, 1923.

Three-Per Cent Contracts

The three-per cent contract issued by purported building and loan associations is not a building and loan contract and the Bureau of Building and Loan Associations should not permit the issuance of same even by a company which is organized as a building and loan company.

Guaranty Loan and Building Co.
Mutual Investment Security Co.
Colorado Home Building Assn.

37. BUILDING AND LOAN ASSOCIATIONS

To Hon. A. M. Stong, State Auditor, March 6, 1923.

The Guaranty Loan and Building Association of Denver, Colorado, according to its articles of incorporation, is not organized as a building and loan association and should not receive a certificate of authority as such.

The three-per cent contract issued by said company is not a building and loan contract and is not such a contract as the Bureau of Building and Loan Associations should permit even

if issued by a company which is organized as a building and loan company.

38. GAME AND FISH LAWS

The setting aside of certain areas of land as game refuges and prohibiting within such areas hunting, trapping and killing of any animals, is in contravention of Art. V., Sec. 25 of the Colorado Constitution.

Hon. Walter G. Moffatt, House of Representatives, March 7, 1923.

You ask in your letter if in my opinion Art. V, Sec. 25, of the Constitution of the State of Colorado prohibits the enactment of laws setting aside certain areas of land as game refuges and prohibiting within such areas the hunting, trapping and killing of any animals.

The article and section of the Constitution to which you refer provides, *inter alia*, as follows:

> "The General Assembly shall not pass any local or special laws . . . for . . the protection of game and fish;"

Chapters 130, 131, 132 and 133 of the Sessions Laws of 1921, which set aside certain defined areas, provide that: "It shall be unlawful for any person or persons at any time to hunt, trap, kill, capture or chase any birds or animals of any kind or description whatever" except as in said statute provided. A penalty is fixed for hunting, trapping or capturing within such areas.

Game refuges are considered by a great many people as very necessary and desirable legislation; and the purpose of such legislation is to protect game and fish. This being the purpose, where the protection of game and fish is limited to certain areas and it is made unlawful to hunt, kill or trap within such areas, it is perfectly clear that such a law is a local law because it is lawful to hunt, kill and trap in other portions of the State not set aside as game refuges.

It is my opinion, therefore, that the statutes above referred to are in contravention of Art. V, Sec. 25, of the Constitution.

The state of Illinois has a constitutional provision similar to ours. It was decided in the case of *People* vs. *Wilcox* (two judges dissenting), 237 Ill., p. 421, that a law requiring persons desiring to fish in any waters of the state of Illinois, excepting Lake Michigan, with a hook, net, seine or trammel net, must first obtain a license and tag for such nets, etc., was in violation of the constitution of the state of Illinois.

In the case of *People, etc.* vs. *Diekman*, 285 Ill. 97, the Illinois court, to a certain extent, receded from the rigidity of the former decision and upheld a law which authorized the game and fish department to set aside in its discretion such waters within the state as it might judge best as state fish preserves, on the theory that that law applied to all of the waters within the jurisdiction

of the state which the commission should find should be used for the preservation and propagation of fish.

I call your attention to what has been done in the state of Illinois with the apparent purpose of avoiding the inhibitions of their constitution: The laws of Illinois, 1919, page 45, provide that the game and fish department shall have the power and authority to establish game refuges, etc. And this law further provides that the lands included in such refuges shall be leased by the state at a nominal rental of one dollar per year for each parcel. The purpose for the last named provision of the statute of Illinois, it is apparent, is to put the state in the position of the holder of a leasehold estate or a proprietor of the lands included within the game refuge. As such proprietor or holder of the leasehold estate it would probably have power to prohibit the taking of game and fish within the leased premises.

I make this last suggestion for the benefit of those who may be interested in legislation which I understand is pending.

See, however, Opinion No. 248, *infra,* in which a contrary conclusion was reached by Mr. Williams.

39. TAXES—IRRIGATION DISTRICTS

Mr. J. E. Lucero, County Treasurer, March 9, 1923.

Under Ch. 160, S. L. 1921, the county treasurer may accept payment of general taxes without requiring payment of irrigation district assessments.

Under the same chapter the county treasurer may accept payment of taxes levied for the bond fund of an irrigation district without requiring at the same time payment of taxes levied for the maintenance fund thereof.

40. COUNTY OFFICERS

Sheriffs and Constables

To Rex C. Evans, Clerk and Recorder, March 10, 1923.

Duties of Sheriffs

(1) The sheriff in whose hands has been placed a writ of *fieri facias* or fee bill upon the expiration of his office, who has levied under the same, is authorized to proceed and collect the same (8761, Comp. Laws. 1921).

Kendall vs. *People*, 14 Colo. App. 175, 179.

(2) The outgoing sheriff does not handle the unfinished cases.

(3) It is advisable for the sheriff to accompany the federal prohibition officer when the latter requests him to do so. (6795, Comp. Laws 1921).

41. MOTOR VEHICLE LICENSE

To Carl S. Milliken, Secretary of State, March 10, 1923.

Free License Tags—Issuance Within Discretion of Secretary

Regular license plates issued to State and federal prohibition departments, to the police department of Denver and for cars used in auto theft work by Secretary of State, may be issued without charge for license, but cost of plate or tag should be charged.

42. ELECTION LAWS

To J. C. Davis, Town Clerk, Mar. 12, 1923.

Registration

Registry boards in outlying precincts or in incorporated towns should sit on the Tuesday two weeks before election, and on Monday before the election.

43. COUNTY COMMISSIONERS

To C. O. Dunagan, March 13, 1923.

A county board cannot lawfully employ one of its own members as superintendent or foreman of road work to be done by the county at the expense of the State.

44. COUNTY OFFICERS

To J. L. Miller, March 14, 1923.

It is not illegal for one person to hold at the same time the offices of county commissioner and city councilman, or the offices of county treasurer and city councilman.

45. TAX SALES

To K. E. Moscript, March 14, 1923.

Neither the board of county commissioners nor the county treasurer is bound by a resolution passed by a board of trustees or city council requesting 30 days' notice of a contemplated sale of tax certificates held by the county on real estate located within the limits of a town or city.

46. MOTOR VEHICLES

To Hon. James A. Marsh, March 17, 1923.

Under S. B. 272, passed by the Twenty-fourth General Assembly (Ch. 149, S. L. 1923), amending Ch. 161, S. L. 1919, the State and its local subdivisions and their employees are required to pay the license fee provided for by law on automobiles used in the public service.

47. APPROPRIATIONS

To Hon. Wm. E. Sweet, Governor, March 23, 1923.

An appropriation for the maintenance and support of the Department of Safety, or the Colorado Rangers, may not be used

under the direction of the Governor for the enforcement of the prohibition laws.

48. INSURANCE LAW

To Jackson Cochrane, Insurance Commissioner, March 23, 1923.

Publication of Statements

Publications required by Sec. 2494, Comp. Laws 1921, need not be completed, but must be commenced within the 30-day period mentioned in said section.

49. BUILDING AND LOAN ASSOCIATIONS

To Hon. A. M. Stong, March 14, 1923.

Three-Per Cent Companies

Associations and companies issuing so-called "Three-Per Cent Contracts" are not entitled to a certificate of authority to do business in this State under the building and loan association laws.

Federal Savings and Building Assn.
Western Home Building and Loan.

50. IRRIGATION DISTRICT BONDS

To A. J. McCune, State Engineer, March 23, 1923.

(1) Board of directors of irrigation district may accept bids for bonds at less than par.

(2) An irrigation district may contract to pay for construction of an irrigation system with bonds of the district.

(3) The irrigation district commission may approve a district bond issue without certifying the bonds of the district as legal investment for State and trust funds.

(4) The certification of irrigation district bond issue by the irrigation district commission as legal investments for school funds makes them legal investments for such funds.

51. ELECTION LAWS

To L. W. Newby, March 24, 1923.

Registration

The county clerk should appoint deputies to sit for the registration of electors on the first and third days before any election or primary in cities of more than 5,000 population which are not county seats.

This also applies to municipal elections in such cities.
Sec. 7657, Comp Laws 1921.

52. TAX SALES

To Reginaldo Garcia, County Treasurer, March 26, 1923.

Tax sales may be held after the second Monday in November.
Secs. 7410-7411, Comp. Laws 1921.
Security & Bond Co. vs. *Wolfel,* 27 Colo. 218.

53. STOCK INSPECTION LAW

To Henry W. Catlin, Montrose, March 26, 1923.

Sec. 3183, Compiled Laws 1921, is valid.

54. ELECTION LAW

To E. R. Boggs, March 27, 1923.

Candidate of Two Parties

Where one person in a municipal election is the candidate of both parties, his name should appear on the ballot in but one place, but the designation of both parties should follow his name.

55. PARDONS

To Hon. W. E. Sweet, Governor, March 28, 1923.

After sentence, only the Governor may pardon or commute. Neither the judge, the district attorney, sheriff or any other officer or person has any authority to release any convicted and sentenced prisoner from confinement.

56. PUBLIC TRUSTEE

To Hon. W. E. Sweet, Governor, March 30, 1923.

When a vacancy occurs in the office of public trustee, and an appointment is made to fill that vacancy, the appointee takes for a full term of two years.

A vacancy is created by death, removal or resignation of the incumbent. To create a vacancy the resignation must be unconditional and bona fide, with an intention to surrender a portion of his term.

57. STATE HIGHWAYS

To Allen M. Lambright, March 31, 1923.

Conveyance of rights of way for State highways should run to the State of Colorado.

58. PUBLIC TRUSTEE

To A. M. McClanahan, April 2, 1923.

Deeds of Trust

Where a beneficiary of a deed of trust failed to elect to declare the note secured by a deed of trust due and payable upon

default in the payment of interest and did not start foreclosure proceedings until the note actually became due, he is entitled to penalty interest from the date when the note became due upon its face, and not from date of default in the payment of interest.

59. SCHOOLS—COMPENSATION INSURANCE

Dunshee, April 3, 1923.

School districts must insure in State Compensation Fund. Districts are liable for accidents to teachers arising out of or in the course of their employment.

60. SCHOOLS

To Mary T. McNulty, April 3, 1923.

A school board has the power to decide the length of the school term.

61. SCHOOL ELECTIONS

To Mrs. Lou C. Beaman, County Superintendent, April 3, 1923.

Notice of election on bond issue should contain time of payment of such bonds.

Registration lists not necessary in third-class districts.

62. MOTOR VEHICLES

To T. E. Dunshee, April 6, 1923.

A school bus, used for carrying children to and from school free of charge would come within provisions of Sec. 6, sub. (e), Ch. 161, S. L. 1919, in regard to payment of annual registration license fee.

63. SCHOOLS

To Ruth Kline, April 7, 1923.

A teacher is entitled to compensation for period school remains closed on account of epidemic.

It is not necessary to make up time lost in order to obtain her salary.

64. TAXATION

Chapter houses of college fraternities are not exempt from taxation. Citation of authorities.

Colorado Tax Commission, State Office Building, April 9, 1923.

Under date of the 3rd inst. you submitted for the consideration of this office the letter of Mr. Hildreth Frost, attorney-at-law, of Colorado Springs, addressed to the county assessor of El Paso County, wherein it is urged that the chapter house of the Phi Gamma Delta fraternity, located in Colorado Springs, is

exempt from taxation, and you ask the opinion of this office as to whether or not the property in question is exempt.

Sec. 5 of Art. X of the State Constitution provides that:

> "Lots with the building thereon, if said buildings are used solely and exclusively for religious worship, for schools, or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law."

Sec. 5545, R. S. 1908, as amended by Ch. 200, S. L. 1921, provides that:

> "The following classes of property shall be exempt from general taxation, to-wit:
>
> * * * * * * * * *
>
> "Third. Grounds with the buildings thereon, if said buildings are used exclusively for schools, other than schools held or conducted for private or corporate profit.
>
> "Fourth. Lots with the buildings thereon, if said buildings are used for strictly charitable purposes."

The section as amended now appears as Sec. 7198, Comp. Laws of 1921.

In states having statutory or constitutional provisions analagous to those above quoted it seems to have been uniformly held that chapter houses of college fraternities are not exempt from taxation.

See:

37 Cyc. 938;
People ex rel D. K. E. Society vs. *Lawler*, 74 App. Div. 553—affirmed without opinion in 179 N. Y. 535;
Phi Beta Epsilon Society vs. *City of Boston*, 182 Mass. 457; 65 N. E. 824;
Inhabitants of Orono vs. *Sigma Alpha Epsilon Society*, 105 Me. 214; 94 Atl. 19;
Inhabitants of Orono vs. *Kappa Sigma Society*, 108 Me. 320; 80 Atl. 831.

It has been held in Kansas and Indiana that property of the kind in question is exempt from taxation under statutes specifically exempting it therefrom.

See:

Kappa Kappa Gamma House Assn. vs. *Pearcy, Co. Treas.*, 92 Kansas 1020; 142 Pac. 294; 52 L. R. A. (ns) 995;
State ex rel Daggy vs. *Allen*, 189 Ind. 369; 127 N. E. 145.

The following Colorado cases bear upon the general subject, but I regard none of them as controlling the present question, viz:

Cathedral, etc. vs. *County Treasurer*, 29 Colo. 143;
Colo. Seminary vs. *Arapahoe County*, 30 Colo. 507;
Pitcher vs. *Wolcott School*, 63 Colo. 294;
Wharton vs. *Colo. Springs Masonic Bldg. Assn.*, 64 Colo. 529;
Commissioners, etc. vs. *D. & R. G. R. R. Employees Relief*, 70 Colo. 592.

In my opinion, the county assessor of El Paso County should assess for taxation the property in question.

65. APPROPRIATIONS

To Hon. W. E. Sweet, April 14, 1923.

The General Assembly has power to increase the appropriation for law enforcement over and above the so-called continuing appropriation in the act of 1915.

66. PUBLIC TRUSTEE—COUNTY COMMISSIONERS

To Frank D. Allen, April 14, 1923.

(1) A public trustee probably cannot compel a subsequent incumbrancer who redeems from a sale and thereafter obtained a deed to surrender the note and subsequent incumbrance for concellation.

(2) County commissioners cannot legally appropriate county funds to assist financially public libraries located in towns in the county.

67. PHOTOGRAPHIC RECORDS

To Carl S. Milliken, Secretary of State, April 16, 1923.

The making of photographic copies of records shall be deemed recording, and such photographic copies, bound, paged and indexed, shall be deemed record books under the provisions of Ch. 104, S. L. 1917.

68. SCHOOL OF MINES

To Hon. Wm. E. Sweet, Governor, April 17, 1923.

Where the board of trustees of the State School of Mines entered into a contract to employ a man as president of the institution for three years, said contract is valid even though three members of said board go out of office two years before the expiration of the contract; provided that the contract was made in good faith and was reasonable.

69. TAXATION

In assessing shares of stock of banks, no deduction should be made on account of part of capital of bank being invested in tax exempted securities.

Mr. William R. Kelly, County Atty., Greeley, Colo., Apr. 17, 1923.

In your letter of the 14th inst. you direct attention to Section 7450, Compiled Laws of 1921, which provides for the assessment of shares of capital stock of national banking associations, and ask my opinion as to whether or not, in fixing the value of such shares for taxation, any deduction should be made by reason of the fact that some part of the assets of the bank consists of loans secured by real estate mortgages.

I beg to advise you that the Colorado Tax Commission, a year or more ago, took the position, which it still adheres to, that in fixing the value of shares of capital stock of banks, no account should be taken of the fact that a part of the capital, surplus or undivided profits of the bank is invested in tax exempt securities.

In *Peters Trust Company* vs. *Douglas County,* 184 N. W. 812, the Supreme Court of Nebraska held that shares of the capital stock of a trust company are a separate and distinct thing from the property or assets of the company, and that in determining the value of such shares for the purpose of taxation no deduction should be made by reason of the fact that a part of the assets of the company consisted of securities exempt by law from taxation. This decision was affirmed by the Supreme Court of the United States. See U. S. Supreme Court Advance Opinions, March 1, 1923, page 277.

The Supreme Court of Oklahoma has held to the same effect in *Longcor* vs. *Central State Bank,* 204 Pac. 1098. This case was likewise affirmed without opinion by the Supreme Court of the United States. See U. S. Supreme Court Advance Opinions, January 15, 1923, page 180.

The case of *Washington County* vs. *Murray,* 71 Colo. 552, involved the taxation of a private bank. There was no question as to the assessment of shares of stock of an incorporated bank.

In my opinion you should advise your county assessor to follow the rule laid down in the Nebraska and Oklahoma cases, and, in assessing shares of capital stock of banks, to allow no deduction by reason of the fact that some part of the capital, surplus or undivided profits of the bank is invested in tax exempt securities.

For your information I enclose herewith a copy of the recent amendment to Section 5219, U. S. Revised Statutes.

70. SCHOOLS

S. J. Shadel, April 18, 1923.

A school director who has preferred charges against a teacher is competent to sit at the hearing.

71. TAXATION

J. E. Stauffer, April 18, 1923.

Church property may be taxed for special improvements.

72. COUNTY FUNDS

R. A. Pfost, Co. Treas., April 19, 1923.

Prohibition Fines

(1) Prohibition fines are placed in the General School Fund.

(2) Interest and penalties on delinquent taxes are distributed between state, county, municipalities and districts in and for which the tax is levied in proportion to tax.

(3) Money in the General School Fund (Minimum Salary Fund) cannot be transferred to other school funds to make up for deficiencies.

73. SCHOOL LAW

Ralph W. Byers, April 20, 1923.

Children between the ages of 14 and 16 are subject to the Compulsory Education Law.

74. INSURANCE LAW

Hon. Wm. E. Sweet, Governor, April 23, 1923.

Under Sec. 2477, Comp. Laws. 1921, one holding practically all of the stock in a corporation which acts as an agent for insurance companies, in this State, is not eligible to hold an appointment in the State Insurance Department.

75. GAME AND FISH LAW

Roland G. Parvin, April 28, 1923.

A company owning an irrigation reservoir is entitled to a lake license, but not to a preserve license.

76. CORPORATIONS

Carl S. Milliken, April 30, 1923.

Amendment of Articles

A corporation organized to engage in a general agency, real estate and loan business, cannot so amend its articles as to include among its objects the owning and operating of moving picture theatres.

77. SCHOOLS

Minimum Salary Law does not include the salary of teachers of special subjects.

Miss Nell B. McCartey, Durango, Colo., May 1, 1923.

It is the opinion of this office that the Minimum Salary Law does not include the salary of teachers of special subjects. Section 1 of the act provides for raising sufficient funds to pay the salary of all teachers the amount of $75.00 a month. This section,

however, is qualified by Section 6 which provides in part that "The minimum salary that shall be paid to any school teacher in public schools, except substitute teachers, part time teachers, and teachers of special subjects, shall be seventy-five ($75.00) dollars per month."

It is the intention of the law that the well-to-do districts should help the poorer ones. As only first class districts can employ teachers of special subjects; any interpretation other than the one given above would force the poorer district to help support the larger ones.

We would advise you, therefore, to only certify the regular, full-time teachers who are engaged in teaching regular subjects.

(See the case of *McCartey* vs. *School Dist. No. 9 in La Plata Co.*, 225 Pac. 835 sustaining the position set forth above.)

78. SCHOOL LAW

A. G. Maine, May 2, 1923.

Summer Schools—Minimum Salary Act

Minimum Salary Act does not apply to summer schools for special sessions.

Nominations are unnecessary in third class school districts.

79. SCHOOL LAW

G. E. Brown, May 2, 1923.

Decision affecting minimum salary law for District of Columbia does not affect the teachers' Minimum Salary Law in this State.

80. PUBLICATION

To Hugh J. Harrison, May 3, 1923.

Tax Deed notices for different pieces of property should be published separately.

81. SCHOOL LAW

To Mrs. Ollie C. Cave, May 3, 1923.

A teacher's contract with a school board, the execution of which begins after the expiration of the term of office of one of the members, is not invalid for that reason, and the board will be liable for a breach thereof.

82. APPROPRIATIONS

State Hist. and Nat. History Society, May 4, 1923.

Under the terms of H. B. 251 making appropriation for salaries and expenses of department, vouchers should be made out in

favor of the Treasurer of the S. H. & N. H. Society, for the use of claimants.

83. OFFICERS—TOWNS AND CITIES

To Edgar L. Jones, May 8, 1923.

The fact that a man holds a twenty-year franchise for telephone lines in an incorporated town, would not disqualify him from acting as mayor.

84. SALARIES

To Hon. A. M. Stong, May 10, 1923.

Payment for extra work actually performed by a public employe, and for which extra work no compensation has been paid, is not prohibited by Sec. 28, Art. V. of the State Constitution.

85. SCHOOLS

To Mrs. M. L. Youmans, May 10, 1923.

A portion of a county H. S. district may be relieved from payment of taxes for county H. S. purposes upon establishment of a high school in the portion seeking this relief.

86. SCHOOLS

Mrs. Ruth B. Vertrees, May 10, 1923.

(1) Census lists should contain only the names of children between 6 and 21 years of age. Children under six years cannot be considered in determining whether a district is first or second class.

(2) If a secretary of a school district fails to give notice of a county school election, any two electors may give such notice. An election may be held after the date set for the annual election.

87. SCHOOLS

To A. I. Fleming, May 10, 1923.

Contracts Benefiting School Director

Where a school director receives indirect benefits from a contract for hauling children the contract itself is against public policy.

88. SCHOOLS

To Mrs. Lenna B. Howard, May 10, 1923.

Contracts entered into between the husband of a school board member and the board, will probably be looked upon with disfavor by the courts, under Sec. 7994 Comp. Laws, 1921; 22 R. C. L., p. 460.

89. **APPROPRIATIONS**

To Hon. William E. Sweet, Governor, May 10, 1923.

Moneys appropriated in the General Appropriation bill (Ch. 7, S. L. 1923) for the traveling and incidental expenses of Factory Inspectors in connection with the enforcement of the Minimum Wage Law cannot be used by the Factory Inspection Department because this department has nothing to do with the enforcement of this law. Nor can the Secretary of the Industrial Commission, who is charged with the administration of this law use the appropriation because the appropriation was made to the Factory Inspectors.

90. **APPROPRIATIONS**

To Hon. A. M. Stong, Auditor of State, May 11, 1923.

The appropriation of 1921 for planting trees, etc., on the site of the Alamosa Normal School is limited to the biennial period ending November 30, 1922.

91. **PUBLIC TRUSTEE**

Mr. George C. Twombly, County Attorney, Ft. Morgan, Colo., May 12, 1923.

The Public Trustee in a third class county is entitled to a salary of $2,000 per annum in addition to his salary as County Treasurer.

92. **APPROPRIATIONS**

To Hon. Arthur M. Stong, May 14, 1923.

Sec. 11, Chapter 60. S. L. 1907, contains a continuing appropriation for salary and expenses of the State Meat and Slaughter Plant Inspector.

93. **DEEDS**

To Edyth C. Wheeler, May 14, 1923.

Deeds issued by sheriffs and public trustees must bear federal tax stamps.

94. **IRRIGATION**

To W. J. McAnally, May 15, 1923.

Authority of Division Engineer to issue blanket orders discussed. Citing statutes.

95. **INSURANCE LAW**

To Jackson Cochrane, May 21, 1923.

Sec. 2511 Comp. Laws Colo., 1921, being superseded by decision of U. S. Supreme Court in 257 U. S., p. 529 (1922), the Insurance Commissioner cannot legally revoke the authority of an insurance

company to do business in this State on the ground that such insurance company has removed a case from a state court to the Federal Court.

96. COUNTY COMMISSIONERS

Mr. G. T. Howe, May 22, 1923.

A county commissioner is entitled to actual mileage in attending to county business, either in his own car or by railroad, provided the actual amount of expense is not more than 15 cents per mile.

97. HIGHWAYS

To E. B. Adams, May 24, 1923.

Moneys allotted to the various counties out of the bond issue authorized in 1920, must be expended in such counties, and cannot be expended outside the county even though the county board consents thereto.

98. MARKETS

To Wm. F. Allewalt, May 25, 1923.

Appropriation in 1921 Act

The new Co-operative Marketing Act takes effect July 22, 1923, and repeals Ch. 173, S. L. 1921. The continuing appropriation in the 1921 Act may be used at the rate of $10,000 per annum until the repeal takes effect.

99. FEES AND SALARIES

To Arthur M. Stong, May 25, 1923.

The policy of the Civil Service Commission in certifying pay rolls where extra compensation is allowed without a showing that extra services were performed out of office hours is contrary to the intent of the amendment.

100. CIVIL SERVICE

To Civil Service Commission, May 25, 1923.

The Secretary of State Board of Health receives compensation for his services, and the fact that he must also be a member of the Board, does not remove him from the classified service.

101. CIVIL SERVICE

To Hon. Carl S. Milliken, Secretary of State, May 29, 1923.

If the position of Superintendent of Private Employment Agencies has actually been abolished and no one is substituted on whole or part time to perform the duties of the office, then the Secretary of State acted within his rights in dispensing with the

services of the officer holding the position at the time the office was abolished.

102. INSURANCE LAW

Mr. Jackson Cochrane, Commissioner of Ins., Denver, May 29, 1923.

The infliction of penalty provided by Sec. 2486, Compiled Laws of 1921, is discretionary with the Commissioner.

103. CITIZENSHIP

A Japanese born in the Hawaiian Islands between Aug. 12, 1898, and April 30, 1900, is a citizen of the United States by reason of his birth on the Islands.

A Japanese person born in the United States is a citizen of the United States.

A Japanese person naturalized prior to the recent decision of the United States Supreme Court holding that members of the Japanese race are not subject to naturalization, is a citizen of the United States within the meaning of the Rules of the Supreme Court requiring that members of the Bar must be citizens of the United States.

May 31, 1923.

Mr. G. W. Humphrey, Secretary,
State Board of Legal Examiners,
Kittredge Building.

In your letter of the 23rd inst., you say, that the Supreme Court of this State has advised your Board to ask the opinion of this office upon certain questions hereinafter set forth regarding the qualification of certain persons, or classes of persons, for admission to the bar in view of the rules of the Court requiring that applicants for admission to the bar, must be citizens of the United States.

In your letter you set forth the facts regarding two individual cases whereon the question you submit are predicated. These cases are described by you substantially as follows:

> 1. A Japanese now attending the University of Denver, under the auspices of the Veterans' Bureau of the United States, and who desires to study law and be admitted to the bar of this State, was born in the "Territory of Hawaii" December 11, 1899; his parents have resided in said "Territory" since 1898, but it does not appear whether or not they ever were citizens of the Republic of Hawaii.
>
> 2. A Japanese "who served in the late war, honorably discharged therefrom" and who is now attending a law school under the auspices of the Veterans' Bureau of the United States was naturalized prior to the recent decision handed down by the United States Supreme Court, to the effect that members of the Japanese race born in Japan are not eligible to naturalization under our Federal Laws.

The questions you ask are as follows:

A. "In the first case would said Japanese become a citizen of the United States on account of his birth in Hawaii at the time specified?"

B. "Is said Japanese a citizen of the United States by reason of the following circumstances:

(1) *The residence* of his parents in the Republic of Hawaii at the time same was obtained by the United States; (2) Is he a citizen of the United States, provided his parents were merely citizens of said Republic of Hawaii at said time?"

C. "Would a person of the Japanese race born in the United States, be a citizen of the United States?"

D. "Would a person of Japanese parentage naturalized in the United States, retain and be a citizen of the United States under the recent ruling of the Supreme Court of the United States?"

Our statutes do not in express terms require that members of the bar shall be citizens of the United States, where admission is sought to be obtained as the result of an examination. However, Section 5997, Compiled Laws 1921, provides, that all members of the bar shall take an oath to support the Constitution of the United States and of the State of Colorado, and a fair inference is that the statutes contemplate that only citizens of the United States shall be eligible to admission to the bar. Moreover Rule 60 of the Rules of the Supreme Court, expressly provides, that no person shall be permitted to practice law in this State "who shall not first have taken and subscribed an oath that he is a citizen of the United States."

The right of the Court to adopt and enforce such a rule is beyond question. From article "Aliens," 1 R. C. L., Section 11, page 803, we quote:

"The qualifications required for admission to the bar are exclusively within the policy and discretion of each state. One of the conditions required in most states is that the applicant must be a citizen of the United States. The power of the state to prescribe citizenship as a requirement for admission to the bar, and thus close the door to this profession to aliens, has never been denied. The applicant, upon his admission to the bar, becomes an officer of the Court. This is a privilege and not a right; and the power which grants the privilege can deny it to aliens. And the privilege may be denied him, although he has been admitted to practice in all the courts of another state, and has been given a certificate of naturalization in the other state, which was void because without authority of law." (See also 6 Corpus Juris 571.)

We shall now take up the questions you propound.

The Hawaiian Islands were annexed to the United States by

Joint Resolution of Congress, approved July 7, 1898. That Resolution did not fix the status of the inhabitants as to citizenship but provided that:

> "The municipal legislation of the Hawaiian Islands, not enacted for the fulfillment of the treaties so extinguished, and not inconsistent with this joint resolution nor contrary to the Constitution of the United States nor to any existing treaty of the United States, shall remain in force until the Congress of the United States shall otherwise determine." Pierce's U. S. Code 1910, Sec. 4405; Revised Laws of Hawaii 1915, page 18.

Pursuant to this Joint Resolution, the United States Government took formal possession of the Islands on August 12, 1898. See Hawaii vs. Mankichi, 190 U. S. 200.

The Act of Congress establishing a territorial government over the Islands, was approved April 30, 1900. Pierce's U. S. Code, 1910, page 803; 4 U. S. Compiled Statutes, 1916, page 4664; Barnes' Fed. Code, 1919, page 742.

It thus appears that the Japanese person mentioned in your letter was born in the "Territory of Hawaii" after the United States took possession of the Islands under the resolution of annexation and prior to the time when the territorial government was extended over the Islands, and the question is, what was his status as to citizenship under the circumstances?

Section 4 of the Act of April 30, 1920, provides as follows:

> "That all persons who were citizens of the Republic of Hawaii on August twelfth, eighteen hundred and ninety-eight, are hereby declared to be citizens of the United States and citizens of the Territory of Hawaii. And all citizens of the United States resident in the Hawaiian Islands who were resident there on or since August twelfth, eighteen hundred and ninety-eight, and all the citizens of the United States who shall hereafter reside in the Territory of Hawaii for one year shall be citizens of the Territory of Hawaii." Pierce's U. S. Code, 1910, Sec. 4412; 4 U. S. Compiled Laws 1916, Sec. 3647; Barnes' Fed. Code 1919, Sec. 3302.

It will be observed that this section does not afford an answer in express terms as to the status of the person in question. The section does declare that all persons who were citizens of the Republic of Hawaii on August 12, 1898, are citizens of the United States, but it does not fix the status of persons born in the Islands after August 12, 1898 and prior to April 30, 1900.

The Constitution of the Republic of Hawaii provided in Section 1 of Article XVII, thereof, that:

> "All persons born or naturalized in the Hawaiian Islands and subject to the jurisdiction of the Republic are citizens thereof." Civil Laws Hawaii 1897, page 6.

It thus appears that had the Act of Annexation not taken place, the Japanese person now in question would have been a citizen of the Republic of Hawaii, because of the mere fact that he was born in the Hawaiian Islands, unless he were not "subject to the jurisdiction of the Republic" notwithstanding his birth in the Islands.

Can it then be said that although Section 4 of the Act of April 30, 1900, declared to be citizens of the United States, all persons who were citizens of the Republic of Hawaii on August 12, 1898, it was intended thereby to exclude from citizenship, persons born in the Islands after August 12, 1898, and prior to April 30, 1900, despite the fact that such persons would have become citizens of the Republic of Hawaii by the mere fact of their birth in the Islands had the Act of Annexation not taken place? We cannot believe that such was the intent of the Federal Act.

We believe that since the Act was given a retroactive effect by extending the privilege of citizenship to persons born in the Islands on and prior to August 12, 1898, it was clearly intended that persons born in the Islands since that date and who would have become citizens of the Republic by reason of their birth in the Islands, should likewise become citizens of the United States by reason of their birth in the Islands.

In a letter addressed to the Secretary of the Treasury by the Attorney General of the United States under date of January 16, 1901, the Attorney General discussed and answered in the affirmative, the following questions:

> 1. "Whether a person born in the Hawaiian Islands in 1885 of Chinese parents, who are laborers, and taken to China with his mother in 1890, is entitled to re-enter the Territory of Hawaii, where his father still resides?
>
> 2. "Whether the wife and children of a Chinese person, who was naturalized in 1887 in Hawaii and still resides there, are entitled to enter that Territory '*by virtue of the citizenship*' of the husband and father?"

In the course of his opinion the Attorney General said:

> "It is worthy of remark in this connection that Section 3 of the bill to provide a government for Porto Rico, as introduced, declared that all the inhabitants of that island, with a certain qualification and exception, 'shall be deemed and held to be citizens of the United States.' This provision was stricken out (see Sec. 7 of the Act, 31 Stat., 77, 79) before the bill became law. But in the Hawaiian case, Congress, after annexation, admitted the islands as a Territory, established a Territorial govern-

ment, *and did not withhold or limit the privilege of citizenship*, which was within its competence to do, but expressly granted that privilege to *all persons* who were citizens of the Republic of Hawaii on the date fixed. Congress said a very plain thing, and must be understood to have meant what is said." Opinions of Attorneys General, Vol. 23, page 345.

In answer to question A, we therefore advise you that in our opinion the Japanese person in question became a citizen of the United States by reason of his birth in the Hawaiian Islands at the time specified, provided, his parents were, at the time of his birth, permanently domiciled in the Islands and were not there merely as official representatives of a foreign State or Kingdom. The above conclusion renders it unnecessary to make any further answer to question B.

The XIV Amendment to the Constitution of the United States provides that:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside." Compiled Laws of Colo. 1921, page 25.

The Civil Rights Act, adopted April 9, 1866, provides that:

"All persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are declared to be citizens of the United States." See Van Dyne on Citizenship of the United States, page 7.

"An alien has been defined to be 'one born out of the jurisdiction of the United States and who has not been naturalized under their Constitution and laws.'" *Low Wah Suey* vs. *Backus*, 225 U. S. 473.

In *U. S.* vs. *Wong Kim Ark*, 169 U. S. 649, the court held that a child born in the United States of parents of Chinese descent, who at the time of his birth are subjects of the emperor of China but have a permanent domicile and residence in the United States and are there carrying on business and are not employed in any diplomatic or official capacity under the emperor of China, becomes, at the time of his birth, a citizen of the United States by virtue of the clause of the XIV Amendment to the Federal Constitution above quoted.

Answering question C, we therefore advise you that a person of the Japanese race born in the United States would be a citizen of the United States, provided that his parents had at the time of his birth a permanent domicile and residence in the United States and were not employed in any diplomatic or official capacity under the emperor of Japan.

In *Takao Ozawa* vs. *U. S.*, decided by the Supreme Court of

the United States November 13, 1922 (U. S. Supreme Court Advance Opinions, Dec. 1, 1922), it was held that the federal laws do not permit the naturalization of persons of the Japanese race.

The general rule is that an order issued by a court of competent jurisdiction, and valid on its face, admitting a person to citizenship, is conclusive as against a collateral attack as to all matters necessarily before the naturalization court and involved in the issue presented. See 6 A. L. R., page 407. But this general rule as to immunity from collateral attack does not apply where the order of naturalization is absolutely void. 6 A. L. R., page 411.

In *In re Yamashita,* 30 Wash. 234, it appears that the statutes of the state required that attorneys-at-law shall be citizens of the United States and that Yamashita, a native of Japan, applied for admission to the bar of the state and produced an exemplification of the record of a court of competent jurisdiction purporting to admit him to citizenship. The record showed that the applicant was a native of Japan. The court held that since members of the Japanese race are not eligible to naturalization, the order of the court purporting to admit him to citizenship was void upon its face and should be disregarded, and thereupon the court declined to admit the applicant as a member of the bar of the state.

I find no federal statute making any exception in the matter of naturalization in behalf of Japanese persons on account of services in the military forces of the United States.

Section 3740, Barnes' Fed. Code 1919, Section 4335 U. S. Compiled Statutes 1916, provides as follows:

> "Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States."

This section appears to have been repealed by the act of May 9, 1918, except as to aliens who served in the armies of the United States and were honorably discharged therefrom prior to January 1, 1900. See Section 3751, Barnes' Fed. Code 1919.

Moreover, the federal courts have held that the above section did not extend the right of naturalization to a person of the Mongolian race, either Chinese or Japanese.

In re Buntaro Kumagai, 163 Fed. 922;
In re Knight, 171 Fed. 299;
In re Alverto, 198 Fed. 688.

The thirteenth paragraph of Section 3750, Barnes' Federal Code 1919, Section 4352, 1919 Supplement to United States Compiled Statutes 1916, was enacted May 9, 1918, and is similar to the section last above quoted and provides in substance that any person "who is serving in the military or naval forces of the United States at the termination of the existing war, and any person who, before the termination of the existing war may have been honorably discharged from the military or naval services of the United States" shall, upon application for naturalization, be relieved from the necessity of proving continuous residence within the United States immediately preceding the time of his application, but it does not purport to extend the privilege of naturalization to persons not entitled to naturalization under the general laws.

Since the effect of the recent decision of the United States Supreme Court above cited is to declare void, or at least voidable, all purported naturalizations of persons of Japanese parentage, it is my opinion that such persons so purporting to have been naturalized in the United States are not eligible to admission to the bar by reason of any such purported naturalization. This answers question D.

104. APPROPRIATIONS

To Carl S. Milliken, June 8, 1923.

Sec. 4207, Compiled Laws 1921, contains a continuing appropriation for the clerk of the Wage Claim Bureau.

Sec. 4313, Compiled Laws 1921, contains a continuing appropriation for a stenographer in the Factory Inspection Department.

105. FEES AND SALARIES

To Joseph Newitt, June 9, 1923.

Neither Ch. 88, S. L. 1921, nor H. B. 239, approved May 7, 1923, has the effect of repealing Sec. 2536, R. S. 1908, fixing the fees payable to county judges.

106. CIVIL SERVICE

To Wyatt Boger, June 12, 1923.

The office man or manager of the State Fair Association is in the classified Civil Service.

107. STATE HIGHWAY BONDS

To H. E. Mulnix, June 13, 1923.

Validity of Issue of 1923

These bonds are expressly authorized by Sec. 3, Art XI, St.

Const., as amended by vote of 1922 election, and are issued under authority of act of Twenty-fourth General Assembly, approved May 4, 1923, which provides for tax levies for interest and principal thereof.

108. TRUST AGREEMENTS

To Scott W. Heckman, June 19, 1923.

Copies of trust agreements organizing so-called "common law trusts" are not entitled to be filed in the office of the Secretary of State.

109. SCHOOLS

To Mary C. C. Bradford, June 19, 1923.

Management of Districts

A law which attempts to give the residents of one school district the right to interfere with the management of the schools of another district is unconstitutional

110. SCHOOLS

To Mary C. C. Bradford, June 20, 1923.

School directors in third-class districts have the power to pay the tuition of students who desire to go to school in other districts to attend eighth and ninth grades, without submitting the question to a vote of the people.

Sec. 8333, Comp. L. 1921.

111. SCHOOL FUNDS

To H. E. Mulnix, State Treasurer, July 10, 1923.

Under Sec. 1 of Ch. 122, S. L. 1917, interest-bearing warrants of the State of Colorado should be preferred as investments for the school funds of the State.

See Opinion No. 232, in which a contrary conclusion was reached by Mr. Williams.

112. FEES AND SALARIES

Mr. J. W. B. Smith, Co. Atty., Idaho Springs, Colo., July 10, 1923.

Section 7873, Compiled Laws of 1921, supersedes Section 7878 concerning the fees of clerks of courts of record, but does not supersede Section 7886 which concerns the fees of county judges.

113. IRRIGATION

To Hon. Addison J. McCune, State Engineer, July 10, 1923.

Discussion of water priorities of the Great Plains Reservoir,

the Lolita Reservoir No. 3 and certain other priorities in Water District No. 17.

114. FEES AND SALARIES

Mr. J. G. Archibald, Boulder, Colo., July 11, 1923.

A county clerk is entitled to but $5.00 a day for his services as clerk of the county commissioners under and by virtue of Section 7888, C. L. 1921, and is not entitled to $5.00 a day for each clerk employed. However, extra clerical assistance can be obtained under the provisions of Section 7940, C. L. 1921.

115. TAXATION

Mr. E. I. Crutchfield, Deputy County Treasurer, Akron, Colo., July 12, 1923.

Equities in school lands should be assessed at actual cash value regardless of the original purchase price.

116. MOTOR VEHICLES

Mr. T. H. Noonon, County Clerk and Recorder, Littleton, Colo., July 12, 1923.

Under the provisions of paragraph (a), Section 1371, C. L. 1921, it is necessary to record the bill of sale or certificate of ownership and all assignments thereof in every county where a sale of the vehicle in question is made. However, such recording is not a prerequisite to the issuance of a license.

117. INSURANCE LAW

Mr. Jackson Cochrane, Commissioner of Insurance, State Office Building, Denver, Colo., July 23, 1923.

A foreign mutual life insurance company, in order to be permitted to do business in this State, under Section 25 of the Insurance Code, cannot reckon as "guaranty capital or equivalent fund, or surplus" the company's general reserve for the protection of policy holders, but must have a guaranty capital or surplus of $100,000.00 in excess of such capital.

118. COLORADO AGRICULTURAL COLLEGE

The funds of the Colorado Agricultural College cannot be invested in bonds of drainage district bonds.

Mr. L. M. Taylor, Secretary State Board of Agriculture, Fort Collins, Colo., July 26, 1923.

The brokerage firm of Sidlo, Simons, Fels & Co., of Denver, has submitted to this office for examination a transcript of proceedings relating to the issuance of certain bonds of the Holly Drainage District, which bonds I am advised your board is contemplating purchasing.

Section 8058, Compiled Laws 1921, provides, in substance, that the State Board of Agriculture may, in its discretion, invest funds derived from the sale of lands therein mentioned "in municipal or school district bonds or in farm loans." It follows, of course, that these funds cannot be invested in any other securities than those expressly named, and this at once raises the question as to whether or not bonds issued by a drainage district organized under the laws of this State are "municipal" bonds within the meaning of the statute above quoted.

Speaking in a broad sense, "municipal" bonds are bonds issued by cities, incorporated towns, counties, townships, school districts and other public corporate bodies. (Harris on Municipal Bonds, page 8; Hainer on The Modern Law of Municipal Securities, Section 4.) But the text of the statute quoted leads me to believe that the word "municipal" is used therein, not in its broadest sense, but rather in the narrower sense, as meaning cities and incorporated towns only. If the word "municipal" had been intended to comprehend all public bodies that are frequently called municipal corporations, then the words "or school districts" would have been unnecessary, because, as above shown, the word "municipal" in its broad sense would include a school district.

Drainage districts organized under our statutes are not municipal corporations except in the broadest and most general sense, and I do not believe that the word "municipal" as used in the above statute is broad enough to include them. We quote from 28 Cyc., page 128, article, Municipal Corporations:

> "There are also many public bodies which are not corporations in the full sense but resemble them in that they have some of the attributes of a corporation, and which are therefore called quasi-corporations. Some of these, like the New England towns, are almost perfect in their organization and scarcely distinguishable from municipalities. Others, like road districts, represent the lowest order of corporate life, with few powers and imperfect organization. Between these two extremes are a larger number of districts erected as agencies of government, of divers names and objects, with varying degrees of organization; including counties, townships, school districts, drainage districts, irrigation districts, levee districts or directors thereof, fire districts, sanitary districts, reclamation districts, and all other sections of territory delimited and organized for the performance of certain governmental functions; and also boards of official persons established for public purposes, local or general, such as boards of education, public works, railroads, levy courts, waterways, sanitary commissions, and the like. These are sometimes declared by statute to be corporations; but all of them lack some of the

essential elements or integral parts requisite to constitute a complete corporation. They strongly resemble and are almost corporations; and by courts and authors they are recognized as constituting a peculiar class of public institutions, and are generally called quasi-corporations. Such bodies, although not 'municipal corporations' nor 'municipalities' in the proper sense, must be construed as falling within such terms in a constitution, statute, or other instrument, *if such appears to be the intention;* and cases are frequently found in the reports in which they are so designated by the courts.''

Bonds issued by drainage districts organized under our statutes are not general obligations of the district as a corporate entity, but are payable only from the proceeds of special assessments levied upon real estate of the respective owners of property located within the confines of the district.

In *State ex rel Port Townsend* vs. *Clausen,* 40 Wash. 95, the court, in holding that bonds issued by a city to defray the cost of construction of waterworks and which were payable only out of a special fund derived from the revenues of the waterworks system were not municipal bonds, said:

''The common mind understands from the fact that a municipal bond is issued that a municipal debt has been created, and that the faith and credit of the municipality issuing the bond is pledged to its payment. The term, it seems to us, can admit of no other definition.''

I am therefore compelled to advise your board that in my opinion the bonds in question are not municipal bonds within the meaning of said Section 8058, and that your board therefore could not lawfully invest the funds, subject to its disposition, in such bonds.

As a matter of justice both to the brokerage firm above mentioned and to your board, I should state that this opinion is not the slightest reflection upon the validity or value of the bonds in question, but is based entirely upon the technical proposition that such bonds are not a legal investment within the limitations of the statute giving your board power to invest funds.

119. AMERICAN LEGION

Mr. Carl Milliken, Secretary of State, July 26, 1923.

The American Legion, as a national corporation, need not file certified copy of articles of incorporation with the Secretary of State before doing business in this State.

120. DEPARTMENT OF SAFETY

To Hon. W. E. Sweet, July 26, 1923.

Appropriations, 1923

If the appropriation of $5,300 made by S. B. 215 for expenses of the Department of Safety prior to Nov. 30, 1922, is not sufficient to cover the indebtedness, the balance must remain unpaid.

No part of the appropriation made by H. B. 369 for $50,000 to cover maintenance, support and part of wages of members and employees of Department of Safety for the months of December, 1922, and January, February and March, 1923, is available for indebtedness of any kind incurred after the last day of March, 1923.

121. IRRIGATION DISTRICTS—TAXATION

To J. E. Lucero, August 2, 1923.

(1) A county treasurer is not authorized to accept district warrants issued in 1922 for the payment of taxes falling due in 1923.

(2) Taxes on personalty do not become a lien on the realty of the owner.

122. FEES AND SALARIES

To Arthur M. Stong, Auditor, Aug. 4, 1923.

Salary of the executive secretary of the Child Welfare Bureau can lawfully be paid from the Sheppard-Towner State Fund and the Child Welfare Bureau Fund in such proportions as the Board of Control of the Bureau shall designate.

123. FEES AND SALARIES

Hon. A. M. Stong, Aug. 4, 1923.

There is no legal objection to a public employee occupying two positions and drawing two salaries if such positions are not incompatible as a matter of law or fact.

Discussion of particular cases.

124. MOTOR VEHICLES

To E. H. Akerly, Aug. 5, 1923.

Where a dealer in second-hand cars buys automobiles and resells them, in order to comply with the law he should have an assignment bill of sale made to him from the owner and then issue a new assignment to the purchaser from him. He should not attempt to pass title directly from the first owner to the new purchaser.

125. STOCK INSPECTION LAW

To Bell & Stivers, Aug. 5, 1923.

Construction of Sec. 4, page 593, Laws 1907—as to whether said section repeals Sec. 58, page 391, Laws 1893.

The latter section repealed by former insofar as it applies to stock inspection and quarantine.

126. FEES AND SALARIES

To Hon. A. M. Stong, Auditor, Aug. 6, 1923.

The State Historical Society may use the cash Archæology Fund to pay a part of the salary of the curator of the Archæological and Ethnological Department.

127. MOTOR VEHICLES

To Anna E. Adkisson, County Treasurer, Aug. 20, 1923.

Under the act of 1923 relating to taxation of automobiles, the applicant for a license for a second-hand car need not pay the taxes assessed against the former owner, but only the taxes assessed against the car.

128. INSURANCE LAW

To Jackson Cochrane, Aug. 21, 1923.

Taxation of Assets (Mountain States Co.)

Sec. 16 of the Insurance Code, exempting insurance companies from taxation where 50% or more of their assets are invested in certain Colorado securities, is not limited to admitted assets, but means all of the assets of such companies. Further, that cash in banks, certificates of deposit and savings accounts in Colorado banks are not investments within the meaning of the Insurance Code so as to exempt from taxation.

129. CIVIL SERVICE

To Hon. William E. Sweet, Governor, Aug. 31, 1923.

The Governor has power to remove members of the Civil Service Commission for cause, upon specific charges and after hearing with due notice thereof.

130. FEES—STATE LAND BOARD

State Board Land Commissioners, Sept. 7, 1923.

The fees required of applicants for farm loans to cover expense of issuing same are deposited with the Land Board for a specific purpose and are available for that purpose only.

131. PUBLIC TRUSTEE—INTEREST

A. M. McClanahan, Sept. 11, 1923.

Compound Interest

Compound interest contracted for in advance is not recoverable in Colorado, even though the notes contain provisions therefor.

After interest becomes due it is the subject of a new contract and may by separate agreement be made a part of the principal and draw interest as such.

The fact that a note contains a provision for compound interest does not make the note void, but a court will merely refuse to allow compound interest.

Provisions in coupon notes to the effect that they shall draw interest after maturity are probably valid, as the Supreme Court has so held with respect on municipal bonds.

Citation of authorities.

132. MOTOR VEHICLES

Carl S. Milliken, Sept. 12, 1923.

Payment of Tax

Where a party applies for a license for an automobile, he is required to tender only the amount of the unpaid property tax against same, and the issuing officer has no right to require the payment of the party's entire personal tax before issuing license. (S. B. 241, S. L. 1923.)

133. COUNTY OFFICERS

J. W. B. Smith, Sept. 12, 1923.

A board of county commissioners cannot lawfully do business with a corporation in which one of the commissioners is the principal stockholder.

134. SCHOOLS

C. H. Hardin Smith, Sept. 13, 1923.

School districts may insure in mutual fire insurance companies which have been organized under or have complied with Sections 2557 and 2575 S. L. 1921.

135. FEES AND SALARIES

D. E. Houston, Sept. 17, 1923.

County commissioners appointed after the passage of an act providing for a change in salaries, are entitled to compensation according to the provisions of such act, provided that the county commissioners so appointed are not those who resigned to make the vacancy.

136. CIVIL SERVICE

Carl S. Milliken, Sec'y of State, Sept. 18, 1923.

There is no such office as corporation statistician created by statute. Therefore the Secretary of State may abolish the use of that name.

The person occupying the position at the time it is abolished is not on account of the abolition of the office discharged, but takes his position of seniority on the eligible list of those to be employed, according to Civil Service rules.

137. ESTATES—GUARDIANSHIP

Hon. James F. Sanford, County Judge, Sept. 20, 1923.

There is no procedure set forth in the statutes for transfer of a guardianship from one county to another; and the question of the right to such a transfer has never been passed upon by the Supreme Court of this State.

A probate court may authorize the continuance of a going business during the administration of the estate. Citation of authorities.

138. COUNTY OFFICERS

Mrs. Adrianna Hungerford, Sept. 21, 1923.

The Governor has no power to remove a sheriff.

Sections 6819 and 3724 Comp. L. 1921, provide the method by which a sheriff may be removed.

County officers are not subject to recall until the legislature shall have passed an act making effective Section 4, Art. XXI Const.

139. BANKS AND BANKING

Carl S. Milliken, Sept. 21, 1923.

Banking corporation must file annual reports with the Secretary of State.

140. TAXES

An owner redeeming real estate sold for delinquent taxes must pay the amount the property sold for with interest and penalties, and not the amount the purchaser of the certificate paid for the certificate.

September 27, 1923.

The Colorado Tax Commission,
State Office Bldg., Denver, Colo.

You have requested an opinion upon the following facts:

Certain real property in Park County was sold for delinquent taxes; the county became the holder of the certificate; afterward the county commissioners assigned the certificate to one McKelvey, for less than the amount for which the property was sold.

The owner desires to make redemption and your question is does he pay to the treasurer and is McKelvey entitled to demand the amount for which the property was sold together with interest and penalties or can the owner redeem by paying the amount McKelvey paid for his certificate?

I am of the opinion that the owner, in making redemption, would be required to pay the amount for which the property was sold together with interest and penalties together with the amount of all taxes accruing on such real estate after the sale, paid by the purchaser and endorsed on the certificate, as provided by Section 7430, Compiled Laws of 1921.

The Supreme Court of Colorado has passed upon this question in *Buchanan* vs. *Griswold*, 37 Colo. 18. Quoting from opinion, p. 20:

> "The fact that the county saw fit to dispose of its tax-sale certificate for a sum less than the amount bid at the sale does not relieve the plaintiff from paying the amount to be ascertained in accordance with the ruling in *Charlton* v. *Kelly*, *supra*. When a county disposes of a tax-sale certificate issued to it, the assignee or purchaser becomes vested with the same rights that he would had he purchased a certificate from an individual. The purchase from a county of a tax-sale certificate issued to it vests the purchaser with the same rights as though he had been the original purchaser at the tax sale. The owner of property who neglects to pay his taxes cannot take advantage of any reduction which the purchaser of his property at a tax sale may have made in disposing of the tax-sale certificate. That is a matter of contract between the seller and purchaser, with which the owner is not concerned. A county cannot take a tax deed. It cannot realize upon certificates issued to it except by redemption from the sale, or disposition of such certificates. The owner who fails to discharge his obligation to pay his taxes on his lands is not to be rewarded for his delinquency by being permitted to take advantage of a reduction which a county may have been compelled to make in order to dispose of a tax-sale certificate issued to it for taxes which he should have paid, and taxes subsequent which he has not discharged."

McKelvey, in this case, would not be entitled to the subsequent taxes for the reason that the order of the county commissioners attempting to cancel the subsequent taxes is clearly void and the said subsequent taxes have therefore never been paid.

141. APPROPRIATIONS

Mrs. E. N. Mathews, Sept. 28, 1923.

Appropriations made by the legislature for the Child Welfare Bureau (Chap. 79, A. L. 1923) must be spent before the end of

the respective Colorado fiscal years, and all portions of the appropriations remaining unexpended will revert to the State treasury.

142. APPROPRIATIONS

Mrs. Bradford, Sept. 28, 1923.

The appropriation for the expense of State Teacher of the Blind is not a continuing appropriation.

143. APPROPRIATIONS

Arthur M. Stong, October 2, 1923.

It is not necessary for parties presenting claims against the State of Colorado to swear to the correctness of such claims unless specifically required to do so by the State Auditing Board.

Sections 283, 335, Comp. Laws 1921.

144. EIGHT HOUR LAW—EMPLOYMENT AGENCIES

Industrial Commission, October 3, 1923.

(1) The enforcement of the Eight Hour Law is under the Supervision and control of the Industrial Commission.

(2) The Department of Free Employment Bureaus and private employment agencies is under the supervision and control of the State Industrial Commission.

Citing sections of statute.

145. GARNISHMENT

Clinton P. Rice, Oct. 3, 1923.

Salaries of state officers and employes and of county officers and employes are exempt from garnishment.

Question in regard to municipal officers and employes is a close one.

Sections 131, 132, Code of Civ. Proc., p. 127 C. L. 1921.

146. TAXES

To R. A. Pfost, Oct. 3, 1923.

(1) A county treasurer has no legal right to postpone delinquent tax sales.

(2) A county treasurer is not justified in requiring a mortgagee to pay the personal property tax of the mortgagor in cases where the mortgagor tenders the taxes upon the real estate for the purpose of protecting his lien.

(See opinion of Supreme Court in *Witt* vs. *County Commrs.*, 74 Colo. 129.)

147. HIGHWAYS

To J. G. Archibald, Oct. 3, 1923.

Right of Way

Sec. 4919 U. S. Comp. Stat. 1916, constitutes a grant of right of way across public lands, and when accepted by State authorities, the right vests and parties settling on the land take it subject to said right of way.

148. INSURANCE LAW

To Mr. Jackson Cochrane, Insurance Commissioner, Oct. 3, 1923.

Under Section 2573 C. L. 1921 mutual insurance companies are subject to taxation on their premiums.

149. SCHOOLS

To Lee Shupe, Oct. 5, 1923.

Expenses of Hearing

The cost of a transcript of proceedings taken before a county superintendent is a legitimate expense of the office.

Attorneys' fees for services at such hearings in behalf of petitioners should be borne by petitioners.

150. TAX SALES

To Frank Dunlevy, Oct. 9, 1923.

Where the owners of the mortgage lien on real estate tenders the amount of taxes thereon before the tax sale, the county treasurer should accept the same and should not require the mortgagee to pay taxes assessed against the owner for personal property, but where such tender is made after tax sale, then the county treasurer should require payment of the entire amount for which the real estate was sold, even though such sale price included taxes on personal property assessed against the owner.

151. FEES AND SALARIES

To Hon. Wyatt Boger, Oct. 10, 1923.

Sec. 7873, C. L. 1921, as amended by Ch. 92, S. L. 1923, does not repeal the provision contained in Sec. 7886, C. L. 1921, providing that county judges shall tax a per diem for trials and hearings in the county court.

152. SCHOOLS

To Minnie A. Bock, Oct. 11, 1923.

School districts which have not made a special school tax levy of three mills are not entitled to share in the apportionment of the Public School Income Fund. (Ch. 166, S. L. 1923.)

153. SHEPPARD-TOWNER ACT—APPROPRIATIONS

To A. M. Stong, Oct. 13, 1923.

Under Ch. 79, S. L. 1923, $10,000 is available in co-operation with the Federal Government during the biennial period commencing December 1, 1922.

154. WITNESSES

To S. W. Johnson, Oct. 16, 1923.

Fees of witnesses in courts of record are governed by Secs. 7906 and 7869, C. L. 1921.

155. BANKS AND BANKING

To E. M. Nourse, Oct. 17, 1923.

Interest on Vouchers

Vouchers are merely approved bills for services or supplies, and interest allowed on them would be equivalent to allowing interest on open accounts.

There is no more reason why a bank should receive interest as the holder of a voucher than that the original holder of the voucher should claim interest.

Payment of interest would be improper.

156. CONVICTS—PARDONS AND PAROLES

To Acting Governor Robt. E. Rockwell, Oct. 20, 1923.

Under Sec. 7158, Comp. Laws 1921, the Governor has authority to issue a parole or permit to go at large, to any prisoner who is or may be imprisoned in the State penitentiary under a sentence other than a life sentence, who may have served the *minimum* term pronounced by the court.

Such a parole is not a pardon, or discharge, or shortening of the sentence, but the prisoner remains subject to reincarceration at any time that he violates parole.

157. ALCOHOL

To John F. Vivian, Federal Prohibition Director, Oct. 20, 1923.

The Alcohol Law of 1917, if constitutional, authorizes licensed manufacturers of mincemeat to purchase alcohol from wholesale dealers for use in such manufacture.

158. PUBLIC WORKS

To R. S. Killey, Oct. 22, 1923.

A county treasurer should not issue warrants in payment for public work done under contract, unless the contractor has furnished bond, as required by law.

Sec. 9514, C. L. 1921, and Sec. 2, Ch. 155, S. L. 1923.

159. PUBLIC HEALTH

To Tracy R. Love, Oct. 24, 1923.

A local board of health cannot prevent the establishment of a private hospital in an incorporated town provided the same is duly licensed by the State Board of Health and complies with the rules of that body.

160. APPROPRIATIONS

To R. D. George, Oct. 25, 1923.

The only appropriation available to defray the expenses of the Colorado Geological Survey is the continuing appropriation provided for in Sec. 465, Comp. Laws 1921.

161. WATER COMMISSIONERS

To C. W. Beach, Oct. 26, 1923.

Subdivision of irrigation districts and determination of periods of work by deputy water commissioners.

Statement of the law.

162. COUNTY OFFICERS

Hon. W. H. Winslow, Deputy District Attorney, Oct. 26, 1923.

Discussion of right of county commissioners to pass on claims submitted by the district attorney.

163. FEES AND SALARIES

To Anna E. Adkisson, Oct. 30, 1923.

Public Trustee

The fee of a public trustee should be based on the amount actually due on an indebtedness at the time of the foreclosure and not on the amount received from the sale, or the original amount of the indebtedness.

See also: Letter to A. M. McClenahan, Jan. 13, 1923; Sec. 5047, C. L. 1921.

164. PUBLIC TRUSTEE

To H. H. Hunter, Nov. 5, 1923.

A subsequent encumbrancer who redeems property from a foreclosure sale is entitled to a deed at the end of nine months, the same as the original holder of the certificate of purchase.

165. STATE HISTORICAL SOCIETY

To the State Historical and Natural History Society, Nov. 5, 1923

By Ch. 43, S. L. 1923, an appropriation of $500 is made for the biennial period to the society, for purposes of publications. This is all the money appropriated for publications of any kind.

166. INSURANCE LAW

To Frank McLaughlin, Nov. 8, 1923.

Union Mutual

Domestic mutual insurance companies, other than life, organized under the laws of 1921, are subject to the 2% premium tax imposed upon all insurance companies by Sec. 16 of the Insurance Code of 1913.

167. STATE BOARD OF AGRICULTURE

To E. R. Bliss, Nov. 8, 1923.

The Board of Agriculture, in pursuance of its power to adopt ordinances, by-laws and regulations for the Colorado Agricultural College, may provide for the collection of fees from students and may prescribe a $4 fee to be used for the purchase of college annual year books. (Sec. 8077, C. L. 1921.)

168. EIGHT HOUR LAW

To Dr. Charles A. Lory, Nov. 12, 1923.

Farm hands at State Agricultural College do not come under the eight-hour law.

169. INSURANCE LAW

To Jackson Cochrane, Insurance Commissioner, Nov. 12, 1923.

Where the question of whether or not a mutual insurance company is subject to the premium tax provided for in Section 2486, C. L. 1921, was a mooted one, and the company was withholding payment pending the rendition of an opinion by the Attorney General, said company should not be compelled to pay the penalty of $25 a day provided for in said section in cases of delinquent payments, and the Insurance Commissioner has the power to waive the payment of said penalty.

170. PROHIBITION—CIVIL SERVICE

To John R. Smith, Chief Prohibition Enforcement Officer, Nov. 12, 1923.

A provisionally appointed deputy prohibition agent cannot legally be paid his salary for work done by him after competitive examination has been held by the Civil Service Commission and there is an eligible list for such position.

171. PROHIBITION

To John R. Smith, Prohibition Officer, Nov. 12, 1923.

Seizure of an automobile under Section 3713, C. L. 1921, by prohibition officers does not carry with it the right to confiscate said automobile.

172. DEPARTMENT OF SAFETY

To Harry Casaday, Budget Commissioner, Nov. 14, 1923.

Salaries of two members of the Department of Safety may be paid out of the contingent fund created by Section 26, Ch. 7, S. L. 1923.

173. SCHOOLS

To E. K. Whitehead, Nov. 19, 1923.

Only children between the ages of 14 and 16 may be exempt from attendance at school for the purpose of working during the school term.

174. MINES AND MINING

To James Dalrymple, Coal Mine Inspector, Nov. 26, 1923.

Mine officials certified from the states of Wyoming, Utah and Montana are eligible to hold positions in Colorado for which they are certified, notwithstanding such officials have taken and failed to pass the Colorado examination.

175. APPROPRIATIONS

To Hon. Wm. E. Sweet, Nov. 26, 1923.

Departments may draw on General Contingent Fund for payment of salaries of employees where an emergency exists or where some contingency has happened which has exhausted the funds of the department asking help. No employe can be paid, however, unless certified by the Civil Service Commission.

The funds from the General Contingent Fund may not be transferred to other funds.

176. FEES AND SALARIES

To the Industrial Commission, Dec. 6, 1923.

The Industrial Commission may by resolution increase the salaries of members of the department, but such salaries are effective only after date of such resolution, and may not be paid for any period prior thereto.

177. FEES AND SALARIES

To Frank C. Barnes, Dec. 3, 1923.

A sheriff is required to account to the county for fees earned by him in collecting taxes under distraint warrants.

A county judge or clerk of the district court must account for fees earned in connection with the making of final proofs in the matter of the purchase of public lands.

178. MARKETS AND MARKETING

Associations organized under the Co-operative Marketing Act of 1923, are corporations not for profit and need not file the annual reports required of corporations for profit.

The reports required to be furnished under Sec. 21 of the act should be filed in the office of the Director of Markets, established by the Act of 1923.

The annual license fee of $10.00 required to be paid by such associations is payable into the office of the Secretary of State.

Honorable Carl S. Milliken, Secretary of State, Dec. 4, 1923.

In your letter of the 5th ult. you direct attention to "The Co-operative Marketing Act," being Chapter 142, S. L. 1923, and ask my opinion upon the following questions with reference thereto:

> "First, is a co-operative marketing association to be treated as a company organized not for profit, in other words, is it exempted from the payment of annual corporation license tax and the filing of the regular annual report required of all corporations?
>
> "If co-operative associations are subject to the annual corporation license tax and filing of report, upon what is the tax and fee for filing report based, both for companies with and without capital stock?
>
> "With whom should the report be filed on the forms to be furnished by the Director of Markets and when is such report due?
>
> "To whom is the annual fee of $10.00 which is mentioned in act to be paid?
>
> "Does this fee become delinquent, and if so, what penalty, if any, is imposed for delinquency?"

Answering your questions in the order propounded, I beg to advise you as follows:

In my opinion associations formed under the act mentioned should be treated as coporations not for profit See paragraph (d), Section 2, p. 423, S. L. 1923.

It follows that such associations are not required to file "the regular annual report required of all corporations." See *Steck* vs. *Prentice*, 43 Colo. 17.

Section 32 of the act provides that "each association organized hereunder shall pay an annual fee of $10.00 only, in lieu of all franchise or corporation license taxes." In view of this provision, I think that these associations are not required to pay the so-called annual flat tax required of corporations in general.

Section 21 of the act provides that:

> "Each association formed under this act shall prepare and make out an annual report on forms to be furnished by the Director of Markets, containing the name

of the association; its principal place of business; and a general statement of its business operations during the fiscal year, showing the amount of capital stock paid up and the number of stockholders of (if) a stock association or the number of members and amount of membership fees received, if a non-stock association; the total expenses of operations; the amount of its indebtedness or liabilities, and its balance sheets."

This section does not nor does any other section of the act provide in what office or with what officer these reports are required to be filed. In fact, the section does not even provide that these reports shall be filed at all. It merely provides that the association "shall prepare and make out an annual report." It will be noticed, however, that these reports must be on forms "furnished by the Director of Markets," and this raises an inference that such reports should be filed in the office of the Director of Markets. Moreover, paragraph "Fourteenth" of Section 1 of the act creating the office of Colorado Director of Markets provides that one of the powers and duties of the Director of Markets is:

> "To prescribe uniform systems of accounting for co-operative associations doing business in this State and to require any such association to render reports to show the nature and volume of business, resources, liabilities, profits, losses and any other facts bearing on the financial condition of the association." (S. L. 1923, p. 414.)

In view of the fact that "The Co-operative Marketing Act" and the "Director of Markets Act" were adopted at the same session of the General Assembly and are designed, broadly speaking, to carry out the same general object, I think that they should be construed together as parts of the same general scheme of legislation; and reading Section 21 of "The Co-operative Marketing Act" in connection with said paragraph "Fourteenth" of the "Director of Markets Act," my conclusion is that the reports required by said Section 21 should be filed in the office of the Colorado Director of Markets rather than in your office.

In view of the fact that the annual fee of $10.00, required to be paid by section 32 of the "Co-operative Marketing Act," is "in *lieu* of all franchise or corporation license taxes," I think it was intended that such fee should be paid into the same office as corporation license taxes are required to be paid; that is to say, in your office.

The "Co-operative Marketing Act" does not expressly provide any penalty for failure to pay the annual fee mentioned. Section 31 of the act, however, provides in general terms that the provisions of the general corporation laws shall apply to these associations except where such provisions are in conflict with or inconsistent with the express provisions of this new act. It is possible that in view of said Section 31, the same penalty could be

invoked for failure to pay this annual fee as is provided by Section 7280, C. L. 1921, for failure to pay the flat taxes due under the general corporation laws. However, we prefer to reserve this question for further consideration when it actually arises.

179. SCHOOLS

To Mary C. C. Bradford, Dec. 7, 1923.

Teacher's Salary

A contract made for less than the minimum salary cannot be enforced, and a teacher working is entitled to the minimum salary, regardless of the terms of the contract.

180. INDUSTRIAL BANKS

To Grant McFerson, Dec. 7, 1923.

Industrial banks organized to operate in cities of more than 100,000 must have an actual cash capital of at least $75,000.

181. TAXATION

To J. E. Lucero, County Treasurer, Dec. 7, 1923.

Where the real property of a mortgagor has been advertised for sale for his real and personal property taxes, the mortgagee may before sale tender the amount due on the realty alone and he is not required to tender the taxes due on the mortgagor's personalty.

182. FEES AND SALARIES

To Paul G. Williams, Dec. 11, 1923.

Under Ch. 92, S. L. 1923, the clerk of the district court is justified in charging fees based upon folios, for furnishing copies of records, even though a carbon copy is offered to him to be certified.

183. CIVIL SERVICE

To Hon. William E. Sweet, Dec. 18, 1923.

The office of Dairy Commissioner is within the Classified Civil Service, and the incumbent can only be removed in accordance with the Civil Service Amendment.

184. FEES AND SALARIES

To T. G. Blevins, Dec. 19, 1923.

Where a sheriff uses his own car in the service of process, he is entitled to charge for depreciation as part of his actual traveling expenses, subject to the approval of the county commissioners. (Sec. 7928, Comp. Laws, 1921.)

185. MOTOR VEHICLES

To Claud Wilson, Dec. 20, 1923.

One who rents a car to another for a few days at a time does not thereby incur the liability to pay any special license tax other than the usual tax exacted from car owners.

186. SCHOOLS

To Mrs. Bradford, Dec. 29, 1923.

In order to change the surname of a person it is not necessary to take court action. The religious sect bearing the name of Je hovaites has the right to register in the public schools under the surname Jehovah.

187. SCHOOLS

To G. H. Maltby, Dec. 31, 1923.

School directors in districts of the first class have the same powers as electors in districts of the third class and for that reason have the right to purchase sites for the erection of school buildings.

188. STATE BOARD OF AGRICULTURE

To Dr. Charles A. Lory, Dec. 31, 1923.

The power of the State Board of Agriculture to purchase land for experimental stations does not carry with it the power to condemn land for such purposes.

189. PUBLICATION

To Alfred Isham, Dec. 31, 1923.

Where lands are sold by a sheriff under execution, publication of sale should be made once each week for four consecutive weeks.

190. STATE ENGINEER

To M. C. Hinderlider, Jan. 8, 1924.

Approval of Accounts of Water Commissioners

The State Engineer has the authority to approve the itemized statements of account of water commissioners without the consent of the county commissioners of all the districts forming the water district, or the approval of the division engineer.

Ch. 133, S. L. 1923, Sec. 2.

191. STATE ENGINEER—APPROPRIATIONS

To M. C. Hinderlider, State Engineer, Jan. 10, 1924.

Section 3334, R. S. 1908, as amended by Section 2, Ch. 212, S. L. 1911, constitutes a continuing appropriation which was not

repealed by Section 11, Ch. 7, S. L. 1923. Consequently, the State Engineer has the right to use the said Gauging Fund for the purposes set forth in said Section 3334 as amended by the Session Laws of 1911.

192. MOTOR VEHICLES

To Carl S. Milliken, Jan. 14, 1924.

The Secretary of State has no authority to obtain liability insurance policies on State cars used by the Motor Vehicle Department.

193. TOWNS AND CITIES

Lois H. Nichols, Jan. 17, 1924.

Unincorporated towns cannot require licenses of pool halls; but it is possible that under Sec. 3737, Comp. L. 1921, the county commissioners can require such a license.

194. OIL INSPECTION DEPARTMENT

To James Duce, State Inspector of Oils, Jan. 23, 1923.

The bill for services in auditing accounts of State Oil Inspection Department and for installing system of accounting is an actual and necessary expense.

195. STATE HIGHWAYS

To H. F. Adams, Jan. 24, 1924.

The county commissioners cannot issue warrants on the general fund to pay for work done on State highways of other roads through the county.

The county treasurer may not lawfully use the moneys belonging to any fund for the purpose of paying warrants which should have been drawn upon some other fund.

196. COUNTY JUDGES

To J. W. Bell, Jan. 24, 1924.

Where county judges assist in holding court in counties other than those of the first or second class, there is no provision for extra compensation for such services.

Sec. 5801, Comp. L. 1921.

197. FEES AND SALARIES

To G. B. Brown, Jan. 25, 1924.

The salary of the sheriff of Pitkin County for the period from Jan. 1, 1921, and ending 90 days after April 5, 1921, was payable out of the fees and emoluments of his office and not out of the county general fund, as Ch. 123, S. L. 1921, did not go into effect

until 90 days after the adjournment of the Legislature, owing to the omission of the safety clause.

See also Ch. 109, S. L. 1919.

198. PUBLICATIONS

To Alfred Isham, Jan. 25, 1924.

Notices of tax sales should be published but four times under the provisions of Ch. 161, S. L. 1923.

199. PUBLICATION—PUBLIC TRUSTEE

To Frank J. Baker, Jan. 25, 1924.

Sec. 8, Ch. 139, S. L. 1923, supersedes that portion of Sec. 5051, C. L. 1921, which fixes the amount of the fees to be charged for the publication of foreclosure notices by the public trustee.

200. TRUSTS AND COMBINATIONS

To Birger Tinglof, Jan. 28, 1924.

The provisions of Sec. 4036, Comp. Laws 1921, are not intended to place upon the district attorney the burden of proving that trusts or combinations are organized for the purpose of obtaining unreasonable profits, but are intended as a denfense which may be brought forward by the accused.

201. CIVIL SERVICE

To the State Auditing Board, Jan. 28, 1924.

Employes of Budget Commissioner

The assistants to the Budget and Efficiency Commissioner come within the provisions of the Civil Service Amendment, and unless such assistants have been certified by the Civil Service Commission there can be no valid appointment of the present incumbents, and they are not entitled to be paid salaries for such positions, although they have performed the services required.

202. STATE TEACHERS COLLEGE

To Mr. H. V. Kepner, Jan. 29, 1924.

The money raised by mill levy under Sec. 8189, Comp. L. 1921, may be used for purchasing equipment as well as for construction purposes.

203. MILITARY DEPARTMENT

To A. M. Stong, Jan. 29, 1924.

The Quartermaster is authorized to make purchases for the National Guard, by and with the consent of the Military Board (Sec. 201, C. L. 1921.)

Payment of claims is to be made on vouchers, the form of which is to be prescribed by the State Auditor and Treasurer, provided the approval of the Military Board attested by the Adjutant General appears thereon.

204. STATE TEACHERS COLLEGE

To H. V. Kepner, Jan. 29, 1924.

The Board of Trustees of the State Teachers College has the right to use funds appropriated for the maintenance and support of the institution in conducting a summer chool.

205. APPROPRIATIONS

To Civil Service Commission, Jan. 30, 1924.

Governor's Veto

A veto by the Governor of a portion of an item is valid where the item is not a separate and distinct and indivisible item.

Where an appropriation is made for three assignable stenographers, the Governor may veto the appropriation for one or more of such stenographers, the item being divisible.

He has no power to veto a portion of a separate, distinct and indivisible item. (See opinion of Supreme Court in *Stong* vs. *People ex rel Curran*, Pac. Rep., Jan. 21, 1924.)

206. PROHIBITION LAW

To John R. Smith, Jan. 30, 1924.

District attorneys have the power to elect whether to file a second offense action against an individual for violation of the prohibition law. A conviction under a first offense charge, even though a second offense charge might have been filed, will be a bar to any further action.

207. BOARD OF CHARITIES AND CORRECTIONS

To Miss Gertrude Vaile, Feb. 6, 1924.

Sec. 1, Ch. 169, S. L. 1923, does not absolutely repeal Sec. 525, C. L. 1921, but transfers the powers and duties therein mentioned from the Board of Charities and Corrections to the Secretary of the Department of Charities and Corrections.

The Act of 1923 may be of doubtful constitutionality, but the Attorney General declines to pronounce it unconstitutional.

208. INDUSTRIAL COMMISSION

To Clark B. Hicks, Feb. 9, 1924.

Printing required by the Industrial Commission of Colorado should be ordered by the Commissioner of Public Printing, in accordance with Sec. 5423, C. L. 1921.

209. MOTOR VEHICLES

To Smith & Brock, Feb. 11, 1924.

No driver shall be required to secure a chauffeur's license unless the automobile which he is driving is for hire.

210. STATE BOARD OF AGRICULTURE

To the U. S. National Co., Feb. 11, 1924.

The State Board of Agriculture has no authority to invest its funds in the bonds of a conservancy district because such a district is not a municipal corporation within the meaning of Section 8058, Compiled Laws of 1921.

211. STATE AUDITING BOARD

To State Auditing Board, Feb. 14, 1924.

The State Auditing Board has authority to audit and allow accounts for auditing State educational institutions where contracts for same were made by the Board of Trustees.

212. PROHIBITION

To Samuel R. Berkley, Feb. 14, 1924.

The Federal statutes and the regulations based thereon and our State laws are cumulative in effect; neither one supersedes the other and both must be observed.

Circumstances under which intoxicating liquors may be imported and possessed in this State.

213. PUBLIC TRUSTEES

To the Colorado Investment & Realty Co., Feb. 18, 1924.

Public trustees should not issue trustees' deeds until the expiration of nine months from date of sale.

214. APPROPRIATIONS

To Arthur M. Stong, Feb. 19, 1924.

The unexpended balance remaining in the appropriation for the Governor's Law Enforcement Fund for 1923 cannot be used during the fiscal year 1924, but reverts to the General Fund.

215. FEES AND SALARIES

To Hon. Arthur M. Stong, Auditor of State, Feb. 21, 1924.

Employees of State educational institutions who are on the regular pay-roll should not be paid for extra work unless the claim for extra compensation is based on written contract. Discussion of case at Western State College at Gunnison.

216. MOTOR VEHICLES

To Carl S. Milliken, Feb. 27, 1924.

The Secretary of State and county clerk should not issue motor vehicle licenses until the taxes required to be paid by Ch. 148, S. L. 1923, have actually been paid. A mere tender to the county treasurer is not sufficient.

217. INTOXICATING LIQUORS

Hon. John F. Vivian, Federal Prohibition Director, Denver, Feb. 27, 1924.

Our statutory definition of intoxicating liquors includes not only the articles usually classed as such, but also other substances in fact intoxicating and that have come into use as a beverage.

218. CIVIL OFFICE

To Harry Nivin, Feb. 28, 1924.

The position of Secretary-Manager of the State Fair is an employment rather than civil office under the State.

219. OFFICERS

To A. M. Stong, Auditor, Feb. 28, 1924.

The Auditor of State is not compelled to recognize or accept letters directing him to deliver warrants to persons other than the payee named thereon.

220. STATE FUNDS

To State Auditing Board, Feb. 28, 1924.

Public funds cannot be used for the payment of expenses incurred by public officers in defending themselves against charges.

(Investigation, State Industrial School for Boys.)

221. CIVIL SERVICE

To Harry E. Mulnix, Feb. 29, 1924.

Employees of military department must be members of National Guard and do not come within the provisions of the Civil Service Act.

Sec. 203, C. L. 1921.

222. COUNTY FUNDS

To Howard & McCrillis, March 4, 1924.

Balances remaining in the General County School Fund and in the County Road Fund at the end of the fiscal year do not automatically go to the County General Fund nor may they be

transferred to it; nor can a portion of a Redemption Fund against which there are warrants which have been called but never presented for payment be transferred to the County General Fund.

223. INDUSTRIAL COMMISSION

To the Industrial Commission, March 5, 1924.

An employer having elected to come under the Workmen's Compensation Act must give notice of withdrawal regardless of the number of his employees.

224. MOTOR VEHICLES

A law taxing license fees upon motor vehicles in lieu of general property taxes, would be unconstitutional.

Honorable Clem Collins, Manager of Revenue, Denver, Colo., March 6, 1924.

In your letter of the 16th ult. you state that as a member of the standing committee of the State Association of Tax Assessors you are charged with the duty of making an investigation with a view of simplifying and improving the present laws in regard to automobiles, and you ask my opinion "as to the validity of a law that would eliminate the automobile from taxation as personal property and increase the license fee sufficiently to cover both the present license and tax, thereby enabling the tax to be collected with much less expense to the taxing officials as well as less annoyance to the taxpayer."

The question you submit raises a number of constitutional questions that are not easily answered. I find that in several of the states, as for instances, Oregon and North Dakota, statutes have been enacted providing, in effect, that license fees imposed upon motor vehicles should be in lieu of all other taxes. Those statutes, however, are based upon constitutional provisions that are not identical with our own. I am very doubtful of the validity of a statute such as you suggest, in view of the provisions of our State Constitution, to which I shall direct attention.

Sections 3 to 7, inclusive, of Article X of the Constitution are as follows:

> "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws, which shall prescribe such regulations as shall secure a just valuation for taxation of all property, real and personal; Provided, That the personal property of every person being the head of a family to the value of $200 shall be exempt from taxation. Ditches, canals and flumes owned and used by individuals or corporations, for irrigating land owned by such

individuals or corporations, or the individual members thereof, shall not be separately taxed so long as they shall be owned and used exclusively for such purposes."

Sec. 4. "The property, real and personal, of the state, counties, cities, towns and other municipal corporations and public libraries shall be exempt from taxation."

Sec. 5. "Lots, with buildings thereon, if said buildings are used solely and exclusively for religious worship, for schools, or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law."

Sec. 6. "All laws exempting from taxation, property other than that hereinbefore mentioned shall be void."

Sec. 7. "The General Assembly shall not impose taxes for the purpose of any county, city, town or other municipal corporation, but may by law, vest in the corporate authorities thereof respectively, the power to assess and collect taxes for all purposes of such corporation."

You will note that Section 3 provides that "All taxes shall be uniform upon the same class of subjects," etc. Under that provision the General Assembly has the right to divide the taxable property of the State into distinct classes of subjects for purposes of taxation, if the classification be reasonable rather than wholly arbitrary (*People ex rel* vs. *Henderson,* 12 Colo. 375), but Section 6, which follows certain enumerated exemptions, provides that "All laws exempting from taxation, property other than that hereinbefore mentioned shall be void." I therefore conclude that even though a statute might place motor vehicles in a separate class for purposes of taxation, it could not exempt them from taxation altogether.

Section 3 obviously has reference to *ad valorem* taxation because it provides for regulations to secure "a just valuation for taxation on all property real and personal." Indeed, that section has been held to apply only to *ad valorem* taxation (*Denver City Railway Co.* vs. *Denver,* 21 Colo. 353), and you will observe that it requires that regulations be provided to secure a just valuation on all property. This word *all* is, of course, modified by the specific exemptions contained in Sections 3, 4 and 5 respectively. It follows from the provisions of Sections 3 to 6 inclusive that all property, real and personal, except that expressly exempted, must be subjected to *ad valorem* taxation. That is to say, Section 6 means that a law exempting from *ad valorem* taxation any other property than that specifically exempted by the preceding sections would be void, and since motor vehicles are, of course, not mentioned in the specific exemption, a statute exempting them

from *ad valorem* taxation would be unconstitutional. And inasmuch as motor vehicles must be subjected to *ad valorem* taxation, it follows that any statute regulating their taxation would have to provide means for securing a "just valuation." That is, such vehicles would have to be assessed.

> "Before taxes can be levied upon any article of property it must be assessed, that is to say, valued for taxation." (Taxation of Mining Claims, 9 Colo. 635.)

From the fact that an assessment would have to be made to determine a just valuation, it follows that a statute providing for such an assessment should contain some provision giving the owner of the motor vehicle a right to be heard on the question of the amount of the assessment, otherwise the "due process" clauses of the State and Federal Constitutions would probably be held to have been violated. Another reason why an assessment would have to be made, arises from the fact that under Section 11 of Article X, the rate of taxation on property for all State purposes, cannot exceed 5 mills on each dollar valuation and unless there was an assessment of motor vehicles as the basis of taxation thereof, it could not be ascertained whether this Section 11 had been violated or not.

Summarizing, I may state my conclusions thus far are as follows:

> (a) Motor vehicles might by a statute, be placed in a separate class for purposes of taxation.
>
> (b) But such motor vehicles would have to be subjected to some rate of *ad valorem* taxation.
>
> (c) Motor vehicles would have to be assessed for the purpose of determining their just valuation.
>
> (d) Such assessment would have to be made in such a way as to give the owner an opportunity to be heard on the question of valuation before the amount of the tax was fixed.

Section 7, which provides that the General Assembly shall not impose taxes for the purpose of any county, city or town, etc., gives rise to a further difficulty in upholding such a statute as you suggest. If license fees were imposed in lieu of general taxes, and the State were to retain all the proceeds for State revenue, then the counties, cities, towns, etc., would lose the benefit of the taxation of the large amount of property represented by motor vehicles, while if a portion of the license fees so imposed in lieu of the general taxes, were to be distributed to the counties, cities, towns, etc., then the General Assembly would be imposing taxes for the purpose of such counties, cities and towns in violation of Section 7.

I also direct attention to the Constitutional Amendment adopted in 1922, providing for the issuance of $6,000,000 of bonds

for construction and improvement of public highways and which amendment provides that the proceeds of motor vehicles registration license fees, under the present Act, shall be applied to the payment of such bonds. That provision alone would probably not interfere with the proposed law. (See Chapter 87, S. L. 1923.)

In *State ex rel Fargo* vs. *Wetz,* 168 N. W. 835; 5 A. L. R. 731, the Supreme Court of North Dakota upheld a statute providing that license fees imposed upon automobiles, should be in lieu of general and local taxes, but it does not appear that the Constitution of North Dakota contained any express provision prohibiting exemptions from taxation such as our Section 6 of Article X. There is also a rather strong and persuasive dissenting opinion in that case.

I realize the value of the plan proposed in your letter, but for the reasons above stated, feel compelled to advise you that in my opinion it could not be carried out without a Constitutional Amendment.

I also wish to assure you that despite the views above expressed, this office would be glad to confer, at any time, with any other legal advisors with whom you or the members of your association might wish to consult. Necessarily the time which I have been able to devote to this matter has been limited, and if it should develop that the objections above pointed out might be obviated, I would only be too glad to aid in bringing about the result your association is seeking.

225. BOARD OF CORRECTIONS

To Hale Smith, March 7, 1924.

The State Board of Corrections has no authority to create, and there is no authority to pay from the maintenance fund, an employe to examine penitentiary records and report to the Governor all persons applying for executive clemency.

226. FEES AND SALARIES

To Frank S. Turner, March 10, 1924.

Public officers, except those in attendance at court by reason of their official capacity, are entitled to claim witness fees when they are called as witnesses.

227. WATER COMMISSIONERS

To M. C. Hinderlider, March 10, 1924.

In water districts having two deputies prior to the enactment of Chapter 134, S. L. 1923, the appointment of such deputies is not made illegal by said act, and neither of said deputies can be discharged without a hearing before the Civil Service Commission.

228. SCHOOLS

To John H. Galbreath, March 10, 1924.

(1) School boards in first and second class districts have the right to purchase and sell sites for school houses.

(2) The county treasurer is not entitled to a commission upon proceeds derived from the sale of a bond issue of a school district.

(3) A school board need not deposit the proceeds derived from the sale of such a bond issue with the county treasurer, but may deposit them in suitable depositories subject to their own order.

229. ELECTIONS

To C. E. Stanton, March 12, 1924.

The officers of an incorporated town incur no penalty for failure to hold a municipal election. The officers in office would hold over until their successors are duly elected and have qualified.

230. OFFICERS

To Carl S. Milliken, March 12, 1924.

Public officers who deposit moneys collected by them, in a solvent bank which thereafter fails causing the loss of the funds, are personally liable for such loss.

231. COUNTY FUNDS

To J. R. Proctor, March 17, 1924.

The County Treasurer has no right to transfer money from one fund to another for the purpose of investing the surplus funds of the county in outstanding school warrants.

232. SCHOOL FUNDS

To Raymond Miller, March 18, 1924.

(1) In investing the school funds under its control, it is not necessary for the Land Board to follow the order of securities named in Sec. 1, Ch. 122, S. L. 1917; Sec. 8298, C. L. 1921;

(2) The discretion and authority to invest the school funds rests in the State Board of Land Commissioners and not in the State Treasurer.

(See Opinion No. 111 in which a contrary conclusion was reached by Mr. Fleming.)

233. BOARD OF CORRECTIONS

To Hon. William E. Sweet, Governor, March 19, 1924.

The Colorado Board of Corrections has the power to make

payment to an outside expert for services in making survey of any state institution under the control of said Board.

234. BLIND BENEFITS

To Mrs. Lute Wilcox, March 25, 1924.

The fact that some member of the family of a blind person otherwise qualified for relief under the Blind Benefit Act is able to provide maintenance in more or less degree for the applicant, does not disqualify such applicant for relief under the act, although such fact may be taken into consideration by the Commission in determining the amount of relief under the act.

235. COUNTY OFFICERS

Hon. Arthur M. Stong, March 27, 1924.

Fees for filing county bonds, if any, should be paid by the official filing the bond. Fees for recording the same after they have been approved by the county commissioners, should be paid by the county.

Fees for recording deputy sheriff's commissions or appointments should be paid by the person appointed.

236. UNIVERSITY OF COLORADO

To Dr. George Norlin, March 28, 1924.

The entire amount of the levy authorized by Ch. 174, S. L. 1921, to complete and equip the School of Medicine and Teaching Hospital of the University of Colorado, may be used for such purposes, even though the amount raised exceeds the $600,000 appropriated.

237. SCHOOLS

To Mrs. Mary C. C. Bradford, March 29, 1924.

District Institutes working under the general direction of the state institutions, would have a right to use the institute money for the payment of salaries and other expenses.

238. PENITENTIARY

To Thomas J. Tynan, Warden, April 1, 1924.

Premiums on the official bond of the warden of the State Penitentiary accruing during the present biennial period may be paid out of the general appropriation for maintenance of the institution.

239. HIGHWAYS

To L. D. Blauvelt, April 1, 1924.

In building a bridge, the State Highway Department should

not interfere with the former flow of the stream to the damage of a land owner.

240. TOWNS AND CITIES

To John N. Mabry, April 2, 1924.

The mayor of a second class city is to be considered a member of the city council and is entitled, in an election to fill a vacancy in the city council, to vote. In order to be elected a candidate must receive a majority vote of the members of the city council, including the mayor.

241. PUBLIC HEALTH

To Dr. J. W. Brown, April 2, 1924.

Local boards of health may make rules requiring fumigation in cases of measles even though the State Board of Health has no rules requiring such fumigation.

242. APPROPRIATIONS

To Hon. Wm. E. Sweet, April 3, 1924.

It is within the power of the State Auditing Board to transfer $700 of the fund of $10,000 appropriated by Sec. 26, Ch. 7, S. L. 1923, to the Governor's Contingent Fund, established by Sec. 2 of the same act.

243. IRRIGATION DISTRICTS

J. E. Lucero, April 3, 1924.

Taxation

A county treasurer cannot demand payment from an irrigation district of general taxes as a condition to the delivery of tax sales certificates to such districts, the lands included in such certificates having been struck off to the district at tax sale.

244. PROHIBITION

State Board of Pharmacy, April 3, 1924.

Substantial and repeated violations of the anti-narcotic laws, both state and federal, constitute grounds for the revocation of a pharmacist's license. Misdemeanor violations of the liquor laws probably do not constitute such grounds, but second offense convictions and repeated violations of the federal laws, in such manner as to endanger public health, do constitute grounds for revocation.

Sections 4582, 4623, C. L. 1921.

245. APPROPRIATIONS

To Arthur M. Stong, April 3, 1924.

Industrial School for Boys

The appropriations contained in Chapters 55 and 56, S. L. 1923, for the support of the Industrial School at Golden are cumulative.

246. TOWNS AND CITIES

To Mr. Mike Welch, J. P., April 5, 1924.

In the absence of ordinances specifically granting such power, mayors of incorporated towns have no power to pardon persons convicted of violations of city ordinances;

Mayors of incorporated towns have no power to veto or disapprove ordinances or resolutions passed by the board of trustees.

247. OFFICIAL BONDS

To Chas. J. Clayton, April 5, 1924.

Secretary State Board of Pharmacy

The bond of the Secretary and Treasurer of the State Board of Pharmacy should be made payable to the People of the State of Colorado.

248. GAME AND FISH

Chapters 130-131, S. L. 1921 and Chapters 117-126, S. L. 1923, providing for Game Refuges within the State are constitutional and are not in conflict with the Federal Laws.

Honorable William E. Sweet, Governor, April 11, 1924.

Answering your letter of March 19th, inquiring into the legality of the Session Laws of 1921, amended in 1923 (Chapters 117-126, S. L. 1923), providing for the creation of game refuges within the State of Colorado made in pursuance of the statute in 1921 (Chapters 130-133, S. L. 1921), I wish to advise you that in my opinion these laws are constitutional.

There can be no question of the value of the law from the standpoint of public policy. Both State and Federal governments have undertaken to create game refuges and game reserves in order that the wild game of America shall not become extinct. This is now an established policy of both state and nation.

The two legal objections to the establishment of game refuges were:

> *First*, That Section 25 of Art. V of the Constitution prohibits the General Assembly from passing local or special laws for the protection of game or fish.

It is my opinion that the laws of 1921 and 1923 are not unconstitutional and are not in violation of this section of the Constitution, viz., Section 25, Article V. They are not, in my judgment, local or special laws, even though the game refuge created is always located within a particular place within this State. These laws are wise and necessary measures for the protection of our game and will result in its conservation.

> The other objection to the law is, that Congress, by the passage of the Migratory Bird Law, has taken away from the State the power to legislate on game.

I am clearly of the opinion that the passage of this law by Congress and the construction of the law made by the Supreme Court of the United States do not take away from the states their powers to legislate on game within their borders. The Supreme Court of the United States has not even held that the passage of the Migratory Bird Law takes away the right of the state to legislate on migratory birds, while a number of the acts passed by our Colorado legislature relate to antelope and other game that cannot be classified as migratory in the same snse that birds are therein classified; that is, some other forms of game are local in their habits and preserve a habitat very largely within the State.

I am, therefore, of the opinion that these laws are constitutional and are thoroughly justified as a matter of public policy.

(See, however, Opinion No. 38, where a contrary conclusion was reached by Mr. Fleming.)

249. PUBLIC UTILITIES COMMISSION

To Grant E. Halderman, Chairman, April 15, 1924.

Town of Holyoke vs. Smith

Decision goes on farther than to hold that rates of a municipally owned public utility are not subject to regulation by Public Utilities Commission. All other powers conferred by statute remain intact.

Above case appealed.

250. BARBERS

To State Board of Barbers' Examiners, April 15, 1924.

Cutting and bobbing of the hair in beauty shops is barbering under the State law.

251. CORPORATIONS

To Carl S. Milliken, Secretary of State, April 15, 1924.

Expiration and Renewal of Term (Investors' Syndicate)

Statement: A foreign corporation qualified to do business

in this State in 1916. Its corporate life in its home state was to expire by limitation in July, 1924. Under the laws of its home state the company duly renewed its existence for a period of thirty years.

Under the foregoing facts the filing made in this State in 1916 has the effect of authorizing the company to remain in business until 1936.

252. OIL INSPECTION LAW

To James Duce, Inspector, April 17, 1924.

It is unlawful to use a device for selling gasoline unless it can be sealed and the sealing approved by the Oil Inspection Department.

253. CIVIL SERVICE

To John R. Smith, April 17, 1924.

Under Art. XII, Sec. 13, of the Constitution, the Civil Service Commission has no power to fix the amount of compensation to be paid employees. The standard classification contemplated by the Constitution includes efficiency as well as like duties.

254. APPROPRIATIONS

To Arthur M. Stong, Auditor, April 29, 1924.

(1) A voucher for the special expenses of a special investigation by the State Board of Health should be paid out of the $10,000 Emergency Fund (Sec. 26, Ch. 7, S. L. 1923.)

(2) The State Civil Service Commission may not pay the salary of one stenographer out of the General Incidental Fund appropriated to the Commission.

(Moneys appropriated for one purpose may not be used for another.)

255. PUBLIC HEALTH

To Stanley P. Young, May 10, 1924.

(1) Towns and cities have power to adopt ordinances providing that all dogs running at large must be muzzled and directing peace officers to shoot unmuzzled dogs.

(2) Boards of health of towns, cities and counties have power to pass rules and regulations to the same effect if necessary.

(3) When such matters are handled by boards of health instead of ordinance, reasons for rule or regulation should be set forth.

(4) Peace officers in enforcing such rules and regulations should, so far as possible, co-operate with the inhabitants and should not act in an unreasonable or arbitrary manner.

256. HIGHWAY BONDS

To Hon. Wm. E. Sweet, Governor, May 12, 1924.

The Governor by his certificate of necessity, may provide for the sale of highway bonds authorized by the act of 1923 (Ch. 129, S. L. 1923) at one time, or for their sale from time to time in partial lots.

Honorable William E. Sweet, Governor of Colorado, State House, Denver, Colo., May 12, 1924.

The Colorado State Highway Bonds, Act of 1923, are authorized by the amendment to Section 3 of Article XI of the State Constitution, which was submitted to a vote of the people at the general election held November 7, 1922, and became effective December 21, 1922. Said constitutional provision limits the indebtedness thereby authorized to an amount not exceeding six million dollars, and provides that said debt shall be evidenced by registered coupon interest-bearing bonds. The constitutional provision further provides that not exceeding $1,500,000 of said bonds shall be dated June 1, 1924.

The legislative authority for these Colorado State Highway Bonds, Act of 1923, is found in Chapter 129, S. L. 1923. In Section 2 of said Act of 1923 it is provided that "fifteen hundred of said bonds shall be dated and issued June 1, 1924. and shall be numbered fifteen hundred and one to three thousand, both numbers inclusive, and bonds numbered fifteen hundred and one to two thousand, both numbers inclusive, shall be known as 'Series D,' and bonds numbered two thousand and one to two thousand five hundred, both numbers inclusive, shall be known as 'Series E,' and bonds numbered two thousand five hundred and one to three thousand, both numbers inclusive, shall be known as 'Series F'."

Section 5 of said Act of 1923 provides that the bonds thereby authorized shall be sold "at *such time or times and in such amounts* as may be required for the construction and improvement of public highways in the State of Colorado as in said Act provided. *upon certificate by the Governor of the necessity therefor*, and the Treasurer shall sell and dispose of all or such portion of said bonds as may be required, after public notice," etc.

It is my opinion that the constitutional provision, and particularly said Colorado State Highway Bonds, Act of 1923, not only authorizes the Governor to require said bonds to be sold from time to time as may be required for the construction and improvement of public highways, but that the Legislature clearly intended that the Governor should issue his certificate of necessity in such manner as to provide for the sale of said bonds from time to time as might be required for the construction and improvement of the public highways of the State rather than that he should require the entire amount of any one issue of said bonds to be sold at one time, thereby accumulating a large fund of cash, the greater part of which must necessarily remain idle for a

considerable part of the time. Such legislative intent is, in my opinion, conclusively indicated by the fact that each issue of bonds in the total amount of $1,500,000 is divided into three series of $500,000 each.

Accordingly, it is my opinion that, as Governor of Colorado, you may issue your certificate of necessity requiring that a specified number of the bonds of the issue of June 1, 1924, shall be eligible for sale on that date, and you may thereafter, from time to time as in your opinion the funds are needed and required for the construction and improvement of public highways in the State, issue other and further certificates of necessity authorizing the sale of said bonds until the entire issue is disposed of. Of course, under the law, the bonds which are sold subsequent to the date of issue must not be sold for less than par and accrued interest as of the date of sale.

257. ELECTIONS

To Hugh J. Harrison, May 13, 1924.

Where election judges are appointed by county commissioners there is no law which provides that the third judge must be appointed from among the members of any political party. The board may select such judge from either of the two parties.

258. PARDONS AND PAROLES

To Hon. Wm. E. Sweet, May 13, 1924.

A man who has been convicted of a crime and whose sentence has expired is automatically re-invested with all the rights of citizenship, and a pardon or other procedure is unnecessary.

259. FACTORY INSPECTION DEPARTMENT

To Carl DeLochte, Labor Commissioner, May 14, 1924.

The Deputy Labor Commissioner and Chief Factory Inspector has the right to inspect theatres where workmen are employed.

260. SCHOOLS

To J. S. Lee, May 14, 1924.

In districts of the third class school directors act as judges of school elections; in first and second class districts, the school directors select judges.

261. SCHOOLS

To Nell B. McCartey, May 14, 1924.

County Commissioners can legally pay expenses necessarily incurred by the County Superintendent of Schools in defending an action brought against her in her official capacity.

262. BOARD OF CAPITOL MANAGERS

To Hon. Wm. E. Sweet, May 15, 1924.

Use of Capitol Building

The Senate Chamber and the House of Representatives can be used only for State purposes.

263. PUBLIC TRUSTEE

To Herbert M. Baker, May 16, 1924.

The bond of a public trustee should be filed with the Secretary of State. His term of office ends on the date set forth in his certificate of appointment.

264. COUNTY FUNDS

To George Robertson, May 16, 1924.

County Commissioners may not transfer funds from the Fair Fund to the County Road Fund.

265. MOTOR VEHICLES

Property taxes on automobiles may be tendered and paid separately and the county treasurer is compelled to accept the same.

Mr. A. H. Smith, Crook, Colo., May 16, 1924.

In reply to your letter of the 1st inst., requesting the opinion of this office concerning the right of the County Treasurer to refuse to accept the amount of the tax assessed on an automobile unless the entire amount of the personal and real property taxes of the person tendering the automobile tax is also offered, I desire to say that it is the opinion of this office that the amount due on the automobile may be paid separately and that, when so paid, the County Clerk and Recorder must issue a license upon the payment of the proper license fee.

Section 3, Chapter 148, S. L. 1923, which is part of the Act passed by the last Legislature requiring the payment of the property tax on automobiles as a prerequisite to the issuing of a license for the same, provides in part as follows:

> "In any case in which the officer refuses pursuant to this Act to issue a registration license number because of nonpayment of any property tax which it appears was due and should have been paid as herein provided, the person applying for the license may (act) at his option forward to the County Treasurer of the proper county funds for the payment of such tax as calculated on the basis of the list of assessed valuations and mill levies applicable to such motor vehicle, motor truck, motorcycle or trailer furnished by the State Tax Commission."

Since the statute gives the car owner the specific right to forward to the County Treasurer the amount of tax due on the said automobile, it is logical to assume that the County Treasurer must accept same and can be compelled to issue a receipt for the said tax if he refuses to do so voluntarily.

If the County Clerk and Recorder of the county where you apply for your automobile license knows that the property tax on the automobile has been paid, he need not require the production of a tax receipt. The law merely provides that he may require the production of a tax receipt or may require such other reasonable proof as he may think necessary. (Sec. 1, Chapter 148, S. L. 1923.)

266. SCHOOLS

H. L. Williams, Flagler, May 16, 1924.

Public school funds cannot be used to pay for transportation of pupils to parochial schools.

267. PROHIBITION LAW

To Carl S. Milliken, Secretary of State, May 19, 1924.

Manufacture

The manufacture of wine for sacramental purposes is prohibited by the Constitution and laws of Colorado.

268. TAXATION

To Moynihan, Hughes, Fauber & Knous, May 19, 1924.

Insurance moneys derived from policies upon improvements on land may be subjected to payment of tax lien by a suit in equity.

269. PUBLICATION—LEGAL NOTICES

Western Newspaper Union, May 19, 1924.

Under Sec. 4, Ch. 139, S. L. 1923, consolidated publications would be authorized to publish legal notices.

270. MOTOR VEHICLE LAW

To Fred O. Pierce, May 20, 1924.

Power of Secretary of State

A regulation by the Secretary of State requiring the taking out of automobile license in the county of the residence of the owner is a reasonable regulation for the collection of the fee, and comes within the powers conferred by law.

271. PROHIBITION

To John R. Smith, May 21, 1924.

Powers of Agents to Enforce Law

Like sheriffs, constables and other peace officers, prohibition enforcement agents are authorized to summons the *posse comitatus* to assist them in the performance of an official duty.

272. SECURITIES ACT

To Carl S. Milliken, May 21, 1924.

An assignment of a definite interest in the oil and gas to be produced under an oil lease owned by a corporation is a "security" within the meaning of the Act.

273. PREMIUMS ON PURCHASES

Logan County Creamery, May 22, 1924.

The offering of premiums by a buyer of cream to its patrons does not violate any law of Colorado, providing the practice is made uniform and not discriminatory.

274. APPROPRIATIONS

Quorum—Wilder Claim

In the absence of a statutory provision or rule in regard to a quorum necessary to transact business, the general parliamentary rule applies—to-wit, that a majority of all the members of a body constitute a quorum and may sit at all meetings duly called, and that a majority of this quorum is authorized to act upon any matter. Under this rule two members of State Auditing Board constitute a majority of the quorum and their action would control.

However, the rule that expenses incurred in one biennial period cannot be paid out of appropriations made for another biennial period, is an obstacle to the payment of this particular claim.

To the State Auditing Board, State House, Denver, Colo., May 27, 1924.

Dear Sirs:

You have referred to the Attorney General's office for further opinion, Voucher No. 6, Latham Tire Company, for $251.76, for tires and tubes for the car of Clifton H. Wilder.

This voucher has been before the Attorney General's office on two previous occasions, and opinions have been rendered holding it invalid and the claim illegal, in letters dated March 11, 1924, and March 31, 1924. The voucher has been referred again to the Attorney General for further opinion on other legal questions that have been raised.

It is not contended that there has been any change in the facts as shown in the letter of the Attorney General of March 11, 1924, nor in the memorandum submitted by James W. Melrose or

the affidavit of Walter W. Byron, of the same date. The new contention is that the minutes of the Auditing Board show that at a meeting of the Board some time during the year 1923, there were three of the five members present, viz., Carl S. Milliken, Secretary of State; Harry E. Mulnix, State Treasurer, and Arthur M. Stong, State Auditor; that at this meeting, the minutes show, a motion was made, seconded and carried, that the voucher be approved and that there were two votes in favor of said motion, to-wit, the votes of Harry E. Mulnix and Carl S. Milliken; that the State Auditor, Arthur M. Stong, did not vote. That these minutes are correct is verified by the fact that the voucher itself bears the signatures of Mr. Mulnix and Mr. Milliken.

The question presented by this record is, Whether when three members out of the five of said Board are present at a meeting, this constitutes a quorum for the transaction of business, and whether a majority of such quorum, to-wit, two members, may lawfully act upon any matter that comes before the Auditing Board, and whether two such signatures on a voucher are sufficient. The question is then raised, whether this is a valid voucher and should be recognized and honored by the Auditor and Treasurer.

The Auditing Board is created by Session Laws of 1911, page 167, and the statute does not state how many members shall constitute a quorum authorized to do business. In the absence of any statutory rule on the subject, the general rule of parliamentary law applies, to-wit, that a majority of all the members of the board constitute a quorum and may sit at all meetings duly called, and that a majority of this quorum is authorized to act upon any matter. Under this rule two members constitute a majority of the quorum, and their action would control.

This principle of law is laid down without exception in every decided case in any court of last resort in the United States. Among the cases we cite:

> *McManus* vs. *Board of Police Commrs,* 62 Atl. 997;
> *Long* vs. *State,* 127 S. W., 551 (Tex.);
> *Hill* vs. *Town,* 138 N. W., 334;
> *Decker vs. School Dist.*, 74 S. W. 390;
> *Zeiler* vs. *Central R. R. Co.,* 12 Fla. 653; 35 Atl. 932;
> *Heiskell* vs. *City of Baltimore,* 4 Atl. 116.

Two leading cases on the subject are found in Colorado:

Snider vs. *Rinehart,* 18 Colo. 18.—In this case the Supreme Court passed upon the number necessary to form a quorum of that court. The Constitution of Colorado declares that a majority shall form a quorum, but the Court points out that under this rule a majority of the quorum may act, and discusses the whole question of what shall constitute a quorum.

The other case is *Gumaer* vs. *C. C. M. Co.,* 40 Colo. 1, where the question arose as to what constituted a quorum and the ma-

jority of the board of directors of a corporation. The Court cites 2 Kent's Commentaries Star Sec. 293, as laying down the principle of law given above, and then adds:

> "This doctrine as laid down by Chancellor Kent is cited with approval by the following authorities, among others" (giving a list of cases).

The Court then cites the decision in the similar case of *Sargent* vs. *Webster*, 13 Metcalf, 504, where it is said:

> "In ordinary cases when there is no other express provision, a majority of the whole board or the aggregate body, who may act together, constitute a quorum and a majority of those present may decide any question upon which they could act."

These authorities, and particularly the Colorado decisions, would seem to be final and determinative and to lay down the rule that, since the Auditing Board consists of five members, three members of the board constituting a majority of the whole board may at any regular meeting or at any special meeting properly called, do any act which the entire board would do, and constitutes a quorum for all lawful purposes. It would further follow that a majority of three,—or two members,—being a majority of the quorum, may act and by their votes control action of the board when only three members are present. This would not be true if either four or five were present.

The Auditor of State has further asked the Attorney General's office, if we find this to be the law, whether his office is obliged to honor a voucher or requisition containing only two names, in view of the fact that two persons may as a majority of a quorum, control the vote of the board if only a bare quorum be present. He has further asked this question because the records of the Auditing Board show that when at the meeting Voucher No. 6 was presented only three members were present and two voted in favor of authorizing the payment of the voucher, and the names of these two members of the board are found upon the voucher.

Answering the last question first, we reply that the action of the Auditing Board was legal; that a majority of two can properly authorize the payment of a voucher; and that if there were no legal objections to its payment it may be considered lawfully audited and payment authorized.

Answering the prior question above, we reply to the Auditor that two signatures upon any voucher or other paper authorization to pay money, are not sufficient unless at the meeting at which such voucher was passed, the minutes of the Auditing Board show that but three members were present and that the voucher received the approval of at least two of those three members so present. Whenever the records of the Auditing Board

do show this state of facts, then a voucher has been lawfully audited and approved and the Auditor may issue the warrant in payment of the claim.

But if the voucher were presented to the Auditing Board bearing only two names, and an investigation of the proceedings of the board should disclose that more than three members were present at the board meeting where the voucher was passed upon and that only two members voted for the approval of the voucher, then the two names would not be sufficient.

In other words, the final test of whether a voucher has been legally approved, if there be a dispute as to its approval, rests upon the minutes of the Auditing Board at its meeting. The names of the members of the board upon the voucher are but an evidence of their approval in such meeting.

The law being as we have stated above, Voucher No. 6 which is again before us, would have to be paid by the Auditor were it not for one other lawful obstacle, which we have dealt with in a previous letter, and which we again call attention to.

While it is true that the present voucher is dated January 3, 1923, to cover a bill that seems to have been incurred December 14, 1922, which was presented after the commencement of the present biennial fiscal period, yet it is also apparent that the object of the proposed payment is to reimburse Mr. Wilder for expenses incurred during the preceding fiscal period, and, as stated in our letter to the Auditor, expenses incurred in a former period cannot be paid out of the appropriation for this period.

If it were contended that the above assumption as to the purpose of this voucher were not correct and that this voucher was to pay for three tires that were to be used during the present fiscal period, then the answer would be that, as a matter of fact, Mr. Wilder withdrew from the service of the State within a month after these new tires were furnished and the State did not get the benefit of the tires and therefore should not pay for them.

In other words, this voucher was either intended to reimburse Mr. Wilder for property expenses incurred during the former period, or it was intended to supply the State with tires for use during the present period; and if the voucher was intended as reimbursement for past expenses, it cannot be paid out of the present appropriation, as above stated, while, if the voucher was intended to pay expenses of the present period, it should not be paid because the State has not received the benefit of the new tires.

A third legal question has been raised, viz.: Since the signature of O. H. Shoup, then Governor, is attached to this voucher, does this not of itself indicate that it is a lawful claim against the State, which must be paid?

We do not pass upon this question because the claim is barred by reason of the facts stated above.

275. WESTERN STATE COLLEGE

To H. V. Kepner, May 27, 1924.

Trustees of the normal school at Gunnison have no right to issue degrees other than those connected with the science and art of teaching.

276. STATE FAIR

Arthur M. Stong, Auditor, May 28, 1924.

The State Auditing Board may authorize a revolving fund to pay premiums awarded at 1923 State Fair.

277. FEES AND SALARIES

To Art Brown, May 29, 1924.

Sheriff's Mileage

The mileage provided for in Sec. 7882, C. L. 1921, is a fee or emolument of the office. The compensation provided for in Sec. 7928 is to cover expenses only.

278. PUBLICATION

To Coen & Sauter, May 29, 1924.

Under Sec. 9170, C. L. 1921, and Ch. 139, S. L. 1923, one publication of a proposed city ordinance is sufficient.

279. SCHOOLS

To E. G. Baker, Superintendent of Schools, June 2, 1924.

Where a school district is formed out of a district which is already bonded, it still may be bonded at least up to three and one-half per cent.

280. JUSTICE OF THE PEACE

Miss Linda M. Lee, June 4, 1924.

Justices of the Peace whose salaries are fixed by Chapter 166, S. L. 1921, may retain fees allowed to them for acting as a member of the County Canvassing Board.

281. SCHOOLS

To H. C. Crowe, June 4, 1924.

It is not necessary for a school board in a third-class district to advertise for bids for the construction of a new school house or an addition to an old one.

It is legal for such a school board to employ a competent superintendent who will build under the direct supervision of the board and the architect.

The members of the school board would not be entitled to receive compensation for any service they may perform in such supervision.

282. SCHOOLS

Della Hendricks, June 5, 1924.

A contract made by a school board with a teacher to teach for the year following the expiration of the term of all of the members, is valid and binding, in the absence of fraud or bad faith.

While the incoming board may change the length of the school year already determined upon, such change will not affect the contracts theretofore made with teachers.

283. GAME AND FISH LAW

Henry W. Catlin, June 5, 1924.

Dogs may not be used in hunting unprotected game in the State of Colorado.

Sections 1445 and 1519, C. L. 1921.

284. PUBLIC TRUSTEE

To Herbert Fairall, June 6, 1924.

Herbert Fairall is authorized to perform the duties of Public Trustee of the City and County of Denver until a new Trustee is appointed by the Mayor.

285. FEES AND SALARIES

W. L. Boatright, June 6, 1924.

The compensation provided by Sec. 28, Ch. 160, S. L. 1921, to be paid county treasurers for their services in behalf of irrigation districts must be considered a part of their regular salaries as county treasurer, and cannot be kept as a personal perquisite.

286. PUBLIC HEALTH

To Tracy Love, June 6, 1924.

The repeal of an ordinance of a charter city providing for compulsory vaccination of school children, does not prevent the board of health from enforcing such a rule in times of threatened epidemics.

287. SCHOOLS

Clement L. Wilson, June 9, 1924.

A first grade certificate may not be renewed one year before its expiration, so as to extend the certificate three years beyond the original date of expiration.

288. PENITENTIARY

Mr. F. E. Crawford, June 10, 1924.

Where a prisoner is serving several sentences, such sentences shall be construed as one continuous sentence for the purpose of deducting "good time."

289. TAXATION

Sec. 1179 C. L. 1921 does not include within its scope a rebate to the holder of a tax sale certificate of the amount of taxes paid at a tax sale and assessed against land which subsequently reverts to the State.

To Mr. William R. Kelley, Greeley, Colo., June 10, 1924.

Replying to your request for an opinion relative to the matter of the rebate of taxes on lands that have reverted to the State of Colorado, I advise that in construing Section 26 of Chapter 134 of the Session Laws of 1917, an act relating to the State Board of Land Commissioners, in connection with the other provisions of the act, it is a fair conclusion that this section was inserted for the benefit of the State rather than for the protection of persons who choose to invest their money in tax sale certificates.

The language of the section is that "it shall be the duty of the county treasurer to at once rebate all taxes that have been charged against the lands so reverted."

The sense of the provision was presumably for the purpose of removing the cloud of a tax sale certificate from lands reverted to the State and not to reimburse individuals who had purchased lands under a tax sale.

290. MINIMUM WAGE

To Industrial Commission, June 14, 1924.

The Minimum Wage Commission has full control over the Women's Minimum Wage Law.

The Secretary of State has no power to expend money in the enforcement of the Minimum Wage Law.

291. SCHOOLS

To John F. Cochran, June 14, 1924.

A union high school has no right to establish a junior college as part of its school system.

292. SCHOOLS

To Miss Alice Burnett, June 14, 1924.

Land can be transferred from one district to another only upon petition filed with the county superintendent of schools.

293. HIGHWAY BONDS

H. E. Mulnix, State Treasurer, June 19, 1924.

Series D, Colorado State Highway Bonds of June 1, 1924, $500,000, are a valid and binding obligation on the State.

294. INITIATIVE AND REFERENDUM

To Carl S. Milliken, July 3, 1924.

The Secretary of State may keep his office open after business hours on the last day for filing initiative petitions in order to receive the same.

295. TAXATION

To J. E. Lawson, July 11, 1924.

Where the property of a cemetery association organized for profit was through error not levied on or assessed for taxation for several years and was then sold to a city, the county has no remedy for the amount of taxes, either against the cemetery association or the city.

296. CRIMINAL PROCEDURE

To Mrs. Flora Boger, Justice of the Peace, July 17, 1924.

Persons who engage in a fight may not thereafter voluntarily appear before a justice of the peace and plead guilty to a charge of assault and battery when no complaint has been filed; and such a procedure if carried out is no bar to subsequent prosecution for the same offense.

297. FEES

To W. N. Jordan, Judge, July 18, 1924.

Docket fees in cases appealed from justice courts and the county court should be paid by the respective parties in the same manner as they would have been had the suit been commenced in the county court.

In suits of cognovit notes, docket fees for both plaintiff and defendant should be charged.

298. DOGS

F. D. Hart, July 18, 1924.

A town board may impose a license fee on dogs that are kept entirely upon the owners property.

299. BLIND BENEFIT LAW

Blind Benefit Commission, July 23, 1924.

Sec. 735, C. L. 1921, authorizes the Blind Benefit Commission

to modify and discontinue previous awards as inquiry into the needs of the persons may justify.

300. INSURANCE LAW

To Jackson Cochrane, Insurance Commissioner, July 24, 1924.

Under Sec. 2609, C. L. 1921, the earnings arising from mortuary funds cannot be lawfully used to pay general expenses of the organizations.

301. SURETY COMPANIES

To H. E. Madison, July 25, 1924.

Surety companies authorized to do business in this State may issue powers of attorney authorizing the holder to execute a bail bond to procure his release upon charges of violation of the Motor Vehicle Law.

302. BUILDING AND LOAN ASSOCIATIONS

To Byron L. Miller, July 29, 1924.

A building and loan association is entitled to charge two dollars a share for a withdrawal fee, provided that the sum shall not exceed ten dollars for any one transaction, regardless of the number of shares.

303. FEES AND SALARIES—COUNTY OFFICERS

Salaries of deputies and assistants of county officers except in counties of the fourth and fifth class may be paid out of the county general fund.

Salaries of justices of the peace in justice precincts of not less than ten thousand and not more than thirteen thousand population should be paid out of the fees and emoluments of the office.

Boulder County is a county of the second class within the meaning of the statute providing for the appointment of a special officer by the District Attorney and the District Attorney of the Eighth Judicial Disrict may appoint a special officer for Boulder County.

General discussion of the effect of the case of Board of County Commissioners v. Straub, 226 Pac. 1087.

To J. G. Archibald, County Attorney, Boulder, Colo., July 29, 1924.

In your letter of the 22nd inst. you refer to the recent decision of our Supreme Court in *Board of County Commissioners* vs. *Straub*, handed down June 2, 1924, and ask my opinion "as to the effect of said case upon the payment of salaries out of the general fund of the county to deputies of the sheriff and the deputy clerks and employees of the county clerk and county treasurer, as well as justices of the peace" within the City of Boulder, where by statute they are allowed one hundred dollars per month payable out of the general fund.

The Straub case held that that part of Chapter 73, S. L. 1917, which provides for the payment of the salary of the sheriff of

Clear Creek county out of the general county fund is unconstitutional, and the question now is, whether or not, under the doctrine of that decision, it would be lawful to pay the compensation of deputy sheriffs, deputy county clerks or deputy county treasurers or assistants of those officers, out of the general county funds.

It will, of course, require a decision of the Supreme Court to set this matter definitely at rest. This office is advised that in several counties of the State great havoc will result if county boards take the view that the Straub decision means that deputies and assistants of these officers cannot be paid out of the general county funds. Several counties represent that the office of their sheriff, for instance, cannot properly function if it must be financed wholly from the fees of the office. In other words, law enforcement would distinctly suffer if the Straub decision means that deputies and assistants cannot be paid out of the general fund.

These county boards are therefore confronted with a practical dilemma of a critical nature. We are glad, therefore, to give you our views,—taking care to remind you that they are not binding upon you or your county board, but are the result of the best thought we have been able to give to the subject.

In *People* vs. *Richmond,* 16 Colo. 278, the Supreme Court said:

> "Authorities need not be cited in support of the proposition that he who asserts the unconstitutionality of a statute must establish beyond a reasonable doubt the conflict or inconsistency which renders it void; it is not enough for him to vaguely insist that the act questioned is obnoxious to some unexpressed intent or spirit supposed to pervade the Constitution; he must point out the specific provision or provisions of that instrument transgressed. Another elementary rule to be borne in mind throughout the following discussion is that the Constitution operates upon the law-making branch of the government purely as a limitation; and that the Legislature possesses plenary authority in the enactment of laws except as such authority is expressly, or by clear implication, therein denied."

The question then is, whther those parts of our statutes which permit the payment of salaries of deputies and assistants of the officers mentioned are unconstitutional beyond a reasonable doubt, or whether the Constitution, expressly or by clear implication. denies the Legislature the right to provide for payment of salaries of such deputies and assistants out of the general county fund.

Section 15, Art. XIV of the State Constitution provides that:

> "For the purpose of providing for and regulating the compensation of county and precinct officers, the General Assembly shall, by law, classify the several counties of the State according to population and shall grade

and fix the compensation of the officers within the respective classes according to the population thereof. Such law shall establish scales of fees to be charged and collected by such of the county and precinct officers as may be designated therein, for services to be performed by them, respectively, and where salaries are provided the same shall be payable only out of the fees actually collected in all cases where fees are prescribed. All fees, perquisites and emoluments above the amount of such salaries, shall be paid into the county treasurer."

Having reference to the effect of that section, it might be argued that at the time it was adopted the general practice in this and other states was to require that county offices be financed out of the revenues of the office only and that since the principal officer himself could only receive his salary out of the revenues of the office, it would logically follow that his subordinates must likewise be paid from the same source alone and that it would be logically inconsistent to say that while the principal officer can only be paid out of fees, yet his subordinates might be paid from a more certain source of revenue. There is, beyond question great force in such an argument, but it might also be said that the Constitution should first be construed by reading and ascertaining the meaning of the language actually employed.

Section 15 makes no reference whatever to deputies, assistants or other expenses of these offices, although, in the nature of things, they could not be conducted without the incurring of expenses of various kinds. The provision in this section clearly has reference to the county and precinct officers mentioned in preceding sections of the same article. Deputies or assistants are not mentioned in any section of the article. The last sentence of the section provides that fees, etc. "above the amount of such salaries" shall be paid into the county treasurer. The word "salaries" in this last sentence of the section, to my mind, clearly has reference only to the salaries of the principal officers named in the article It is not provided in this section that all fees above the amount of the expenses of the office shall be paid over; but only all fees above the amount of these salaries,—meaning the salaries of the principal officers,—shall be paid over. Thus construing Section 15 literally it does not prohibit the payment of salaries of deputies and assistants out of the general fund.

At the recent conference of county attorneys it was suggested that there was authority for the proposition that deputies of county officers were not those officers and, therefore, not within the purview of Section 15. That argument may have force, but I do not think it quite reaches the point. Whether these deputies are officers or not, they certainly are not officers for whom "fees are prescribed." Fees are only prescribed for the officers named in the article. No fees are prescribed for deputies or assistants, and, according to the language of Article XV, it is only the officers

for whom fees are prescribed who must be paid out of the fees of the office.

I have found no constitutional provision analagous to our own, except Sections 9 and 10, Article IX of the Constitution of Illinois, adopted in 1870. Section 9, Art. X, of that constitution provides as follows:

> "The clerks of all the courts of record, the treasurer, sheriff, coroner and recorder of deed of Cook county, shall receive as their only compensation for their services, salaries to be fixed by law, which shall in no case be as much as the lawful compensation of a judge of the circuit court of said county, and shall be paid, respectively, only out of the fees of the office actually collected. All fees, perquisites and emoluments (above the amount of said salaries) shall be paid into the county treasury. The number of the deputies and assistants of such officers shall be determined by rule of the circuit court, to be entered of record and their compensation shall be determined by the county board."

Section 10 of Article X is as follows:

> "The county board, except as provided in Section 9 of this article, shall fix the compensation of all county officers, with the amount of their necessary clerk hire, stationery, fuel and other expenses, and in all cases where fees are provided for, said compensation shall be paid only out of, and shall in no instance exceed, the fees actually collected; they shall not allow either of them more per annum than $1,500, in counties not exceeding twenty thousand inhabitants; $2,000 in counties containing twenty thousand and not exceeding thirty thousand inhabitants; $2,500 in counties containing thirty thousand and not exceeding fifty thousand inhabitants; $3,000 in counties containing fifty thousand and not exceeding seventy thousand inhabitants; $3,500 in counties containing seventy thousand and not exceeding one hundred thousand inhabitants; and $4,000 in counties containing over one hundred thousand and not exceeding two hundred and fifty thousand inhabitants; and not more than $1,000 additional compensation for each one hundred thousand inhabitants; *Provided,* that the compensation of no officer shall be increased or diminished during his term of office. All fees or allowances by them received, in excess of their said compensation, shall be paid into the county treasury."

The Supreme Court of that state held that under said Section 10 the compensation of deputies and other expenses of county officers could only be paid out of the fees of the office (*Jennings* vs. *Fayette,* 97 Ill. 419). But in the case of *Cook County* vs. *Hartney,* 169 Ill. 566, the court held that under Section 9, above

quoted, the salaries of deputies and assistants of the officers named in that section need not be paid out of the fees of the office, but might be paid out of general funds of the county.

You will see at once that this case is not precisely in point, for obvious reasons; but it is interesting to note that the Supreme Court of Illinois adhered strictly to the language of the constitution and did not indulge in any line of reasoning to the effect that it would be illogical to pay deputies and assistants out of the general fund, in the face of the fact that Section 9 expressly required that the salary of the principal officer himself could only be paid out of the fees of his office actually collected. Apparently the Supreme Court of Illinois saw no inconsistency in paying deputies and assistants out of general county funds, despite the fact that the constitution expressly required the principal officer to be paid only out of fees actually collected. That court took the language of the constitution as it found it and did not attempt to extend its application to any process of logical implication.

Thus I repeat that, taking the language of our Constitution, we find no prohibition against a statute providing for the payment of deputies and assistants of the county officers in question out of the general fund of the county. And, in view of the repeated decisions of our Supreme Court, that statutes will not be declared unconstitutional unless they appear, beyond a reasonable doubt, so to be, I think that county boards would be warranted in allowing compensation to deputies and assistants of these officers out of the general fund of the county until the Supreme Court has spoken further on this matter.

Your next question is as to the effect of the Straub decision upon the payment of salaries of justices of the peace within the City of Boulder.

Chapter 166, S. L. 1921, provides that in justice precincts of not less than ten thousand nor more than thirteen thousand inhabitants, justices shall receive an annual salary of $1,200 out of the general fund of the county. The question, of course, is, whether that provision of this statute for payment out of the general fund is invalid under the doctrine of the Straub case.

Article XIV of the State Constitution is entitled "Counties." Section 11 of that article provides for the election of two justices of the peace in each precinct in the county. Section 15, already quoted, expressly provides that the general assembly shall establish the fees to be collected by county and precinct officers, and also provides, as above set forth, that salaries of officers for whom fees are prescribed shall only be paid out of the fees actually collected.

In *Thrush* vs. *People*, 53 Colo. 544, the court held that justices of the peace are county officers. Whether they are county or precinct officers, it seems perfectly clear that under Section 15 their salaries can only be paid out of fees actually collected, and it follows that the provision in Chapter 166, S. L. 1921, applies under the ruling in the Straub case.

You also direct attention to the fact that Section 5990, C. L. 1921, authorizes the district attorney to appoint a special officer in each county of the second class within his judicial district, and that Boulder County is in the second class, under Section 7920, C. L. 1921, for the payment of salaries of county officers, but is in the third class, under Section 7869, for fee purposes; and you submit the question as to whether or not a special officer can be appointed by the district attorney of your district.

It is not clear what classification the Legislature had in mind in enacting Section 5990, but in view of the fact that said section is a part of Chapter 171, S. L. 1907, which deals entirely, at at least mainly, with public officers and their salaries, I think it is more reasonable to say that the classification the Legislature had in mind in enacting that statute was the classification for salary purposes, and I therefore conclude that, since Boulder County is in the second class for salary purposes, your district attorney is authorized to appoint a special officer for your county.

I also think that, under Section 5992, the expenses of the special officer can lawfully be paid by the county.

304. HIGHWAY BONDS

To William E. Sweet, July 30, 1924.

The Highway Bonds provided for by the constitutional provision found at p. 237, S. L. 1923, need not all be sold during the respective calendar years in which provision is made for their issuance. The discretion in regard to their sale rests in the Governor.

305. PUBLIC UTILITIES COMMISSION

Loveland Case

Under the decision of our Supreme Court in the case of Town of Holyoke vs. Smith, et al, 226 Pac. Rep., Adv. Sheets, No. 1, p. 158, the Attorney General has no authority to institute suit to enjoin the building of a municipal electric light plant.

To Grant E. Halderman, Chairman, Public Utilities Commission, and to the Public Utilities Commission of the State of Colorado, State Office Building, Denver, Colo., July 30, 1924.

We have before our department for consideration the resolution of the Public Utilities Commission of the State, adopted July 28, 1924, requesting the Attorney General to forthwith institute legal proceedings against the City of Loveland, Colorado, to determine the relative rights and powers of the city and the Public Utilities Commission in the controversy which has been pending before the Commission.

In determining whether or not the Attorney General should accede to this request, it is necessary to examine the whole situation somewhat at length, without, however, reviewing in detail the

proceedings before your Honorable Commission, which are, of course, more familiar to your members than to anyone else.

The City of Loveland is engaged in the construction of a municipal electric light plant. It appears that this plant has been authorized by a vote of the citizens and commands, therefore, the support of a majority of the electors of that municipality. By an order dated May 14, 1924, the Commission, in effect, directed the City of Loveland to cease construction of the plant and refused to issue a certificate of convenience and necessity.

In now asking the Attorney General to institute legal proceedings against the City of Loveland the Commission of necessity has in mind a proceeding to sustain the order of the Commission, and the necessary effect of such a suit would be to stop the building of the municipal electric light plant by the City of Loveland.

After examining this record and the law applying to a situation of this sort, I am compelled to come to the conclusion that as Attorney General I cannot comply with the request of your Commission and cannot therefore institute any legal proceedings to prevent the construction of a municipal electric light plant in the City of Loveland.

May I respectfully call your attention to the fact that the Attorney General's office has not been asked to give a legal opinion upon this question.

In my judgment the law, as laid down by the Supreme Court of this State, absolutely prohibits and precludes any such action being taken as your Commission assumes to take in its order of May 14, 1924.

Permit me to call your attention to the case of *Town of Holyoke* vs. *Smith, et al*, found in 226 Pac. Rep., Advance Sheets, No. 1, page 158. It is impossible to ignore this decision, or to shut our eyes to the necessary and logical consequences of the ruling of our Supreme Court. This case holds that the Public Utilities Commission has no power to fix rates for a municipally owned utility.

May I also call your attention to the constitutional provision under which the decision in that case was rendered. Section 35, Article V, of the Constitution provides:

> "The General Assembly shall not delegate to any special commission, private corporation or association, any power to make, supervise or interfere with any municipal improvement, money, property or effects, whether held in trust or otherwise, or to levy taxes or perform any municipal function whatever."

In view of the holding of the Supreme Court under this provision of the Constitution, the Utilities Commission cannot fix rates for a municipal utility, and it would certainly seem to be beyond all dispute that the Commission cannot control the construction of a utility such as is involved in the Loveland case.

I call your attention to the fact that the constitutional provision in question does not even mention rates, but refers to

> Municipal improvements,
> Money,
> Property or
> Effects.

And I call your further attention to the fact that this provision specifically says that no special commission "may perform any municipal function whatever." This language is broad and all-inclusive. If, as is here held by our Supreme Court, the making of rates for a municipally owned utility is a municipal function, must it not be granted that the construction of a municipal lighting plant is also a municipal function? If the rates of a municipal light plant cannot be regulated by the Commission, how can the construction of that same plant be controlled by the Commission?

The language of Mr. Chief Justice Teller in the Holyoke case leaves no doubt in my mind as to the position your Commission should take in this matter and as to what my own action should be.

Moreover, the opinion is based upon the further broad ground that the legislature has no right to interfere thus in municipal affairs.

Under the ruling in this case, therefore, the Commission should bow to the decision of the Supreme Court and should not attempt to interfere with the construction of the municipal light plant by the City of Loveland, for it has no jurisdiction to make any order relative to such construction and operation. I cite you also in support of this position to the case of

> *Springfield Gas and Electric Co. vs. City of Springfield*, 257 U. S., 66.

Aside from the fact that the Supreme Court has laid down the rule which we should follow, there are important considerations of public welfare involved. For the Utilities Commission or the Attorney General now to secure or seek to secure an injunction restraining this municipality from building its own light plant, would be to seriously jeopardize the rights of the people of any city or town of this State to provide their own public utilities service. This would mean that the State would seriously interfere with the welfare of the people of the municipalities of Colorado. The right of the people to exercise this principle of local self-government and to institute a program of municipal ownership of public utilities under the laws of this State cannot be denied by any power within the state.

In view of the decision of our Supreme Court, therefore, and of the law controlling this matter, and of the important considerations of public welfare which touch and affect every citizen in his fundamental rights, and I am therefore obliged to refuse to

comply with your request to bring this action against the people of Loveland and their municipal government.

306. FEES AND SALARIES

To A. M. Stong, Auditor, July 31, 1924.

It is proper for the State to pay salaries earned by *de facto* officers where there is no *de jure* claimant, even though the *de facto* officer is ineligible to appointment to the office.

307. ELECTIONS

To Hon. John Anderson, Aug. 7, 1924.

A county judge may accept the nominations of both political parties.

308. FEES AND SALARIES

Scott Heckman, County Attorney, Aug. 7, 1924.

Retention of Fees

County treasurers are not entitled to retain in addition to their regular salaries, fees earned under Sec. 7378, C. L. 1921.

309. APPROPRIATIONS

Hon. William H. Adams, August 11, 1924.

Appropriations made for the support of the Normal School at Greeley are not available for the maintenance of the Adams Normal School at Alamosa.

310. PUBLIC HEALTH—TOWNS AND CITIES

Dana E. Kepner, Aug. 28, 1924.

State Board of Health

(1) The State Board of Health was not divested of any jurisdiction which it might have had by the passage of Secs. 8972 and 8973, C. L. 1921, conferring upon City and County of Denver the right to protect its water supply.

(2) Cities may protect their water supply by prosecuting those who pollute the streams from which the water supply is obtained, where the offenses constitute violations of city ordinances.

311. TAXATION

Under Sec. 7236, C. L. 1921, debts may be deducted from notes and credits even though such debts are due and payable outside the State.

Honorable Clem W. Collins, Manager, Department of Revenue, Denver, Colo., Sept. 2, 1924.

In your letter addressed to this office under date of the 22nd ult. you state that

> "After due consideration and after receipt of legal opinions in regard to the matter, this office has promulgated the rule that debts due outside the State of Colorado and mortgages on real estate in Colorado are not deductible from the money, notes and credits on the tax return of the taxpayer."
>
> And further, that
>
> "At a recent conference between this office and several of the larger taxpayers affected by this rule, it was agreed that we should get the opinion of your office on this point and this we now seek."

You enclose copies of opinions received from the city attorney of the City and County of Denver for our consideration, and ask our opinion upon the points involved.

The statute bearing directly upon this matter is Section 7236, C. L. 1921, which reads as follows:

> "In listing the amount of notes and credits held by him, the person making such schedule may deduct therefrom the amount of all his debts, but not including any liability to any insurance company for premiums on policies, or on account of any subscription to any literary, scientific, charitable or other like institution or society, or on account of any subscription due or indebtedness payable upon or for the capital stock of any company, whether incorporated or unincorporated, or for the purchase of any bonds, treasury notes or other securities of the United States not taxable, or other exempt property, or for or on account of any obligations signed by such party as surety for another, nor any acknowledgment of indebtedness not founded on actual consideration, or made for the purpose of being so deducted; and the party making such return and demanding any abatement upon credits, by reason of any indebtedness, shall set down in a separate statement all liabilities in respect whereof a deduction is claimed."

We beg to advise you that after examination and consideration of this matter, we are unable to agree fully with the position taken by the office of the City Attorney as disclosed by the copies of opinions of that office submitted in your letter.

In his letter addressed to the Board of Equalization of the City and County of Denver, under date of December 1, 1919, City Attorney Marsh says:

> "The statute authorizes debts to be deducted from assessments of moneys, notes and credits. The uniform practice in the City and County of Denver, sanctioned by the law department, has been to permit only debts due locally to be deducted from moneys, notes and credits, *owned or payable locally.* No other plan would be prac-

> tical in its application or results. If other than local debts were permitted to be deducted, in numerous in-instances all moneys, notes and credits owned and due locally would be wiped out by debts owed out of the state, without there being any power in the local assessor to assess moneys, notes and credits kept or due out of the state; it, therefore, seems to be the equitable rule to permit only local debts to be offset against moneys, notes and credits which are assessable. A strong reason for the adoption of this rule is, that debts which are owed locally may be assessed to the creditor, if he lives within the jurisdiction, but if debts are deducted which are owed outside of the jurisdiction there would be no opportunity to assess such outside debts, as credits in the hands of the creditor."

We direct your attention to the fact that the section above quoted distinctly provides that the taxpayer may deduct from the amount of notes and credits held by him "*the amount of all his debts*" with certain defined exceptions. The statute does not say that the taxpayer may deduct the amount of all his debts that are owed or payable locally, but *all his debts.*

It is contended that this construction of the statute affords an equitable rule, because, if debts owed to persons outside of this State were nevertheless subject to deduction, then those debts could not be taxed as credits in the hands of the non-resident, with the result that the State would lose the benefit of taxation upon the credit of the non-resident which represented a debt due by the Colorado resident.

But this argument is based upon equities as applied to the advantage of the State in raising public revenue rather than equities as between individual taxpayers. I take it that the fundamental principle of *ad valorem* taxation is the distribution of the burden among the several taxpayers in proportion to their ability to pay as measured by their wealth.

To illustrate an inequity of the rule laid down by the City Attorney:—Suppose that the property of A, who is a taxpayer in Colorado, consists solely or mainly of $10,000 worth of notes and credits, and that A owes X, who resides in Colorado, the sum of $5,000, which is a taxable credit under the statute above quoted. Then A would be required to pay taxes upon $5,000,—being the $10,000 worth of notes and credits less the statutory deduction.

Suppose, further, that B, a Colorado taxpayer, has property consisting of notes and credits worth $10,000, and owes Y, a non-resident of the State, $10,000; then B would have to pay taxes on the whole sum of $10,000, because his debt of $10,000 was not owed or payable locally, but was owed to a non-resident. In other words, A is worth $5,000 net and pays taxes according to his net worth. B is worth nothing because his debts wholly offset his notes and credits; yet B would be required to pay taxes on $10,000.

or twice the amount of taxes required to be paid by A, despite the fact that A is worth $5,000 and the net estate of B amounts to absolutely nothing.

In the case of *Denver* vs. *Hobbs Estate,* 58 Colo. 220, the Court had under consideration that provision of our statutes to the effect that corporate stock shall be deemed to represent the corporate property and, except in the case of banking corporations, shall not be taxed. The question in that case was whether or not shares of capital stock in a foreign corporation were subject to taxation in this State if owned by a resident thereof, in view of the above statute.

It was contended in behalf of Denver that the statute was only intended to apply to domestic corporations and that shares of stock in foreign corporations owned by residents of this State were subject to taxation in this State, regardless of the statute. But the Court pointed out that the statute provides that corporate stock, except that of banks, shall not be taxed, and made no distinction as between domestic and foreign corporations. To the contention that the statute applied only to domestic corporations, the Court replied, at page 221:

> ''We cannot agree that the legislature thus intended; when tested by the language used it would be violative of elementary rules of construction. It would be to hold that they meant to say that which they did not say, and that they did not intend to say that which, in the clearest and plainest language possible, they have said. In such case it is not for the courts to give to the language any different meaning from that plainly expressed.''

In other words, the Court resolved the question upon the express language of the statute and declined to read into the statute a limitation not therein contained. Applying the rule of construction laid down in the Hobbs case, we do not see how it would be permissible to read into Section 7236 the words ''owing to residents of this state,'' or any like words, as a limitation upon the provision that the taxpayer may deduct ''the amount of all his debts.''

We, therefore, do not concur in the opinion of the City Attorney that only debts due locally are subject to deduction. We believe that all debts, except those excluded by the statute, are subject to deduction.

This brings us to the question as to what debts are excluded by the statute and therefore not deductible.

These non-deductible debts, as we construe the statute, are:

> (a) Liabilities to insurance companies for premiums on policies;
>
> (b) Liabilities on account of subscription to any literary, or scientific, or charitable or other like institution or society;

(c) Liabilities on account of any subscription due or indebtedness payable upon or for the capital stock of any company whether incorporated or not;

(d) Liabilities for the purchase of any bonds, treasury notes or other securities of the United States not taxable;

(e) *Liabilities for the purchase of other exempt property;*

(f) Liabilities for or on account of any obligation signed by the taxpayer as surety for another;

(g) Acknowledgments of indebtedness not founded on actual consideration or made for the purpose of being so deducted.

It will be noted that among the debts that are not deductible are liabilities for the purchase of "other exempt property." And this raises the question as to what is meant by the words "other exempt property" as used in this statute. Were those words intended to comprehend only property that has an actual or constructive situs in this State but which has been given immunity from taxation by some express or implied grant of the State, or are they used in the broader sense *as including also* property having its situs outside of this State and therefore beyond its sovereign power of taxation? The word "exempt," as used in revenue acts, has been construed to refer to and include property that is beyond the sovereign power of the State to tax, as well as property having its situs within the State and which the State might tax if it chose, but has relieved from taxation by some statutory or constitutional enactment. (See *Dutton* vs. *Bd. of Review*, 58 N. E. 953, Ill.)

Although there is room for controversy upon this point, we believe that the words "other exempt property," as used in Section 7236, should be considered as including property that could not be taxed in this State, because its situs is outside the State, as well as property in this State but which is relieved from the tax burden by some provision of our laws.

To illustrate again:—If a Denver merchant incurs a debt to a Chicago firm for merchandise to replenish his stock, then, in our opinion, that debt may lawfully be deducted by the merchant from his credits—even though the debt is not due locally but represents a credit that is owned and payable in Chicago. But if the merchant should incur a liability for the purchase of real estate located outside this State, then, in our opinion, that would be a debt for "other exempt property" and not subject to deduction.

We find nothing in our statutes that would justify the conclusion that debts secured by mortgages on real estate in Colorado are not subject to deduction. The statute makes no distinction between secured and unsecured debts. On this point our opinion is that such debts may be deducted.

Summarizing, we conclude:

1. That debts due outside the State nevertheless may be deducted unless such debts come within one of the exceptions above enumerated.

2. That the words "other exempt property" should be construed in a broad sense so as to exclude from deduction not only debts incurred in the purchase of property in this State that is exempt because of our laws, but also debts incurred in the purchase of property having its situs outside the State and therefore not within the taxing power of the State, such as real estate in a sister State.

3. That debts secured by mortgages on real estate may be deducted, provided, of course, that the debt itself does not fall within one of the classes that the statute says may not be deducted; for example, a mortgage debt that was incurred for the purchase of corporate stock could not be deducted.

312. BOARD OF CORRECTIONS

To Hon. Wm. E. Sweet, Governor, Sept. 4, 1924.

Members of this board are within the Classified Civil Service.

313. MARKETS AND MARKETING

To J. E. Roberts, Sept. 5, 1924.

A tenant who is not himself a member of a co-operative marketing association and has not bound himself by the terms of his lease through such association, is not bound to market through the association, although his landlord is a member of the association.

314. ELECTIONS

To Ralph Callaghan, Sept. 9, 1924.

Special judges must be appointed for county seat elections and the regular judges cannot act as such special judges.

315. STATE TEACHERS' COLLEGE—APPROPRIATIONS

To Hon. A. M. Stong, State Auditor, Sept. 17, 1924.

The Board of Trustees of the State Teachers College may expend such of its maintenance funds as are necessary to insure and protect the building erected for the Adams Normal School.

316. MOTOR VEHICLES

To Denver Automobile Dealers' Assn., Sept. 18, 1924.

Since there is no provision in the statute for the registration of the titles of automobiles purchased from residents of other states, the practice adopted by the M. V. Department requiring

persons bringing autos into this State to execute certificates of ownership, is reasonable.

The question of requiring the "year model" to be placed on bills of sale is entirely within the discretion of the Secretary of State.

317. STATE FAIR COMMISSION

To T. P. Kearney, Mgr., St. Compens. Fund, Sept. 19, 1924.

The Colorado State Fair Commission is an administrative board and is a public institution within the meaning of Sec. 21 of the Workmen's Compensation Act as amended by S. L. 1923.

318. IRRIGATION DISTRICTS

Colorado Tax Commission, Sept. 24, 1924.

Lands bid in under Sec. 1999, C. L. 1921, by irrigation districts are not exempt from taxation, pending the sale or redemption of such lands.

319. TAXATION

Miss Florence A. Wilkin, Sept. 24, 1924.

Before delinquent tax sale a mortgagee may, for the protection of his security, pay the taxes upon the real estate only,—but after such tax sale and even though the land was bid in by the county, the mortgagee would be required to pay all taxes (real and personal) for which the sale was made.

320. COLORADO AGRICULTURAL COLLEGE

To L. M. Taylor, Secretary, Sept. 25, 1924.

Each particular investment of funds of the Agricultural College need not bear 5% interest, provided another is made at the same time on a basis of enough more than 5% to make the average yield from both investments 5% or more.

321. COMPENSATION INSURANCE

To Thos. B. Kearney, Sept. 25, 1924.

Counties must pay the expense of compensation insurance of Water Commissioners.

322. DEPENDENT AND NEGLECTED CHILDREN

To Anna L. Cooley, Superintendent, Oct. 16, 1924.

When a girl has been committed to the State Home for Dependent and Neglected Children, she cannot thereafter be transferred to the State Industrial School for Girls without a hearing; but should be returned to the county from which she was originally committed and new charges filed against her.

323. ELECTIONS

To Edyth C. Wheeler, Oct. 24, 1924.

Under Sec. 3 of the Act of 1912, persons who are illiterate but not physically disabled cannot be assisted by the election officers in voting at the general election.

Under Sec. 2261, R. S. 1908, voters who are illiterate but not physically disabled may be assisted in voting at *primary* elections.

324. PUBLIC HEALTH

To Dana E. Kepner, Sanitary Engineer, Oct. 28, 1924.

Water Supply

Where a city takes its water from an irrigating ditch along which corrals pollute the water, the city should bring an injunction suit against the owners of such corrals.

Another possible remedy would be an action to abate a nuisance, and the passing of an ordinance to protect the water supply.

325. SALARIES

To Arthur M. Stong, Oct. 30, 1924.

Where an emergency exists, salaries may be paid out of the Incidental Fund of a department.

326. COMPENSATION INSURANCE

To State Industrial Commission, Oct. 30, 1924.

Members of municipal volunteer fire departments are not protected by Workmen's Compensation Act. Municipalities maintaining volunteer fire departments are not liable for the payment of premiums to State Compensation Insurance Fund.

327. PUBLIC WORKS

Construction and application of Ch. 98, S. L. 1919—Colorado Products Act—which requires preference of Colorado materials in the construction of public works.

Major L. D. Blauvelt, State Highway Engineer, Nov. 13, 1924.

You have asked the opinion of this office upon a point of law arising out of a state of facts substantially as follows:

Your department advertised for bids for the construction of about seven miles of state highway. This advertisement called for bids upon two distinct types of roadbed. The first type calls for a roadbed consisting of 7 inches in depth of concrete, while the second type calls for 5 inches of concrete to be overlaid with 2 inches of asphalt. The concrete that would be used in the first type of road is produced entirely of Colorado materials; and the same, as we understand it, is true of the 5-inch layer of concrete that would be used in building the second type of road, but the asphalt that

would be used in the second type of road is not produced in Colorado. The lowest bid for the first type of road was $336,735.70, while the lowest bid for the second type was $336,155.80. Thus there was but a few hundred dollars' difference in the amount of the two lowest bids.

The question is, what is your duty in the matter of letting this contract, in view of the provisions of Chapter 98, S. L. 1919, which is an act entitled "An act entitled for the promotion and use of materials, supplies, and provisions produced, manufactured, or grown, in this state in the construction and maintenance of any public buildings, public monuments, or other public structures and for the use of materials, supplies and provisions produced, manufactured or grown in this state for the maintenance and provisioning of any state, county, school district or municipal institution."

The third section of that act reads as follows:

> "All public buildings, court houses, public school buildings, public monuments and other public structures hereafter constructed in this state shall be constructed and maintained by materials produced, or manufactured in Colorado; *provided*, that such Colorado materials can be furnished in marketable quantities that such preference shall not be for materials of an inferior quality to those offered by competitors outside of the state, but a differential of not to exceed 5% may be allowed in cost on Colorado materials of equal quality."

The constitutionality of this section has never been determined by our Supreme Court, nor have we found any decisions of other courts bearing upon the constitutionality of similar statutes. We shall, therefore, assume that this statute is valid and constitutional. It is our duty and that of every department of State to so assume.

The first point that naturally arises is whether or not an artificially constructed roadbed is a public structure within the meaning of this statute. We are of the opinion that such roadbeds should be considered as public structures within the meaning of this statute for the following reasons:

The broad object of the statute was to provide a preference for the use of home materials in the construction and maintenance of public works and institutions. The General Assembly had already in 1913 and 1917 passed elaborate statutes for the construction and maintenance of a system of state highways, naturally requiring the use of vast quantities of materials and supplies. When this Act of 1919 was passed, it may fairly be said that the Legislature must have understood that for many years a very considerable proportion of all the public construction to be done in this State would consist of the construction of State highways having artificial roadbeds. It is inconceivable, therefore, that the Legislature by this statute only intended to include buildings and structures of that kind within the purview of this statute. More-

over, the Act of 1917 already in existence repeatedly uses the word "construction" when speaking of the building of State highways. Naturally, that which is constructed may usually be properly spoken of as a structure; so we think there is no doubt that artificial roadbeds should be regarded as public structures within the intent, meaning and object of this statute. We therefore assume not only that the statute is constitutional, but that it applies to a public work of the kind now involved.

We do not believe, however, that your department is entirely at liberty to award the contract in question upon either one of the two bids above mentioned.

We must construe this statute in the light of its origin and purpose both as found in the title of the Act and in the body of the statute. This Act is Chapter 98, S. L. 1919, and the heading over the Act reads, "COLORADO MATERIALS AND PRODUCTS—Use of, Mandatory upon State, County and Municipal Institutions." The title of the Act is even quite as emphatic. It is as follows:

> "An Act entitled for the promotion and use of materials, supplies, and provisions produced, manufactured, or grown, in this State in the construction and maintenance of any public buildings, public monuments, or other public structures and for the use of materials, supplies and provisions produced, manufactured or grown in this State for the maintenance and provisioning of any State, county, school district or municipal institution."

Section 1 provides that the governing body of any State, county and municipal institution, "shall prefer in all purchases for supplies, material, and provisions—provisions and supplies produced, manufactured, or grown in this State."

Section 2 provides that all bids and proposals for supplies and materials, preference must be given to such as are grown or produced in Colorado.

The third section is the particular one involved in your inquiry. If we would adopt the construction of the statute contended for by those who represent certain products and interests outside of the State of Colorado and which they now desire to sell to the Highway Commission, this construction would, in my opinion, destroy the purpose of the statute. The construction they contend for is that the Highway Department is not confined to Colorado material unless it decides to construct a road of a type for which Colorado materials can be furnished. They would have us hold that if the Highway Department decided on a type of road which could be built only out of materials made outside of the State, then Colorado materials could not be used. The result of this construction would be to permit any department of the State to nullify the statute at will.

Moreover, the statute would not bear this construction because of its wording.

Section 3 above quoted covers ''all'' public constructions and specifically provides that they shall be constructed out of materials produced or manufactured in Colorado. This section is all embracing, inclusive and is mandatory upon all departments of the State. The only exception to the rule is that—

Colorado materials can be furnished in marketable quantities and shall not be inferior in quality to those offered from outside the State, and in the event there is competition, a differential of 5% is allowed on the cost of Colorado materials of equal quality.

The duty of any department of the State, therefore, is to first ascertain if the structure contemplated can be built of Colorado materials and if such materials are to be found in marketable quantities and are not inferior to outside materials. If these conditions obtain, the State has no further choice in the matter. It must obey the statute and use Colorado materials and products.

It has been urged that this construction of the Act might involve some hardships, but that argument must be addressed to the next Legislature. The Act in question is a good one and serves a very valuable purpose because it compels all agencies and departments of the Government, city, county and State, to patronize home industry if other conditions are equal. Our first duty is to Colorado, and this Act should be construed to carry out its purposes and not to defeat them. In the precise case you have before you, the difference in price between two types of road, asphalt and concrete, is only a few hundred dollars, so that no possible hardship or extra expense is entailed upon Colorado by reason of using Colorado materials to construct this highway.

328. PUBLIC HEALTH

To Dr. Tracy R. Love, Nov. 25, 1924.

Where local health officers are not charged by local ordinance with the duty of registration of births and are not paid for such services, they are entitled to compensation from the State when appointed local registrars by the State Board of Health. Sec. 989, C. L. 1921, does not apply to such officers.

329. TOWNS AND CITIES

To Hugh J. Harrison, Nov. 28, 1924.

Towns and cities have no power under Ch. 178, S. L. 1923, to levy a frontage tax for the maintenance of waterworks.

330. TAXATION

To Harry E. Mast, Dec. 4, 1924.

School Property

Property of school district, not used exclusively for school purposes, but owned by the district, is not subject to taxation.

331. COUNTY OFFICERS' BONDS

To Victor Miller, Dec. 5, 1924.

County Treasurer

(1) A bonding company, furnishing a bond for a county treasurer, is liable for the amount of money held by a bank when the latter closes. The bonding company cannot wait until the affairs of the bank have been liquidated before paying the obligation.

(2) County commissioners are justified in rejecting a surety company which is in default to the county on other obligations.

(3) Art. XII, Sec. 3, of the Constitution, refers to criminal defalcation and does not include a default by a county treasurer caused by failure of a bank in which he has deposited funds.

332. PUBLIC HEALTH

To State Board of Health, Dec. 12, 1924.

The Home Rule Amendment does not divest the State Board of Health of any of the powers conferred upon it by statute.

333. CIVIL SERVICE

To W. S. Abbott, Dec. 17, 1924.

Under Civil Service rules, if a junior deputy water commissioner is given the work during the time the senior deputy reports for duty, the senior deputy is entitled to compensation.

334. APPROPRIATIONS

Hon. Arthur M. Stong, Auditor of State, Dec. 18, 1924.

Section 4313, C. L. 1921, creates a continuing appropriation for the salaries of the four deputy factory inspectors, the clerk and the stenographer.

Section 4195, C. L. 1921, creates a continuing appropriation for salaries of members of the Bureau of Labor Statistics.

Section 1083, C. L. 1921, creates a continuing appropriation for the Venereal Disease Department.

Section 3723, C. L. 1921, does not create a continuing appropriation for the Law Enforcement Department.

335. DISTRICT ATTORNEY—BONDS

Hon. Carl S. Milliken, Secretary of State, Dec. 22, 1924.

Where the official bond of a district attorney is not sealed by the seals of the principal and surety, the bond should not be approved by the Secretary of State until the seals are affixed.

336. TAXATION

To Colorado Tax Commission, Dec. 20, 1924.

A county treasurer seized some cattle under a distraint warrant just as they were about to be shipped out of the State. The owner tendered a sight draft on the First National Bank of Kansas City, Missouri. The said bank wired the county treasurer that the draft would be paid when presented and the treasurer then accepted the draft in payment of the taxes due on the cattle and released them. The First National Bank of Kansas City then refused to pay the draft when it was presented. The treasurer then applied for a refund or credit for the amount of the said taxes. Held: The refund should not be allowed, but the treasurer should at once start suit against the bank to recover the amount of the draft.

337. GOVERNOR

Conditional Reprieve

The Governor has no constitutional power to grant a conditional reprieve after partial execution of sentence.

The matter of a conditional furlough to enable a prisoner to prepare for trial of a criminal case against him, should be left in the discretion of the trial court.

Governor William E. Sweet, Dec. 30, 1924.

In re: Conditional Reprieve of Maurice Mandell

You have referred to me for an opinion the proposal that the Advisory Council of the State Department of Charities and Corrections grant a conditional reprieve and leave of absence to one Maurice Mandell, who heretofore was convicted in the criminal court of Denver of embezzlement of funds of the Hibernia Bank & Trust Co. Mandell is now serving sentence for terms aggregating nine to twenty years in the State Penitentiary at Canon City. Along with this request for this executive action comes a brief filed by a Denver lawyer supporting the right of the Governor and the Council to do this thing together with an executive order of conditional reprieve and a bond on reprieve.

The bond is in proper form and is properly worded to secure the purposes intended by its execution. The executive order of conditional reprieve is in proper form.

The remaining question is one of law, to wit: Whether the Governor has the power to grant this leave of absence or "conditional reprieve," as it is called. On this point. I find that the Governor has not this power. Sec. 7, Article IV, of the Constitution of the State of Colorado, provides: "The Governor shall have power to grant reprieves, commutations and pardons, etc." The only power that your Excellency seeks to exercise is the constitutional power of reprieve, and this power of reprieve cannot be applied to this sort of a situation or this kind of a case for the

reason that a reprieve does not extend to a leave of absence or a temporary furlough in a case of this character.

A reprieve is the act of the Governor in staying or deferring execution of the sentence or penalty and the power must be exercised prior to the beginning of the execution of the penalty. It cannot be exercised after service of sentence has begun. The term "reprieve" came from the Common Law with a distinct and well-understood meaning and it referred solely to the right to defer execution of a sentence in a capital case. Some authority has been presented holding that the power of reprieve extends to cases other than capital offenses; but even if this be true, the power of reprieve does not extend to a furlough or temporary leave of absence such as is here proposed. Upon the meaning of the word "reprieve" and its well-known common law significance, I cite you:

> *Snodgrass* vs. *The State (Texas),* par. 150, S. W. 162, in re Herrin, 77 New York Law, 315.
> *State* vs. *Finch,* 54 Ore. 482, 103 Pac. 505.

In this last case the word "reprieve" is defined to mean a respite by the Governor from a sentence of death.

It has been urged that a conditional furlough of four months is necessary to enable Mandell to rest up, restore his mind and prepare for the trial of a criminal case brought against him by the State Bank Commissioner involving the sum of four hundred sixty-five thousand dollars. This matter should be left in the discretion of the trial court. It is the custom in Colorado in such cases for a subpœna to issue regularly out of the court where the trial is to be held and to be served upon the prisoner, who then comes under guard of the warden to the place where the trial will occur and there confers with his attorneys, prepares for the trial and makes his appearance. This practice is common in Colorado. It has frequently been resorted to, notably in the case of Floyd and Harrington, who were brought to the criminal court in Denver to testify against Mandell in the trial which resulted in a conviction for which he is now serving sentence.

The Governor having, therefore, no constitutional power to grant a conditional reprieve, and the district court having the power to subpœna Mandell under proper representations by his attorneys in the civil case, the matter should rest with the trial court, for there is no power in the Advisory Council or in the Governor to make an order of this character.

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