BIENNIAL REPORT

OF

ATTORNEY GENERAL

OF COLORADO

1929 - 1930

Biennial Report

of the

ATTORNEY GENERAL

of the

STATE OF COLORADO

Years 1929 and 1930

ROBERT E. WINBOURN
Attorney General

JOHN S. UNDERWOOD
Attorney General

IN MEMORIAM

Robert E. Winbourn, Attorney General of the State of Colorado, departed this life on the seventh day of August, 1930.

In the full vigor of manhood, when hopes were high, when public favor and successful achievement were beckoning him onward to earnest endeavor and to wider fields of usefulness, the Invisible Hand was laid upon him and he passed to his reward as his native State of Colorado mourned the loss of one of her noblest sons. An exemplary citizen, an able lawyer, a faithful and efficient public officer, he rose to every occasion, fulfilled every responsibility, and discharged every duty with wholehearted zeal and scrupulous fidelity.

Modest and unassuming, courteous to all, yet resolute and courageous, impartial and just, he was an ideal servant of a free people.

Honored, respected and trusted alike by the Chief Executive of the State, and by the humblest citizen who grasped his friendly hand, a brilliant career of public service awaited him.

The stress and storms of life never swept from the soul of Robert E. Winbourn the golden qualities of youth, and his radiant smile and buoyant spirit lightened the burden of all who wrought with him in private life or in public station.

Those whose good fortune it was to share in his official labors, to come in daily contact with him, and to feel the charm of his wholesome and engaging personality, held him in deep regard akin to personal affection and his untimely passing was felt by them as the pangs of personal bereavement.

IN MEMORIAM

On the 13th day of August, 1930, John S. Underwood was appointed by his Excellency Governor William H. Adams, to the office of Attorney General of the State of Colorado to succeed the lamented Robert E. Winbourn.

On the 11th day of January, 1931, just as his term of office was drawing to its close, Mr. Underwood met with a fatal accident and Colorado again mourned the loss of a valued and honored public servant.

He was an able and accomplished lawyer and during his brief term of office met with decision and courage and handled with fidelity and marked ability the many trying problems which confronted him.

His administration of the office was such as to command and receive the universal respect and confidence of the people of the entire State.

Above all he was a cultured Christian gentleman, a loyal and abiding friend, a devoted husband and father, a useful, public spirited citizen in whose passing the State has suffered an irreparable loss.

ATTORNEYS GENERAL OF COLORADO

From the Organization of the State

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

William L. Boatright 1925-1928

Robert E. Winbourn 1929-1930

John S. Underwood 1930

STATE OF COLORADO LEGAL DEPARTMENT

ATTORNEY GENERAL
[1]Robert E. Winbourn
[2]John S. Underwood

DEPUTY ATTORNEY GENERAL
Charles Roach

ASSISTANT ATTORNEYS GENERAL
Sidney P. Godsman
[3]Fred A. Harrison
Arthur L. Olson
George A. Crowder
A. L. Beardsley
[4]Edward J. Plunkett
Colin A. Smith
Oliver Dean
Tom L. Pollock
[5]Wellington Fee
[6]Otto Friedrichs

STENOGRAPHIC AND CLERICAL ASSISTANTS
Miss Margaret E. Fallon
Miss Anna G. Landy
[9]Mrs. Mary Haynes
[10]Mrs. Elizabeth D. Patten

INHERITANCE TAX COMMISSIONER AND ASSISTANT ATTORNEY GENERAL
Andrew H. Wood

DEPUTY INHERITANCE TAX COMMISSIONERS
A. M. Morris
O. S. Brinker
J. W. Klein

INHERITANCE TAX APPRAISERS
G. W. Moscript
Leland S. Boatright

STENOGRAPHIC AND CLERICAL ASSISTANTS
Mrs. Margaret Kranich
[7]Mrs. M. L. Schneider
Mrs. Marie Powell
[8]Miss Lillian Kiesler

LEGISLATIVE REFERENCE OFFICE
[11]John S. Woy
[12]Allen Moore
*Clair Sippel

[1] Deceased August 7, 1930.
[2] Deceased January 11, 1931.
[3] Appointed May 1, 1929.
[4] Appointed February 15, 1929.
[5] Resigned May 1, 1929.
[6] Resigned February 15, 1929.
* Stenographer.
[7] Deceased July 21, 1930.
[8] Appointed July 21, 1930.
[9] Resigned February 1, 1930.
[10] Appointed February 1, 1930.
[11] Resigned June 30, 1930.
[12] Appointed September 8, 1930.

BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF COLORADO

SCHEDULE I

To His Excellency,

WILLIAM H. ADAMS,
Governor of Colorado.

Dear Sir:

This Biennial Report for the period January 8, 1929, to January 13, 1931, of the performance and progress of the Attorney General's office concerns the work of Honorable Robert E. Winbourn, who came to an untimely death on August 7, 1930, and of Honorable John S. Underwood, who met with a fatal accident on January 11, 1931, just two days before the beginning of the new term. Mr. Underwood started the preparation of this letter the last day he was at the office.

You will remember that upon the death of Mr. Winbourn and the appointment of Mr. Underwood, no changes were made in the personnel of the staff of attorneys assisting in this department. This enabled the work to progress without any break in the service rendered. Nevertheless, the making of this report for these officials who have departed this life has been undertaken with reverence and some reluctance, for indeed this privilege and honor rightfully belong to them and each was so amply qualified to express himself concerning his own administration of this branch of the State Government.

TAXATION PROBLEMS

Many forces have played their part to thrust the taxation laws to the foreground of the legal administration of the state. Economic changes and development coupled on the one hand with greater and more numerous demands for the taxpayers' dollar, and on the other hand with the laws as written on the statute books and in the court decisions directing the collection and use of that dollar, have caused much litigation of grave importance to State Government.

Many conditions do need remedying, yet should some of the litigants prevail there would be created new equally serious con-

ditions to be corrected. It is the duty of the encumbent of this office to administer and defend the law, governing taxes, as it is written. Powerful litigants have been aggrieved at their tax problems, as have all taxpayers, and have sought relief in the courts. The defense of these tax cases is of vital importance to the state, and is being prosecuted with vigor. These cases are intricate and involve an enormous amount of work.

WATER

The mountains are higher in Colorado than in the states adjoining. The snow melting in these mountains flows from Colorado in all four directions. As the population grows in the states surrounding, as well as in Colorado, the conflicts in the rights to and use of water as between citizens of Colorado and citizens of Wyoming, Utah, New Mexico, and Kansas, likewise increase in numbers and in importance. Furthermore the reasonable and fair preservation for future increased use in Colorado of waters arising within our borders, which is not now put to beneficial use here and is flowing from Colorado into all these other states, is of paramount importance. Were Southern California allowed to prosecute her claims and demands for water in the Colorado River unrestricted, the future citizens of Colorado would not have the right to use much more of these waters which arise within our state than are now appropriated, because Southern California has more than double the population of Colorado, is wealthy, has great need for water to appropriate, and is ready to spend all the money necessary to get the water she wants.

It was hoped that the Colorado River Compact settled the division of the waters of the Colorado River fairly and for all time to come, but the case which Arizona has started in the United States Supreme Court against Colorado, the five other Colorado River States, and the Federal Department threatens all that was accomplished by the compact. The magnitude and importance of the defense of this case is apparent. The Attorney General is now actively defending Colorado's present and future right to water that is flowing out of Colorado into Kansas in the Arkansas River, into Wyoming in the Laramie River, into New Mexico in the La Plata River, into Utah in the Colorado River.

Unfortunately the defense of Colorado's rights in this regard is expensive and doubly so for we must defend ourselves against so many, and at a time when all savings should be made in public expenditures which are compatible with good judgment. It is impossible for one who has not participated in cases of this kind to realize the task they entail and volume of printed matters necessary in their preparation.

LEGISLATIVE REFERENCE OFFICE

The Legislative Reference Office was established by an act of the General Assembly approved May 6th, 1927 (Chapter 124, Session Laws of Colorado, 1927). The major services of the office are three: Legislative reference work, bill drafting and revision of statutes.

This branch of the Attorney General's staff has functioned for some months and has helped the efficiency given the legislature and those desiring to draft bills to present to the General Assembly.

The coming session of the Legislature is the first since the organization of the office, consequently there is not as much to report as there would, if it were older. However, what has been accomplished already forecasts the bigger service which this department will be able to render the state in the future by the addition of this office. Formerly the general work of the Attorney General's office was seriously delayed during legislative sessions.

GASOLINE TAX

The increase in the tax on gasoline has added to the duties of the office. This in the administration of the law as well as in the litigation to collect the tax. Constant care has been exercised to protect the state to the end that the revenue due from this source should not suffer depletion. Suits have been brought to recover delinquent gasoline taxes. In most cases these have been successful. Where the facts justified, the violator has been prosecuted and convicted. "Gasoline price wars" have caused some of the trouble.

Before these price cutting escapades cease in a community some individuals are bankrupt, and at the time they are forced out of business owe the state some tax and have nothing out of which the same can be realized. When considerable gasoline is sold the amount of tax due each month is material. The tax for one month is not due by law until the 25th of the following month, thus permitting nearly two months to pass with no legal provision for a check on the tax due.

The amount of the bond required by law to be given by a gasoline vendor is too small in the case of the large operator, with but small capital invested.

HIGHWAY MATTERS

Many difficult problems for the highway department are disposed of each year. Litigation and disputes constantly arise over right of way as well as administrative legal questions which demand particular attention from this office. Several millions of tax money are expended on the development and maintenance of state highways each year. Great care has been rendered by this office to assist that department in every way as needed.

PUBLIC UTILITIES

Public Utilities litigation has been important and included more especially

Participation in the application of the C. & S. Ry. Co. to abandon its Platte Canon line of railroad, including oral argument before the I. C. C. at Washington, D. C. Although the application was successfully opposed, permission was granted to renew it after three years, during which time it is the express duty of all parties concerned, including the State, to effectuate any possible economies for saving the line. The I. C. C. suggested that the State of Colorado, as other states have done in similar cases, might reduce or even eliminate taxation of this line.

Preparation of the case of the P. U. C., etc. v. the City of Loveland, 289 Pac. 1090, in which the Colorado Supreme Court pronounced the effectiveness of the Commission's orders.

Preparation of the case of the People v. Swena, now pending in the Supreme Court. This is a test case to determine the constitutionality of Sec. 2975 (a) C. L. 1921.

Preparation of the case of Cox v. the State of Colorado in the U. S. Supreme Court in which the appellant, Cox, attacked the constitutionality of our Public Utilities Act, and in which, after oral argument before the court, the State of Colorado was sustained and the appeal dismissed.

SCHOOL QUESTIONS

The laws governing the public school system of the state are quite involved and are continually being amended so that the administrative legal questions submitted to this office are highly technical and receive constant attention. The opinions on these questions shown in this volume represent but a small portion of the work performed.

PUBLIC SCHOOL LANDS AND FUND

There is considerable legal work done by this office in connection with the leasing and sale of school lands to protect the interests of the state, including actions for the recovery of delinquent rentals and actions to recover possession of state lands. Likewise the loaning of the school fund on real estate security requires continual vigilance in the examination of abstracts to protect the state with good titles as security. The bonds which are purchased with this fund have to be examined as to correctness of the legal procedure under which they are issued before the money is invested.

The act validating certificates of purchase and patents, containing a reservation of the mineral rights, is being tested in two cases now before the Supreme Court.

CRIMINAL CASES

The criminal appeals handled by this office before the Supreme Court as tabulated on the following pages show a good record and represent a great deal of time and work in the preparation of brief and abstracts.

WORKMEN'S COMPENSATION

The legal service rendered by this office to the Industrial Commission is not only voluminous but requires attention at all times. Much success in this branch of the work is reflected in the cases tabulated in this report.

INHERITANCE TAX

Through this department there has been collected during the last biennial period from December 1, 1928, to December 1, 1930, the total sum of $2,064,986.20, which is the largest sum collected during any biennium since this department was instituted.

The expense of this department for the same period amounts to the sum of $46.347.30, which is substantially less than the expense has been for any other biennium since the enactment of the Inheritance Tax Act of 1921. This expense is 2.2+ per cent of the amount collected.

The appropriation made by the last General Assembly for the expense of the Inheritance Tax Department, exclusive of salaries, for the period from December 1, 1928, to July 1, 1931, was $25,000.00 plus an emergency fund of $3,000.00. Of this appropriation we have expended $16,047.30 to December 1, 1930.

The refunds of taxes made under order of court for the biennium amount to $8,957.00.

The collections for the biennial period may be tabulated as follows:

Number of Treasurer's Receipts issued on estates examined, being receipts numbered 44963 to 51965, both inclusive	7,003
Receipts issued on estates paying tax	1,039
Receipts issued on estates paying $1.00 waiver fee	3,510
Receipts issued on estates paying $3.00 waiver fee	721
Receipts issued on estates paying $5.00 waiver fee	1,356
Receipts issued on estates paying $10.00 waiver fee	331
Receipts issued on estates paying additional fees	45
Number of estates paying $10.00 examination fee, these being included in certain of the above mentioned receipts	796

Attached hereto is a graphic comparison of inheritance taxes collected in each of the fifteen biennial periods since the first inheritance tax law went into effect.

Civil Service hearings and the hearings of other boards have required their share of legal assistance from this office; likewise, have the hearings on extradition and requisition received prompt attention of this office at all times.

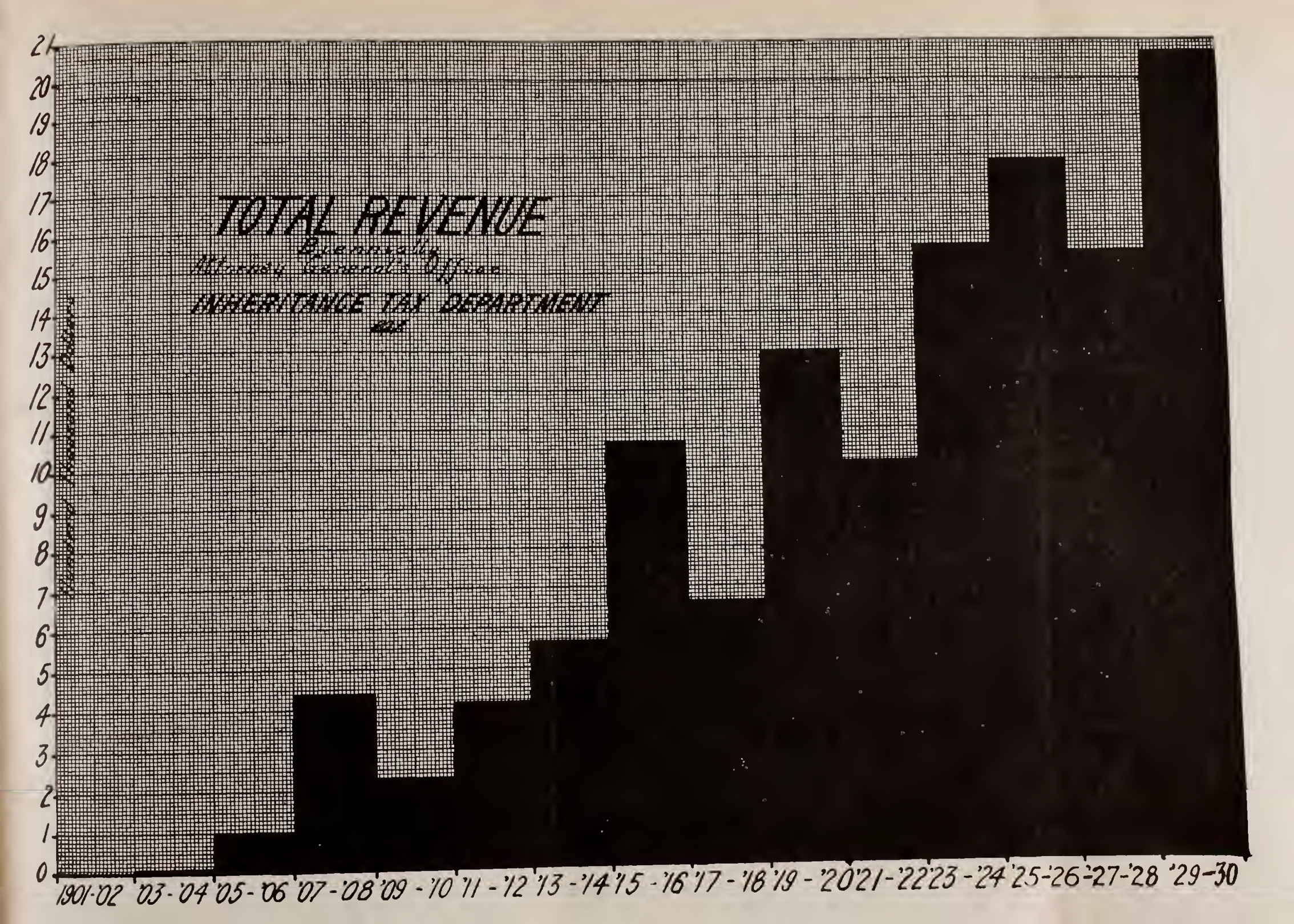
While some of the matters which have received the attention of the state legal department have been of paramount importance to the state in the functioning of its government and seem to have taken the foreground of public interest, yet the major portion of the work of this department, though not so powerful in its appeal generally, has been, nevertheless, voluminous and indispensable to state government as established by our laws.

This report does not contain as many opinions as some of the reports in the past but only the most important have been here edited.

The members of the staff in this department have co-operated at all times, have rendered their best to the state and their record speaks for itself. This office has felt the friendliness of all our state departments and has enjoyed their co-operation.

Respectfully submitted,

CLARENCE L. IRELAND,
Attorney General.


TOTAL REVENUE
Collected by
Attorney General's Office
INHERITANCE TAX DEPARTMENT
Millions of Dollars
0
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
1901-'02
'03-'04
'05-'06
'07-'08
'09-'10
'11-'12
'13-'14
'15-'16
'17-'18
'19-'20
'21-'22
'23-'24
'25-'26
'27-'28
'29-'30

SCHEDULE II

LIST OF ALL PENDING AND DISPOSED CASES, IN ALL COURTS

1929-1930

CASES IN THE SUPREME COURT OF THE UNITED STATES

No. 12. October term, 1924. State of New Mexico v. State of Colorado.

Original proceeding to establish southern boundary of Colorado and northern boundary of New Mexico. Decision of Supreme Court handed down January 26, 1926, sustaining Colorado's contention that the line of the Darling survey was the true boundary and ordering that the said line be resurveyed at the joint expense of New Mexico and Colorado. The survey is now in progress.

No. 15. Original. October term, 1927. State of Colorado v. State of Kansas, et al.

Original proceeding to determine rights of the parties to water in the Arkansas River. Evidence being taken as and when commissioner directs. Pending.

Painless Parker v. The People.

Application for Writ of Certiorari. Relief from No. 21050 Colorado Supreme Court. Writ denied October 22, 1929.

No. 524. Harvey Cox v. People of the State of Colorado.

Appeal from Colorado Supreme Court No. 12485 on application for Writ of Habeas Corpus. Hearing held and case dismissed December 1, 1930.

No. 525. Harvey Cox v. People of the State of Colorado.

Appeal from United States District Court No. 9083. Dismissed for lack of jurisdiction April 21, 1930.

No. 526. Harvey Cox v. People of the State of Colorado.

Appeal from the United States District Court No. 9076. Dismissed for lack of jurisdiction April 21, 1930.

No. 639. Union Pacific Railroad Company v. Board of County Commissioners of the County of Weld.

Writ of Certiorari from Circuit Court of Appeals No. 96. Denied.

No. 640. Atchison, Topeka and Santa Fe Ry. Co. v. Board of County Commissioners, of the County of Prowers.

Writ of Certiorari from Circuit Court of Appeals No. 123. Denied.

No. 915. Goldsmith v. Standard Chemical Company.

Writ of Certiorari denied.

No. 19. October term, 1930. State of Arizona v. California, Nevada, New Mexico, Colorado, Utah, Wyoming and Ray Lyman Wilbur, Secretary of Interior.

Suit for interpretation of Colorado River compact and construction of Boulder Dam. Pending.

No. 20. October term, 1930. State of Wyoming v. State of Colorado.

Interpret construction of former Wyoming-Colorado decree to enjoin use of waters of Laramie River. Pending.

CASES IN THE UNITED STATES CIRCUIT COURT OF APPEALS

No. 96. Union Pacific Railroad Company v. Board of County Commissioners of the County of Weld.

Judgment sustaining defendant's demurrer reversed. District Court No. 8718. Case remanded to the United States District Court for trial, where answer was filed and plaintiff's motion for judgment on the pleadings granted. Pending on appeal to this Court.

No. 97. Denver Tramway Company v. City and County of Denver.

Judgment sustaining defendant's demurrer reversed; case remanded to the United States District Court for trial, where answer was filed and plaintiff's motion for judgment on the pleadings granted. Pending on appeal to this court.

No. 123. Atchison, Topeka and Santa Fe R. R. Co. v. Board of County Commissioners of the County of Prowers.

Judgment reversed, sustaining defendant's demurrer. Rehearing denied. Writ of Certiorari United States Supreme Court No. 639 denied. Case remanded to the United States District Court for trial, where answer was filed and plaintiff's motion for judgment on the pleadings granted; pending on appeal to this court. U. S. Supreme Court No. 8767.

No. 140. People v. Victor-American Company.

Action to cover royalties due under coal land leases. Appealed from the United States District Court No. 8777. Settled January 17, 1930.

No. 8022. Bankers Life Company v. Jackson Cochrane, et al.

Action to recover tax paid under protest. Judgment for plaintiff appealed from United States District Court, No. 8372.

No. 8372. Bankers Life Company v. Jackson Cochrane, et al.

Action to recover tax paid under protest. Judgment for plaintiff. Appealed to the United States Circuit Court of Appeals, No. 8022.

CASES IN THE UNITED STATES DISTRICT COURT

No. 8730. Town of Georgetown v. Colorado & Southern Railway Company.

Injunction to prevent abandonment of Clear Creek Canon line. Case dismissed.

No. 8777. People v. Victor-American Company.

Action to recover royalties due under coal land leases. Removed from Denver District Court. Demurrer of defendant sustained. Appealed to the United States Circuit Court of Appeals No. 140. Case settled January 17, 1930.

No. 8900. The Baltimore Butterine Company v. Adams, Winbourn and Morton.

Injunction against enforcement of Oleomargarine Law. Temporary injunction issued, but later dissolved. Pending.

No. 8901. Ed. S. Vail Butterine Company v. Adams, et al.

Injunction against enforcement of Oleomargarine Law. Temporary injunction issued, but later dissolved. Pending.

No. 8904. The Harrow-Taylor Company v. Adams, et al.

Injunction against enforcement of Oleomargarine Law. Temporary injunction issued, but later dissolved. Pending.

No. 8918. Olson Food Products Company v. Adams, et al.

Injunction against enforcement of Oleomargarine Law. Temporary injunction issued, but later dissolved. Pending.

No. 9083. Harvey Cox v. People.

Application for Writ of Habeas Corpus as relief from judgment in No. 106046, Denver District Court, denied October 14, 1929. Appealed to the United States Supreme Court No. 525 and there dismissed for lack of jurisdiction on April 21, 1930.

No. 9076. Harvey Cox v. People.

Transcript of No. 106046, Denver District Court to remove same to Federal Court. Remanded to State Court on October 14, 1929. Appealed to the United States Supreme Court No. 526, where dismissed for lack of jurisdiction on April 21, 1930.

No. 8718. Union Pacific Railroad Company v. Board of County Commissioners of Weld County.

Action to recover taxes paid under protest. Demurrer of defendant sustained. Appealed to the United States Circuit Court of Appeals, No. 96, where judgment was reversed and cause remanded to the United States District Court. Petition for rehearing there denied. Writ of Certiorari to United States Supreme Court, No. 639, denied. Thereupon answer filed in United States District Court, where judgment for railroad company was entered on motion for judgment on pleadings, Sept. 17, 1930. Pending on appeal from such judgment to the United States Circuit Court of Appeals.

No. 8765. The Denver Tramway Company v. City and County of Denver.

Action to recover taxes paid under protest. Demurrer to complaint sustained. Appealed to the United States Circuit Court of Appeals, No. 97, where judgment was reversed and cause remanded. Rehearing denied. Case remanded to the United States District Court for trial. Answer filed and plaintiff's motion for judgment on pleading granted. Pending on appeal to the United States Circuit Court of Appeals.

No. 8767. Atchison, Topeka and Santa Fe Ry. Co. v. Board of County Commissioners of the County of Prowers.

Action to recover taxes paid under protest. Demurrer of Defendant sustained. Appealed to the United States Circuit Court of Appeals, No. 123, where judgment was reversed and cause

remanded to the United States District Court. Petition for rehearing there denied. Writ of Certiorari to United States Supreme Court, No. 640, denied. Thereupon answed filed in the United States District Court, where judgment for railroad company was entered on motion for judgment on pleadings, September 17, 1930. Pending on appeal from such judgment to the United States Circuit Court of Appeals.

THE FOLLOWING CASES ARE PENDING OUTCOME OF THE THREE LAST ABOVE TAX CASES:

No. 8719. Atchison, Topeka and Santa Fe Ry. Co. v. Otero County.

No. 8720. Atchison, Topeka and Santa Fe Ry. Co. v. Bent County.

TRANSCRIPT OF DOCKET CASES BEFORE INTERSTATE COMMERCE COMMISSION

17000. Rate structure investigation. Part 2. Western Trunk line Class Rates. Ex Parte No. 87. Sub. 1. Class Rates within Western Trunk Line territory. Attorney for Commission attended hearings at Chicago and Denver, and presented evidence at Denver. Pending.

17000. Part 9. Rate structure investigation. Livestock. Western District rates. Attorney for Commission attended hearings at Salt Lake City, Kansas City and Chicago. Pending.

17000. Part 7. Rate structure investigation. Grain and grain products within western district and for export. Attorney for Commission attended hearings at Dallas, Texas, and Chicago, Illinois. Pending.

13535 and 17166. Petition filed on behalf of Commission to institute investigation of rates on potatoes in cases numbered above and that effective dates of prior orders be postponed. Pending.

Finance Docket No. 7092. Application of the City and County of Denver for a certificate authorizing the Colorado and Southern Railway Company to relocate a part of its Platte Canon line. Dismissed.

Finance Docket No. 7132. Application of Colorado and Southern Railway Company to abandon part of its Platte Canon line. Denied with privilege to renew its application in three years.

8070. Application of Denver & Rio Grande Western for an order authorizing the acquisition of D. & S. L. Ry. (Moffat Road). Pending.

CIVIL CASES IN THE SUPREME COURT OF COLORADO

No. 11969. The Antlers Athletic Association v. Hartung, et al.

Action to review order of the District Court of the City and County of Denver, refusing to restrain the enforcement of the 1927 act regulating boxing. Judgment affirmed December 31, 1928.

No. 12000. Ireland v. Collins.

Petition in behalf of State Tax Commission to intervene on petition for rehearing. Rehearing denied.

No. 12043. Rio Oil and Supply Company, a corporation v. James Duce as State Inspector of Oils, et al.

Injunction to restrain oil inspector, attorney general, state treasurer and state auditor from collecting gasoline taxes under the 1927 law. Judgment affirmed February 27, 1929.

No. 12050. Painless Parker, et al. v. State Board of Dental Examiners.

Quo warranto (No. 29242 and 99010 Denver District Court) action against a dental corporation for practicing without a license. Judgment of dismissal reversed March 4, 1929. Writ of Certiorari to the United States Supreme Court denied October 22, 1929.

No. 12059. People v. City and County of Denver.

Suit to have gasoline tax imposed by the Act of 1923 declared a lien prior to general personal property taxes levied and assessed by the City and County of Denver against a gasoline dealer. Judgment for city reversed and money paid to State.

No. 12089. Emily Johnson, et al. v. Colorado Bureau of Child and Animal Protection.

Action brought by heirs of Fred H. Forrester to set aside Forrester's will making a residuary bequest of the sum of $120,000.00 to the State Bureau of Child and Animal Protection. Writ of Error to Denver County Court which upheld the will. Affirmed July 1, 1929.

No. 12108. People, ex rel. Mahurin, et al. v. State Board of Dental Examiners.

Decided March 4, 1929, on petition for writ of prohibition to restrain the Board of Dental Examiners from revoking licenses. Petition dismissed. Affirmed. (District Court No. 100696.)

No. 12145. Industrial Commission v. Continental Investment Company.

Action to recover a penalty. Demurrer to answer overruled

and case dismissed by the District Court of the City and County of Denver. Judgment affirmed.

No. 12185. People v. The Texas Company, a corporation.

Action to collect penalty of three cents per gallon on gasoline because of failure of the Texas Company to pay its tax in full within the time prescribed by the 1927 Act. February 27, 1929. Judgment reversed.

No. 12199. Ray R. Lindsley v. W. J. Werner.

Replevin by mortgagee of confiscated automobile. Attorney General appeared as amicus curiae. Judgment for defendant affirmed.

No. 12245. Industrial Commission v. The People, ex rel. Metz.

Action in mandamus to require the Industrial Commission to "promulgate and announce its final award and decision in the matter of" its investigation into the question of wages in the coal mines of this state during the period December 19, 1927, to March, 1928. Writ of Error to order of the District Court of the City and County of Denver awarding judgment on the pleadings against the Industrial Commission and ordering the issuance of a writ of peremptory mandamus. Reversed with instructions, October 21, 1929.

No. 12254. Public Utilities Commission, et al. v. City of Loveland.

Action to review an order of the Public Utilities Commission. Error to the District Court of Larimer County. Judgment reversed June 10, 1930.

No. 12356. Gillette v. Rice.

Mandamus. Judgment for plaintiff affirmed June 24, 1929.

No. 12397. Johnson v. Pettijohn.

Confiscation of fish seine. Petition for rehearing denied. Supersedeas denied July, 1929.

No. 12417. State v. Driscoll.

Action to reverse injunction interfering with oil lease on state land. District Court of Routt County, No. 1816. Pending.

No. 12485. Harvey Cox v. People of the State of Colorado.

Application for Writ of Habeas Corpus seeking relief from sentence in District Court case No. 106046, denied October 16, 1929. Appealed to the United States Supreme Court, No. 524, where hearing was held and case dismissed on December 1, 1930.

No. 12507. Board of County Commissioners of Boulder County v. Union Pacific Railroad Company.

Tax assessment case. Pending.

No. 12513. Continental Mutual Insurance Company v. Jackson Cochrane.

Action pending on declaratory judgment fixing rights of policy holders. Denver District Court, No. 105709.

No. 12518. Frank S. Hoag v. State Civil Service Commission.

Judgment for plaintiff affirmed. District Court No. 105974. Attorney General acted in advisory capacity only.

No. 12527. People ex rel. v. District Court of Boulder.

Application for Writ of Prohibition. Writ granted April 21, 1930.

No. 12562. People v. M. B. Swena (P. U. C.).

Money demand. Appeal from judgment for defendant. Denver District Court No. 105046. Pending.

No. 12574. People v. Miller.

Oil Tax Case. Pending.

No. 12602. The People v. Stephen F. Thomas.

Contempt of court. Respondent adjudged guilty. Order of commitment December 11, 1930. Pending on motion for rehearing.

No. 12624. People v. County Commissioners of Weld County.

Suit for collection of oil tax. Pending.

No. 12627. People v. Stanley.

Appeal by the people from a judgment for the defendant to test the constitutionality of the melon inspection act. Pending.

No. 12661. Civil Service Commission v. The People ex rel. Beates.

Re certification of classified civil service. Pending.

No. 12666. State Board of Dental Examiners v. B. G. Savelle.

Writ of Error, Denver District Court, No. 107296. Pending.

No. 12667. State Board of Dental Examiners v. A. W. Heitler.

Writ of Error, Denver District Court, No. 107297. Pending.

No. 12668. State Board of Dental Examiners v. John H. Miller.

Writ of Error, Denver District Court No. 107299. Pending.

No. 12669. State Board of Dental Examiners v. Charles W. Patch.

Writ of Error, Denver District Court, No. 107298. Pending.

No. 12670. State Board of Dental Examiners v. Joseph R. Walsh.

Writ of Error, Denver District Court, No. 107295. Pending.

No. 12671. Raymond Miller, W. R. Murphy and Arthur King as State Land Board vs. Limon National Bank.

Action by bank to recover from State Land Board $1,669.20. Action test validating act brought under declaratory judgment statute. Writ of Error Denver District Court, No. 98288. Pending.

No. 126790. People v. City and County of Denver.

Collection of oil tax. Pending.

No. 12704. County Commissioners v. Lavington.

Suit for refund of taxes. Error to the District Court of Washington County. Pending.

No. 12711. Board of Livestock Commissioners v. Esser.

Dispute over value of livestock sold by livestock board as estrays. Pending.

No. 12735. Eastenes v. Adams, et al.

Appeal from judgment of Weld County District Court, No. 7549, dismissing complaint. Pending.

No. 12736. Hinderlider, et al. v. Everett, et al.

Writ of Error in Chaffee County District Court, No. ..... on judgment restraining supervision of upper Arkansas.

No. 12746. Katherine L. Craig v. People, ex rel. Hazzard, et al.

Writ of Error from Adams County District Court No. 2856. Pending.

State Normal School v. Wightman.

Writ of Error to review judgment for plaintiff for salary. Bill of Exceptions signed. Pending.

CRIMINAL CASES IN SUPREME COURT OF COLORADO

No.	Title	Crime
12123	Wilder v. People	Violation Still Law
12128	Humrich v. People	False Pretenses
12133	Phenneger v. People	Embezzlement
12136	Dillard v. People	Violation Still Law
12148	Osgood v. People	Assault
12221	Sweek v. People	Larceny
12327	Ives v. People	Murder
12334	Bunch v. People	Aggravated Robbery
12336	Cockroft v. People	Violation Liquor Law
12343	Stewart v. People	Confidence Game
12350	Hamilton v. People	Confidence Game
12371	Bowen v. People	Indecent Liberties
12395	Ewing v. People	Rape
12399	Critchfield v. People	Larceny of Livestock
12405	Ball v. People	Rape
12418	Weiss v. People	Murder
12426	Kind v. People	Murder
12441	Wilkinson v. People	Rape
12432	Terwilliger v. People	Juvenile Delinquency
12453	Wilkins v. People	Violation Liquor Law
12493	Herrera v. People	Murder
12525	Porter v. People	Violation Liquor Law
12528	Garcia v. People	Receiving Stolen Property
12558	Abshier v. People	Murder
12560	Adams v. People	2nd Violation Liquor Law
12572	Lasasso v. People	Statutory Rape
12576	Funk et al., v. People	Robbery With Gun
12580	Fleagle v. People	Murder
12595	Diehl v. People	Violation Liquor Law
12599	Royston v. People	Murder
12614	Leighton and Scott v. People	Aggravated Robbery
12636	Moya v. People	Murder
12651	Kolkman v. People	Grand Larceny
12673	Lord v. People	Juvenile Delinquency
12684	Walker, Ray and Halladay	Murder
12685	Wolfe v. People	Gambling
12689	Copp v. People	Second Violation Liquor Law
12694	Lackey et al., v. People	Possession of Still
12726	Crane and Flynn v. People	Petition for Bale

CRIMINAL CASES IN SUPREME COURT OF COLORADO

Supersedeas	Disposition
Allowed	Affirmed April 29, 1929
Denied	Dismissed March 8, 1929
Allowed	Affirmed March 11, 1929
Denied	Dismissed October 19, 1929
No application	Reversed May 27, 1929
No action	Affirmed April 15, 1929
Allowed	Affirmed June 3, 1929
Denied	Affirmed January 20, 1930
Denied	Dismissed April 26, 1929
Denied	Affirmed December 2, 1929
Denied	Affirmed April 21, 1930
Denied	Affirmed January 27, 1930
Denied	Affirmed January 20, 1930
No application	Pending
Denied	Affirmed October 21, 1929
Allowed	Affirmed February 3, 1930
Denied	Affirmed January 20, 1930
Denied	Affirmed November 4, 1929
.....	Pending
Denied	Affirmed October 28, 1929
Allowed	Affirmed April 28, 1930
Denied	Affirmed February 10, 1930
Allowed	Pending
Allowed	Affirmed June 9, 1930
Denied	Affirmed March 10, 1930
Denied	Affirmed April 30, 1930
No application	Pending
Allowed	Affirmed June 9, 1930
Denied	Dismissed September 8, 1930
Allowed	Affirmed June 30, 1930
Allowed	Reversed June 30, 1930
Allowed	Affirmed
Allowed	Pending
.....	Pending
Allowed	Pending
Allowed	Pending
Withdrawn	Pending
Denied	Pending
Denied	Pending

DISBARMENT CASES IN THE STATE SUPREME COURT OF COLORADO

No. 12130. The People ex rel. v. Ben. B. Lindsey.
Order of disbarment entered December 9, 1929.

No. 12423. The People ex rel. v. George J. Humbert.
Order of disbarment entered November 12, 1929.

No. 12469. The People ex rel. v. H. N. Marshall.
Pending.

No. 12515. The People ex rel. v. Jean D. Kelley.
Order suspending respondent indefinitely entered February 10, 1930.

No. 12519. The People ex rel. v. Charles Ginsberg.
Order suspending respondent for one year, entered February 17, 1930.

No. 12520. The People ex rel. v. Samuel Winograd.
Order suspending respondent indefinitely entered May 5, 1930.

No. 12543. The People ex rel. v. James W. Kelley.
Pending.

No. 12547. The People ex rel. v. J. H. Boutcher.
Pending.

No. 15448. The People ex rel. v. Granby Hillyer.
Pending.

No. 12591. The People ex rel. v. Ivan A. Allen.
Pending.

No. 12592. The People ex rel. v. John G. Powell.
Order entered disbarring respondent entered May 5, 1930.

No. 12593. The People ex rel. v. Charles E. Roberts.
Pending.

No. 12652. The People ex rel. v. Allen Warren.
Pending.

No. 12716. The People ex rel. v. S. J. Castleman.
Order of commitment entered December 6, 1930. Pending.

No. 12745. The People ex rel. v. Sam Nikkel.
Pending on motion for judgment on the pleadings.

WORKMEN'S COMPENSATION CASES IN THE SUPREME COURT OF COLORADO

No.	Title of Cause	Judgment of Lower Court	Status
12083	S. E. French v. Industrial Commission and Theodore Rowley	Award Affirmed	Judgment Affirmed January 7, 1929
12112	John I. Robinson v. Industrial Commission and Colorado Fuel & Iron Company	Award Reversed	Judgment Reversed February 18, 1929
12114	Smart, et al. v. Radetsky, et al.	Award Affirmed	Judgment Affirmed May 27, 1929
12114	Hazelton, et al. v. Radetsky, et al.	Award Affirmed	Judgment Affirmed May 27, 1929
12229	John Thompson Grocery Stores Company, et al. v. Industrial Commission	Award Affirmed	Judgment Reversed December 6, 1929
12236	C. F. & I. Co. v. Industrial Commission and Medina	Award Sustained	Judgment Affirmed February 4, 1929
12251	Employers' Mutual Insurance Company, et al. v. Industrial Commission, et al	Award Affirmed	Judgment Affirmed March 18, 1929
12280	Employers' Mutual Insurance Company, et al. v. Industrial Commission	Award Affirmed	Judgment Affirmed May 6, 1929
12282	New Jersey Company, et al. v. Richey, et al	Award Affirmed	Judgment Affirmed March 18, 1929
12320	Comerford v. Carr, et al	Award Affirmed	Judgment Affirmed January 6, 1930
12333	Maryland Casualty Company, et al. v. Industrial Commission, et al.	Award Affirmed	Judgment Affirmed December 23, 1929
12335	Ontario Mining Company v. Industrial Commission, et al	Award Affirmed	Judgment Affirmed June 17, 1929
12345	Beatrice Creamery Company, et al. v. Standley, et al	Award Affirmed	Judgment Affirmed September 23, 1929
12347	New York Indemnity Co., et al. v. Industrial Commission, et al	Award Affirmed	Judgment Affirmed October 14, 1929
12428	A. M. Platt, Inc., et al. v. Reynolds, et al	Award Affirmed	Judgment Reversed October 28, 1929
12436	New Jersey Company v. Patterson	Award Affirmed	Judgment Affirmed December 23, 1929
12484	Guidetti v. Industrial Commission, et al	Award Affirmed	Judgment Affirmed December 23, 1929

No.	Title of Cause	Judgment of Lower Court	Status
12489	Greeley Gas & Fuel Co., et al. v. Thomas, et al.	Award Affirmed	Judgment Affirmed June 16, 1930
12512	McKnight v. Houck, et al.	Award Affirmed	Judgment Affirmed March 17, 1930
12514	Connell v. Continental Casualty Company, and I. C.	Action to set aside default judgment.	Motion to Dismiss Appeal Denied March 24, 1930
12514	Connell v. Continental Casualty Company, and I. C.	Action to set aside default judgment. Denied	Judgment Affirmed June 23, 1930
12598	Devereaux, et al. v. Industrial Commission, et al.	Award Affirmed	Judgment Affirmed June 30, 1930
12613	Aetna Life Insurance Co., et al. v. I. C. and Rose Mitchell, et al.	Award Reversed	Judgment Reversed September 29, 1930
12663	Industrial Commission, et al. v. Mrs. Chester L. Diveley	Award Reversed	Judgment Reversed November 24, 1930 and Motion for a Rehearing Pending
12674	Royal Indemnity Company, et al. v. Industrial Commission, et al.	Award Affirmed	Judgment Affirmed November 24, 1930
12696	Tyler, et al. v. George Hagerman and I. C.	Award Affirmed	Judgment Reversed with Directions September 22, 1930
12760	Grimm v. U. S. Fidelity & Guaranty Co., et al.	Award Reversed	Pending in Supreme Court

CASES IN THE DISTRICT COURTS

Adams County

Union Pacific Railroad Co. v. County Commissioners of Adams County.

Suit to recover alleged excessive taxes. Pending.

No. 2747. Fellows v. County Commissioners.

Survey of county boundaries. Survey completed.

No. 2856. People, ex rel. Hazzard, et al. v. Craig.

Mandamus to compel distribution of school income fund. November, 1930, judgment sustaining demurrer appealed to the Supreme Court.

Arapahoe County

Colorado Central Power Co. v. Colorado Tax Commission.

Action for refund of taxes pending.

Colorado Central Power Co. v. Colorado Tax Commission.

Action for refund of taxes. Pending.

No. 2339. Atchison, Topeka & Santa Fe Railway Co. v. County Commissioners of Arapahoe County.

Suit to recover alleged excessive taxes. Pending.

Union Pacific Railroad Co. v. County Commissioners of Arapahoe County.

Action to recover excessive taxes. Pending.

Baca County

Bordner v. County Commissioners.

Suit to recover taxes. Demurrer to complaint sustained. Plaintiff elects to stand on complaint. Dismissed July 8, 1929.

Bent County

Stanley Fruit Company v. Wasson.

Injunction against enforcement of melon inspection act. Temporary injunction granted. Pending.

Boulder County

No. 8704. People v. Zener.

Action to recover three-cent gasoline tax and penalties. Pending.

No. 8705. People v. Clark H. Clark.

Action to recover three-cent gasoline tax and penalty. Pending on final settlement of assignee for benefit of creditors.

No. 8709. In the matter of the assignment of Clark H. Clark doing business as Boulder Auto Wrecking Company. State Gas Tax allowed as preferred claim and paid to amount of total assets.

No. 8799. Union Pacific Railroad Co. v. County Commissioners of Boulder County.

Action to recover alleged excessive taxes. Pending.

No. 8949. Equalization Board of Boulder County v. Colorado Tax Commission, et al.

Injunction. Order directing Tax Commission to certifying findings of County Boards. Pending.

No. 8963. People ex rel. County Commissioners v. Colorado Tax Commission and County Assessor.

Injunction. Defendants' demurrer overruled. Appeal to Supreme Court No. 12527, for writ of prohibition.

No. 9041. Boulder National Bank v. Boulder County.

Action for refund of taxes. Pending.

Chaffee County

No. 2962. J. H. Habenicht v. M. C. Hinderlider, State Engineer, et al.

Action to restrain State Engineer from issuing order requiring headgates. Dismissed July 14, 1930.

Everett, et al. v. Hinderlider.

Injunction to restrain water supervision as to upper Arkansas River. Permanent injunction granted September 2, 1930. Appealed to Supreme Court No. 12736.

Cheyenne County

Union Pacific Railroad Co. v. County Commissioners of Cheyenne County.

Action to recover alleged excessive taxes. Pending.

Clear Creek County

E. M. Patrick v. Board of County Commissioners.

Action to recover taxes. Pending.

Denver County

No. 29242. Painless Parker, et al. v. State Board of Dental Examiners.

Judgment of dismissal reversed by Supreme Court No. 12050.

No. 96617. People v. Union Mutual Insurance Company.

Receivership action to dissolve insurance company. Receiver discharged. Company dissolved. Operations ceased.

No. 97513. People v. H. J. Nance.

Action to recover one-cent and two-cent gasoline tax. Claim paid and case dismissed.

No. 97797. The Madsen Construction Company v. L. D. Blauvelt.

Action in mandamus to compel allowance of claim for extra labor and material alleged to have been furnished by plaintiff on Federal Aid Project No. 283B. Demurrer sustained.

No. 97953. People v. Shield Oil Company.

Action to recover two-cent gasoline tax. Receiver appointed and discharged after making final report and paying net receipts into court. Appealed to Supreme Court, No. 12059. Judgment of priority of general over gasoline tax, there reversed and money paid to state.

No. 98288. Limon National Bank v. Raymond Miller, et al.

Declaratory judgment for plaintiff. Refund payments to State Land Board on cancelled certificate containing mineral reservations. Error to Supreme Court No. 12671.

No. 99010. Painless Parker, et al. v. State Board of Dental Examiners.

Judgment of dismissal reversed by Supreme Court, No. 12050.

No. 99076. Quincy Ricker National Bank and Trust Company v. Raymond Miller, et al.

Action to recover money paid on canceled certificates of purchase of state land. Pending outcome of No. 98288, supra.

No. 100017. People v. Zinn.

Action to recover three-cent gasoline tax penalties. Settled and dismissed.

No. 100447. Henry Bitter v. Charles Armstrong.

Mandamus concerning truck license as ash-hauler. Dismissed.

No. 100696. People, ex rel. Mahurin, et al. v. State Board of Dental Examiners.

Decided March 4, 1929, on petition for writ of prohibition to restrain the Board of Dental Examiners from revoking licenses.

Petition dismissed. Affirmed. Supreme Court No. 12108.

Beatrice Creamery Company v. Industrial Commission.

Appeal from decision of Industrial Commission affirmed. Appealed to Supreme Court, No. 12345.

Atchison & Santa Fe Railway Co. v. City and County of Denver.

Action to recover alleged excessive taxes. Pending.

Union Pacific Railroad Company v. City and County of Denver.

Action to recover alleged excessive taxes. Pending.

No. 102161. People, ex rel. Charles Metz v. Industrial Commission.

Mandamus to compel making of an award. Judgment for petitioner. Appealed to Supreme Court No. 12245. Judgment entered as per order of Supreme Court.

No. 102559. People v. Victor-American Fuel Company.

Action to recover royalties due under coal land leases. Removed to United States District Court, No. 8777. Demurrer sustained. Appealed to U. S. Circuit Court of Appeals No. 140.

No. 102560. People v. Colorado Fuel and Iron Company.

Action to recover royalties due on coal land leases. Settled upon amount of agreed judgment, January 25, 1930.

No. 102974. People v. Albin and Lindsey.

Action to recover three-cent gasoline tax. Judgment pending.

No. 103477. National Educational Association v. M. H. Alexander, Deputy Labor Commissioner.

Action in mandamus to require issuance of a license to an employment agency. Dismissed.

No. 103893. Union Mutual Insurance Company v. Cochrane.

Mandamus to compel restoration of certificate. Dismissed April 23, 1929.

No. 104807. The People v. Orenstein.

Injunction to restrain defendant from selling, or otherwise disposing of casing head gas without plainly labeling the same, as required by law. Temporary restraining order issued. Pending.

No. 105202. Condemnation suit affecting Museum Building.

Dismissed as to State.

No. 105211. Greenblatt v. State Board of Accountancy Mandamus.

Judgment for defendants January 31, 1930.

No. 105450. Henry Esser v. State Board of Stock Inspection Commissioners.

Wrongful conversion in sale of estrays. Judgment for plaintiff June 2, 1930. Appealed to Supreme Court, No. 12711.

No. 105699. The People v. Lowell, et al.

Action to collect rent for land board. Judgments against defendants, October 8, 1929.

No. 105709. Continental Mutual Insurance Company v. Cochrane.

Petition for declaratory judgment. Decree for plaintiff. Appealed, No. 12513. Pending in Supreme Court.

No. 105974. Frank S. Hoag v. State Civil Service Commission.

Judgment for plaintiff upholding his right to office as member of Board of Corrections. Writ of Error to Supreme Court. Judgment affirmed. The Attorney General acted in advisory capacity, only.

No. 106262. J. C. Johnson v. State Normal School (Western State College).

Defendants' demurrer overruled. Settlement pending.

No. 106538. Consolidated Fire & Marine Insurance Co. v. Cochrane.

Petition for receiver. Receiver appointed. Pending.

No. 106996. Lawrence v. Davidson, et al.

Suit to quiet title. Pending.

No. 107217. City and County of Denver v. Aschenaur. State of Colorado, et al.

Dismissed as to the state, November 9, 1929.

No. 107295. Walsh v. State Dental Board.

Writ of certiorari on revocation of license to practice dentistry. Judgment for plaintiff. Appealed to Supreme Court.

No. 107296. Savelle v. State Dental Board.

Writ of certiorari on revocation of license to practice dentistry. Judgment for plaintiff. Appealed to Supreme Court.

No. 107297. Heitler v. State Dental Board.

Writ of certiorari on revocation of license to practice dentistry. Judgment for plaintiff. Appealed to Supreme Court.

No. 107298. Patch v. State Dental Board.

Writ of certiorari on revocation of license to practice dentistry. Judgment for plaintiff. Appealed to Supreme Court.

No. 107299. Miller v. State Dental Board.

Writ of certiorari on revocation of license to practice dentistry. Judgment for plaintiff. Appealed to Supreme Court.

No. 107363. C. P. Link v. Civil Service Commission.

Mandamus for reinstatement to office. Pending.

No. 107842. People, ex rel. Beates v. Civil Service Commission.

Mandamus for certification to position in classified Civil Service. Peremptory writ issued. Appealed to Supreme Court, No. 12661.

No. 108618. Charles Hair Stores v. State Board of Barbers Examiners.

Recovery of license and examination fee paid under protest. Judgment for plaintiff, September 10, 1930.

No. 108464. Mongone v. State Boxing Commission.

Injunction to restrain Tax Commission from interfering with exhibition. Judgment for plaintiff, March 25, 1930.

No. 109854. City and County of Denver v. Card, State of Colorado, et al.

Dismissed as to State. August 16, 1930.

Filer v. Land Board.

Suit for declaratory judgment.. Pending.

No. 110145. Newman, et al. v. State Board of Health.

Action to restrain Board of Health from issuing plumbers' license. Dismissed without prejudice.

No. 110717. Sam Bernstein v. State of Colorado, et al.

Pending on demurrer.

Dolores County

Rio Grande Lumber Company v. County Commissioners.

Suit to recover taxes. Pending.

Douglas County

No. 1058. Atchison, Topeka & Santa Fe Railway Co. v. County Commissioners of Douglas County.

Action to recover alleged excessive taxes. Pending.

Elbert County

Union Pacific Railroad Company v. County Commissioners of Elbert County.

Action to recover alleged excessive taxes. Pending.

El Paso County

No. 783. Wood v. State Land Board.

Petition for survey. Pending.

No. 16169. State Highway Department v. Frank Hudson, et al.

Mandamus action to secure right of way for highway. Order for temporary possession entered. Pending.

No. 16629. State Highway Department, et al. v. A. W. Haigler, et al.

Action to condemn right of way for a highway. Order for temporary possession entered. Pending.

No. 16630. State Highway Department, et al. v. Florence Lindley, et al.

Action to condemn right of way for a highway. Order for temporary possession entered. Pending.

No. 16631. State Highway Department, et al. v. M. A. London, et al.

Action to condemn right of way for a highway. Order for temporary possession entered. Pending.

No. 16632. State Highway Department, et al. v. Willis Fiedler, et al.

Action to condemn certain lands for right of way for a highway. Order for temporary possession entered. Pending.

No. 16758. Atchison, Topeka & Santa Fe Railway Co. v. County Commissioners of El Paso County. Pending.

No. 17265. State Highway Department v. Smith, et al.

Condemnation for right of way. Order for temporary possession entered and judgment for plaintiff's valuation by jury paid.

No. 17266. State Highway Department v. Antonio Lucero, et al.

Condemnation for right of way. Order for temporary possession entered and judgment for plaintiff's valuation by jury paid.

County Commissioners and State Highway Department v. Foster.

Order for temporary possession issued. Pending.

No. 17587. Midland Terminal Railway Company v. Colorado Tax Commission.

Action for refund of taxes. Judgment finding value of Railway to be $583,908.00, February 24, 1930.

Fremont County

No. 4858. Atchison, Topeka & Santa Fe Railway Co. v. County Commissioners of Fremont County.

Action to recover alleged excessive taxes. Pending.

No. 4888. Cherokee & Pittsburgh v. Irish, Assessor, et al.

Recovery of taxes, October 4, 1929, stipulation for dismissal.

Garfield County

No. 2771. Standard Shale Company v. County Commissioners and State Tax Commission.

Action for refund of taxes. Pending.

Gunnison County

No. 1874. Wightman v. Trustee State Normal School.

Money demand on salary depending on whether contract existed for employment. Judgment for plaintiff July 31, 1930. Appeal to Supreme Court being prepared.

Jefferson County

People v. Irving, et al.

Injunction. Right of way. Decree in favor of plaintiff. July 16, 1929.

No. 3052. Agricultural Ditch & Reservoir Company, et al. v. Hinderlider.

Temporary injunction granted. Pending.

No. 3087. Morse v. School of Mines.

Suit for damages and salary $15,000. Verdict for plaintiff.

No. 3100. State Land Board v. Orr, et al.

Unlawful detainer. Pending re-surveying in separate suit.

No. 3124. Colorado Central Power Company v. Colorado Tax Commission.

Action for refund of taxes. Pending.

No. 3127. People v. Board of County Commissioners.

Action for re-survey of land. Pending.

Kiowa County

County Commissioners and State Highway Department v. Thayer, et al.

Action for right of way. Pending.

La Plata County

No. 4089. The La Plata River and Cherry Creek Ditch Company v. M. C. Hinderlider, State Engineer, et al.

Action to restrain engineer in distribution of water. Judgment for defendants, June 16, 1930.

Larimer County

No. 5780. Union Pacific Railroad Co. v. County Commissioners of Larimer County.

Action to recover alleged excessive taxes. Pending.

Paul Miller v. Game and Fish Commissioner.

Appeal from decision denying right to float ties down river. Pending.

Las Animas County

No. 11746. People v. John Zurowski.

Action to recover two-cent gasoline tax. About one-half paid and action still pending on the balance.

No. 12888. Lindsey Lumber Company v. M. L. Miller, et al.

Mechanic's lien against State Land. Judgment for plaintiff against the defendant, September 8, 1930.

Lincoln County

Union Pacific Railroad Co. v. County Commissioners of Lincoln County.

Action to recover alleged excessive taxes. Pending.

Logan County

Union Pacific Railroad Company v. County Commissioners of Logan County.

Action to recover alleged excessive taxes. Pending.

No. 5578. Industrial Commission v. Town of Fleming.

Action under Workmen's Compensation Law to recover premium due compensation fund. Settled by stipulation. Dismissed March 22, 1930.

Mesa County

No. 4983. The People, ex rel. v. Gillette.

Mandamus issued. Appealed to Supreme Court, No. 12356.

Montezuma County

No. 925. T. A. Schonberg, et al. v. Board of County Commissioners, et al.

Action to recover taxes. Pending.

In the Matter of Shares of stock of the Cortez Land & Securities Company.

Judgment for respondents, May 7, 1930.

Morgan County

No. 5259. Union Pacific Railroad Co. v. County Commissioners of Morgan County.

Action to recover alleged excessive taxes. Pending.

Park County

No. 1932. Miller v. Barkley, Water Commissioner.

Injunction to restrain use of water and for damages. Pending.

Pueblo County

No. 20407. People v. Stanley Fruit Company.

Action to collect melon inspection fees. Pending.

County Commissioners and State Highway Department v. Clark.

Condemnation action. Order for temporary possession entered June 18, 1931. Decided for plaintiffs.

Board of County Commissioners v. State Board of Land Commissioners.

Action to condemn state land. Pending.

No. 20616. Atchison, Topeka & Santa Fe Railway Co. v. County Commissioners of Pueblo County.

Action to recover excessive taxes. Pending.

No. 20756. People v. Stanley Fruit Company.

Money demand for inspection fees. Pending.

Rio Blanco County

M. E. Smith, et al. v. L. D. Blauvelt, et al.

Pending on Demurrer.

Rio Grande County

No. 3597. Sargent School District, et al. v. Katherine Craig, State Superintendent.

Mandamus to compel State aid. Pending.

Routt County

No. 1816. State of Colorado & Texas Production Company v. Driscol and Thomas Driscol.

Injunction to restrain oil lease on state land. Judgment for plaintiffs, April 4, 1929. Appealed to Supreme Court, No. 12417.

Saguache County

No. 1183. County Commissioners and Highway Department v. Tate, et al.

Condemnation for state. Order for temporary possession issued, August 4, 1930. Pending.

Sedgwick County

No. 1227. Union Pacific Railroad Company v. County Commissioners of Sedgwick County.

Action to recover alleged excessive taxes. Pending.

Teller County

Midland Terminal Railway Company v. Colorado Tax Commission.

Action for refund of taxes. Judgment finding value of Railway to be $583,908, February 24, 1930.

Washington County

Union Pacific Railroad Co. v. County Commissioners of Washington County.

Action to recover alleged excessive taxes. Pending.

Weld County

Colorado Central Power Company v. Tax Commission.

Action for refund of taxes. Pending.

No. 7549. Eastenes v. Adams, et al.

Damages growing out of coal strike. Judgment entered dismissing complaint with cost, August 6, 1930.

No. 7634. Morrison v. Adams, et al.

Damages growing out of coal strike.

No. 7635. Nelson v. Adams, et al.

Damages growing out of coal strike.

No. 7636. Morrison v. Adams, et al.

Damages growing out of coal strike.

No. 7637. Sparros v. Adams, et al.

Damages growing out of coal strike.

No. 7638. Herrera v. Adams, et al.

Damages growing out of coal strike.

No. 7639. Mazzine v. Adams, et al.

Damages growing out of coal strike.

No. 7640. Brierley v. Adams, et al.

Damages growing out of coal strike.

No. 7641. Zarini v. Adams, et al.

Damages growing out of coal strike.

No. 7642. Georgeff v. Adams, et al.

Damages growing out of coal strike.

No. 7643. Jacovette v. Adams, et al.
Damages growing out of coal strike.

No. 7644. Milo v. Adams, et al.
Damages growing out of coal strike.

No. 7645. Brandon v. Adams, et al.
Damages growing out of coal strike.

No. 7646. Bottinelli v. Adams, et al.
Damages growing out of coal strike.

No. 7647. Krivokopich v. Adams, et al.
Damages growing out of coal strike.

No. 7648. Pappas v. Adams, et al.
Damages growing out of coal strike.

No. 7649. Sokrodia v. Adams, et al.
Damages growing out of coal strike.

No. 7650. Bullich v. Adams, et al.
Damages growing out of coal strike.

The foregoing seventeen cases are all pending the outcome of case No. 7549, Eastenes v. Adams, et al.

WORKMAN'S COMPENSATION CASES IN THE DISTRICT COURT OF COLORADO

Denver County

Polo Hernandez v. Hayden Bros. Coal Corporation.
Action to set aside award. Demurrer to Complaint sustained.

Chas. Mantor v. Industrial Commission, et al.
Action to set aside award. Pending.

Lafayette Ryan v. I. C., and The State Compensation Ins. Fund, et al.
Action to set aside award. Pending.

State Compensation Insurance Fund v. I. C., Frances E. Kelso et al., and State Board of Agriculture of the State of Colorado.
Action to set aside award. Pending.

W. J. Pappas v. Industrial Commission, et al.
Action to set aside award. Pending.

American Employers' Insurance Company v. I. C. and Elnora Parker, et al.
Action to set aside award. Award affirmed.

Denver Tramway Corporation v. I. C. and Ina H. Bodfish.
Action to set aside award. Demurrer to Complaint sustained.

Colorado Fuel & Iron Company v. I. C. and Jamsay.
Action to set aside award. Affirmed.

John Mannion v. Christenson Construction Co., et al.
Action to set aside award. Pending.

David D. Knight v. I. C. and Western Construction Corp., et al.
Action to set aside award. Demurrer to Complaint sustained.

London Guarantee & Accident Co., et al. v. Motto, et al.
Action to set aside award. Affirmed.

Tony Sandos v. I. C. and The North Park Coal Co., et al.
Action to set aside award. Affirmed.

Colorado Fuel & Iron Co. v. I. C. and Wm. E. Crawford.
Action to set aside award. Pending.

Vought v. Industrial Commission and City and County of Denver.
Action to set aside award. Pending.

Fred Rogers v. Industrial Commission and Public Service Company.
Action to set aside award. Pending.

New Jersey Fidelity & Plate Glass Insurance Company v. Industrial Commission.
Award affirmed. Appeal to Supreme Court, No. 12282, affirmed.

Maryland Casualty Company v. Industrial Commission.
Award affirmed. Appeal to Supreme Court, No. 12333, affirmed.

Gunnison County

Chesnick v. Industrial Commission, et al.
Action to set aside award. Award modified by District Court and amount of award as changed paid in full.

Las Animas County

Mike Davich, et al. v. I. C. and Genoveva Velasquez.
Action to set aside award. Pending.

Luigi Juliano v. Industrial Commission.
Action to set aside award. Reversed.

PUBLIC UTILITIES CASES IN THE DISTRICT COURTS

Clear Creek County

No. 8730. Town of Georgetown, et al. v. Public Utilities Commission, et al.

Conspiracy by defendants to effectuate curtailment and discontinuance of rail service on Clear Creek branch of Colorado and Southern Railway. Order of dismissal May 14, 1930.

Denver County

No. 88883. People v. A. T. Burbridge, et al.

Suit to restrain operation of bus line. Pending.

No. 95024. People v. Albert J. Herbertson.

Suit to restrain operation of bus line. Dismissed.

No. 96751. People, ex rel., Public Utilities Commission v. D. E. Tilden.

Suit to enjoin operation of motor truck line. Dismissed.

No. 96751. People, ex rel. v. Harry Large, et al.

Suit to enjoin operation of motor truck line. Dismissed.

No. 106046. The People v. Harvey Cox.

Injunction to restrain from operating without certificate of public convenience and necessity. Temporary injunction granted. Citation for contempt issued. Appealed to U. S. Supreme Court on petition for Habeas Corpus. Application to remove to Federal Court denied. Sentenced three months, October 15, 1929. Released on bond pending appeal. Pending on merits.

No. 106932. The People v. Johnson & Cox.

Temporary injunction granted May 2, 1930. Judgment for costs. Permanent injunction entered. Judgment for plaintiff as to Johnson.

No. 109772. Burbridge v. Public Utilities Commission.

Decree sustaining findings of Public Utilities Commission, November 17, 1930.

No. 110066. People v. Schwilke.

Injunction to restrain operation without a certificate. Pending.

No. 109906. People v. Perry.

Injunction to restrain operation of truck without certificate. Permanent injunction issued September 12, 1930.

No. 105046. State of Colorado v. M. B. Swena, City and County of Denver.

Action to collect a contempt fine imposed by the Public Utilities Commission. Judgment for defendant. Appeal to Supreme Court, No. 12562.

No. 105047. People of the State of Colorado v. M. B. Swena.

Injunction to enjoin illegal truck operations without certificate. Order for temporary injunction entered. Pending.

People of the State of Colorado v. Edward W. Huls.

Criminal action against defendant operating interstate into Wyoming without certificate, etc., original brought in justice of the peace court. Transferred to District Court. Verdict of guilty. Fine of $250 imposed.

No. 107709. People of the State of Colorado v. P. D. Schwab.

Injunction to enjoin illegal truck operations without certificate. Order for temporary injunction entered. Defendant has since obtained certificate. Pending.

No. 108810. People of the State of Colorado v. F. W. Sullivan.

Injunction to enjoin illegal truck operations without certificate. Defendant sold equipment to a certificated carrier and quit business. Case dismissed at cost of defendant. Defendant's check for $12.50 delivered to Attorney General's office.

No. 109417. People of the State of Colorado v. Clarence Wright.

Injunction to enjoin illegal truck operations without certificate. Pending.

Huerfano County

People v. Levy.

Injunction to restrain illegal motor vehicle operations. Pending.

Mesa County

No. 5245. People v. Burt.

Injunction to restrain illegal trucking operations. Decree sustaining findings of Public Utilities Commission, November 17, 1930. Pending.

No. 5250. People v. Janes.

Injunction to restrain illegal trucking operations. Decree sustaining findings of Public Utilities Commission, November 17, 1930. Pending.

No. 5251. People v. Burdick.

Injunction to restrain illegal trucking operations. Decree sustaining findings of Public Utilities Commission, November 17, 1930. Pending.

Pitkin County

No. 2565. Charles Dailey Sr., v. Public Utilities Commission, et al.

Review of Commission's order in Case No. 348 concerning rates charged by the Roaring Fork Water, Light and Power Company. Commission's order sustained in part and reversed in part.

ESCHEAT AND PROBATE CASES COUNTY COURT

Adams County

Estate of Alonza A. Anderson, deceased.

Estate closed and money paid to State Treasurer.

Estate of Otto Monson, deceased.

Petition for repayment of money paid to State Treasurer's Escheat Fund. Granted.

Arapahoe County

Estate of Peter Franzen, deceased.

Pending.

Estate of Hans H. Hansen, deceased.

Pending.

Estate of Bernhardt Petersen, deceased.

Pending.

Archuleta County

Estate of Hans Wieck.

Pending.

Bent County

Estate of Charles Givens, deceased.

Pending.

Boulder County

Estate of Hans Nelson, deceased.

Pending.

Chaffee County

Estate of J. L. Dimon, deceased.

Estate closed and money paid to State Treasurer.

Estate of Charles W. Marsh, deceased.

Pending.

Estate of Sabrina A. Newell, deceased.

Pending.

Estate of George Nichols, deceased.

Estate closed and money paid to State Treasurer.

Estate of Chas. E. Roemke, deceased.
Pending.

Estate of Thomas H. Thompson, deceased.
Pending.

Clear Creek County

Estate of E. A. Erickson, deceased.
Pending.

Estate of Chas. J. Olson, deceased.
Pending.

Custer County

Estate of William Cochrane, deceased.
Pending.

Estate of Joseph Schmitt, deceased.
Estate closed and money paid to State Treasurer.

Denver County

Estate of Gustave Ballentine, deceased.
Estate closed and money paid to State Treasurer.

Estate of Charles Barclay, deceased.
Estate closed and money paid to State Treasurer.

Estate of Edward Campbell, deceased.
Pending.

Estate of John M. Cassell, deceased.
Pending.

Estate of May Chapman, deceased.
Pending.

Estate of Patrick J. Collins, deceased.
Pending.

Estate of John Davis, deceased.
Pending.

Estate of Nat Emery, deceased.
Pending.

Estate of William A. Faust, deceased.
Pending.

Estate of Fred H. Forrester, deceased.
Contest instituted by heirs of Fred H. Forrester over probate of Forrester's will making State Bureau of Child and Animal Pro-

tection residuary legatee. Will admitted to probate. Writ of Error to Supreme Court. Affirmed in Supreme Court.

Estate of George Henry Gifford, deceased.
Estate closed and money paid to State Treasurer.

Estate of James V. Goggin, deceased.
Estate closed and money paid to State Treasurer.

Estate of Mary Gross, deceased.
Pending.

Estate of Albert Groussman, deceased.
Petition of an heir for an order on State Treasurer to pay out money. Petition granted.

Estate of Peter Healy, deceased.
Estate closed and money paid to State Treasurer.

Estate of Edith Hubbard, deceased.
Estate closed and money paid to State Treasurer.

Estate of Andy Irving, deceased.
Pending.

Estate of Kate C. Manley, deceased.
Estate closed and money paid to State Treasurer.

Estate of Mary May, deceased.
Estate closed and money paid to State Treasurer.

Estate of Harriet Fox McFaddin, deceased.
Estate closed and money paid to State Treasurer.

Estate of John McLaughlin, deceased.
Petition filed by Attorney General's office praying that the probate of a Will be revoked. Granted. Estate closed and money paid to State Treasurer.

Estate of Carrie Brown Nelson, deceased.
Pending.

Estate of Nicholas Nunez, deceased.
Estate closed and money paid to State Treasurer.

Estate of Mary B. Rasmussen, deceased.
Pending.

Estate of Wm. J. Seebold, deceased.
Estate closed and money paid to State Treasurer.

Estate of Mary Scanlan, deceased.

Three sisters of the decedent adjudged to be heirs and money ordered paid over to them.

Estate of Rachael M. Schleier.

Will contest involving bequest of public use. Pending.

Estate of Jefferson B. Strut, deceased.

Pending.

Estate of Ola Waldrum, deceased.

Pending.

Estate of Adam Weiss, deceased.

Pending.

Estate of James S. Wilder, deceased.

Estate closed and money paid to State Treasurer.

Estate of George C. Wortman, deceased.

Petition of Claimants for Order on State Treasurer to pay out money. Petition granted.

Dolores County

Estate of James Best, deceased.

Pending.

Eagle County

Estate of Eric Farsgren, deceased.

Money paid to State Treasurer.

Estate of William C. Rhinehart, deceased.

Pending.

El Paso County

Estate of Fred H. Day, deceased.

Pending.

Estate of Jane L. Forrester, deceased.

Petition of Claimants for Order on State Treasurer to pay out money. Petition granted.

Estate of Samuel Hackett, deceased.

Pending.

Estate of Frank Ward, deceased.

Estate closed and money paid to State Treasurer.

Fremont County

Estate of Barbara Barshin, deceased.

Petition for repayment of money paid to State Treasurer. Granted.

Estate of Viola Glover, deceased.

Pending.

Estate of John Johnson, deceased.

Petition of Claimants for Order on State Treasurer to pay out money. Petition granted.

Huerfano County

Estate of Edwin A. Lewis, deceased.

Estate closed and the share due Blanch Lewis, one of the heirs at law, paid to State Treasurer, because here whereabouts was unknown.

Jefferson County

Estate of J. F. Dunn, deceased.

Pending.

Estate of Sarah Jones, deceased.

Pending.

Estate of Katie Massie.

Pending.

Kit Carson County

Estate of Rachel E. Mahoney, deceased.

Estate closed and money paid to State Treasurer.

La Plata County

Estate of Theodore C. LaFeiver.

Petition of Claimant for Order on State Treasurer to pay her money. Petition denied.

Larimer County

Estate of William James Field, deceased.

Estate closed and money paid to State Treasurer.

Estate of Albert Johnson, deceased.

Estate closed and money paid to State Treasurer.

Estate of Chas. Luft, deceased.

Pending.

Estate of Joseph J. Scanlon, deceased.

Pending.

Las Animas County

Estate of Daniel Schultz, deceased.
Petition filed by other claimants to estate. Disallowed.

Mesa County

Estate of Frank O'Neil.
Pending.

Morgan County

Estate of James O'Hara, deceased.
Pending.

Ouray County

Estate of Lewis Blanchard, deceased.
Pending.

Estate of Thomas Mudge, deceased.
Pending.

Otero County

Estate of Martin Eder, deceased.
Petition to probate a Will filed. Will admitted to probate. No appeal taken.

Pueblo County

Estate of Harry L. Darr, deceased.
Pending.

Estate of Agnes M. Hicks, deceased.
Pending.

Estate of W. H. Kletzel, deceased.
Petition of Claimants for Order on State Treasurer to pay out money. Petition granted.

Estate of Lena Smith, deceased.
Pending.

Rio Grande County

Estate of William Chives, deceased.
Pending.

Estate of David Fountain, deceased.
Estate closed and money paid to State Treasurer.

Routt County

Estate of John Kephart, deceased.
Pending.

San Juan County

Estate of Steve Sprawn, deceased.
Estate closed and money paid to State Treasurer.

Estate of Robert Williamson, deceased.
Pending.

San Miguel County

Estate of Chas. Ross, deceased.
Pending.

Teller County

Estate of A. T. Brandt, deceased.
Estate closed and money paid to State Treasurer.

Estate of Russell I. Clark, deceased.
Estate closed and money paid to State Treasurer.

Estate of Andrew Johnson, deceased.
Estate closed and money paid to State Treasurer.

Washington County

Estate of Eugene Purdy, deceased.
Pending.

Weld County

Estate of Jennie P. Brockway, deceased.
Re: Interest of Henry W. Gordon. Money paid to State Treasurer.

Estate of John D. Cornell, deceased.
Estate closed and money paid to State Treasurer.

Estate of Joe Holt, deceased.
Estate closed and money paid to State Treasurer.

Estate of Peter Kolsky, deceased.
Estate closed and money paid to State Treasurer.

Estate of Clara B. Pearson, deceased.
Share of Alva Crawford, one of the heirs in the above entitled estate paid to State Treasurer, whereabouts unknown.

Estate of Sarah Porter, deceased.
Estate closed and money paid to State Treasurer.

Estate of Ingrid Sanberg, deceased.
Estate closed and money paid to State Treasurer.

RECAPITULATION

In the United States Supreme Court—Cases disposed of, 7; cases pending, 4; total, 11.

In the United States Circuit Court of Appeals—Cases disposed of, 1; cases pending, 4; total, 5.

In the United States District Court—Cases disposed of, 5; cases pending, 9; total, 14.

In the Interstate Commerce Commission—Cases disposed of, 2; cases pending, 5; total, 7.

In the Colorado Supreme Court (Criminal)—Cases disposed of, 28; cases pending, 11; total, 39.

In the Colorado Supreme Court (Disbarment)—Cases disposed of, 6; cases pending, 9; total, 15.

In the Colorado Supreme Court (Civil)—Cases disposed of, 17; cases pending, 22; total, 39.

In the Colorado Supreme Court (Workmen's Compensation)—Cases disposed of, 27; cases pending, 0; total, 27.

In the Colorado District Court (Civil)—Cases disposed of, 56; cases pending, 77; total, 133.

In the Colorado District Court (Workmen's Compensation)—Cases disposed of, 11; cases pending, 9; total, 20.

In the District Court (Public Utilities Cases)—Cases disposed of, 11; cases pending, 10; total, 21.

In the County Court (Escheat and Probate)—Cases disposed of, 48; cases pending, 49; total, 97.

Total number of cases disposed of in all courts.....213

Total number of cases pending in all courts.....200

Total number of cases handled during the biennial period.....413

Requisition matters for the Governor.....140

Extradition hearings before the Governor.....133

SCHEDULE III

OPINIONS AND SYLLABI OF OPINIONS

RENDERED DURING THE BIENNIAL PERIOD 1929-1930

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

Opinions and Syllabi of Opinions

1 **FINES—PROHIBITION LAW**

To Clement A. Bowle, Nov. 23, 1928.

The fines assessed and collected as penalties for the violation of the prohibition law of the State should, when paid into the county treasury, be credited to the general school fund. (Sec. 8288, C. L. 1921.)

2 **NUISANCES**

To Dana E. Kepner, Dec. 5, 1928.

Authority of State Board of Health.

When any local board of health is unable or unwilling to promptly abate a nuisance or prevent the introduction or spread of any disease, the State Board of Health shall have full power to take such measures as will insure the abatement of the nuisance or prevent the introduction or spread of disease. (Sec. 883, Sec. 6893, C. L. 1921.)

3 **TAX CERTIFICATES**

To Paul M. Williams, Dec. 8, 1928.

Sale of by county.

Under Sec. 7422, C. L. 1921, "whenever any lot, or parcel of land, interest therein or improvement . . . shall be bid in by or for the county . . . at any tax sale, pursuant to the provisions of this act, and a certificate of purchase shall be made to such county . . . the treasurer of such county . . . may sell such certificate . . . upon payment of the amount for which said property was bid in . . . or for such sum as the board of county commissioners . . . may decide and authorize by order duly entered in the recorded proceedings of such board" . . . (Amendment, Ch. 152, S. L. 1927.)

The money received for such assignment of certificate shall be divided among the various county funds.

4 **APPOINTMENT TO FILL VACANCY**

To C. R. Monson, Dec. 31, 1928.

Office of County Superintendent of Schools.

An appointee to fill a vacancy holds until the next general election, if no new term intervenes . . . but if a new term commences during the interval, the term of the appointee ends and the one entitled to the new term has a right to the office.

People v. DeGuelle, 47 Colo. 13.
Gibbs v. People, 66 Colo. 414.

5 **VACANCIES—Appointment to fill**

To Hon. John M. Woy, Jan. 4, 1929.

Office of County Treasurer.

Under the constitutional amendment of 1902 the term of office of county treasurers commence on the second Tuesday in January; and under Sec. 8789, C. L. 1921, they shall be elected for a term of two years.

A vacancy occurring after the election and before the new term begins could only be filled until the beginning of such new term. (See 47 Colo. 13; 66 Colo. 414.)

6 **SHERIFF'S SALES**

To J. R. Ruberson, Jan. 7, 1929.

Publication of Notice.

Unless otherwise ordered by the court, the sheriff may select the newspaper in which to publish notice of sheriff's sale.

7 **SCHOOLS**

To Homer J. Smith, Jan. 8, 1929.

Amount of special levy.

The electors of a third class district, and not the Board of Directors, determine the amount of a special levy. (3 Colo. App. 397. Sec. 8286, C. L. 1921.)

8 **LIBRARIES**

To Mrs. J. G. Clayton, Jan. 8, 1929.

A member of the board of directors of a public library is not eligible for appointment and salary as librarian. (Sec. 8548, C. L. 1921.)

9 **PUBLIC UTILITIES**

To Public Utilities Commission, Jan. 19, 1929.

Charge for copies of evidence.

Sec. 42 of the Public Utilities Act enumerates the items for which the commission shall charge and collect fees. The act does not prohibit the reporter from charging or collecting for such services as he may render outside of his official duties, even though such services may be in connection with a case before the Commission. The duly appointed reporter is therefore entitled to a reasonable compensation for his service in furnishing uncertified copies of the evidence in any case before the commission.

10 SCHOOLS

To Myrtle Jordan, Jan. 21, 1929.

County Commissioners cannot arbitrarily limit amount of mileage of county superintendent of schools to $500 per annum if the miles traveled multiplied by rate per mile allowed by commissioners exceeds that amount. (Chap. 154, S. L. 1927.)

11 STATE NORMAL SCHOOLS

To State Auditing Board, Jan. 21, 1929.

Power to employ auditor.

Separate from State examiner is vested in Board of Trustees of State Normal Schools though not advisable. (Sec. 8164 not superseded by sections 309-319, C. L. 1921.)

Gunnison County v. Davis, 27 C. A. 501.

12 SCHOOLS

To F. M. Stone, Jan. 22, 1929.

County commissioners can use school house for voting only by permission of board of directors and upon payment of reasonable compensation.

13 SCHOOLS

Mrs. L. M. Orlingdulph, Jan. 28, 1929.

A member of the school board in a third class district may be appointed truant officer. (See 8473, C. L. 1921.)

A county superintendent of schools has no jurisdiction in matter of enforcement of law requiring display of flags at school houses. (See 8468, C. L. 1921.)

14 DISTRICT ATTORNEYS

To J. Arthur Phelps, Jan. 28, 1929.

Under Sec. 5975, C. L. 1921, it is the duty of a district attorney to defend an action brought against a county treasurer to enjoin collection of alleged illegal taxes. Sec. 7334, C. L. 1921 discussed.

January 28, 1929.

Mr. J. Arthur Phelps
District Attorney
Pueblo, Colorado

Dear Sir:

Your letter of the 24th inst., raising the question as to whether or not it is your duty to participate in the defense of an injunction suit brought to restrain the collection of certain taxes upon the ground that the property was erroneously assessed and taxed, is at hand.

You refer to Section 5975, C. L. 1921, which requires the district attorney to appear in behalf of the state, and of the several counties of his district, in all indictments, suits and proceedings which may be pending in the district court in any county within his district wherein the state, or the people thereof, or any county of his district, may be a party.

This language is rather broad and comprehensive. It is true that the defendant in the case you mention is not the county but the county treasurer, but it is likewise true that the only way a county can be sued is through its officers. And the suit, in substance, is, I think, one against the county. I have, however, gone somewhat into the history of this section and of others related to it. Section 5975 appears in the Revised Statutes of 1868 (R. S. 1868, page 261). The first section of the chapter in which this section appears in said Revised Statutes expressly abolishes the office of county attorney, which was established by an act passed in 1861. In 1877, an act was passed authorizing the board of county commissioners to employ an attorney (see General Laws, 1877, page 251). That section was afterwards amended by authorizing the board to appoint a county collector and the section, as amended, appears as Section 8717, C. L. 1921. This act of 1877 does not purport to repeal the act of 1868. In 1902 the state constitution was amended by providing for the election or appointment of a county attorney in each county, but no statute has ever been enacted to carry out that constitutional amendment (see Section 8 of Article XIV). In view of the doctrine that repeals by implication are not favored, and of the fact that the act of 1877 did not expressly repeal the act of 1868, which now appears as Section 5975, my best judgment is that Section 5975 is still in full force, and that it is broad enough to cover such an action as the one you mention. I therefore think that it would be proper and probably your duty to appear in this litigation.

However, I direct your attention to the fact that Section 7334, C. L. 1921, authorizes the Colorado Tax Commission to appear in all suits for abatement or refundment of taxes. This action may not be technically a suit for abatement or refundment, but it is substantially such a suit. If this action were brought to the attention of the Colorado Tax Commission it would probably request this office to appear in its behalf, and if so requested, we would appear and participate in the defense of the case.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By CHARLES ROACH,
Deputy Attorney General.

15 **SCHOOLS**

To W. D. Blaine, Feb. 4, 1929.

Maximum levy permitted County and Union High Schools Districts, discussed. (Secs. 8392, 8412, C. L. 1921.)

Wash. Co. Commissioners, 85 Colo. 72.

16 **CONSTITUTION**

To. Hon. Richard Dillon, Feb. 13, 1929.

Amendments to.

Resolutions to submit amendments to the State Constitution, may be introduced after the first fifteen days of a legislative session. Art. XIX, Sec. 2, Art. V, Sec. 19 Colo. Const.

February 13, 1929.

Hon. Richard Dillon
House of Representatives
Capitol Building
Denver, Colorado

Dear Mr. Dillon:

You have asked my opinion as to whether or not a resolution to submit an amendment to the state constitution may be lawfully introduced after the first fifteen days of the session.

Section 19 of Article V of the Constitution provides that:

> "No *bill* except the general appropriation bill for the expenses of the government only, introduced in either house of the general assembly after the first fifteen days of the session, shall become law."

Section 39 of the same article provides, in substance, that every resolution to which the concurrence of both houses may be necessary, except on questions of adjournment, "or relating solely to the transaction of business of the two houses," shall be presented to the governor for approval or disapproval, and upon disapproval must be repassed by both houses according to the rules and limitations prescribed in case of a bill.

Section 2 of Article XIX provides that:

> "Any amendment or amendments to this constitution may be proposed in either house of the general assembly, and if the same shall be voted for by two-thirds of all the members elected to each house, such proposed amendment or amendments, together with the ayes and noes of each house thereon, shall be entered in full on their respective journals."

These provisions of the constitution have been before our

Supreme Court for construction on several occasions. In the case of *Nesbit v. The People*, 19 Colo. 447, the court said:

> "The power of the general assembly to propose amendments to the constitution is not subject to the provisions of article 5, regulating the introduction and passage of ordinary legislative enactments. A proposed amendment to the constitution need not be restricted, like an ordinary legislative bill, to a single subject; the only restriction is, that 'amendments shall not be proposed to more than one article of this constitution at the same session.' "

That decision was quoted and approved in the case of *People v. Sours*, 31 Colo. 401.

In the case of *People v. Ramer*, 62 Colo. 128, the court held that a resolution recommending to the people a constitutional convention was not subject to the requirements of Section 39 of Article V, and could not be vetoed by the governor. The court there held that Article XIX afforded the sole and exclusive rule for submitting questions of amendment or revision of the state constitution.

The courts of other states have likewise generally held that the submission of proposed amendments to a state constitution is not a matter that is governed by the ordinary rules concerning legislation. See 12 *Corpus Juris*, 693.

I am, therefore, clearly of the opinion that a resolution to submit a proposed amendment to the state constitution to a vote of the people may be introduced after the first fifteen days of the session.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By CHARLES ROACH,
Deputy Attorney General.

17 VACANCIES IN OFFICE

To Wm. C. Alexander, Feb. 15, 1929.

Office of Alderman.

It becomes the duty of the city or town council to declare a vacancy in the event an alderman removes from one ward to another. But if no action is taken by the council declaring a vacancy, such alderman remains a *de facto* officer, and his vote on any matter before such council after he has moved is just as lawful as the vote of any other alderman and he is entitled to the salary the same as if he had not moved. (Sec. 9037, C. L. 1921.)

18 **TAXATION**

To E. B. Morgan, Feb. 21, 1929.

Assessment of water of McKenzie Land and Cattle Co., through Busk-Ivanhoe Tunnel.

The corpus of the water carried by ditches belonging to companies organized to carry water for profit to consumers is not taxable in Colorado. But the ditches used for such purposes it seems from the Colorado decisions probably may be taxed.

February 21, 1929.

Mr. E. B. Morgan, Chairman
Colorado Tax Commission
State Office Building
Denver, Colorado

In re: *Assessment in Pitkin County of Water of McKenzie Land and Cattle Co. through Busk-Ivanhoe Tunnel.*

Dear Sir:

STATEMENT OF FACTS.

The County Assessor of Pitkin County assessed the McKenzie Land and Cattle Company, as follows:

"36,060 acre feet of water through the Busk-Ivanhoe Tunnel —Value of water $36,000.00," as shown on copy of 1928 tax schedule.

From letters submitted with the schedule, it is further shown: That said company operates a carrier water system in the mountains to supply water for profit to mutual ditch companies and consumers near Holly, Colorado; that all of the water is so put to beneficial use in the irrigation of sugar beets; that the water is taken from the natural source of supply on the west side of the range in Pitkin county and conveyed by ditch and tunnel to reservoir in Lake county.

QUESTION.

Was the assessment in Pitkin County valid?

ARGUMENT.

The fundamental law involved is best set forth in the case of *Wheeler v. Northern Colorado Irrigation Co.*, 10 Colo. 582, in the opinion by Justice Helm, in which he states:

> "For convenience I shall, throughout this opinion, use the terms 'carrier' and 'consumer,' meaning the canal company and the tiller of the soil respectively.
>
> "The agriculturists in the territory mentioned are, with few exceptions, unable to convey water from the

natural streams to their land. * * * at present, without irrigation, but a small fraction of the producing capacity of the soil can be utilized, and, unaided, these consumers will for years to come be practically helpless. To the successful cultivation of that region the carrier and consumer are, therefore, equally indispensable. Hence a wise legislative policy and an intelligent judicial construction require a careful consideration of the privileges, powers and duties of the carrier, (587) as well as the rights and obligations of the consumer. The courts should protect the consumer in the full enjoyment of his constitutional and statutory rights; but they should also jealously guard the rights of the carrier; and so deal with it (the constitution and statutes permitting) as to encourage the investment of capital in the construction of reservoirs and canals for the storage and transportation of water.

"The pleadings in the case at bar show that respondent is a carrier and distributor of water for irrigation and other purposes. That its canal, two years ago, was upwards of sixty miles in length and capable of supplying water to irrigate a large area of land. That relator is one of the land owners and consumers under the canal, and can obtain water from no other source; also, that respondent has, undisposed, a sufficient quantity to supply his wants. That he tendered the sum of $1.50 per acre, the annual rental fixed by respondent, and demanded the use of water for the current season, but declined to pay the further sum of $10 per acre also demanded, and to sign a certain contract presented to him for execution. That respondent refused, and still refuses, to grant relator's request, except upon compliance with these conditions. The remaining essential facts will sufficiently appear in connection with the specific questions of law presented, as they are in their proper order discussed.

"Does the record show a clear legal right of relator, from the enjoyment of which he is unlawfully precluded by respondent?

"Our constitution dedicates all unappropriated water in the natural streams of the state 'to the use of the people,' the ownership thereof being vested in 'the public.' The same instrument guaranties in the strongest terms the right of diversion and appropriation for beneficial uses. With certain qualifications it recognizes and protects a prior right of user, acquired through priority of appropriation. We shall presently see that after appropriation the title to this (588) water, save,

perhaps, as to the limited quantity that may be actually flowing in the consumer's ditch or lateral, remains in the general public, while the paramount right to its use, unless forfeited, continues in the appropriator. * * *.

"The constitution unquestionably contemplates and sanctions the business of transporting water for hire from natural streams to distant consumers. The Colorado doctrines of ownership and appropriation (as declared in the constitution, statutes and decisions) necessarily give the carrier of water an exceptional *status;* a *status* differing, in some particulars, from that of the ordinary common carrier. Certain peculiar rights are acquired in connection with the water diverted. * * * For the present it sufficies to say that they are dependent, for their birth and continued existence, upon the use made by the consumer.

"But giving these rights all due significance, I cannot consent to the proposition that the carrier becomes a 'proprietor' of the water diverted.

"* * *. The constitutional (589) convention was legislating with reference to the necessities and practical wants of the people. And this body, in its wisdom, ordained that the ownership of water should remain in the public, with a perpetual right to its use, free of charge, in the people.

"By section 8, article XVI, of the constitution, * * * the convention recognized the carrier's right to compensation for transporting water, and provided for a judicial, or *quasi*-judicial, tribunal to fix an equitable maximum charge where the parties fail to agree. * * * Under the constitution, as I understand it, the carrier is at least a *quasi*-public servant or agent. It is not the attitude of a private individual contracting for the sale or use of his private property. It exists largely for the benefit of others; being engaged in the business of transporting, for hire, water owned by the public, to the people owning the right to its use. * * *

* * * *

"* * * The primary (590) objects were to encourage and protect the beneficial use of water; * * *.

* * * *

"* * * The carrier (592) must be regarded as an intermediate agency existing for the purpose of aiding consumers in the exercise of their constitutional right, as well as a private enterprise prosecuted for the benefit of its owners."

This doctrine that water in a carrier's ditch is public property has never been altered in Colorado. Such water is like the water in the natural stream. Therefore, in our opinion, the above assessment is not valid. To tax this water would be like taxing the freight of a railroad instead of its cars and like equipment.

However, under the doctrine laid down in *Murray v. Montrose County,* 28 Colo. 427, it would appear that the ditch of a carrier company might be taxed where the water is so carried for profit and the profit not sought solely from beneficial use of the water. The court there states, speaking of the consumers, pages 430-431:

> "Conceding that they own an interest in the ditch, they are not as yet the sole owners. The company is a co-owner with them; the title to the ditch is still vested in the corporation. It has reserved to itself the right to retain such title until the capacity of the ditch has been sold. It still has a large number of water rights which it is offering for sale. While it may be true that at some time in the future, the ditch will be owned exclusively by those using water therefrom for the purpose of irrigating lands which they own, or in which they are interested, that is not the condition at the present time. The evident purpose of the company in still retaining the title to the ditch is to derive a revenue from the further sale of water rights. That the purchasers of such rights may use the water in irrigating their lands only does not change the situation. The fact still remains that so long as the company is interested in the ditch with water rights remaining unsold, it is its purpose to make use of the ditch as a means through which to derive a profit from the sale of further water rights. The provision of the constitution upon which the ditch company relies was adopted for the sole benefit of those canals which are exclusively used for irrigating lands owned by those who own the canal in whole or in part—*Empire Canal Co. v. Rio Grande County,* 21 Colo. 244.
>
> "The consumers appear to be making the use contemplated by the constitution, but the ditch company is not; hence, the ditch is not used exclusively for the purpose of irrigating lands belonging to the owners of the ditch. In Empire Canal Co. Case, *supra,* the facts as deduced from the averments of the complaint are essentially different from those in the case at bar. It was there held that according to the statements in the complaint, the canal was used only for the purpose of irrigating lands belonging to the owners of such canal."

In considering this case, it is well to bear in mind that the court seems to adopt the definition of "water rights" as adopted in the form of contract considered in the case, without distinguishing the same from the technical definition given by the courts.

The case of *Antero Co. v. Park County,* 65 Colo. 375, 379, does not change the holding in the Murray case, *supra,* for the reason that in the latter case the dam was held to be erroneously assessed as an improvement to the land on which it stood, while the water right was exercised on other land owned by the company.

Likewise in the later case of *Antero Co. v. Commissioners,* 75 Colo. 131, the assessment was held to be too indefinite as "against its reservoirs, and other property connected therewith" to permit the same to be proved at the trial by parol testimony that the principal thing assessed was unsold water rights and was therefore held to be void. It is impossible to tell from this last opinion what an "unsold water right" is. However, it was not necessary that the opinion define the same in deciding the case. But it does raise the question, without so deciding, that in some cases there might be "unsold water rights" that are taxable. Our opinion is, however, that the assessment before us for consideration does not purport to assess "unsold water rights."

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By SIDNEY P. GODSMAN,
Assistant Attorney General.

19 TAX SALES

To E. B. Morgan, Feb. 23, 1929.

"A taxpayer may pay the tax on some of his property without paying the tax on other property separately assessed or the amount of one tax without paying other taxes." (Cooley on Taxation, Sec. 1253.)

It is the duty of the county treasurer to collect whichever tax is tendered, and it follows that the sale for general taxes and also the sale for special improvement taxes may be made separately and to different persons. (149 Ark. 183; 126 Mich. 375; 66 Colo. 525; 96 Ore. 192.)

20 FISCAL YEAR

To Members of House of Representatives, Feb. 25, 1929.

The modus operandae of H. B. 527 changing the present fiscal year discussed. Art. X, sec. 1, Colo. Const. Chap. 98, S. L. 1929.

February 25, 1929.

To the Members of the House:

Re: *The Fiscal Year Bill.*

The Chairman of your Judiciary Committee requested me to submit a brief explanation of House Bill 527, the object of which is to change the fiscal year of the State.

Section 1 of Article X of the State Constitution provides that the fiscal year shall commence on the first day of October in each year, unless otherwise provided by law. In 1877 the General Assembly enacted that the state fiscal year shall begin December 1 and end November 30 following, and it has so remained ever since.

This bill provides that the state fiscal year shall begin July 1 and end June 30 following. This change would effect at least two desirable objects:

First—It would make the state fiscal year correspond with the federal fiscal year;

Second—It would result in extending each biennial fiscal period beyond the time when the General Assembly meets in regular session and would thus dispense forever with all necessity of short appropriation bills.

Manifestly the fiscal year could be readjusted only by extending the last fiscal year or the current one, or by creating a short extra fiscal year to cover the gap between the end of the old fiscal year and the beginning of the readjusted fiscal year.

This bill, in substantially its present form, was drafted by Mr. James Grafton Rogers, Dean of the Law Department of the State University. He felt that the simplest plan would be to extend the fiscal year that ended November 30, 1928, to July 1, 1929, and then begin the new fiscal year 1929 on that date, and the bill is so drawn.

This readjustment of the fiscal year would have involved but little more than a matter of booking, except for the fact that the state government spends some of its revenues before they are collected. The numerous mill levies for the support of state institutions are not expended until collected, and the proposed change does not affect them.

The general revenue fund consists of the inheritance taxes, the receipts from the insurance department and other minor sources, and a mill levy fixed each year by the state board of equalization. It is out of this general revenue fund that practically all biennial appropriations are made.

Inheritance taxes, receipts from the insurance department and other special sources are not anticipated and spent before they are collected. But the proceeds of the millage levied each year by the board of equalization to replenish the general revenue fund and make it sufficient to meet your biennial appropriations are spent before collected.

That is to say, the levy of about .42 of a mill made in October, 1928, for the general revenue fund was all spent prior to December 1, 1928, when the fiscal year 1928 ended. Now if the fiscal year 1928 is arbitrarily extended to July 1, 1929, and a new fiscal year started at that date, the mill levy for general revenue that will be made in October, 1929, will of course be for the new fiscal year that will begin July 1, 1929, and end June 30, 1930. That will leave a period of seven months from December 1, 1928, to July 1, 1929, without benefit of any mill levy to replenish the general revenue fund. This gap must be filled by a special tax.

To further illustrate the need of this extra tax, I will state the situation in another way: When you pay your state tax in March, 1929, you will have settled your debt to the general revenue fund of the state up to December 1, 1928, because the levy for that fund was made to supply the needs of a year that ended on that date. But if this change is made in the fiscal year, the result will be that when you pay your state taxes in March, 1930, you will have paid your debt to the general revenue fund up to July 1, 1930, rather than only to December 1, 1929, as would have been the case had the fiscal year not been changed. In a word, you will have jumped seven months ahead in meeting this part of your annual contribution to the support of the state government. Manifestly it will cost the taxpayer something extra to put himself seven months ahead in the matter of his annual contributions to the general revenue fund.

It cannot be exactly determined just what it will cost to effect the above result. That will depend upon the rate of state expenditure for the present fiscal period. Mr. Noonan of the Auditor's office estimates that to replenish the general revenue fund for the seven months' period from December 1, 1928, to July 1, 1929, about $400,000 must be supplied by a mill levy.

This bill provides for an additional one-half mill levy for the years 1929 and 1930, contingent upon the repeal of the present one-half mill levy for highway purposes. This new levy is designed not only to meet the expense of readjusting the fiscal year but to aid also in meeting the present deficits of some of the institutions and the enlarged requirements of the present fiscal period. This new one-half mill levy for the two years will produce nearly $1,600,000, and after covering the cost of changing the fiscal year about $1,200,000 of new revenue will remain for other needs of the state.

This bill changes the fiscal year of the state only. It has no effect upon the county, school district or municipal fiscal year. They all remain as before. Section 5 of the bill is probably entirely superfluous, but Mr. Rogers thought it might possibly serve some useful purpose and I felt it does no harm.

This bill provides that for the purposes of the special tax of one-half mill, the seven months' period from December 1, 1928, to July 1, 1929, shall be deemed part of the fiscal year 1929.

This provision is necessary because the constitution provides that the expenses of each fiscal year shall not exceed the revenues of that year and since this seven months' period required new revenue it must be attached to a year in which new revenues can be levied.

The bill is necessarily technical in some respects, but Mr. Rogers and I are confident that it is valid as a legal proposition and the Auditor's office approves it as a practical plan of readjustment.

I feel that the enactment of this bill would be a constructive achievement of great and permanent good to the state.

Respectfully yours,

ROBERT E. WINBOURN,
Attorney General.

By CHARLES ROACH,
Deputy Attorney General.

21 PUBLIC UTILITY.

To John C. Vivian, Feb. 28, 1929.

A successor to realty company which supplies domestic water to a resident of a tract of land and charges therefor, would be a public utility within the meaning of Sec. 2913, C. L. 1921.

22 PARTY AFFILIATION

To W. S. Buchanan, March 1, 1929.

Time to make declaration for change.

A voter at the primary for the general election last fall, who declared his party affiliation, is bound by that declaration in the coming primary for the city election, unless such party affiliation has been changed in accordance with the provisions of Chapter 98, S. L. 1927.

23 MUNICIPAL LIGHT PLANT

To J. M. Swenson, March 11, 1929.

Sale of—Who may vote on.

Persons who are qualified voters under the registration and election laws of this state and who have paid a personal or real

property tax during the calendar year preceding the one in which the election is held are entitled to a vote on the question of the sale of a light plant owned by such municipality. (Sec. 6517, 7530, C. L. 1921, Chap. 191, S. L. 1927.)

24 SCHOOLS

To Zepha S. Moore, March 11, 1929.

Where several school districts other than first class districts are consolidated, the title to property in each district remains in status quo. Where the districts are of the first class the title to all property vests in the consolidated district. (Sec. 8320, C. L. 1921.)

25 COUNTY SURVEYOR

To I. D. Messenger, March 15, 1929.

A county surveyor is not required to comply with provisions of Ch. 99, S. L. 1927, before he can qualify for duties of the office.

There is no limitation prescribed by said session laws on the work such county surveyor may do under Sec. 8824, C. L. 1921, as long as such work is confined to his statutory duties. As to any other work of surveying, he must first comply with the provisions of Ch. 99, S. L. 1927.

March 15, 1929.

Board of County Commissioners of
Kit Carson County,
Burlington, Colorado.

Attention Mr. I. D. Messenger, Chairman.

Gentlemen:

In reply to your letter of the 6th inst., we will say:

Answering your first question, the opinion of this office is that a county surveyor is not required to comply with Chapter 99, Session Laws of 1927, before he can qualify for the duties of the office. As to the second question, in our opinion, there is no limitation prescribed by said Session Laws on the work such county surveyor may do under Section 8824, C. L. 1921, as long as such work is confined to his statutory duties. As to any other work of surveying, he must first comply with the provisions of Chapter 99, S. L. 1927. The reasons for these answers are as follows:

(1) The legislature is without power to vary qualifications for the office of the county surveyor, for:

Art. XIV, Sec. 8 of the Colorado Constitution creates, *inter alia*, the office of county surveyor and expressly states:

> "This section shall govern, except as hereafter otherwise expressly directed, or permitted by constitutional enactment."

Art. XIV, Sec. 10 of the said constitution provides the only constitutional enactment directing the eligibility of persons to such office of county surveyor in the following language:

> "No person shall be eligible to any county office unless he shall be a qualified elector; nor unless he shall have resided in the county one year preceding his election."

The weight of authority is well expressed in 47 *A. L. R.* 481:

> "The Illinois Constitution provides for a board of county commissioners for Cook county, and in a separate clause prescribes as a general qualification for office a residence of one year in the state. It was held in People ex rel. Hoyne v. McCormick," 221 Ill. 9, 77 N. E. 321, "That a statute providing that no person could become a commissioner of Cook county who had not resided therein was unconstitutional. The court said: 'There is a distinction between offices created by the Constitution and those created by statute. Where an office is created by statute, it is wholly within the power of the legislature creating it. The length of term and mode of appointment may be altered at pleasure, and the office may be abolished altogether. It is not so of constitutional offices * * *. It may be true that many persons having the constitutional qualifications are wholly unfit to discharge the duties of many offices within the state; but, if the legislature possesses the power to vary the constitutional qualifications for office by adding new requirements or imposing additional limitations, then eligibility to office and freedom of elections depend not upon constitutional guaranties, but upon legislative forbearance. If the legislature may alter the constitutional requirements, its power is unlimited, and only such persons may be elected to office as the legislature may permit. In our judgment, when the Constitution undertakes to prescribe qualifications for office, its declaration is conclusive of the whole matter, whether in affirmative or in negative form."

It is said in 46 *C. J.* 937:

> "The legislature has, in the absence of constitutional inhibition, the same right to provide disqualifications that it has to provide qualifications for office. But the legislature may not add disqualifications, where the constitution has provided them in such a way as to indicate the intention of its maker that the disqualifications provided shall embrace all that are to be permitted."

22 *R. C. L.* 382 states the proposition in this language:

> "Constitutional offices are those designated in the constitution of a state as existing functions of government. Such offices differ in many ways from those not mentioned by name in this fundamental instrument, their most important characteristic being that they are generally immune from legislative changes except as may be expressly permitted by the terms of the constitution itself."

Further, Chapter 99, Session Laws of 1927, states in express terms that its object is to regulate the practicing of engineering or land surveying and does not even attempt by the language to add requirements of eligibility to the office of county surveyor as created by the constitution.

(2) When elected, it is the duty of the county surveyor to perform as directed by the legislature.

Some of the duties of the office of county surveyor are specified in the following sections of the Compiled Laws of Colorado, 1921, to-wit:

1296—survey and plat new road;
1315—report on toll road;
1695—survey reservoir on arid land;
1696—supervise construction of certain water works;
1697—file certain plats;
1699—annually inspect reservoirs;
5038—administer certain oaths;
5500—survey site for powder house;
8646—assist in establishing disputed county lines;
8824—make certain surveys;
8825—keep certain records.

Such official duties are not affected by Chapter 99, Session Laws, Colo., 1927, for:

1. The terms of the statute do not say so nor is such the necessary implication.

2. To hold otherwise would be to hold that the constitution created an officer to whom the legislature could say after defining his duties that he must perform, that he should not perform those very duties and thereby nullify the constitutional provision, for

> "An officer has been defined as a person commissioned to perform any public duty, or as one who has some duty to perform concerning the public. In harmony with this assertion is the legal principle that the powers and duties attached to a position manifest its character, and that a position to which there are no duties assigned

cannot be regarded as an office. And a public officer is one whose duties are in their nature public and for the benefit of the public, and in whose proper performance all citizens, irrespective of party, are interested equally as members of the entire body politic, or of some duly established division of the United States or of a state. It is the substance of the powers exercised, and the nature of that duty, which make the office, and not the extent of authority, * * *."

22 *R. C. L.* 373.

The legislature has not said how the county surveyor shall conduct the business of his office. In our opinion if such officer contracts and employs another to aid and assist in his work, requiring that such employee must practice engineering or land surveying, such employee would have to first comply with the said Chapter 99 for in so doing such employee would be practicing engineering or land surveying and not fulfilling an official duty as a constitutional officer.

Likewise if a county surveyor practices engineering or land surveying outside of the duties of his office, he must first comply with the provisions of said Chapter 99.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By SIDNEY P. GODSMAN,
Assistant Attorney General.

26 TAXES

To W. G. Schenck, March 15, 1929.

Collection of in another county.

A county treasurer or his collector may not lawfully go from his county into another county in the state for the purpose of collecting by distraint for taxes assessed in his county, when property has been removed from his county. Distraint must be issued to the sheriff of such other county. (Sec. 7461, C. L. 1921.)

27 SOLDIERS AND SAILORS HOME

To D. D. Shakespeare, March 15, 1929.

Insane and feeble-minded inmates.

The mere fact of being "feeble-minded" or of inconvenience to the Board should not have any bearing, under the provisions of the statute providing for the "care and treatment of honorably discharged soldiers," etc., but inmates who are fit subjects for the insane asylum or other institutions should not remain in the home. (Chap. 160, S. L. 1927. Sec. 549, C. L. 1921.)

28 CONSTITUTIONAL CONVENTION

To Hon. W. H. Adams, Governor, March 15, 1929.

Governor's approval of House Concurrent Res. No. 2.

> "That which the General Assembly is authorized to do by Art. XIX (St. Const.) relative to initiating proceedings to amend or change the fundamental law, is its business solely, with which the executive has nothing whatever to do." (62 Colo. 128.)

The Governor's approval or disapproval will in no way affect the validity of such a measure.

All other concurrent resolutions are governed by Sec. 39 of Art. V (St. Const.) and require the executive's approval or disapproval.

29 LEGAL RESIDENCE

To County Commrs., Pueblo, March 18, 1929.

Family of convict.

The fact that a husband or head of a family is involuntarily confined in a penitentiary would not change the legal residence of the family. (Art. VII, Sec. 4, Colo. Const.)

30 TAXATION

To Colorado Tax Commission, March 21, 1929.

Sewing machines.

Sewing machines placed in Colorado under lease, and "even as to bona fide purchaser without notice," are taxable to the real owner.

Commissioners v. Cutter, 3 Colo. 350.
Singer Mfg. Co. v. Converse, 23 Colo. 247.

31 TOWN ELECTIONS

To J. M. Swenson, March 21, 1929.

Who may vote.

Electors who have paid a tax, either for the calendar year preceding the year of the vote, or a tax due for some other year paid in that year, and whether paid by the elector personally or by some other person for him, are entitled to vote at a town election on the question of the sale of the municipal light plant.

Ch. 191, S. L. 1927.
Phillips v. Corbin, 8 C. A. 346, 20 C. J. 77.

See opinion to J. M. Swenson, of March 11, 1929.

32 ELECTIONS

To J. A. Johnson, March 21, 1929.

Names of candidates.

In cities of from 2000 to 5000 in population, unless a primary election is held, by which the names of the candidates are chosen to appear on the ballot of the general election, the only names that can be put on such general election ballot are those that are properly certified to the city clerk by petition. (Secs. 7582, 7583, 7586, C. L. 1921.)

33 ELECTIONS

To M. D. Haynes, March 21, 1929.

1. The candidates of a party which did not have a ticket in the field at the last city election, cannot be placed on the ballot unless properly certified to the town clerk by petition.

2. Both personal and real property taxpayers are entitled to vote on the question of the sale of municipal light plant.

3. To entitle electors to vote on sale of municipal light plant, taxes must be paid during the calendar year preceding year in which election is held.

4. Joint ownership of property entitles both to vote after the tax is paid by either one or both of the owners, or by some one else for the benefit of the owners.

Secs. 7582, 7583, C. L. 1921, 20 C. J. 77.

34 CIVIL SERVICE

To Civil Service Commission, March 26, 1929.

Certification of D. S. DeLappe.

A finding and decree of the Civil Service Commission that a civil service employee has resigned from a given position, is not a finding that he has been dismissed from the public service for delinquency or misconduct; consequently Rule III of the C. S. Commission could not be invoked to prohibit his certification to another position in the public service for which he is eligible.

35 ELECTIONS

To C. J. Kennedy, March 28, 1929.

Organization of new party.

Certification of nomination should be filed with the city, municipal or town clerk, not more than 30 nor less than 15 days before the day of election.

The name of each person nominated shall be printed on the ballot in but one place, but there should be added opposite the name of each person nominated, the name of the party or parties or political designation.

In casting the ballot each voter will vote for one of the candidates appearing upon the ballot as having been nominated by one or more of the parties.

The voter may write in the name of any qualified person for any office to be filled. (Secs. 7557, 7711, C. L. 1921.)

36 SCHOOLS

To Board of Directors, Dist. No. 6, March 28, 1929.

Bus Driver's license.

The driver of a school bus should have a chauffeur's license. Contractor transporting pupils, should give bond. (Chap. 149, S. L. 1923. Sec. 1344, 8338, 8468, C. L. 1921.)

37 SCHOOLS

To J. F. Lunsford, March 29, 1929.

The requirement that certain officers in consolidated school districts be elected for certain specified terms is mandatory. (Sec. 8316, C. L. 1921.)

38 SCHOOLS

To Earle Bryant, March 30, 1929.

Powers of County Superintendent.

The county superintendent of schools, as ex-officio member of a county high school committee, has all the powers and duties any member has, among them, the right to vote on all matters coming before the committee. (Sec. 8402, C. L. 1921.)

39 TAXATION

To Colorado Tax Commission, April 1, 1929.

Tax sales.

A second sale of property, after sale to county, not redeemed, is void. A valid tax deed could not be issued thereon, and money paid by such second party should be refunded by the board of county commissioners. (Sec. 7444, C. L. 1921.)

Emerson v. Valdez, 24 C. A. 462.
Henrylyn Irr. Dist. v. Patterson, 65 Colo. 385.

40 CIVIL SERVICE

To. C. S. Commission, April 4, 1929.

Removal of name from eligible list.

If an employe has resigned from one position, whether the resignation is constructive or voluntary, it has no effect on the employe's status on another eligible list. Before a person can be removed from an eligible list such removal must be based upon good and sufficient charges filed as by law provided.

41 WORKMEN'S COMPENSATION

To Thomas Annear, April 12, 1929.

Discrimination against Osteopathic physicians.

As all allopathic, homeopathic, electric and osteopathic physicians are required to take the same courses with the same number of hours per course before they can take the medical examination in this State, and inasmuch as the examinations for all four schools, and the licenses issued, are the same and give each school the same rights and privileges, discrimination against osteopathic physicians in compensation cases, is not proper, under Sec. 4455, C. L. 1921. (Sec. 4528, 4533, C. L. 1921.)

April 12, 1929.

Mr. Thomas Annear,
Chairman of State Industrial Commission,
State Office Bldg.,
Denver, Colo.

Dear Sir:

Your recent request for information as to whether or not under the provisions of Section 4455, Compiled Laws, 1921, any discrimination is allowed against Osteopathic Physicians in compensation cases has been duly considered.

In Section 4528, Compiled Laws, 1921, we find the following: * * * Provided, however, that any person who shall have been lawfully engaged in the practice of the healing art in the State of Colorado, for not less than three months immediately prior to the date upon which this act takes effect, and is a graduate from an institution chartered, to teach the healing art, by the state wherein it was located which school, in case the practitioner graduated therefrom prior to January 1, 1908, required such practitioner to be in actual attendance for two years of nine months each of not less than one thousand hours of instruction work in each of those years in order to graduate, and which school, in case the practitioner graduated therefrom subsequent to January 1, 1908, required the practitioner to be in actual attendance for three years of nine months each of not less than one thousand hours of instruction work in each of those years in order to graduate, shall be granted a license to practice medicine in the State of Colorado by the State Board of Medical Examiners without examination as to his skill or knowledge; Provided further, that such practitioner shall make application to the said Board of Medical Examiners for such license within ninety days after the date upon which this law takes effect upon such blank forms as said board shall provide, and shall pay the fees herein prescribed and shall furnish evidence satisfactory to the board

that he is a person of good moral character and possesses the educational qualifications herein specified.

Under Section 4533, Compiled Laws, 1921, we find that all allopathic, homeopathic, eclectic and osteopathic physicians are required to take examination upon the following subjects:

> "The subjects of examination shall be as follows: Anatomy, Physiology, Chemistry, Symptomatology, Toxicology, Pathology, Surgery and Obstetrics, but no question shall be asked of any applicant concerning Materia Medica, Therapeutics, or any manner, means or system of treatment of healing."

In addition to the above, the Board of Medical Examiners require the above named physicians to take an examination in public health and sanitation and all allopathic, homeopathic, ecletic and osteopathic physicians receive licenses in the following form:

The Colorado State Board of Medical Examiners by Authority of Law hereby licenses.....to practice medicine in the State of Colorado.

Attest.

....

Secretary-Treasurer. President.

No..... .....19.....

We quote from Section 4455, Compiled Laws, 1921.

> "In all cases of injury, the employer or insurer, as the case may be, shall have the right in the first instance to select the physician who shall attend said injured employee: Provided however, that if the services of a physician are not tendered at the time of injury, the employee shall have the right to select his own physician and may upon the proper showing to the commission procure its permission at any time to have a physician of his own selection attend him, and in any non-surgical case, the employee with the permission in lieu of medical aid, may procure any non-medical treatment recognized by the laws of this state as legal, the practitioner administering such treatment to receive such fees therefor under the medical provisions of this act as may be fixed by the commission."

As all allopathic, homeopathic, eclectic and osteopathic physicians are required to take the same courses with the same number of hours per course before they can take the medical examination, and inasmuch as the examinations and questions are the

same for all four schools of medicine, and the medical licenses issued are the same and give each school the same rights and privileges, it is our opinion that under Sec. 4455, Compiled Laws, 1921, discrimination against osteopathic physicians in compensation cases is not proper.

Yours very truly,

ROBERT E. WINBOURN,
Attorney General.

ARTHUR L. OLSON,
Assistant Attorney General.

42 SALARIES—Increase

To Governor Adams, April 12, 1929.

Under amendment of 1928 to Sec. 30, Art. V, Const., where the salary of a public officer was not heretofore fixed by legislative enactment before his election or appointment, such salary may be fixed by legislative enactment after his election or appointment.

43 CIVIL SERVICE

To C. S. Commission, April 13, 1929.

"Laborers" and "Skilled laborers" are not exempt from operation of civil service amendment. (Art. XII, Sec. 13, Colo. Const.)

44 SCHOOLS

To Earl S. Garland, April 16, 1929.

No state license is required of a person operating a moving picture machine at a school entertainment, nor for a school holding an amateur boxing exhibition. (Chap. 70, S. L. 1927.)

45 CHANGE OF NAME

To Nora A. Woods, April 17, 1929.

There is no legal objection to use of a name adopted through marriage of mother, on high school diploma, or for any other purpose; and a court action is not necessary.

46 MEMBERS OF LEGISLATURE

To Governor Adams, April 18, 1929.

Appointment to Civil Office.

Members of Public Utilities Commission are civil officers under the State, and members of the General Assembly are not eligible to appointment as such commissioners. (Sec. 8, Art. V, Const. Sec. 2915, C. L. 1921.)

47 **NATURALIZATION**

To Elizabeth E. Bennet, April 18, 1929.

A native of China or Japan cannot become a citizen of the United States, but one born in the United States, regardless of nativity of parents, is a citizen by force of the 14th amendment to the Constitution of the United States.

48 **SCHOOLS**

To Robert O. Park, April 19, 1929.

Insurance.

A school district may not insure its property in a mutual fire insurance company, unless the policy provides for a definite cash premium and is expressly made non-assessable by reason of the restrictions of Secs. 1 and 2, Art. XI of the State Constitution.

April 19, 1929.

Mr. Robert O. Park,
Pres., School District No. 47,
of Jefferson County,
Edgewater, Colo.

Dear Sir:

Sometime ago you made a request for an opinion from this office as to the legality of carrying mutual fire insurance on the school building in your district, but owing to the importance of the question, and to the fact that there has been considerable diversity of opinion as to this matter, we have taken time to go into the matter thoroughly in order that we might arrive at a satisfactory conclusion.

The question at issue is:

> "May a town, city or school district, or other public corporation, in the State of Colorado, carry fire insurance in a mutual insurance company as apparently authorized by Section 2564, C. L. 1921, regardless of the provisions of Sections 1 and 2, Article XI, Constitution of the State of Colorado?"

In our opinion we are amply justified in answering this question in the negative subject to a possible exception where the policy issued provides for a cash premium and is absolutely non-assessable, and with no contingent liability whatever, and owing to the importance of the question and the diversity of opinion concerning it, we feel that we should state our reasons for such opinion at some length.

Section 2564, C. L. 1921, above referred to, reads as follows:

> "Any public or private corporation, board or association in this State or elsewhere may make applications,

enter into agreements for and hold policies in any such mutual insurance company. Any officer, stockholder, trustee or legal representative of any such corporation, board, association or estate may be recognized as acting for or on its behalf for the purpose of such membership, but shall not be personally liable upon such contract of insurance by reason of acting in such representative capacity. The right of any corporation organized under the laws of this state to participate *as a member* of any such mutual insurance company is hereby declared to be incidental to the purpose for which such corporation is organized and as much granted as the rights and powers expressly conferred." (Italics ours.)

Section 2566, C. L. 1921, reads as follows:

"The policies shall provide for a premium or premium deposit payable in cash, *and*, except as herein provided, for a contingent premium at least equal to the premium or premium deposit. Such mutual company may issue a policy without a contingent premium while it has a surplus equal to the capital required of a domestic stock insurance company transacting the same kinds of insurance, and in no event shall the holder of any such policy be liable for a greater amount than the premium or premium deposit expressed in the policy. If at any time the admitted assets are less than the reserve and other liabilities, the company shall immediately collect upon policies with a contingent premium a sufficient proportionate part thereof to restore such assets, provided no member shall be liable for any part of such contingent premium in excess of the amount demanded within one year after the termination of the policy. The commissioner may, by writen order, direct that proceedings to restore such assets be deferred during the time fixed in such order." (Italics ours.)

The Sections quoted are Sections 8 and 10, respectively, of Chapter 147, Session Laws, 1921.

The Constitutional provisions referred to read as follows:

"Article XI, Section 1. Neither the state, nor any county, city, town, township or school district shall lend or pledge the credit or faith thereof, directly or indirectly, in any manner to, or in aid of, any person, company or corporation, public or private, *for any amount*, or for any purpose whatever; or become responsible for any debt, contract or liability of any person, company or corporation, public or private, in or out of the state

> Section 2. Neither the state, nor any county, city, or town, township, or school district shall make any donation or grant to, or in aid of, *or become a subscriber to*, or *shareholder* in any corporation, or company, or a joint owner with any person, company or corporation, public or private, in or out of the state, * * *." (Italics ours.)

Referring to constitutional provisions similar to those of Colorado, Ruling Case Law says:

> "The Constitutions of many of the states contain an express provision that the credit of the state shall not be given or loaned in aid of any person, association or incorporation * * *.
>
> "Such provisions are restrictive and not enabling."
>
> 25 R. C. L. p. 394, Sec. 27, citing Cole v. La Grange, 113 U. S. 1, 5 S. Ct. 416, 28 U. S. (L. Ed.) 896, 1884.

We have been unable to find in our State reports any case where this particular question has been considered, but in three cases hereinafter referred to the court has stressed the force and effect of the Constitutional provisions quoted as applied to counties and cities.

This question has, however, been before the courts of five other states, namely, Kentucky, New Jersey, Oregon, Idaho and Pennsylvania, and the decision of the court in each of these states will be discussed further on.

Inasmuch as the authorities are not agreed upon the question of whether one carrying a policy in a mutual insurance company thereby becomes a member, shareholder or stockholder of the company, we will devote some space to that question.

Our Statute, Section 2564, definitely establishes the identity of a policy-holder as a member.

IDENTITY OF INSURERS, MEMBERS AND STOCKHOLDERS IN MUTUAL COMPANIES.

In 28 Cent. Dig., Sec. 67, (Insurance) we find the following:

> "One insuring in a mutual company becomes a member thereof."

Citing numerous authorities:

Members and stockholders in a mutual insurance company are identically the same.

Carlton v. Southern Mut. Ins. Co., 72 Ga. 371, 399:

> "Policy-holders in mutual insurance companies are members."

Huber v. Martin, 127 Wis. 412.

"The defendant in error is a mutual insurance company. All persons who effect insurance therein become associated together in a manner partaking of the nature of *limited or special partners* * * *. By effecting an insurance the plaintiff in error became a *constituent member of the corporation.*"

Krugh v. Lycoming Fire Ins. Co., 77 Pa. 15, 19.

AUTHORITIES HOLDING THE AFFIRMATIVE.

Dalzell v. Bourbon County Board of Education, et al., Court of Appeals of Kentucky, Dec. 6, 1921.

Affirms judgment of Circuit Court of Bourbon County holding that school houses and furniture may be insured in a cooperative or assessment insurance company under authority conferred by Sec. 4440, Vol. 3, Ky. Stats. reading as follows:

"And the county board of education is authorized to have said houses and furniture insured against damage by fire or other casualty, the expenses incurred from such insurance to be paid out of the funds raised for general county purposes."

The court holds that the express power given by this section carries the implied power to select the insurance corporation it will contract with. Kentucky has a constitutional provision (Kentucky Constitution, Sec. 179) somewhat similar to that found in the Constitution of Colorado, but this provision is absolutely ignored and no mention whatever, directly or indirectly, is made of it in the opinion.

The opinion devotes over a column to an effort to show that the resources and assets of the insurance company in question are in such a wonderfully good financial condition that in no event would the school district be called upon to contribute from its funds to pay losses incurred by other members of the company.

As far as affecting the constitutional question herein involved we deem this case a very unsatisfactory and disappointing one.

French, Receiver, Millville Mutual Marine and Fire Insurance Company v. The Mayor and Common Council of the City of Millville, 66 N. J. L. 392, action on contract, demurrer to declaration.

Defendant was holder of eight policies of fire insurance in the company, and had given therefor eight premium notes, for sums stated payable to said company in such proportions and at such times as might, agreeably to the charter, be required; the receiver made an assessment on each of said notes for sums stated, which assessment was entirely for fire losses that occurred during the life of said policies and certain necessary expenses. These

notes were taken under the authority of the charter of the company.

The court overruled all objections to the validity of the contract, including the one that it was ultra vires, and concluded its opinion in the following words:

> "We therefore conclude that the *legislature intended* to confer upon this municipality power to enter into such contracts as these notes express, and that there is no reason to thwart that intention." (Italics ours.)

This seems to the writer to be a weak argument which seems to beg the question, and to award little weight to the constitutional provision. What the legislature intended is of no moment if it departed from its constitutional powers.

The constitutional provision involved reads as follows:

> "Art. 1, Sec. 19. No county, city, borough, town or township shall hereafter give any money or property, or loan its credit, to or in aid of any individual, association or corporation, or become security for or be directly or indirectly the owner of any stock or bonds of any association or corporation."

The court, however, found that by giving its premium notes the city did not loan its credit to the company, and that the so-called membership of the insured did not render the city in any sense the owner of the stocks and bonds which belonged to the company, or a holder of stock in the company, within the fair import of the constitutional prohibition.

N. P. Johnson, Respondent, v. School District No. 1 of Multnomah County, State of Oregon, et al., Appellants, 270 Pac. 764.

This case involves a *cash premium non-assessable policy* where there is no contingent liability and as this feature detracts from the importance of the case in this discussion we will quote but briefly from it.

The court says, page 3:

> "This is a suit to cancel certain policies of insurance issued by the Northwestern Mutual Fire Association to School District No. 1 of Multnomah County, Oregon, and to enjoin the school district from purchasing similar policies from such company. The precise question presented is whether a mutual fire insurance company may, under the Constitution and statutes of this state, issue a non-assessable policy to a school district. It is the contention of the plaintiff-respondent that a cash premium policy violates the spirit and intent of Article XI, Section 9 of the Oregon Constitution which, so far as material herein, provides:

'No county, city, town or other municipal corporation, by vote of its citizens, or otherwise, shall become a stock holder in any joint company, corporation or association, whatever, or raise money for, or loan its credit to, or in aid of, any such company, corporation or association.' "

The court also says, p. 3:

"If the contract of insurance subjects the school district to a contingent liability, it is a violation of the constitution and ultra vires. Mere membership does not offend."

The court cites the New Jersey case heretofore referred to and says:

"We do not go so far as the New Jersey case, holding that there is no lending of credit even though a contingent liability exists. In the instant case there is no liability—contingent or otherwise."

A great part of this case is devoted to the discussion of the question whether one holding a policy in a mutual insurance company is necessarily a stockholder, the court holding the negative and contrary to the authorities heretofore cited herein.

Inasmuch as the company had complied with the provisions of the statute of Oregon in having the required amount of assets and net cash surplus the court held that the company was authorized to issue to the school district a cash premium non-assessable policy.

AUTHORITIES HOLDING THE NEGATIVE.

School District No. 8, Twin Falls County v. Twin Falls County Mutual Fire Ins. Co., May 4, 1917. (30 Ida. 400, 164 Pac. 1174.)

This action was instituted by the school district in the district court for Twin Falls County to recover upon an alleged contract of insurance. From a judgment in favor of the school district this appeal was taken. In the complaint it is alleged that the plaintiff below, respondent here, is a school district organized under the laws of this state; that the defendant, appellant here, is a mutual fire insurance company organized under the laws of this state and doing business in Twin Falls County. It is further alleged that the respondent applied to appellant for insurance on its school building, and that the appellant agreed to insure the same; that the building so sought to be insured was burned; and that appellant failed to pay the insurance as agreed.

The court says:

(1) "Under the Constitution of the State, school districts are prohibited from becoming members of a county mutual fire insurance company. Section 4 of Article 8 of the Constitution is as follows:

'No county, city, town, township, board of education, or school district, or other sub-division, shall lend, or pledge the credit or faith thereof directly or indirectly, in any manner, to, or in aid of any individual, association or incorporations, for any amount or for any purpose whatever, or become responsible for any debt, contract or liability of any individual, association or corporation in or out of the state.' "

The section quoted is almost the same as Art. XI of the Colorado Constitution, word for word, the only departure being that the word "individual" is used in place of the word "person," and the word "association" instead of the word "company," and both constitutions contain the words "for any amount," not found in the Constitutions of Kentucky, New Jersey or Oregon.

In conclusion the court says:

"It follows that there could have been no contract of insurance existing between the respondent and appellant, and this action cannot be maintained. The judgment is reversed."

F. B. Downing, executor of J. F. Downing, deceased, and G. Daniel Baldwin, plaintiffs, vs. School District City of Erie, Pa., et al., defendants, April 19, 1928.

From the opinion of Judge Hirt we quote:

"This is an action in equity brought by taxpayers for an injunction restraining the directors of the school district of the city of Erie from entering into a fire insurance contract with a mutual company."

"It is the position of the school district that they are authorized by the act of April 27, 1925, P/L 305, to make such contract. Section 1 of that act provides: 'That any county, city, borough, incorporated town, township, school district, or poor district may make contracts of insurance with any mutual fire insurance company duly authorized by law to transact business in Pennsylvania, on any building or property owned by such county, city, borough, incorporated town, township, school district, or poor district.'

It is plaintiff's contention that this act of assembly violates Article IX, Section 7, of the constitution which is as follows: 'The general assembly shall not authorize any county, city, borough, township or incorporated dis-

trict to become a stockholder in any company, association or corporation or to obtain or appropriate money for, or to loan its credit, to any corporation, association, institution or individual.' With this contention we agree."

"The insured named heretofore by accepting this policy thereby becomes a member of this corporation, and agrees to pay the corporation in addition to the premium deposit such sum or sums, in no event to exceed in the aggregate five times the amount of said premium deposit, at such time or times, in such manner and by such installments as the directors of this company shall assess and order pursuant to its character and by-laws and the laws of Pennsylvania."

"The prohibition against lending credit is applicable because the insured is assessable under the policy to pay losses and is not affected by the fact that the liability is limited to five times the premium. It is not a question of limited or unlimited liability; the prohibition operates against loaning credit in any amount."

The Pennsylvania decision herein cited is from the common pleas court, and not the supreme court, but the decision was reaffirmed and amplified as a result of a rehearing, by a decision handed down January 9, 1929, as we are advised by a pamphlet emanating from the Committee on Publicity and Education, Room 953, Insurance Exchange, Chicago, Illinois.

The pamphlet quotes the court as saying in the new decision, "It is not a question of limited or unlimited liability, nor the reasonableness of the amount a municipality may pay, nor the probability that it will be asked to pay; what the constitution forbids is the loaning of credit of any amount, conditional or otherwise."

While this case has not reached the supreme court we apprehend that should it do so the decision would be affirmed, basing this belief upon the language used in Brodie, Appellant, v. Philadelphia, 230 Pa. 434, 449-450, in reference to the constitutional provision involved where the court quotes with approval the language found in Wysearver v. Atkinson, 37 Ohio St., 80, 96-97. This Pennsylvania case does not involve mutual insurance companies but is cited to call attention to the weight given the constitutional provision involved.

And our own supreme court in Lord v. Denver, 58 Colo. 1, at pages 29, et seq., cites with approval the Ohio case herein cited, quoting the provision of the Ohio Constitution and adding, p. 29.

"It will be seen that the provision of the Colorado Constitution is broader and more exclusive than the one

stated, in that it denies this power to the state as well as to corporate sub-divisions, and uses the terms, 'directly,' or 'indirectly,' 'in any manner,' 'public or private,' 'for any amount,' or for 'any purpose whatsoever,' or 'become responsible for any debt,' 'contract or liability,' 'in or out of the state,' 'make any donation to,' 'grant, or in aid of,' 'subscribe to,' 'shareholder in,' 'joint owner with,' etc."

This was an action by a citizen and taxpayer, to restrain the City and County of Denver from issuing its bonds in the amount of three million dollars, to aid in the construction of a proposed tunnel to be known as the "Moffat Tunnel."

The court held that the proposed bond issue was clearly both in letter and spirit, within the inhibition of Sections 1 and 2 of Art. XI of the Constitution, and void.

Note: The bonds subsequently issued in aid of the Moffat Tunnel were issued by "The Moffat Tunnel Improvement District" and not by the City and County of Denver.

In the Colorado Central R. R. Co. v. Lea, et al., 5 Colo. 192, the court held that Sec. 2, Art. XI of the Constitution prohibited the Board of County Commissioners of Boulder County making a donation to the railroad company.

In Leddy, State Treasurer, v. The People, ex rel., Attorney General, 59 Colo. 120, 122, the court held that the provisions of Rev. Stat. 1908, Sec. 5207, making each county liable to the state for losses incurred by the loan of the school fund in such county, is in violation of Sec. 1 of Art. XI of the Constitution.

While the Colorado cases are not in point they emphasize the dignity and sanctity of the constitutional provision involved.

Section 2566, Compiled Laws, 1921, requires that the policies provide for a premium or premium deposit payable in cash, *and* except as therein provided, for a contingent premium *at least* equal to the premium deposit. It may issue a policy without a contingent premium "while it has a surplus equal to the capital required of a domestic stock insurance company transacting the same kind of insurance." If at any time the admitted assets are less than the reserve and other liabilities the company must collect from policy-holders a sufficient amount to restore such assets. And this assessment may be demanded within one year after the termination of the policy.

The provision of this section, "It may issue a policy without a contingent premium while it has a surplus equal to the capital required of a domestic stock insurance company transacting the same kind of insurance," refers us to Section 2495, C. L. 1921, which reads in part as follows:

> "No joint stock fire or life insurance company shall be permitted to do any business in this state, unless it is possessed of an actual paid-up cash capital, as follows: Fire insurance companies with territory not limited to Colorado, of not less than Two Hundred Thousand Dollars, ($200,000); fire insurance companies, the business of which is limited to Colorado only, not less than Fifty Thousand ($50,000) Dollars."

Unless this requirement is complied with no mutual fire insurance company transacting business in Colorado is permitted to write a non-assessable policy or one carrying no contingent liability.

In connection with this question we have examined a digest of Statutes and Court decisions relating to the right of public corporations to insure property in mutual fire insurance companies, prepared by American Mutual Alliance, 168 N. Michigan Blvd., Chicago, Illinois, but it has been of little assistance to us.

The Digest is informative and from it we learn that many of the states have statutes specifically authorizing public corporations to insure their property against fire in mutual insurance companies, many of which statutes read exactly as does Sec. 2564, C. L. 1921 of Colorado, but the constitutional provisions, if any, of the several states are omitted. To us this Digest means little more than to indicate that there has been an organized effort to secure a uniform law permitting public corporations to become members of mutual insurance companies.

Our research herein leads us to the following conclusions:

1. That our constitution forbids a school district lending its credit to an insurance company in any amount, and that by accepting a fire insurance policy in a mutual insurance company providing for a contingent liability for any amount whatever, it lends its credit to the company.

2. That the words "limited" or "unlimited" cannot be read into the constitutional provision controlling herein.

3. That a school district may not insure its property in a mutual fire insurance company unless the policy provides for a definite cash premium and is expressly made non-assessable.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By A. L. BEARDSLEY,
Assistant Attorney General.

49 **GOVERNOR'S VETO**

To A. R. Jackson, April 20, 1929.

Under Art. 4, Sec. 11 of the Const., when a bill is vetoed by the Governor, it must be submitted for reconsideration in the house in which it originated.

50 **JUVENILE DELINQUENTS**

To Marion F. Jones, April 20, 1929.

It appears to this office that persons under 18 years of age may not be legally fined in a police magistrate's court. (Sec. 660, C. L. 1921.)

51 **GENERAL ASSEMBLY**

To. Hon. J. M. Jackson, April 26, 1929.

Payment of employes of General Assembly.

Employes of the General Assembly may lawfully be paid their statutory per diem up to the date of actual final adjournment of the general assembly, regardless of the fact that the date of actual adjournment was subsequent to the date fixed by resolution to adjourn. (Secs. 6 to 9, 12, 14, C. L. 1921. Art. 5, Sec. 27, Colo. Const.)

52 **PURCHASE AND SALE OF ALCOHOL**

To Charles M. Armstrong, April 30, 1929.

Ch. 1, S. L. 1917, authorizes the Secretary of State to issue a license to a wholesale dealer for the sale of alcohol, and to a manufacturer for the purchase of alcohol.

This Act is distinguished from the Intoxicating Liquor Act of 1915 as amended in 1919, by a former opinion of this office addressed to E. H. McClenahan, Oct. 26, 1921.

53 **PREDATORY ANIMALS**

To Governor Adams, May 1, 1929.

Eradication of.

Discussion of House Bill No. 333, passed by the 27th General Assembly.

54 **SCHOOLS**

To C. A. Fowler, May 1, 1929.

Transportation of Pupils.

Under the provisions of House Bill No. 33, approved and in effect April 9, 1929, a third class school district, authorized by vote of electors to transport children to and from school, may transport pupils to a high school in another district. (Sec. 8338. C. L. 1921.)

55 APPROPRIATIONS

To Governor Adams, May 2, 1929.

Long Appropriation Bill.

Inclusion of item in re:

Domestic and Foreign Corporations.

It is within the power of the Legislature in the general appropriation bill, to make adequate provision for governmental agencies, not limited in the creation acts. (Chap. 10 and 11, S. L. 1917.)

56 FEES AND SALARIES

To Governor Adams, May 3, 1929.

Discussion of House Bill No. 165, relating to fees of Probate Courts. (Chap. 80, S. L. 1929.)

57 EMPLOYEES—State

To John M. Jackson, May 4, 1929.

Auto-theft Department.

Expenses of enforcing Auto-theft Act must be paid out of moneys collected under the act, under Sec. 1380, S. L. 1921, which limits such expenditures to $10,000 per year.

58 SCHOOLS

To W. F. Temple, May 6, 1929.

County H. S. Committee.

No member of County H. S. Committee may draw pay for attendance or mileage.

Member serves until successor qualifies. Sec. 8325, C. L. 1921—Opinion No. 107, May 10, 1927. (Secs. 8403, 8407, C. L. 1921.)

59 COUNTY CLASSIFICATION

To C. B. White, May 7, 1929.

Jefferson County.

The act changing classification goes into effect 90 days after April 21. When the act becomes effective it would be necessary for the Governor to appoint a Public Trustee for the county. Until such appointment is made the acts of the county treasurer who is acting as Public Trustee would be valid as those of a de facto officer. There is no reason why the offices of county treasurer and of public trustee may not be held by the same person. (Chap. 77, S. L. 1929.)

60 INSURANCE LAW

To Jackson Cochrane, May 7, 1929.

Workmen's Compensation Insurance.

A foreign reciprocal exchange authorized to do a workmen's compensation insurance business in its home state, may be

admitted to this state upon its agreement to confine its business in this state to insurance other than industrial insurance.

See also Opinion of this office of July 12, 1915, Attorney General's Report, 1915-16, page 25.

61 SCHOOLS

To Mazie Snyder, May 8, 1929.

Teacher's certificate.

A county second grade teacher's certificate issued subsequent to July 18, 1923, can be renewed without examination, once only. (Sec. 3, Ch. 165, S. L. 1923. Ch. 152, S. L. 1925.)

62 SATURDAY AFTERNOONS

To Governor Adams, May 9, 1929.

Re: Senate Bill 265.

The title of the bill purports to make Saturday afternoon of each week a holiday in state offices, while the bill itself provides that such offices "shall be closed" on Saturday afternoon of each week. The bill is mandatory instead of permissive and carries its effect far beyond the intention of its proponents.

63 SCHOOLS

To J. N. Taylor, May 14, 1929.

Budget may be voted at annual election without being mentioned in notice, and a majority vote carries. (Sec. 8327, C. L. 1921.)

Contract to transport pupils for two years not illegal. Is a question of policy rather than school law.

Any qualified elector may vote on all questions except on issuing of bonds, which requires an additional qualification of having paid a school tax. (Sec. 8358, C. L. 1921.)

64 GENERAL ASSEMBLY

To Governor Adams, May 15, 1929.

A joint resolution of the General Assembly appointing a committee to investigate the National Guard and report to next General Assembly, pertains solely to the transaction of the business of the general assembly and goes into effect without approval of the governor.

65 SCHOOL LAW

To Robt. J. McCullough, May 20, 1929.

Insurance written by Member of Board.

Assuming that the school director who writes insurance collects a premium upon the policy and is paid a commission out of such premium, the weight of opinion is to the effect that the trans-

action is contrary to public policy, even where not forbidden by statute.

Citing School Dist. 98 v. Pomponi, et al., 79 Colo. 658. Also Sec. 7994, C. L. 1921.

66 BUILDING AND LOAN LAW

To B. L. Miller, May 21, 1929.

Stockholder's liability.

The Building & Loan Association Statute of Colorado does not contain any provision creating a stockholder's liability. (Sec. 2792, C. L. 1921, Am. by Chap. 72, S. L. 1927.)

67 SALARIES

To E. B. Cornell, May 22, 1929.

Deputy District Attorney.

The Deputy District Attorney's salary is payable out of the general fund of the county. (Sec. 7949, C. L. 1921, Am. by Chap. 112, S. L. 1923.)

68 BOARD OF HEALTH

To S. R. McKelvey, May 23, 1929.

Under provisions of Secs. 970-1-2-3, C. L. 1921, local registrars may be appointed and are subject to removal by the State Board of Health in Home Rule cities.

69 MILITARY DEPARTMENT

To A. P. Ardourel, May 25, 1929.

Under Sec. 365, Ch. 11, C. L. 1921, surplus funds remaining in National Defense Fund, must first be applied to payment of installments maturing on national defense bonds, or for redemption and cancellation of bonds before being applied to payment of relief bills. (Chap. 30, S. L. 1929.)

70 HIGHWAYS

To Stivers & Strang, May 27, 1929.

Under Ch. 33, Sec. 1305, C. L. 1921, all public highways are required to be 60 feet in width, but the board of county commissioners has the right to make the roadway as wide as they wish.

71 OPTOMETRY

To J. C. Bloom, June 1, 1929.

Sale of eyeglasses and spectacles.

A corporation in Colorado may operate an optometric department as part of their business, upon compliance with the law. (Sec. 19, Ch. 140, S. L. 1925, and Sec. 20 of same act.)

The Supreme Court decision in Painless Parker case does not apply to optometrists because statutes differ materially

72 HIGHWAYS

To Major Blauvelt, June 5, 1929.

Re: Livestock grazing along public highway.

1. The owner of livestock has a right to pasture stock upon public highway which is not fenced, but is forbidden from pasturing on public highway if set apart from adjoining property by legal fence.

2. The authorities in charge of highway maintenance are not in position to demand that stock be kept off highway if not fenced.

3. If a motorist has a collision with live stock on a public highway that is fenced, and kills or injures live stock the owner has no recourse against the motorist. If the collision results in injury to the motorist, he has a right to demand damages from owner of stock. (Chap. 168, S. L. 1921.)

73 AUTO TOURIST CAMPS

To Charles M. Armstrong, June 7, 1929.

Licensing and supervision of.

Under S. B. 220, 27th General Assembly, the Secretary of State is not required to license or supervise hotels, apartment or rooming houses that furnish garage accommodations;

Nor to license or supervise auto camps within the limits of any incorporated town or city in the State;

Nor to license or supervise auto camps owned by any municipality in the state, whether located within or without the territorial limits of any incorporated town or city;

But he is required to license and supervise all privately owned auto and tourist camps located outside the limits of incorporated towns and cities in the State;

The act does not violate the "equal protection of the law" clause and is not unconstitutional as class legislation.

Dwyer v. People, 82 Colo. 574,576.

12 Corpus Juris, Sec. 890, p. 1155, Sec. 880, p. 1150, Chap. 132, S. L. 1929.

74 PROBATE FEES

To L. C. Kinikin, June 7, 1929.

H. B. 165 takes effect Aug. 7, 1929, and since it directs matters of procedure only it is not retroactive in the sense that such acts are unconstitutional and will apply to all estates pending on that date as to the fees to be paid. (Chap. 80, S. L. 1929.)

75 TAXATION

To Colorado Tax Commission, June 13, 1929.

Additional railroad tracks.

The additional track of the Denver & Rio Grande R. R. Co. in Eagle Canon, Eagle County, is not "main track" within the meaning of our statutes relating to the unit valuation and apportionment of the assessment of railroad property among the several counties. (Secs. 7305, 7308, 7309, 7294, C. L. 1921.)

76 CORPORATION FEES

To Charles M. Armstrong, June 24, 1929.

Refund of.

Fees paid to the Secretary of State where articles of incorporation do not comply with statute, may be returned on the ground that the action of such officer in filing the articles of incorporation was unauthorized and a nullity. (Sec. 2815, C. L. 1921.)

77 PROBATE FEES

To Clarence M. Smith, June 25, 1929.

H. B. 165, 1929, not retrospective in sense constitution prohibits such legislation.

Citing Fisher v. Harvey, 6 Colo. 20; Edelstein v. Carlile, 33 Colo. 57; 15 C. J. 24; Cain v. French, 29 Calif. App. 727; Fessenden v. Nickerson, 125 Mass. 317. (Chap. 80, S. L. 1929.)

78 MILITARY DEPARTMENT

To A. P. Ardourel, June 27, 1929.

Purchase of equity in property mortgaged by owner.

The purchase of an equity in a piece of property which is mortgaged, is undoubtedly the assumption of a debt such as is specifically forbidden by Sec. 30, Art. XI of the State Constitution.

79 APPOINTMENTS

To Gov. William H. Adams, June 27, 1929.

Member of Civil Service Commission.

Governor has power to make a provisional appointment and it would be wise to make such appointment under Sec. 536, C. L. 1921 from a congressional district not already represented on such commission.

80 ELECTIONS

To E. B. Cornell, June 28, 1929.

Purging of Registration lists.

Outlying precincts do not have a permanent election registration list, nor is there a provision to purge the same.

County clerks in counties in which there are one or more cities of 2000 to 5000 population are required to purge registration lists for such cities as directed by Sec. 7619, C. L. 1921. Also the registration lists for one or more cities in such county with a population of 5000 or more, as directed in Sec. 7647, C. L. 1921.

81 JURORS' FEES

To William W. Gaunt, July 1, 1929.

Construction of House Bill No. 24.

Jurors shall receive for attending any court of record the sum of four dollars per day for the first two weeks of actual jury attendance, and thereafter, six dollars per day of actual attendance.

Citing: Jackson v. Baehr, 71 Pac. 167, 168;
Mason v. Culbert, 41 Pac. 464;
Jacobs v. Elliot, 37 Pac. 942;
35 Corpus Juris.
Chap. 119, S. L. 1929.

July 1, 1929.

Hon. William W. Gaunt
County Attorney
Brighton, Colorado

Dear Mr. Gaunt:

In your letter of the 24th ult., you propound the following question:

> Under House Bill No. 24, passed by the last General Assembly, and approved April 5, 1929, effective from that date, is the attendance of a juror upon a court of record, for which he is paid a per diem of $4.00 for the first two weeks, measured by calendar weeks from the first day such juror reports for duty or is such attendance measured by two weeks of fourteen days actual attendance at court?

In my opinion, a juror is intended under this statute to receive $4.00 per day for the first two weeks of fourteen days actual court attendance, for attendance of jurors has been held to mean actual court attendance. Attention is called to the following:

In the case of Jackson v. Baehr, 71 Pac. 167, 168 (Calif.) a juror was in attendance at court thirteen days and on but three of those days did he act as an impaneled juror. The court affirmed a judgment in his favor, when the auditor claimed the juror was entitled to but three days fees, in the following language:

> "We therefore hold that * * * the 'fees of jurors for each day's attendance' *means the attendance* of

the jurors lawfully summoned and present in court in answer to the call thereof, whether sworn to try any case or not."

In *Mason v. Culbert,* 41 Pac. 464 (Cal.) the jurors were sworn, heard testimony for thirteen days, when two of them became sick and the case was continued three times for that reason and was likewise dismissed and jury discharged the 43rd day after the trial was commenced. The jury was excused during the continuances. When discharged the jurors were given certificates for 16 days attendance. They demanded certificates for 43 days attendance and the court affirmed the judgment denying the mandate for that purpose, saying:

"The statute regulating the fees of jurors in Amador county was enacted March 1, 1872 (St. 1871-72, p. 188), and provides that they shall receive three dollars per day 'for attendance upon courts of record.' * * * The per diem provided by the statute is not intended to be in the nature of a salary for the time that he is serving as a juror, or as wages for trying a cause, but rather as a compensation for the time during which he is withdrawn from his ordinary avocation and in actual attendance upon the court. After he has been drawn as a juror he may be excused from attendance for a definite period, and, after a jury has been impaneled and sworn, the remaining jurors may be excused, from attendance until some future day. In such cases they are not 'in attendance upon the court' during the period for which they are excused. Neither are the jurors who have been impaneled and sworn to try a cause in attendance upon the court during any period that they are excused therefrom, with the opportunity to be engaged in ordinary avocations, any more than if they had been relieved from attendance at their own request, or because the court may have taken an adjournment for its own convenience."

The case of Jacobs v. Elliot, 37 Pac. 942 (Cal.) was decided the same way where the jurors were excused from attendance during adjournment from time to time and the jurors were not impaneled to try a case at the time of being excused and was reasoned as follows:

"The compensation comes, not by virtue of the quasi office, but at so much per diem for attendance on the court. Jurors are subject to the orders of the court. It designates the time when their attendance shall commence, and its duration. It may excuse them for cause,

and may discharge the whole panel at will. Having general authority to command the presence of the jury, and by virtue of sundry statutes as well as by that inherent authority which comes from the common law and attaches to courts of record, it is not doubted but that the superior court may, in furtherance of the public interest, dismiss from attendance upon it for a limited and specified time the jurors in attendance, without finally discharging them from their duties; and, as their compensation is only given for attendance, they are not entitled, when so excused, to the per diem fixed by the statute."

This seems to be the general rule as laid down by 35 C. J. 310, and the other cases there cited.

The said House Bill No. 24 says "Jurors shall receive for attending any court of record * * * the sum of four dollars per day for the first two weeks, and thereafter six dollars per day * * *."

In my opinion this means the same as if the Legislature had said:

"Jurors shall receive for attending any court of record * * * the sum of four dollars per day for the first two weeks of actual jury attendance, and thereafter six dollars per day of actual attendance."

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By SIDNEY P. GODSMAN,
Assistant Attorney General.

82 CIVIL SERVICE

To Civil Service Commission, July 2, 1929.

Sweeney v. Hoag. Writ of Mandamas.

In compliance with the writ of mandamus issued in the case of Hoag v. C. S. Commission, No. ....., District Court, Denver, the Commission should take no action regarding a provisional or permanent appointment on the Board of Corrections which might at a future time involve the Commission should it fail to show before the court a good cause why it did not comply with the writ, wherein the Commission was ordered to expunge its record of June 21, 1929.

83 TOURIST CAMPS

To Hon. Charles M. Armstrong, July 2, 1929.

Auto camps within incorporated towns are not regulated by Chapter 132, S. L. 1929. It would be well to have the various towns to pass ordinances modeled on provisions of state law.

84 JURORS' FEES

To Frank L. Turner, July 3, 1929.

Amount of jury fees paid by litigants in county court.

In Criminal cases: When the defendant is chargeable with costs, he is taxed with a $5.00 jury fee;

In Civil cases: The unsuccessful litigant pays the jury fees. If the jury is chosen under Sec. 5842, C. L. C. 1921, the jury fee is $5.00 and board, under sections 5894 and 5896. If the jury is procured under Sec. 5773, the jury fee so paid is the per diem and board under Sec. 5773 and 5896.

85 SCHOOLS

To W. F. Templin, July 5, 1929.

Funds of district should be kept separately—The county treasurer must keep various funds of school districts separate and apart, and cannot combine them into one fund. (C. L. 1921. Secs. 8280-81-82-83-86-88; 8302, 8449, 8801.

86 COMPATIBLE OFFICES

To Geo. C. Twombly, July 9, 1930.

There is no statute prohibiting a county commissioner from holding the office of Brand Inspector.

87 HIGHWAY DEPARTMENT

To Major Blauvelt, July 10, 1929.

Use of Gasoline and Motor Vehicle Tax by counties.

Under the present law, if the county commissioners of any of the counties are using their allocation of the Gas Tax or of the Motor Vehicle Tax for any purpose other than the building and maintaining of roads, they are doing so in direct violation of law. Chap. 139, S. L. 1929.

July 10, 1929.

Major L. D. Blauvelt
State Highway Engineer
State Office Building
Denver, Colorado

Dear Sir:

Replying to your letter of the 5th inst., in reference to the report which has come to you that the counties in some instances have transferred moneys received from the gasoline tax and motor vehicle license tax from the road fund to the general county fund, and particularly as to whether or not such procedure is legal, we advise you that the act of 1923, amending the act of 1919, with regard to the allocation of the funds received

from the gas taxes referred to, contains the following paragraph as to the allocation of moneys received from gas taxes:

> "* * * The remaining fifty (50%) per cent of such money so paid by the State Oil Inspector to the State Treasurer under the provisions of this act, shall be apportioned on the first day of January and the first day of July of each year, among the several counties of the State according to the mileage of State Routes and State Highway, as established by the State Highway Department, and the Auditor of State shall issue warrants covering the above payments to the several counties, and the State Treasurer is hereby authorized to pay same."

The Act of 1927, amending the act of 1923, contains the following paragraph as to the allocation of moneys received from gas taxes:

> "Of funds remaining with the State Treasurer not later than the twentieth day of each month seventy per centum (70%) shall be paid by him to the credit of the State Highway Fund and Thirty per centum (30%) shall be paid by him to the several counties in the State in proportion to the number of miles in each county designated by the State Highway Department as state highways, and shall be expended by said counties in the construction and improvement, repair or maintenance of public highways in said county."

The Act of 1929 passed by the recent Legislature contains the following paragraph as to the allocation of moneys received from gas taxes:

> "Of the balance of such funds thus obtained and remaining with the State Treasurer on the twentieth day of each month he shall pay seventy per cent to the credit of the State Highway Fund and twenty-seven per cent to the credit of the several counties of the state in proportion to the number of miles of highway in each county designated by the State Highway Department as state highways, and said twenty-seven per cent shall be expended by said counties only in the construction, improvement, repair or maintenance of public highways in said counties. * * *"

From a careful perusal of these paragraphs, it would appear that while in the Acts of 1919, 1921 and 1923, the funds referred to were merely turned over to the County Treasurers of the different counties, and while there might, therefore, during that period have been an ambiguity with regard to the question as to

whether the counties had the right to transfer the money received from gasoline tax from the road fund to the general county fund, under the acts of *1927* and *1929*, the direction is *specifically* made that the funds thus allocated shall be expended by the counties only in the construction, improvement, repair or maintenance of public highways in said counties.

As to the moneys received from motor vehicle taxes in the laws of 1927, there appears the following paragraph:

> "(C) The remaining fifty (50) per cent. of such moneys so paid by the secretary of state to the state treasurer under the provisions of this act shall, not later than the twentieth day of each calendar month, be paid by the state treasurer to the county treasurers of the different counties in which such moneys were collected during the preceding calendar month; provided, such payments shall be made in equal proportion to the moneys collected in each such county under the provisions of this act; **provided, further,** such moneys so paid to said county treasurers shall be credited to the road funds of such counties and shall be expended under the direction of the board of county commissioners of each such county for the construction, maintenance and improvement of the county roads and bridges of such county, and for no other purpose."

If, therefore, any counties are transferring, the moneys, as indicated in your letter, they are doing so in direct violation of the law.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By TOM L. POLLOCK,
Assistant Attorney General.

88 OIL SHALE INVESTIGATION

To James Duce, July 10, 1929.

Contract between State and U. S. Bureau of Mines.

Under Ch. 139, S. L. Colo. 1925, which is still in force and effect, a contract between the State of Colorado and the Bureau of Mines of the U. S. Department of Agriculture, for the study of oil shales and shale oil in this State, is legal, and under its terms, the appropriation made by the general assembly, not to exceed $6000, may properly be expended.

July 10, 1929.

Mr. James Duce
State Inspector of Oils
Capitol Building
Denver, Colorado

Dear Mr. Duce:

You have submitted to me request for an opinion as to whether or not the State can be legally bound to pay a sum of money, not in excess of $6000.00 per annum, out of the fees and emoluments of your office, under the conditions as contained in the proposed Cooperative Agreement by and between the State of Colorado and the Bureau of Mines of the Department of Commerce under the direction of the Bureau, for studying oil shales and shale oil in Colorado.

An act of the legislature on page 388 of the Session Laws of 1925 provides, as follows:

> "* * * Out of such fees shall also be paid the expenses incurred in making such geological examinations of State oil lands as shall be authorized by the Governor, but not to exceed Eight Thousand Dollars ($8,000.00) per annum."

This Act, in my opinion, is still in force and effect and fully authorizes the expenditure in question out of the revenues of your office.

In addition to the legality of the proposed agreement, I am convinced that Colorado has a deep interest in maintaining the laboratory at the State University in cooperation with the Federal Government. Colorado has a vast area of oil shale on the western slope and many of our citizens are interested therein individually. It is very apparent that any reasonable effort looking to the speedy development of this vast resource should be encouraged. I understand that the laboratory has been conducted jointly with the Federal Government for a few years and was obtained originally only after strenuous efforts on the part of far seeing individuals of the State.

I strongly advise, both from an economic and legal standpoint, the speedy execution of the contract in question.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

89 COLORADO PRODUCTS LAW

To T. H. Gibson, City Attorney, July 11, 1929.

Re: Application of law to local improvements, sidewalks, alleys, streets.

Since the act of 1919 does not repeal any acts or parts of acts in conflict with said act, and since repeals by implication are not favored, it is natural to assume that the legislature only intended that the language used in Sec. 3 should cover public buildings, court houses, public schools and the like, and does not cover public improvements, such as sidewalks, streets, alleys, roads and highways.

Citing: Section 455 C. L. 1921
35 Cyc. page 1119
41 C. J. 211
3 Words and Phrases (3d) p. 141-3
C. L. 1921, pages 2409-13-14
Cutshaw v. Denver, 19 Colo. App. 341
Morse v. Morrison, 16 Colo. App. 449
Climax Dairy v. Mulder, 78 Colo. 407

Contra:
West Va. Co. v. Royal Indemnity Co., 43 A. L. R. 558

90 COURT COSTS—Probate

To M. N. Jordan, July 15, 1929.

H. B. —165—27th General Assembly.

The docket fees provided in H. B. 165, 27th General Assembly, when paid, are a credit on all the other fees provided in the bill except in first-class counties, in which case they are added to all the other fees required thereby. (Chap. 80, S. L. 1929.)

91 INHERITANCE TAX LAW

To L. T. Morgan, July 16, 1929.

H. B. 165—27th General Assembly.

The bill repeals portion of Sec. 6, Ch. 114, S. L. 1927, which provides for taxing as costs certain sums for services incidental to probate proceedings. (Chap. 80, S. L. 1929.)

92 COUNTY OFFICERS

To W. B. Justice, July 17, 1929.

Sheriff's salary.

In a fourth-class county only so much of the salary of the sheriff can be paid out of the General Fund as equals the fees earned by the sheriff.

Commissioners v. Straub, 75 Colo. 495.

93 PLUMBING LAW

To R. E. Porter, July 17, 1929.

(Western State College)

Act of 1929.

"It is the opinion of this office that the act does not apply to the State of Colorado or its institutions."

Same opinion to F. H. Wolcott, State University. (Chap. 142, S. L. 1929.)

94 INSANE PERSONS

To. F. H. Zimmerman, July 17, 1929.

Medical, surgical and dental treatment of insane patients.

It is the duty of the proper officials of the State Hospital to provide medical, surgical and dental treatment when the same tends to relieve or cure the wards of the State.

Relatives should be consulted before directing treatment in critical cases. (Secs. 573, 578, C. L. 1921.)

95 STATE GEOLOGIST

To R. D. George, July 19, 1929.

Salaries of State Geologist and his secretary.

The appropriation provided by Sec. 6, Ch. 66, S. L. 1925, is not a continuing appropriation. (Davis v. The People, 78 Colo. 158.)

House Bill 371, 27th General Assembly, expressly repeals Ch. 66, S. L. 1925, but seems to leave a lapse from July 1, 1929 to the date of the taking effect of this new law, about Aug. 7.

96 WORKMEN'S COMPENSATION

To Thomas Annear, July 27, 1929.

Compensation Insurance Employe of R. R. contractor.

If the employes of contractors for railroads are engaged in interstate transportation, or in work so closely related to it as to be practically a part of it, the contractor need not protect them by carrying compensation insurance. (Sec. 10 Workmen's Comp. Law.)

If, however, the employes for railroad contractors are not engaged in interstate transportation or in work so closely related as to be practically a part of it, such contractor comes under the provisions of the act and must carry insurance. Citing cases.

In no event can a common carrier engaged in interstate commerce (Comp. Law, Sec. 49) or being the owner of property and contracting work to be done thereon (Comp. Law, Sec. 50) be held to come under the act, although its contractors may. Sec. 4384, C. L. 1921.

July 27, 1929.

Hon. Thomas Annear,
Chairman, Industrial Commission of Colorado,
State Office Building,
Denver, Colorado.

Dear Sir:

We have your request for an opinion as to whether or not an employee of a contractor for a railroad comes within the provisions of Sec. 4384, C. L. 1921, and also whether it is necessary for such contractor to protect his employees by carrying compensation insurance.

Sec. 10 of the Workmen's Compensation Act of Colorado (Sec. 4384, C. L. 1921) provides as follows:

> "The provisions of this Act shall not apply to common carriers engaged in interstate commerce nor to their employees."

Applying the test as set out in 10 A. L. R. 1184, 14 A. L. R. 732, and 24 A. L. R. 634, which reads as follows:

> "Was the employee at the time of his injury engaged in interstate transportation or in work so closely related to it as to be practically a part of it."

Contractors and their employees naturally fall into two classifications. If the employees of contractors for railroads are engaged in interstate transportation or in work so closely related to it as to be practically a part of it, Sec. 10 of the Workmen's Compensation Act of Colorado applies and the contractor of such employees need not protect them by carrying compensation insurance.

On the other hand if the employees of contractors for railroads are not engaged in interstate transportation or in work so closely related to it as to be practically a part of it, we are of the opinion that such contractor comes under the provisions of the Act and not under Sec. 10 thereof.

We are led to this conclusion by the plain wording of Sec. 10, also by the provisions of the Federal Workmen's Liability Act, and the cases construing said act as given in the preceding A. L. R. citations. To construe the Colorado Act otherwise, we feel, would render it unconstitutional as denying to such latter employees the equal protection of the laws, in violation of the 14th Amendment to the Constitution of the United States.

See:

Barbier v. Connolly, 113 U. S. 27, 31, 28 L. Ed. 923, 925.

Gulf C. & S. F. R. Co. v. Ellis, 41 L. Ed. pages 666, 667-669.

A. T. & S. F. Ry. Co. v. Vosburg, 59 L. Ed. pages 1199, 1200-1201.

Royster Guano Co. v. Virginia, 64 L. Ed. pages 989, 990-991.

Sec. 49 of the Workmen's Compensation Act of Colorado reads as follows:

> "Any person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof to any lessee, sub-lessee, contractor or sub-contractor, shall irrespective of the number of employees engaged in such work be construed to be an employer * * *."

In Sec. 50 of the same Act we find:

> "Every person, company or corporation that owns any real property or improvements thereon and that contracts out any work done on and to said property to any contractor, sub-contractor, person or persons who shall hire or use four or more employes or workmen * * * in the doing of such work, shall be deemed to be an employer under the terms of this act * * *."

In construing statutes the following rules are pertinent: that every statute must be read as a whole and its meaning gathered from all its parts; that the settled canons of judicial construction require that possible interpretation be given a statute which will render it effective, and effect the legislative intent, if such intent can be reasonably inferred, and that full effect be given to every word and phrase; provided a proper, logical and reasonable conclusion is thus deduced, that no part should perish by construction, and all clauses are to be harmonized if possible.

Further, that a conflict between different statutes or different sections of the same statute cannot be raised by implication. Testing Secs. 49 and 50 of the Workmen's Compensation Act by the above rules of Statutory construction we are of the opinion that giving Sec. 10 the full effect to which it is entitled, that in no event, can a common carrier engaged in interstate commerce, whether engaged in or conducting any business by leasing or contracting out any work, or being the owner of any property contracts any work to be done thereon, be held to come under the Colorado Workmen's Compensation Acts, although their contractors may come within its provisions.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By ARTHUR L. OLSON,
Assistant Attorney General.

97 COUNTY COMMISSIONERS

To Wm. Barber, July 29, 1929.

Expenses.

County Commissioners have the right to pay the expenses of themselves and their clerk on trips to Denver and other places in the State provided such trips are made on county business and do not exceed the sum of 15 cents per mile. (Chap. 75, S. L. 1925.

98 CLASSIFICATION OF COUNTIES

To S. W. Johnson, July 31, 1929.

Jefferson County.

Compensation of County officers.

Senate Bill No. 196, 27th General Assembly, being merely a change in that part of Sec. 7921, C. L. 1921, which relates to Jefferson County, carries the Clerk of the District Court into the new classification. (Sec. 7922, C. L. 1921; Chap. 77. S. L. 1929.)

99 PROBATE FEES

To Carra M. Shackleford, Aug. 2, 1929.

Discussion of operation of Chap. 80, S. L. 1929.

100 COUNTY CLERKS

To John L. Stivers, Aug. 5, 1929.

Making abstracts.

Sec. 8742, C. L. 1921, does not mean, in the light of decisions that a county clerk is required to make complete abstracts of title to real property, but does require him to make abstracts of such records to which his attention was especially called when tendered the proper fee therefor.

101 STATE PLUMBING LAW

To Irving A. Fuller, Aug. 8, 1929.

Plumbing in State Institutions.

1. All institutions having new plumbing work should apply for a permit.

2. All plumbers regularly employed by State institutions and those engaged in work let by contract to outside parties should be subject to the provisions of Sec. 4837, C. L. 1921.

3. The buildings of the State and its institutions should be in as good sanitary condition as those operated by private individuals or municipalities.

4. All new plumbing to be installed in any State building should be under the supervision of a master plumber (Sec. 4837, C. L. 1921) and a permit should be secured therefor from the State Board of Health.

102 SALARIES

To Frank D. Allen, Aug. 8, 1929.

Clerk, County Court, Interpretation of H. B. 287.

The Clerk of the County Court, Washington County, classified as Third Class, Division C, is entitled to a salary not exceeding $1400 per annum. (Chap. 96, S. L. 1929.

103 GEOLOGICAL SURVEY—Government

To H. S. Sands, Aug. 9, 1929.

The appropriation made by H. B. 371, Ch. 69, S. L. 1929, is not available to pay indebtedness incurred by the Board of Directors of the Metal Mining Fund for work done in co-operation with the U. S. Geological Survey, for reasons stated.

104 SCHOOLS

To G. G. Robertson, Aug. 12, 1929.

The County General School Fund should not be mingled with other funds.

The fiscal year referred to in Sec. 8450, C. L. 1921, means the school fiscal year beginning July 1 and ending June 30. (Sec. 8446, C. L. 1921.)

(Opinion No. 384, Oct. 20, 1922, overruled.)

105 LAND COMMISSIONERS

To State Board Land Commissioners, Aug. 13, 1929.

Loans—In irrigation districts which carry a bonded indebtedness upon the land and water:—Are not unincumbered and the State Land Board is not authorized to loan school funds on such lands. Chap. 169, S. L. 1929.

August 13, 1929.

The State Board of Land Commissioners,
Denver, Colorado.

Gentlemen:

We have your favor of the 18th ult. asking for an opinion from this office concerning the making of farm loans upon lands in irrigation districts which carry a bonded indebtedness upon the land and water.

You refer us to Sec. 1 of Chapter 169, Session Laws, 1929, directing the investment of school funds by you, sub-division (c) of which reads as follows:

> "In loans on unincumbered cultivated farm lands within the State of Colorado, and in manner hereinafter provided."

You ask if farm lands in an irrigation district carrying a bonded indebtedness are "unincumbered cultivated farm lands" as contemplated by the statute referred to, and in reply thereto will say that in our opinion farm lands within an irrigation district carrying a bonded indebtedness are not unincumbered, and we are, therefore, of the opinion that the statute referred to does not authorize your board to loan school funds secured on cultivated farm lands lying within an irrigation district carrying a bonded indebtedness.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.
By A. L. BEARDSLEY,
Assistant Attorney General.

106 ENGINEERS

To C. C. Hezmalhalch, Aug. 13, 1929.

Engineer members of the faculties of state educational institutions, who practice within the State, for compensation, engineering or land surveying, actively upon the ground, or by consultation, investigation or planning in the office, must be registered under the law. (Ch. 119, S. L. 1921, as amended by Ch. 99, S. L. 1927.)

107 TAX DEEDS—Issuance of

To Claude Cartwright, Aug. 15, 1929.

Procedure.

Legal publication of request for a tax deed may be commenced before the expiration of the three-year redemption period. (Secs. 7422 and 7423, C. L. 1921.)

Advertising can be charged the person redeeming in addition to interest. (Secs. 7407 and 7424, C. L. 1921.)

No authority is given by statutes to make charge for abstractor's search.

108 PUBLICATION OF NOTICES

To A. W. Quinn, Aug. 15, 1929.

Request for Tax Deed.

Chapter 139, S. L. 1923, does not repeal or amend Sec. 7423, C. L. 1921, relating to publication of notice of request for tax deed.

109 SCHOOLS

To A. T. Monson, Aug. 21, 1929.

Chapter 159, S. L. 1929, known as the "Tobin Bill," providing for attendance of H. S. pupils in a county other than the one

in which they reside, must be followed by public officials until declared invalid by a court of competent jurisdiction.

110 MUNICIPAL IMPROVEMENTS

To A. L. Taylor, Aug. 22, 1929.

Assessment for taxation.

Improvements built by a company under a franchise, on land owned by the municipality are subject to assessment for taxation, under Sec. 7193, C. L. 1921.

Such improvements outside the city limits are not subject to the levy of taxes for municipal purposes, under Sec. 9149, C. L. 1921.

111 ABSTRACTOR'S BOARD OF EXAMINERS

To E. H. Zimmerman, Aug. 26, 1929.

Chapter 57, S. L. 1929, revokes by implication Sec. 8742, C. L. 1921, insofar as same applies to county clerks in counties where there is a licensed abstractor, except that in such counties which own and operate their own abstracting plant there might be an exception to the revocation in case the county clerk was the officer who operated the plant.

What an abstracting plant is would be a question of fact for a court or jury in each instance under consideration.

The legislature has made the District Attorney the official to enforce the penal clauses of the law for violations thereof. The Board may not directly regulate the violation of the law.

The Board, as constituted under the present act, would not have the authority to promulgate a rule of ethics to the end that two or more abstractors doing business in the same county could be restrained from cutting each other's prices.

A county judge who receives money for making and compiling abstracts of title is not required to account to the county for the money so received.

112 TAXATION

To R. D. McLeod, Aug. 26, 1929.

Situs of tangible personal property.

Generally the situs of taxation of personal property is that of its owner's domicile, except in states where the legislature has fixed that situs as the taxing district where the property is located. (37 Cyc. 952.)

The legislature has power to fix the situs of personal property for purposes of taxation * * * (37 Cyc. 947).

The legislature of Colorado has adopted the policy of fixing the taxing situs of tangible personal property as of the taxing district where it is located. (Secs. 7249, 9149 and 9150, C. L. 1921.)

Taxes refunded are not limited to those involuntarily paid. Sec. 7460 prescribes the method of making the refund.

August 26, 1929.

Mr. R. D. McLeod
City Attorney
Leadville, Colorado

Dear Sir:

In re: *Taxation Situs of Tangible Personal Property.*

Replying to your recent letter and the brief therewith enclosed, will say that generally the *situs* of taxation of tangible personal property is that of its owner's domicile except in states where the legislature has fixed that *situs* as the taxing district where the property is located.

37 Cyc. 952.

Further:

"The legislature has power to fix the *situs* of personal property for purposes of taxation, placing it either at the owner's domicile or where the property itself is situated, and also to invest executive officers with authority to determine the place for the listing of personal property as between different counties or different places in the same county."

37 Cyc. 947.

That the legislature of Colorado has adopted the policy of fixing the taxing *situs* of tangible personal property as of the taxing district where it is located is shown by the following enactments in the Compiled Laws of Colorado, 1921.

"Section 7249. All personal property within this state on April first in the then current year shall be listed and assessed in the county where it shall be on said April first."

"Section 9149. The city council or board of trustees of any city or town shall have power and authority to levy taxes, the same kinds and classes, upon taxable property, real, personal and mixed, within the limits of the city or town, as are subject to taxation for state or county purposes, in accordance with the laws of this state."

"Section 9150. It shall be the duty of the county assessor each year, in making his return, to designate the property situate within the limits of any city or town in such county."

Taxes refunded are not limited to those involuntarily paid by Section 7460 of said laws. That section prescribes the method of making the refund

The refund to the Western Hardware Company of Leadville, Colorado, recommended by the State Tax Commission, assuming that to be in conformity with the legal procedure for that purpose, in our opinion, was proper for that portion of the tax which was on property physically located in a different *situs* than the city of Leadville and for the amount of the difference in the tax figure at the lower rate of the taxing district outside of Leadville.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.
By SIDNEY P. GODSMAN,
Assistant Attorney General.

July 24, 1929.

Mr. R. D. McLeod,
City Attorney,
Leadville, Colo.

My Dear Sir:

Under date of the 22nd inst. The Colorado Tax Commission advises this office that it approved a rebate of taxes to the Western Hardware Company of your city. Such rebate was approved because it developed that the company kept a part of its personal property outside the city, but within Lake County, and the rebate was deemed proper because the tax rate in Leadville is higher than it is at Georgia Gulch where this personal property was kept.

The Tax Commission advises me that you question the ruling made by the commission and rely upon Sec. 10 of Art. X of the State Constitution. Upon reading that section I am unable to see that the ruling of the Tax Commission conflicts with it, therefore, I would regard it as a favor if you would write me or, if convenient, call at this office and explain more fully your point of view, and I would be glad to have you submit any authorities you may have in mind.

Very respectfully yours,

ROBERT E. WINBOURN,
Attorney General.
By CHARLES ROACH,
Deputy Attorney General.

113 REAL ESTATE LICENSE FUND

To J. M. Jackson, Aug. 27, 1929.

The appropriation provided by Sec. 3, Ch. 15, page 42, S. L. 1929 (Long Appropriation Bill) and the appropriation provided for by Ch. 149, S. L. 1929, are both available for the use of the Real Estate License Fund.

114 AUTO-TOURIST CAMP LAW

To Chas. M. Armstrong, Aug. 30, 1929.

Grand Lake Lodge.

Whether or not Grand Lake Lodge comes within the definition of Auto Camp and is subject to the provisions of Ch. 132, S. L. 1929, must be determined by the Secretary of State upon the facts.

There is no merit in the contention that it is exempt because it is located within the boundaries of Rocky Mountain National Park, because the Federal Government has not yet assumed jurisdiction.

All moneys paid as license fees under protest should be kept in a separate fund by the State Treasurer, as custodian and no expenditures made therefrom. (Sec. 338, C. L. 1921.)

115 HEALTH—State Board of

To S. R. McKelvey, Aug. 30, 1929.

Registrar of Vital Statistics.

No person may lawfully hold the position of Local Registrar without having been appointed by the State Board of Health, except those who were acting under local ordinances at the time of the passage of the act.

The local treasurer of any registration district is required by the act to pay the fees provided for local registrars. (Sec. 970, C. L. 1921.)

116 ABSTRACTORS' EXAMINERS

To Board of Examiners, Sept. 5, 1929.

The Abstractors' Board of Examiners is not vested by the act creating said board, with authority to refuse license to an applicant where there is already a licensed abstractor in the county. Your board would be required to issue license to all who pass the necessary examination and have the required qualifications. (Chap. 57, S. L. 1929.)

117 SCHOOLS

To Mrs. J. G. Oleson, Sept. 6, 1929.

Teachers who teach all day, every day of the school week, special subjects as well as other regular subjects, are not "teachers of special subjects" within the meaning of Sec. 8451, C. L. 1921, and are subject to the provisions of the Minimum Salary Law.

118 COAL MINE INSPECTION

To James Dalrymple, Sept. 10, 1929.

Five-men Mine.

A five-men mine is one in which the number of men employed at any one time does not exceed five.

It is the duty of the Coal Mine Inspector to examine such mines and enforce the requirements of the Inspection Law. (Chap. 68, S. L. 1929, amending Sec. 3503, C. L. 1921. Secs. 3480, 3481, C. L. 1921.)

119 INSURANCE

To Jackson Cochrane, Sept. 11, 1929.

The Security-Lloyds of America, an insurance association organized under the laws of Texas, is entitled, under the principle of interstate comity, to be admitted to do business in Colorado, although our statutes contain no provision for the organization of such associations. (Sec. 2554, C. L. 1921.)

120 FOREST FIRES

To F. H. Wolcott, Sept. 12, 1929.

On State University lands.

Under Sec. 14, Art. X of the Colorado Constitution, it is within the power of the Regents to protect the property set aside for the University and to pay its share of the cost of suppression of forest fires on such lands.

121 SCHOOLS

To Olga A. Hellbeck, Sept. 14, 1929.

"School month" and "Teachers of special subjects" defined. See letter of Sept. 6, 1929 to Mrs. J. G. Oleson. (Secs. 8333, 8502, C. L. 1921. Chap. 154, S. L. 1925. Chap. 165, S. L. 1929.)

122 COUNTY COMMISSIONERS

To Thompson & Grutter, Sept. 18, 1929.

Where the entire fine collected for violation of Sec. 6867, C. L. 1921, has been paid to the county treasurer, the county commissioners have no authority to order any part thereof paid to the informer, who should apply for relief to the court collecting the fine.

123 PROBATE COURT FEES

To Moynihan, Hughes and Knous, Sept. 19, 1929.

Fees for sales.

If a petition for the sale of real estate in an estate in probate is filed in the county court and an order secured authorizing its sale, the fee provided by Ch. 80, S. L. 1929, should be paid.

124 TAX LIENS

To Edna L. McGuire, Sept. 19, 1929.

Stocks of merchandise.

Sec. 7375, C. L. 1921 makes all taxes assessed on personal property a perpetual lien on such property until the taxes are paid.

Sec. 7379, taxes the entire stock of goods through all its changes while in the hands of the person taxed. When the stock is sold and passes into the hands of another, the lien follows the specific goods and fixtures which the vendee receives. Citing many cases.

September 19, 1929.

Edna L. McGuire,
County Treasurer,
Rio Grande County,
Del Norte, Colo.

Dear Madam:

In reply to your letter of the 14th inst. in reference to the collection of taxes upon a stock of goods, your question is, can the County Treasurer collect by distraint, taxes assessed against Mr. Chisholm, from goods now in possession of his vendee, i.e., corporation Herrick-Olsen-Chisholm?

Section 7568, Compiled Laws, 1921, makes the collection of taxes the duty of the County Treasurer.

Section 7375, Compiled Laws, 1921, makes all taxes assessed upon personal property a perpetual lien upon such property until the taxes are paid.

Section 7379, Compiled Laws, 1921, extends this lien upon merchandise to additions to the stock of goods while held by the person taxed.

In the following cases our Supreme Court has construed these statutes to mean that the specific goods held at the time of sale are subject to distraint, and that the right of distraint must be exercised before a suit can be maintained.

> "That there may be distress and sale of property in the hands of a vendee on account of taxes assessed against his vendor, the property seized must be the identical property upon which the taxes became a lien. The lien for taxes embraces only the specific property levied upon, except that in case of a stock of merchandise, which is subject to constant change in the articles composing it, the lien attaches to the stock, and the entire stock, through all its changes, is subject to the lien so long as it remains in the hands of the person taxed; but the lien does not embrace additions to the stock made by his vendee. When the stock is sold and passes into the hands of another, the lien follows the specific goods which he received, but it reaches no subsequent additions or re-

newals." See Chicago Bazaar Co. v. McNichols, 13 Colo. Ct. of Appeals, pp. 154, 156.

"The lien for which section 2819 makes provision, attaches to the specific property assessed or levied upon; and while, for the collection of the tax, any property of the person assessed may be taken, as against a subsequent purchaser or incumbrancer, only the property to which the lien has attached, can be seized; Bazaar Co. v. McNichols, 13 Colo. App. 154; See Lee v. Stanard, 15 Colo. App. 101, 105."

"At the date of the trial below, April, 1901, store fixtures in value about $400 and a part of the assessed property were in said store, and could have been identified as a part of the assessed property. Property upon which the tax in question was a lien, and sufficient in value to pay such tax, was in appellee's county at the time of the institution of this action. The only reason suggested why this property was not subjected to the remedy of distress is that it could not be identified."

"It does not appear that appellee made a reasonable effort to identify the property and to avail himself of the remedy of distress. It does not appear that if he had made such effort it would not have been effectual. This remedy of distress is more expeditious and less expensive than an action at law, and specially provided by statute for the collection of delinquent taxes. The statute does not authorize it to be laid aside and an action at law to be resorted to for the collection of delinquent taxes when it is available." See Bergerman v. Beerbohm, 34 Colo. 118, 120.

Therefore, it is our opinion that you may proceed to collect the taxes mentioned in your letter by distraint against the merchandise and fixtures owned by Mr. Chisholm at the date of the sale to the corporation. You must use due care to see that no subsequently acquired merchandise or fixtures are taken under the distraint warrant.

If only goods taken by distraint are those owned by Chisholm before the sale, you are not personally responsible for the expenses of any suit which may arise. However, in order to avoid difficulty, you should consult the County Commissioners and the County Attorney and secure their cooperation.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By FRED A. HARRISON,
Assistant Attorney General.

125 PROBATE COURT FEES

To Moynihan, Hughes and Knous, Sept. 19, 1929

Fees for sales.

If a petition for sale of real estate in an estate in probate is filed in the county court and an order secured authorizing its sale, the fee provided by Ch. 80, S. L. 1929 should be paid.

126 MECHANICS LIEN—Registered Land

To E. B. Cornell, Sept. 20, 1929.

Sec. 4994, C. L. 1921, provides that all instruments * * * required to give effect to the enforcement, shall, in the case of liens upon registered lands, be filed with the register of titles and registered in the Register of Titles, in lieu of filing or recording. This would mean that mechanic lien statements which are to be enforced against registered lands should be handled under the registration of titles act. (Sec. 6450, C. L. 1921.)

127 INSURANCE

To Jackson Cochrane, Sept. 23, 1929.

Where a contract for the purchase of bonds and shares of stock issued by an insurance company is prepared by the company itself and is ambiguous in its terms, it must be construed most strongly against the company.

September 23, 1929.

Hon. Jackson Cochrane,
Commissioner of Insurance,
State Office Building,
Denver, Colo.

Dear Sir:

You have submitted for my consideration a copy of the form of subscription blank used by the Colorado Life Company in the sale of its so-called "Five Year Payment—Ten Year Endowment Bonds" and certain shares of its capital stock, and which subscription form is known as "Form A-8-10-28 Southwest." You also submit a copy of the bond form known as "Form A A A 3-14-29."

The problem you are confronted with is the valuation of these bonds, or, in other words, what is the extent of the liability of the company upon each $1000.00 bond, and consequently the amount of reserves that the company must possess for the redemption of these bonds at maturity. These bonds mature in 10 years from the date thereof. The subscription form contains the following paragraphs:

> "Each bond herein subscribed for is to be paid for in five equal annual payments of One Hundred and Fifty

Dollars each, or the equivalent thereof in semi-annual, quarterly or monthly payments, as provided in the bond; and payment for the share of stock subscribed for in connection with each bond is secured by a lien of Two Hundred and Fifty Dollars, hereby created, against the bond, which lien shall and does constitute an indebtedness to the company of Two Hundred and Fifty Dollars, under the bond, to be deducted from the loan, cash surrender or maturity value of the bond and/or from each and every payment made thereon. The share of stock herein subscribed for in connection with each bond and therein referred to is to be issued, as fully paid, five years after the date of the bond if the bond be then in full force, or prior thereto upon permanent termination of the bond after the company has received in cash not less than two annual payments on the bond; if so terminated before two such annual payments are made, all payments made on the bond shall apply as payments on subscription price of the stock and any balance, unpaid on said stock, shall thereupon be payable by the undersigned; and if default occurs in payment of such balance and continues for one year the company may at any time thereafter sell, at foreclosure sale, all right and title of the undersigned to said stock. Any excess over such price, realized at such sale, shall be paid to the undersigned. Full payment of subscription price of a share, before the third annual payment under the bond becomes due, entitles the undersigned to the stock; any over payment will be refunded. The share of stock herein mentioned is without par value."

"Each and all of the undersigned have read and understand the terms and conditions of this subscription and agree that herein is contained each and every material inducement, representation, agreement and/or warranty which influenced each of the undersigned to make this subscription, and each and all of the undersigned hereby agree that this instrument and the provisions and conditions of said bond, or bonds, constitute the entire contract between the parties hereto, and that no oral representation, agreement and/or warranty by whomsoever made shall be binding upon any party in interest hereunder."

We quote also from the paragraph entitled "General Provisions" in the bond form:

"Any and all indebtedness to the company hereunder or on account hereof may be paid off in full or in

part at any time while this bond is in full force and unearned interest, if any, will be refunded. Such indebtedness, whether or not endorsed hereon, shall constitute a first lien against each and every right of the bondholder and against each and every amount, value and benefit payable hereunder, and shall bear five and one-half per cent interest per annum in advance to the end of the bond year immediately following the date the indebtedness is incurred and at the beginning of each bond year thereafter interest in advance will again become due and payable. If interest is not paid in cash when due it shall be added to and become a part of the principal and bear interest at the same rate."

The question to be determined is, what interest, if any, is the company entitled to charge upon the $250.00 lien against the bond.

These forms were prepared by the company itself. They are ambiguous in their terms, and the rule is that where a contract is ambiguous in its terms, it must be construed most strongly against the party that prepared it. (Ins. Co. vs. Baseball Co., 82 Colo. 86.)

The subscription form makes no mention whatever of interest. It says that payment for the stock is secured by a lien of $250.00 "against the bond" which lien "shall and does constitute an indebtedness to the company of Two Hundred and Fifty ($250.00) Dollars, under the bond, to be deducted from the loan, cash surrender or maturity value of the bond and/or from each and every payment made thereon." Here is an express statement that the amount to be deducted from the value of the bond is $250.00, and that would appear to be the entire deduction that could be made. The claim that interest also may be deducted is based upon the recital that this $250.00 is an indebtedness "under the bond," and upon the fact that the bond, as above quoted, provides that all indebtedness "hereunder or on account hereof" shall bear interest at 5½% per annum. But the fact remains that the subscription form states in plain terms that the indebtedness to be deducted is $250.00, not $250.00 *and interest as provided for by the bond.* If it had been intended that the indebtedness to be deducted should be $250.00 plus interest as provided for in the bond, it may well be asked why the subscription form did not so state in plain and unequivocal terms. It is true that the last paragraph of the subscription form recites that the application "and the provisions and conditions of said bond or bonds constitute the entire contract between the parties," etc., but the same paragraph also declares that the subscribers have

read and understand "the terms and conditions of this subscription and agree that herein is contained each and every material inducement, representation, agreement and/or warranty which influenced each of the undersigned to make this subscription," etc. It will be noted that the subscriber is not required to say that he has read the bond. He is only required to say that he has read the "subscription." Apparently he was not expected to read the bond, but only the "subscription" which purports to contain within itself every material representation and agreement that influenced him to make the purchase of the bond and the stock. Yet as already observed, the "subscription" makes no mention whatever of interest, and that term of the contract, if it exists at all, must be sought for in an instrument outside of the one that purports to contain all the material representations and agreements that influenced the purchaser to embark in the transaction. The phrase "under the bond" as used in the subscription is meaningless and certainly conveys no information that the lien indebtedness bears interest. One must resort to the General Provisions of the bond itself to find any significance in this phrase, yet the subscription itself purports to contain all material representations that influenced the contract and thus excludes resort to the bond for any material part of the contract.

Considering more specifically the last paragraph of the subscription, we find that it consists of a single sentence stating that the subscription itself contains every material representation and agreement that influenced the contract, and that such instrument and the bond constitute the entire contract. If by this single sentence it was meant to be said that there was a material agreement in the bond that is not contained in the subscription, then we have an ambiguity that amounts to an absolute contradiction, and we take it that such an ambiguity, like any other, must be resolved against the company. And especially so, since it is the subscription and not the bond that the subscriber is required to say that he has read and understands.

The company proposes to say to the purchaser—you read and understood the subscription form and consequently understood as you had the right to do that it contained every material element in the contract of purchase, nevertheless you are bound by a provision in the bond that materially affects its value and which provision is not set forth in form or substance in the subscription form itself.

In conclusion I advise you that in my opinion the courts would not allow any interest at all upon the lien indebtedness, and that you should therefore value these bonds upon the assumption that the lien indebtedness does not bear interest.

Since formulating this opinion we have heard the arguments

of able counsel representing the company and have given careful consideration to the same and to the authorities cited by them, but we feel that we must adhere to the views above expressed.

Respectfully submitted,

ROBERT E. WINBOURN,
Attorney General.

By CHARLES ROACH,
Deputy Attorney General.

FRED A. HARRISON,
Assistant Attorney General.

OLIVER DEAN,
Assistant Attorney General.

128 MOTOR VEHICLE LAW

To Guarnsey & Wheeler, Sept. 24, 1929.

Employes of automobile dealers driving cars to the place of business of the dealer for the purpose of sale, are not chauffeurs within the meaning of Sec. 1336, C. L. 1921, as Am. by Ch. 149, S. L. 1923, and therefore are not required to take out a chauffeur's license. (Sec. 1344, C. L. 1921.)

129 MARKET DEPARTMENT

To B. O. Aylesworth, Sept. 25, 1929.

A violation of the first part of Ch. 99, S. L. 1929, constitutes a misdemeanor and subjects the violator to the penalties prescribed by the law.

The mere failure to furnish the shipment certificate required by sub-paragraph 3, Sec. 2, Ch. 99, S. L. 1929, and failure of the railroad agent to place the official designation of the grade or grades on the bill of lading, way-bill or original paid freight bill covering such shipment are violations of the act and constitute a misdemeanor as defined therein.

130 PAROLES

To F. E. Crawford, Sept. 28, 1929.

A convict who has been returned to the penitentiary for a violation of parole, has the right to be re-paroled under such rules as the Governor may prescribe, under Sec. 7158, C. L. 1921—such right being one of the terms of the original sentence; but in computing the period of his confinement, the time between his release and his return, shall not be taken to be any part of the term of his sentence (Sec. 7160).

September 28, 1929.

Mr. F. E. Crawford
Warden, State Penitentiary
Canon City, Colorado

Dear Sir:

Replying to your letter of the 24th inst., wherein you ask the question as to whether or not a prisoner, violating a parole and returned to the penitentiary, may be re-paroled, will say:

Sections 7158 and 7160, Compiled Laws of Colorado, 1921, provide as follows:

> "Section 7158. The governor shall have authority, under such rules and regulations as he may prescribe, to issue a parole or permit to go at large to any convict who now is, or hereafter may be, imprisoned in the said penitentiary under a sentence other than than a life sentence, who may have served the minimum term pronounced by the court, or, in the absence of such minimum term pronounced by the court, the minimum term provided by law for the crime for which he was convicted; provided, that any convict who shall make an assault with a deadly weapon upon any officer, employe or other convict of said penitentiary shall not be eligible to parole under this act."
>
> "Section 7160. The parole convict who may, upon the order of the governor, be returned to the penitentiary, shall be retained therein *according to the terms of his original sentence* and in computing the period of his confinement the time between his release upon said permit and his return to said penitentiary shall not be taken to be any part of the term of the sentence."

Since every sentence pronounced by a judge necessarily has read into it by law the provisions of Section 7158, it follows from Section 7160, in our opinion, that a convict who has been returned to the penitentiary for the violation of parole, there to be retained according to the terms of his original sentence likewise includes his right to be reparoled, under such rules as the Governor may prescribe under said Section 7158, for such right was part and one of the terms of the original sentence, with the exception contained in the proviso clause in said Section 7158.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

SIDNEY P. GODSMAN,
Assistant Attorney General.

131 PROBATE COURT FEES

To Clarence M. Smith, Sept. 28, 1929.

Chapter 80, S. L. 1929.

Where fees have been paid to the clerk of the county court in an estate for the amount due under the old law and reported as fees earned, there would not automatically be a refund to the estate, but the matter could be considered under a motion to retax costs.

If an amended inventory were filed in an estate, showing the amount of the fee due at the time of the filing of the original inventory was too large, the excess fee should be refunded.

132 HAIL INSURANCE

To J. M. Jackson, Sept. 28, 1929.

Issuance of warrants for losses, under Ch. 111, S. L. 1929, where there are not sufficient funds to take up the warrants, should be for the pro rated amount.

133 CIVIL SERVICE

To Civil Service Commission, Oct. 1, 1929.

The Civil Service Commission cannot include in Rules and Regulations of the Civil Service a rule providing that a person selected for appointment shall be subjected to a probationary period of three months. (Art. XII, Sec. 13, Colo. Const.)

134 HEALTH—Boards of

To Charles G. Lamb, Oct. 3, 1929.

Control of dogs.

The county boards of health have no jurisdiction in health matters within the jurisdiction of cities, towns or villages. Subject to such limitation they may prescribe regulations under Secs. 891, 894, C. L. 1921.

135 ENGINEER—State

To M. C. Hinderlider, Oct. 5, 1929.

The construction of a dam by any person, firm or corporation, exceeding the limits of any one of the three conditions mentioned in Sec. 1685, C. L. 1921, as amended by Ch. 122, S. L. 1925, without filing plans and specifications in the office of the State Engineer and securing his approval, is a violation of the law. There is no duty placed by law upon the State Engineer to see that said law is enforced.

136 SCHOOLS

To H. T. Sukeforth, Oct. 14, 1929.

Sate Aid. Ch. 164, S. L. 1929.

The distribution of "state aid" is dependent upon a special levy of not less than 5 mills by the district requesting the aid; but every district is entitled to its proportion of the levy of 5 mills made by the county commissioners for teachers' salaries, regardless of the amount of the special levy required to entitle them to such aid. (Chap. 158, S. L. 1929. Secs. 7214, 7216, C. L. 1921. Ch. 165, S. L. 1929.)

137 SCHOOLS

To Elizabeth A. Baghott, Oct. 16, 1929.

A family which moves into a school district temporarily for the sole purpose of enjoying the school facilities, having a home or domicile elsewhere to which they intend to return, are not legal residents of such districts, and are not entitled to school facilities unless they pay for them. (Ch. 166, S. L. 1929.)

138 GASOLINE TAX LAW

To W. O. Petersen, Oct. 16, 1929.

No part of the 3% gasoline tax can be advanced by the State Highway Department to any paving project until designation has been made by the department of the portion of the highway which is to be part of the State highway. (Ch. 139, S. L. 1929.)

139 COUNTY RECORDS

To Nellie Noble. Oct. 16, 1929.

There is no law which prohibits the county clerk from having the county records rebound to preserve them, and for that purpose allowing them to be taken from the office when necessary. (Secs. 8736 to 8740, C. L. 1921.)

140 BARBERS EXAMINERS ACT

To W. R. Lichtenheld, Oct. 18, 1929.

There is no authority to issue permits to carry on the business of barbering prior to such time as the applicant has received a license or certificate to do so. (Ch. 64, S. L. 1929.)

141 PLUMBING INSPECTION LAW

To M. E. Fuller, Oct. 22, 1929.

A plumber may not engage in his trade in a home rule city in this state without a state license; a city board of plumbers

examiners cannot legally license a plumber who does not have a state license. (Enclosing opinion of Nov. 27, 1918—John Connor.) (Ch. 107, S. L. 1917.)

142 PROHIBITION LAW

To C. M. Armstrong, Oct. 22, 1929.

Manufacture of sacramental wine.

The Secretary of State has no authority to issue a license to the Jewish Consumptives Relief Society to manufacture sacramental wine.

October 22, 1929.

Hon. Chas. M. Armstrong
Secretary of State
Capitol Building
Denver, Colorado

Dear Sir:

In your letter of the 19th inst., you ask for an opinion from this office as to whether or not you would be authorized to issue a license to the Jewish Consumptives Relief Society to manufacture sacramental wine to be used only upon their own premises. In our opinion you would not have authority to issue such a license. Chapter 57, Compiled Laws of Colorado, 1921, regulates how all intoxicating liquors shall be obtained by those desiring to use the same for medicinal and sacramental purposes. Section 3715 of said act contemplates only the method of purchase and the permit therefor, and does not provide any method of manufacture or a permit therefor.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.
By SIDNEY P. GODSMAN,
Assistant Attorney General.

143 SCHOOLS

To Page J. Bruch, Oct. 23, 1929.

Explanation of distinction between tuition payable by parent and that payable by the district of the pupil's residence.

October 23, 1929.

Mr. Page J. Bruch,
Secy., School District No. 13,
Genoa, Colo.

Dear Sir:

We have your favor of the 15th inst. advising us that School District No. 13 is charging $5.00 per month tuition for high school students living outside the district and $2.00 tuition for grade students; that a parent living 6 miles from Genoa has one

high school student and 4 grade students; that he lives 5 miles from the country school in the district wherein he resides; that he has a much better road to Genoa and, of course, has to bring his high school girl there, and as a matter of convenience is taking his grade child there also.

You ask if this parent would have to pay this tuition or the district in which he resides would have to pay it, and in reply thereto will say:

If the High School Board of the High School District attended by the high school pupil, and the board of the school district of the residence of such pupil, agree upon the necessity for such attendance, and also upon the compensation to be paid by the district of the pupil's residence, such district of the residence will be liable for the amount of tuition. If such agreement cannot be reached, such pupil may attend the high school with the permission of the high school board, and the parent will be compelled to pay the amount charged. This applies also to the grade pupils you mention. See Sub-division 15 of Section 8333, Compiled Laws of 1921, which is Section 139 of the School Laws of 1927.

There is another statute, Chapter 159, Session Laws of 1929, which, under certain conditions, permits a qualified high school pupil to attend high school in a county other than the county of his residence, with the permission of the district attended, and without the consent of the district of his residence, in which event the charge for tuition is certified to the State Superintendent of Public Instruction, who, in apportioning the Public School Income Fund, deducts the amount of such tuition from the amount that otherwise would be apportioned to the county of the student's residence, and adds such amount to the apportionment made to the county wherein school is attended. Although you do not so state, we infer from your letter that the two districts involved in the case stated by you are in the same county, in which event the statute last mentioned would have no application.

Yours very truly,

ROBERT E. WINBOURN,
Attorney General.
By A. L. BEARDSLEY,
Assistant Attorney General.

144 PROBATE FEES

To L. C. Kinnikin, Oct. 24, 1929.

Total fee to be charged in a probate case in an estate valued at between $1000 and $5000 in a third class district is $30. The docket fee when paid will be a credit thereon of $20, leaving a balance of $10, to be paid at the time of the filing of the inventory.

Exception where there is a sale of real estate or record to be made on a writ of error. (Chap. 80, S. L. 1929.)

145 PREDATORY ANIMALS

To Geo. C. Twombley, Oct. 24, 1929.

Provision for eradication.

Levy of tax to meet Federal provisions; Method of levy, collection and accounting. (Ch. 144, S. L. 1929.)

146 FISCAL YEAR

To S. W. Carpenter, Oct. 28, 1929.

Chapter 98, S. L. 1929, changing the fiscal year of the State, has no effect whatever upon the county fiscal year as heretofore fixed by statute.

147 CLERKS OF COUNTY COURTS

To S. S. Worley, Oct. 28, 1929.

Under sections 5802 and 7963, C. L. 1921, clerks of county courts in fourth class counties are required to give bond.

Such clerks may be appointed and salary fixed by county judge, at not to exceed $1200 per annum. (Chap. 96, S. L. 1929.)

Such clerk should be 21 years of age.

The county judge may also appoint such clerical help as is necessary at a salary approved by the county commissioners. Such help would not be required to give bond and may be under 21 years of age. (Sec. 7924, C. L. 1921.)

148 SCHOOLS—Bonds

To Clement A. Bowle, Nov. 1, 1929.

The question of refunding two issues of bonds may be submitted to electors at same election, provided that the proposition as to each issue is separately stated on the ballot in order that a voter may vote for one proposition and against the other, if he so desires.

149 HIGHWAYS

To Irving W. Hart, Nov. 1, 1929.

Signs on.

Only such signs as are authorized by the State Highway Commission may be placed on state highways. (Secs. 1262 to 1267, C. L. 1921. Chap. 128, S. L. 1923.

150 COUNTY OFFICERS

To John C. Vivian, Nov. 5, 1929.

The clerk of the district court is not a county officer and therefore his salary is not affected by the re-classification of Jefferson county by Ch. 77, S. L. 1929. Under that statute the under-

sheriff and the deputy sheriff acting as chief clerk may be paid increased salaries under the re-classification, since they have no fixed term of office. (Secs. 7921, 7922, 7927, C. L. 1921.)

151 PROBATE COURT FEES

To L. T. Morgan, Nov. 7, 1929.

Chapter 80, S. L. 1929.

Where an estate consists solely of real property against which there are encumbrances, the safer procedure to be followed by the clerk of the county court is to charge a fee based upon the total value of the property, disregarding the encumbrances, and *if* it should be decided later that the lower fee should be charged, an allowance can be made in the way of a rebate to the estate before the date of final settlement.

152 STATE HIGHWAYS

To State Highway Department, Nov. 12, 1929.

Participation in 3 per cent special fund.

Towns of 2500 and under are entitled to participation in the expenditure of the 3 per cent special fund created by Sec. 11, Ch. 139, S. L. 1929, as well as towns of over 2500.

152½ LEGAL NOTICES

To Charles M. Armstrong, Nov. 14, 1929.

Publication of.

Within the limits fixed by Sec. 8 of Ch. 139, S. L. 1923, which defines the maximum amount that may be paid for publication of legal notices, the Daily Journal is probably qualified as a newspaper within the meaning of Secs. 5403 and 5407, C. L. 1921.

153 BANK STOCK

To I. B. Rogers, Nov. 14, 1929.

Assessment of.

Where the stock of a bank is bought and sold to such an extent as to establish a market value, such market value should probably be the guide in assessing the stock; otherwise the value of the stock may be determined by reference to the capital, surplus and undivided profits of the bank.

154 PRISONERS

To Warden Crawford, Nov. 20, 1929.

Safekeeping.

If the destruction of the penitentiary by fire or otherwise makes it necessary that prisoners be taken elsewhere for safekeeping, such prisoners would be deemed confined in the penitentiary wherever placed, and their status would be the same

whether received by the warden at the penitentiary or at the various jails, and their sentences commence from the time they are so received. The state is liable for maintenance. (Secs. 754, 755, C. L. 1921.

155 SCHOOLS

To A. J. McFarland, Nov. 23, 1929.

Tax levies should be made to cover calendar year.

Floating indebtedness should be taken care of by bond issue rather than by special levy.

Surplus moneys in special school fund, other than bond fund, may be used for any legitimate purpose. (Secs. 8369, 8370, C. L. 1921.)

156 SCHOOLS

To Hester H. Taylor, Nov. 23, 1929.

Discount on Teachers warrant.

If there are no funds in the treasury to pay teacher's warrant, it may be registered and thereafter draws 6% interest; if the employe must have the money and is compelled to pay a discount to get the warrant cashed, the county cannot be held liable for the amount of the discount.

An outgoing school board has the legal right to re-elect teachers of the district with a raise of salary, and the new board is bound by the contracts of the old board, but the new board has no legal right to raise any salaries above those under which the employes accepted their employment, or to add anything to the amount of the warrants to take care of a discount. (Sec. 8330, C. L. 1921.)

157 WORKMEN'S COMPENSATION

To Sadie H. Korn, Nov. 26, 1929.

Mere ownership of stock of a corporation by employes who are paying for same by their labor and are not receiving any other pay for such labor, is not to be considered a determining factor in deciding whether or not an employer is under the workmen's compensation act, i.e. employing four or more employes. (Sec. 4391, C. L. 1921.

158 STATE HIGHWAYS

To Mr. L. D. Blauvelt, Nov. 27, 1929.

Sec. 11, Chap. 139, S. L. 1929, the 3% fund operates as to state highways "hereafter designated" only.

Absolute discretion reposes in State Highway Department as to designation of "streets, roads or highways—in the various towns, cities or counties."

Three per cent fund allocated to the counties may be appropriated for a specific purpose and allowed to accumulate to a practical, sizeable amount.

Three per cent fund under this act is all that can be spent on state highways within cities and towns.

159 PROBATE COURT FEES

To Geo. H. Stuntz, Nov. 29, 1929.

It is not the duty of a county court to collect the appraiser's fee in the settlement of an estate, but the estate should probably not be closed until the administrator has filed his receipt showing the appraiser has been paid or waived payment. (Chap. 80, S. L. 1929.)

160 TAX SALES

To C. S. Ickes, Nov. 29, 1929.

A tax levied against land is a perpetual lien until such tax is paid, together with penalties and interest. There is no objection under our statute to a tax lien being foreclosed at a year later than the one in which the tax sale would normally be held, providing the delay is not made in bad faith. (Sec. 7179, C. L. 1921.)

161 FEES—County Judge

To Scott W. Heckman, Nov. 29, 1929.

For performing marriage ceremony.

County judges must account to their counties for the fees charged and collected for performing marriage ceremonies. (Secs. 7890, 7899, C. L. 1921.)

Glaister v. County, 22 C. A. 326.

162 JUSTICE OF PEACE

To Thos. E. Higgins, Nov. 30, 1929.

Collection Agency Bond.

The bond of a Justice of the Peace covers only his official acts under the statute regulating his office. When he engages in the collection agency business as a side issue, a collection agency bond is required under Ch. 77, S. L. 1927.

163 SCHOOLS

To D. L. Kemper, Dec. 2, 1929.

Section 8357, C. L. 1921, as amended by Chap. 162, S. L. 1923, limiting bonded indebtedness in third class school districts, construed.

164 PARTITION FENCES

To Omar A. Coppock, Dec. 2, 1929.

Sec. 3156, et seq., C. L. 1921, applies to partition fences separating lands of *owners* and not of lessees.

165 SCHOOL FUNDS

To State Board Land Commissioners, Dec. 2, 1929.

Where it comes to the knowledge of the State Board of Land Commissioners that securities in which the board has previously invested have depreciated, the board has the power to permit such securities to be redeemed before the optional or due date.

December 2, 1929.

State Board of Land Commissioners
Capitol Building
Denver, Colorado

Gentlemen:

We have your favor of the 25th ult., advising us that you have concluded to allow to be redeemed at $104.60 and accrued interest certain bonds not due and not redeemable until March 15, 1935, if, in the opinion of this office, such transaction be legal.

You attach to your communication two letters from Mr. Charles H. Beeler, mayor of the Town of Hugo, from which we learn that the bonds in question were purchased by your board as an investment of school funds on May 1, 1920, which issue being $45,000, Town of Hugo, Colorado, 6% Water Extension Bonds, at a rate to yield 5% per annum; that the amount realized from the sale of said bonds was used by the town to erect and equip a municipal electric light plant, from the income of which the town has paid the interest on said bond; that about two months ago the town sold its light plant receiving cash therefor and is now in the possession of funds with which to redeem the bonds, and desires so to do, although they are neither due nor redeemable, as the town has no income with which to continue the payment of interest; that the funds received from the sale of the light plant are lying idle in the town treasury, but that some of the citizens of the town are urging that the funds be used for paving streets or other municipal purposes. And it is not reasonable to assume that the fund can be kept intact until the bonds become redeemable in 1935.

It is also apparent that the Town of Hugo, like many of the small towns in the state, is losing population and business.

On August 18, 1927, this office rendered to the state treasurer an opinion based upon the facts therein contained that the State Board of Land Commissioners has no right to permit redemption of an investment prior to the date when it is optional or due.

Said decision was based upon the fact that there is no statutory power authorizing the board to sell or permit a change in an

investment, and also upon the authority of a decision of the Supreme Court of Nebraska, entitled *in re School Fund*, 15 Neb. 684. In that case the Board of Education Lands and Funds desired to dispose of United States 3% bonds, and use the proceeds for the purchase of registered county bonds bearing a higher rate of interest; in other words, it seems to be settled that the State Board of Land Commissioners has no power to engage in the business of selling and buying bonds with school funds.

Such is not the case in the present instance, however. In this case it has come to the knowledge of the board that the securities in question have been and are becoming weakened, even to the extent of the danger point.

Under such circumstances, it is our opinion that you not only have the power, but that it is your duty to liquidate such weakened securities without waiting for the optional or due date thereof.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

Attached letters returned.

166 AMERICAN LEGION—Exemption

To W. J. Patten, Dec. 3, 1929.

Boxing license.

The American Legion is not exempt the $50 license fee for holding boxing bouts. They are exempt the 5 per cent on gross gate admission which is required of all other persons or associations, except those exempted by the act itself. (Ch. 70, S. L. 1927.)

167 CONVICT LABOR

To F. S. Hoag, Dec. 3, 1929.

Sec. 757, C. L. 1921, is recognition for the practice of using prisoners for state work outside the prison walls.

168 ALIENS

To Frank C. Bryant, Dec. 3, 1929.

An alien in Colorado has equal rights with citizens of the state in owning and possessing land in their own names.

169 TAX SALES

To W. S. Meek, Dec. 4, 1929.

1. **Real property sold for taxes to the county, is not to be sold again for taxes, until by redemption or sale, the county is made whole. Sec. 7409, C. L. C. 1921; Henrylyn Irr. Dist. v. Patterson, 65 Colo. 385; Emerson v. Valdes, 24 C. A. 462.**
2. **A tax certificate purchased by a county may be assigned only upon**

the payment of the taxes assessed on the land for the years subsequent to the date of sale, or the payment of the sum the county commissioners agree to take in lieu of such taxes.

3. Land sold for county, state and school and irrigation taxes should be shown in one certificate, except that if the general tax only was paid, leaving the irrigation tax unpaid, the land should be sold for such irrigation tax only and the certificate in the usual form issued therefor. Secs. 2083, 7190, 7191, C. L. 1921. Ch. 148, S. L. 1925; Ch. 175, S. L. 1927.

December 4, 1929.

Mr. W. S. Meek,
County Treasurer,
Grand Junction, Colo.

Dear Sir:

In response to your recent inquiries will answer as follows:

1. Real property sold for taxes to the county when there are no other bidders is not to be sold again for taxes until by redemption or sale the county is made whole.

> "* * * When the county treasurer has so struck off any tract of land or town lots to the county, city, town, or city and county, as the case may be, he shall issue to the county, city, town, or city and county, as the case may be, a certificate of purchase as now provided by law. No taxes assessed against any lands purchased by the county under the provisions of this section shall be payable until the same shall have been derived by the county from the sale or redemption of such lands." Sec. 7409, C. L. C., 1921.

See also:

Henrylyn Irr. Dist. vs. Patterson, 65 Colo. 385.

Emerson vs. Valdez, 24 C. A. 462.

2. There is no statutory authority for endorsing subsequent taxes due on land on a tax sale certificate held by a county, so that such endorsements become a part of the certificate. However, there is no objection to such procedure, so that a memorandum of such subsequent tax might not be overlooked, when an assignment of such certificate is contemplated. In case of an assignment of a tax certificate purchased by a county the same shall be assigned only upon the payment of the taxes assessed on the land described in the certificate for the years subsequent to the date of such sale or the payment of the sum that the county commissioners agree to take in lieu of such taxes.

> "* * * Whenever any lot, or parcel of land, interest therein or improvement on land shall be bid in by or for the county, city, town or city and county, as the case may be, at any tax sale, pursuant to the provisions

of this act, and a certificate of purchase shall be made to such county, city, town or city and county, therefor, the *treasurer* of such county, city, town or city and county as the case may be, may sell, assign and deliver any such certificate to any person who shall desire to purchase the same upon payment to the treasurer of the amount for which said property was bid in by the county, city, town or city and county, as the case may be, with interest and penalties accrued thereon from the date of sale, together with the sum of one dollar for making such assignment, *also the taxes assessed thereon since the date of such sale,* or in case of a county, city, town or city and county for such sum as the board of county commissioners or other board authorized to perform the duties of a board of county commissioners at any regular or special meeting may decide and authorize by order duly entered in the recorded proceedings of such board." * * *. Session Laws of Colorado, 1927, page 614.

3. If such memorandum endorsement is made on the tax certificate of subsequent taxes, it is proper to make such endorsement as of August 1 of each year. However, when the endorsement is made on that date and the first half of the tax has not been paid (of course, if the whole tax was paid before the last day of April, there would be no reason for making any endorsement) the interest should be figured on the first half of the tax from March 1 to August 1 at 10 per cent per annum.

"Section 7191. In case of first installment of one-half of any tax is not paid prior to March first in any year, then there shall be assessed against any such installment a penalty of ten per cent per annum for each month or fractional part thereof from March first until paid, provided it is paid prior to December first as provided by law; Provided, however, that if the entire annual tax be paid on or before the last day of April in such year, then no penalty shall be assessed or collected on account of failue to pay such first installment of such tax prior to March first of such year." Session Laws of Colorado, 1927, page 682.

Then the whole tax shall bear 10 per cent interest per annum beginning August 1 the year in which the tax is payable.

"7190. All taxes shall be due and payable, one-half on or before the last day of February, and the remainder on or before the last day of July of the year following the one in which they were assessed. The treasurer shall receive the tax assessed against any person who may of-

fer to pay the same, at any time after the tax warrant shall come into his hands." Compiled Laws of Colorado, 1921.

"On the first day of August in each year the unpaid taxes of the preceding year become delinquent and shall thereafter draw interest at the rate of ten per cent per annum, but the treasurer shall continue to receive payments of the same, with interest, until the day of sale for taxes; Provided, That nothing in this section shall be construed to prevent the collection of the penalty as provided for in Section 7191." Session Laws of Colorado, 1925, page 439.

4. Land sold for county, state, school and irrigation taxes should be shown in one certificate, except that if the general tax only was paid leaving the irrigation tax unpaid the land should be sold for such irrigation tax only and the certificate in the usual form issued therefor. There seems to be no provision for sales of land for county, state and school tax, separately, that is, all three taxes must be paid at the same time or sold for all three taxes together if they are not all paid.

"* * * The revenue laws of this state for the assessment, levying and collection of taxes on real estate for county purposes, except as herein modified, shall be applicable for the purposes of this act, including the enforcement of penalties and forfeiture for delinquent assessments, and in the collection and enforcement of irrigation district assessments, the county treasurer is hereby authorized to issue such instruments and do such acts at such times, in the same manner and with like effect as authorized by the general revenue laws concerning such taxes upon real estate for county purposes; * * * Provided, further, That payment of irrigation district assessments shall be receipted for upon the same receipt required in the collection of general real estate taxes, but in the case of payment of only general tax or irrigation district assessment and the non-payment of the other, such non-payment shall be clearly indicated upon such receipt so issued, and the payment of the one shall in no way affect the lien or obligation of the unpaid tax or assessment, but each shall exist and be enforceable separately." Section 2083, C. L. C., 1921.

Yours very truly,

ROBERT E. WINBOURN,
Attorney General.

By SIDNEY P. GODSMAN,
Assistant Attorney General.

170 **FEED LOT**

To Moulton Chambers, Dec. 4, 1929.

Chapter 144, S. L. 1929, was designed for the purpose of protecting range sheep, goats and cattle from predatory animals, and "feed lot" probably means any lot or pen surrounded by a substantial fence, where feed for the stock is brought in from outside the enclosure.

171 **WORKMEN'S COMPENSATION**

To Industrial Commission, Dec. 11, 1929.

The right to compensation for injuries under the Act, is barred by failure of injured person to make claim within six months, as provided by statute.

December 11, 1929.

The Industrial Commission of Colorado,
State Office Building,
Denver, Colorado.

Dear Sirs:

Assuming the facts as given in your recent letter and the accompanying affidavits to be true, and as follows, to-wit: That Robert O. Lockhard was injured in April, 1927, and taken to the Denver General Hospital where he remained for a period of over six months immediately after the injury. Being a bed patient he was ordered to be off his feet and in bed for fifteen months under a penalty of expulsion from said hospital if the said order was not obeyed. On the above facts you have asked for an opinion as to whether or not a failure to file a claim with the Industrial Commission within six months after the injury would be barred by the Statute of Limitations.

The second paragraph of Section 84 of the Workmen's Compensation Act of Colorado provides:

> "The commission shall have jurisdiction at all times to hear and determine and make findings and awards on all cases of injury for which compensation or benefits are provided in this act. The right to compensation and benefits, as provided by this act shall be barred unless within six months after the injury, or within one year after death resulting therefrom, a notice claiming compensation shall be filed with the commission. This limitation shall not apply to any claimant to whom compensation has been paid."

The above section has been passed upon by our Supreme Court in Mercantile Co. v. Fox, 77 Colo. 90, 92, thus:

"The claimant was barred from any right to compensation, not having filed any notice claiming compensation within six months after the injury, unless the question of waiver or estoppel comes in, and lead to the contrary result..... * * * The doctrine of equitable estoppel may in a proper case be invoked to prevent a party from relying upon a Statute of Limitations, 25 Cyc. 1016.

A direct approval of this ruling may also be found in Industrial Commission vs. Hover, 82 Colo. 335, and London Co. v. Industrial Comm., 83 Colo. 252.

The first paragraph of said section 84 reads as follows:

..... * * * "If no such notice is given by the employer, as required by this act, *such notice may be given by any person.* Any notice required to be filed by an injured, or if deceased by his defendants, may be made and filed by anyone on behalf of such claimant and shall be considered as done by such claimant if not specifically disclaimed or objected to by such claimant in writing filed with commission within a reasonable time."

As Mr. Lockhard could have secured the services of some hospital attache to communicate with the outside world his friends could visit him, the aid of messengers secured, his friends in the hospital (inmates) could have used the telephone in his behalf, and agents and attorneys were admitted while compensation was never paid him, and there being no claim that the question of waiver or estoppel has come in by any act of the employer, insurance carrier or Industrial Commission we are of the opinion that the six months Statute of Limitations would effectually bar the claim.

Yours very truly,

ROBERT E. WINBOURN,
Attorney General.

ARTHUR L. OLSON,
Assistant Attorney General.

172 **LIBRARY—Public**

To S. S. Worley, December 11, 1929.

The location of the free county library authorized by Ch. 122, S. L. 1929, should be left to the discretion of the county library board after it is established as provided by the act.

173 SCHOOLS

To R. J. McCullough, Dec. 16, 1929.

Liability insurance on school busses.

School districts are not compelled or authorized to carry liability insurance on school busses.

174 HIGHWAY DEPARTMENT

To Maj. L. D. Blauvelt, Dec. 16, 1929.

Allocation of 3% Gasoline Tax Fund.

Under Sec. 11, par. 2, Chap. 139, of the 1929 Gasoline Tax Law, the State Highway Department in computing the mileage of State Highways in the several counties for the purpose of allocating to the counties 27% of the tax, should not include in such mileage any mileage which has been designated by the Highway Department for the application of the 3% special fund for construction and maintenance.

See also Opinion of Nov. 12, 1929; Opinion of Nov. 27, 1929.

175 SCHOOLS

To M. J. McMillan, Dec. 19, 1929.

"School Nurse."

County commissioners are not authorized to pay "school nurse" from county funds.

176 LIBERAL CHURCH

To Charles M. Armstrong, Dec. 19, 1929.

Application for permit for sacramental liquor.

The contemplated uses for intoxicating liquor as outlined by Bishop Rice do not come within the terms of Art. XXII, Colo. Const., and Sec. 3715, C. L. 1921, and permit should be denied until issues is ordered by a court of proper jurisdiction.

December 19, 1929.

Hon. Charles M. Armstrong,
Secretary of State,
Capitol Building,
Denver, Colorado.

In re: *Application of Frank H. Rice for Sacramental Wine Permit for The Liberal Church, Inc.*

Dear Sir:

We have before us the application under date of December 5, 1929; your request for an opinion as to whether you should honor this application; the various articles of incorporation of

said organization as are matters of record in your office bearing reception numbers 77154, 77326, 78317 and 79289; the former opinion of this office to your predecessor under date of May 22, 1924, on this same subject; the request of this office of the 13th inst., addressed to Bishop Frank H. Rice for any regular official publication or written description or statement of the particular service in which sacramental wine is used by The Liberal Church, Inc.; also his reply thereto under date of the 16th inst. in which he states, in part:

> "We do not claim to know the truth but we are seeking the truth. Therefore we believe that it is our duty and our constitutional rights to have intoxicating liquors to assist us in this direction, and we know that we will put forth every legal effort possible to secure said intoxicating liquors."
>
> "In having intoxicating liquor to consume when we are reciting and meditating over what of the Great Unknown we may some day learn for the benefit of mankind, we feel that we can think more clearly and that we will have inspiration to cause us to work more sincerely for the benefit of the race."
>
> "We believe that Life is for living, that living is growing, that growing is outgrowing; that 'the end of life is growth, and that the end of growth is the beginning of death.' Therefore we desire to prolong life. We think we know enough of the laws of the universe, anatomy, biology and psychology, to know that a limited amount of intoxicating liquor is necessary and essential to the proper conducting of our religious services."
>
> "We believe that 'Heaven' is a way and not a goal, that 'Heaven' and 'Hell' have no legitimate meanings today, except as states of mind independent of place; but should our attempted explorations into the Unknown reveal to us conditions that would cause us to believe in any ancient or modern theological religion, or any kind of heaven or hell, we will then feel free to do so, and then we will still need intoxicating liquors to assist us in investigating, analyzing, weighing and measuring this belief."
>
> "It is a part of our accepted services and religious worship that our qualified ministers have lawful use of intoxicating liquors in their sincere religious search for the ultimate truth about the condition commonly termed God, and if and when we discover the ultimate truth we will call it God, and then we will no longer need intoxicating liquors."

From the printed caption of the stationery of The Liberal Church, Inc., we note that Frank H. Rice is the founder of that organization and therefore recognize Frank H. Rice as the duly authorized and accredited interpreter and expounder of the doctrines, tenets and usages of The Liberal Church, Inc.

In our opinion the contemplated uses of intoxicating liquor, as outlined by Bishop Frank H. Rice as quoted above, by The Liberal Church, Inc., does not come within the terms of Article XXII of the Colorado Constitution and Section 3715, C. L. 1921, as to the sacramental purposes for which permits for the use of intoxicating liquors may be issued by you.

Webster's New International Dictionary says, pertaining to Sacraments:

> "The three chief opinions concerning the sacraments are: a. That they are channels by which divine grace is conferred and are inherently efficacious. This is the view of the Roman Catholics, of the members of the Eastern Church, and of many in the Anglican Communion. b. That they are seals or ratifications of a covenant between God and the individual soul. This is the view generally held by Protestants. c. That they are signs or badges of a Christian profession or that they are simply visible signs or symbols of something invisible and spiritual, and destitute of value and significance if the invisible or spiritual reality is wanting."

Our opinion is, therefore, that you should deny the application of Frank H. Rice on behalf of The Liberal Church, Inc., for a permit to use intoxicating liquors for sacramental purposes, until such time as you are ordered to issue such permit by a court of proper jurisdiction.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.
By SIDNEY P. GODSMAN,
Assistant Attorney General.

177 PENITENTIARY

To Frank S. Hoag, Dec. 19, 1929.

Payment of bills for extra guards and medical services.

When prisoners who have been sentenced to the penitentiary are held in the custody of sheriff in county jail, at the request of the warden of the penitentiary, the expenses attendant on such custody, such as maintenance, extra guards, medical services, etc., should be paid by the Board of Corrections as expenses of the penitentiary. See opinion to Warden Crawford, Nov. 20, 1929. (Sec. 539, C. L. 1921.)

178 SALARIES

To J. M. Jackson, Dec. 20, 1929.

State Tax Commissioner.

Mr. Tucker is now and since Nov. 25, 1929, has been a duly appointed, qualified and acting Commissioner, and the State Auditor is justified in recognizing him as such and paying his salary.

179 FEES AND SALARIES

To T. H. Hargreaves, Dec. 23, 1929.

County Treasurer.

Fee of ½ of 1% for collection of Hail Insurance Indemity Tax.

Since Sec. 14, Ch. 111, S. L. 1929, does not state specifically that the fee is to be received by the treasurer in addition to his salary, it is our opinion that said fee is an emolument of the office and should be accounted for. (Ch. 111, S. L. 1929.)

180 MUNICIPALITIES

To Harry W. Hartman, Dec. 23, 1929.

Negligence in maintenance of jail.

Municipalities are not responsible for negligent performance of public duties.

McAuliffe v. Victor, 15 C. A. 337, 339.

181 CIVIL SERVICE

To Civil Service Commission, Jan. 6, 1930.

The Commission may authorize temporary employment, but cannot say who the appointee may be. (Sec'y Tax Comm.)

January 6, 1930.

State Civil Service Commission
Capitol Building
Denver, Colorado

Dear Madam and Gentlemen:

Your letter of the 27th ult. received. You request an opinion as to whether or not your Commission has the right to disapprove a provisional appointment made by a department head in the absence of an eligible list. We assume you refer to the recent appointment made by the Colorado Tax Commission of Mr. T. W. Monell as its secretary and that there was no eligible list from which a permanent appointment could be made.

Sections 7332 and 7333, C. L. 1921, a 1911 law, provide, in part, as follows:

"Section 7332. 'The (tax) commission is authorized to employ a secretary, * * *.'

"Section 7333. '* * * The secretary of the commission shall keep full and correct minutes of all the testimony taken, hearings had and the proceedings of said commission and shall perform such other duties as may be required by said commission.' "

Art. XII, Sec. 13, of the Colorado Constitution and Sec. 130, C. L. 1921, effective in 1919, provide, *inter alia:*

"In cases of emergency or for the employment of an essentially temporary character, the commission *may authorize temporary employment without competitive test."* (Italics ours.)

Our Supreme Court has never passed on the meaning of these words of the constitution which are underscored. Their meaning will not be finally determined until there is such a ruling in a proper case. However, our best judgment is that they mean that your commission may authorize a temporary appointment in an emergency but cannot say who the particular appointee may be.

Our Supreme Court has said that a provisional appointee is not under civil service, for example:

"In a series of cases, beginning with Shinn v. People, 59 Colo. 509, 149 Pac. 623, this court has consistently held that the safeguards and provisions of the civil service laws are for the protection only of those who have taken an examination and thereby showed the necessary qualifications, and as the result thereof are within the classified service. The other cases referred to are: People, ex rel. v. District Court, 59 Colo. 582, 151 Pac. 1196; People, ex rel. Capp., 61 Colo. 396, 402, 158 Pac. 143; Sowers v. Pitcher, 63 Colo. 139, 165 Pac. 253; People v. Chew, 67 Colo. 394, 179 Pac. 812; Wilson v. People, ex rel. 71 Colo. 456, 208 Pac. 479. Cummings is not within the classified service. He never took an examination; he was only a temporary or provisionl appointee."

Civil Service Com. v. Cummings, 83 Colo. 379, 383.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.
CHARLES ROACH,
Deputy Attorney General.
SIDNEY P. GODSMAN,
Assistant Attorney General.

182 INCORPORATED TOWNS

To F. A. Falkenburg, Jan. 7, 1930.

Each incorporated town is required to elect six trustees for the term of two years on the first Tuesday of April, 1930, and every two years thereafter. (Ch. 180, S. L. 1929.)

183 SCHOOLS

To Myrtle E. Jordan, Jan. 7, 1930.

Questions of residence and tuition discussed. (Sec. 8333, C. L. 1921.)

184 FEES AND SALARIES

To Pelton & Chutkow, Jan. 15, 1930.

Construction of Ch. 96, S. L. 1929.

County Salaries.

The dilemma as to maximum salary of clerk of county court, provided by Ch. 96, S. L. 1929, is one of punctuation only. Punctuation should divide third and fourth class counties into divisions, A, B and C; with no divisions in counties of the fifth class.

185 PRISONERS

To William Orthen, Jan. 22, 1930.

Transportation of.

Sec. 7882, C. L. 1921, fixes the fee "for transporting insane and or other prisoners, besides the actual expenses necessarily incurred." Actual expenses necessarily incurred would include only the railroad fare actually incurred. If a pass in the possession of the sheriff made it unnecessary to actually incur the expense of a ticket, the sheriff should not present to the county for such railroad fare as he did not actually incur.

186 SCHOOLS

To M. L. Youmans, Jan. 23, 1930.

A school district does not lose its organization or imperil its existence by paying tuition and transporting all its pupils to an adjoining district.

187 SCHOOLS

To Avery T. Searle, Jan. 23, 1930.

Members of High School Committee are not entitled to pay for expense of attending meetings.

Leckenby v. The Post Co., 65 Colo. 443, 447 and cases cited.

188 **COUNTY OFFICERS**

To T. John Payne, Jan. 25, 1930.

County Clerk—Salary;
Commissioners—Fees;
Traveling expenses.

Jackson County is a county of the 4th class, div. C, and under Sec. 7931 the county clerk would be entitled to a salary of $1,600 per year; but in Commissioners v. Straub, the Supreme Court held that such salary must be paid out of fees collected by the office; if not sufficient, the officer would not receive the salary designated. The county clerk is entitled to $5 per day while acting as clerk of the board of county commissioners, and there is no authority of law to further compensate such clerk.

County commissioners are entitled to traveling expenses while attending a state convention of commissioners, but not to exceed 15 cents per mile.

January 25, 1930.

Mr. T. John Payne,
C/o County Commissioners,
Walden, Colo.

County Clerk's Salary—Fees
County Commissioners—Traveling Expenses.

Dear Sir:

Answering your verbal inquiry concerning the salary of your county clerk, wish to say that it is the opinion of this office that for the purpose of determining the salary of your county clerk, Jackson County is classified as a *fourth class* county, Division "C."

Section 7921, Compiled Laws, 1921, states:

> "That for the purpose of providing for and regulating the compensation of clerks of the district court, county sheriffs, *county clerks,* county treasurers and county assessors and their deputies and assistants, but of no other county officers, the several counties of the state shall be classified with reference to population and divided into five classes as follows:"
>
> * * * *
>
> "Archuleta and Jackson shall be counties of the fourth class, Division "C."
>
> * * * *

Section 7931 then specifies what salary shall be paid to county clerks of the different counties. It is as follows:

> "The county clerks in the several counties of this state shall receive as their compensation for their services rendered, an annual salary to be paid monthly out of the general county fund and not otherwise, * * *

in Division "C" of counties of the fourth class, sixteen hundred dollars, * * *."

However, the Supreme Court in County Commissioners vs. Straub, 75 Colo. 495, in construing a statute similar to Section 7931 above cited, held that the salary could not be paid out of the general fund, but must be paid out of fees collected by the office with the consequent result that if the fees were not sufficient to pay the salary the officer would not receive this salary designated. Such is the law at the present time as this office views it.

Your county clerk while acting as clerk of the board is entitled to five dollars per day while so acting. We know of no authority authorizing your board to further compensate the clerk regardless of a desire to do so.

Concerning the question of the payment of traveling expenses of county commissioners in attending a state convention of county commissioners in Colorado, this office on February 2, 1928, to H. F. Kiesel, Boulder, Colorado, rendered an opinion to the effect that county commissioners were entitled to traveling expenses in matters of this kind, but not to exceed fifteen cents per mile.

Yours very truly,

ROBERT E. WINBOURN,
Attorney General.
By E. J. PLUNKETT,
Assistant Attorney General.

189 INSURANCE

To Hon. Jackson Cochrane, Jan. 27, 1930.

A company ceded insurance cannot claim the exemption of the ceding company from the payment of taxes, under Sec. 2486, C. L. 1921.

190 HIGHWAY DEPARTMENT

To L. D. Blauvelt, Jan. 28, 1930.

The Highway Department is not liable for damages sustained by Public Service Company for change in its lines to conform to new highway project.

191 HIGHWAY DEPARTMENT

To L. D. Blauvelt, Feb. 3, 1930.

It is not necessary that specific mention should be made in the contract to the paragraph of the specifications which has reference to "failure to complete work on time," since the specifications are made part of the contract by reference.

Nor is it necessary that reference should be made to the paragraph referred to in the bond, as the bond is conditioned upon the faithful performance of the contract.

192 **BUILDING AND LOAN**

To Byron L. Miller, Feb. 5, 1930.

When a foreign building and loan association puts up securities under Section 2806, C. L. 1921, as a prerequisite to doing business in this state and later formed a Colorado association to take over all its Colorado business, the Colorado company is in the position of a reinsurer and therefore the securities so placed with the building and loan department of this state should remain with the department even though the foreign association quit doing business in this state after such transfer.

193 **SALARIES—Clerk County Court**

To Hon. William Mellen, Feb. 7, 1930.

Counties of fifth class.

Construction of Ch. 96, S. L. 1929.

Hon. Wm. Mellen, February 7, 1930.
County Judge,
Cripple Creek, Colorado.

Dear Judge:

Your recent letter received. You ask our opinion as to the maximum salary of clerks of the County Court in counties of the fifth class.

In our opinion Chapter 96, S. L. C. 1929, fixed this maximum salary at $750.00 per annum. The dilemma in reading this 1929 Act arises, we think, in a mistake in punctuation. In the classification of counties for salary purposes in Colorado, we have divisions "A," "B" and "C" in both counties of the third and fourth class, but no such divisions in counties of the fifth class.

As said Chapter 96 was introduced into the legislature it was punctuated to conform to the above classification, but before the bill was finally passed, a mistake in punctuation crept in. However, it is our opinion that the correct punctuation must be read into the Act to give the same meaning as a whole.

Beginning at the bottom of page 351, S. L. C. 1929, there should be a comma instead of a semi-colon, and a semi-colon following the division "A" at the top of page 352, and a comma in place of the semi-colon after the words "of the third class" in the second line of that page, and a comma after the words "division 'B,' " and so on through these items so listed.

This punctuation will leave counties of the fifth class without any division which is as it should be.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

SIDNEY P. GODSMAN,
Assistant Attorney General.

194 TAX DEEDS

To Colorado Tax Commission, Feb. 10, 1930.

Variance or difference in description between treasurer's deed and assessment roll.

Second or correction deed cannot be made to correct error other than a typographical error.

The treasurer should hold the purchaser harmless by paying the purchaser the amount of principal and interest at 8% as provided by Sec. 7444, C. L. 1921. When this is done the treasurer may then readvertise and resell for all the taxes past due.

195 SALARIES

To E. C. Peabody, Feb. 10, 1930.

The county clerk of Summit County is dependent upon his fees for his salary, which cannot be paid out of the General Fund.

Commrs. v. Straub, 75 Colo. 495.

The county clerk gets no extra compensation for making abstracts, but shall receive $5.00 per day for each day actually employed as clerk of the board of county commissioners.

196 VACANCY IN OFFICE

To John H. White, Feb. 14, 1930.

County Commissioner.

A county commissioner appointed by the Governor to fill a vacancy shall hold office only until the next election and until the one elected shall have qualified.

February 14, 1930.

Mr. John H. White,
Teller County,
Cripple Creek, Colo.

Dear Sir:

Your letter of the 8th inst., received and in reply will say that Article 14, Section 9, of the Colorado Constitution provides:

> "In case of a vacancy occurring in the office of county commissioner, the governor shall fill the same by appointment; and in case of a vacancy in any other county office, or in any precinct office, the board of county commissioners shall fill the same by appointment; and the person appointed shall hold the office until the next general election, or until the vacancy be filled by election according to law."

Section 7820, C. L. C. 1921, provides:

> "Section 307. Any of the said officers that may be elected or appointed to fill vacancies may qualify and

enter upon the duties of their office immediately thereafter, and if elected they may hold the same during the unexpired term for which they were elected, and until their successors are elected and qualified, but if appointed they shall hold the same only until their successors are elected and qualified."

We are of the opinion therefore that a county commissioner appointed by the Governor to fill the vacancy shall hold office only until the next election, and as soon thereafter as the one elected has qualified, that is, as soon as the results of the next election are known and the next commissioner is thereby determined, he may immediately qualify and assume the office.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.
SIDNEY P. GODSMAN,
Assistant Attorney General.

197 TAX SALE CERTIFICATES

To A. Mitchell, Feb. 14, 1930.

Refund on.

No refund should be made voluntarily to a tax certificate holder because of possible mistake in assessment, until a court of competent jurisdiction has directed such refund to be made.

February 14, 1930.

Mr. A. Michell,
County Commissioner,
Washington County,
Akron, Colorado.

Dear Sir:

Your recent request received in which you ask whether you should refund voluntarily upon the petition of a holder of a tax sale certificate on a quarter section of land described as such, when there might be some question as to whether or not the land should have been assessed as town lots individually instead of as land.

C. L. C. provide as follows:

Section 7447, passed in 1902. "Each county is responsible to the state for the full amount of tax levied for state purposes, excepting such amounts as are certified to be unavailable, double or erroneous assessments, as provided in this act, and in all cases where any person shall pay any tax, interest or cost, or any portion thereof, that shall thereafter be found to be erroneous or illegal,

whether the same be owing to erroneous assessment, to improper or irregular levying of the tax, or clerical or other errors or irregularities, the board of county commissioners shall refund the same without abatement or discount to the taxpayer."

Section 7460, passed in 1913. "No abatement, rebate or refund of taxes shall be allowed by the county commissioners, unless a hearing shall be had thereon and a notice of such hearing and an opportunity to be present being first given to the assessor, and in case any abatement, rebate or refund of taxes shall be recommended by said county commissioners, they shall certify to the Colorado Tax Commission their findings, giving the amount of such abatement, rebate or refund, and their reasons therefor, and such abatement, rebate or refund shall become effective upon the endorsement thereon of the approval of the Colorado Tax Commission and in case the said Colorado Tax Commission shall disapprove the recommendations of the county commissioners, they shall endorse their disapproval thereon and return it to the county commissioners with a statement of their reasons therefor and no abatement, rebate or refund of taxes shall be allowed by the said board of county commissioners if the application is disapproved by the said Colorado Tax Commission."

Our Appellate Court, in the case of Clear Creek County v. Yingling, 14 Colo. App. 449, page 453, lays down the fundamental principle that:

"Public policy requires that all presumptions should be in favor of the legality of an assessment; and the burden is upon him who assails it to show its illegality."

The Supreme Court, considering the two sections above quoted, in the case of First National Bank v. Patterson, 65 Colo. 166, pages 175-176, said:

"So it becomes necessary to determine the effect of the new section on the old section. We are of the opinion that it does not substantially affect the continued existence of the right conferred upon the taxpayer to recover from the county an illegal or erroneous tax he has paid. It may be conceded that the new section prohibits any voluntary refunding of taxes by the county board of commissioners, save in instances having the approval of the State Tax Commission. But this in no sense takes away the right of the taxpayer given by the old statute to sue. The true meaning of section 5750 is to impose a

liability upon the county in favor of a taxpayer who pays an illegal or erroneous tax, and a corresponding duty upon the commissioners, as agents of such county, to refund the same. The effect of the new section in no-wise removes that liability, or deprives the taxpayer of his right to maintain a suit therefor, but only takes away the right of the commissioners, without first obtaining the approval of the Tax Commission, to refund the tax until it is 'found' by judgment of a court of competent jurisdiction that the tax is erroneous or illegal, establishing the liability of the county. In other words, without the approval of the Tax Commission, it may not be 'found,' except by judgment of a court that the tax is illegal or erroneous."

We are of the opinion, therefore, that no refund should be made, in the instance you propound to a tax certificate holder by assignment from the county, until a court of competent jurisdiction has directed such refund to be made. The holder of such tax certificate, by assignment from the county, might never successfully assail in court the legality of the assessment on which this certificate is based.

Yours very truly,

ROBERT E. WINBOURN,
Attorney General.

SIDNEY P. GODSMAN,
Assistant Attorney General.

198 **COAL MINES**

To James Dalrymple, Feb. 15, 1930.

Liability for coal tax.

The owner of land is not liable where lessee fails to pay the coal tax provided by subdivision (b) Sec. 3605, C. L. 1921.

199 **HIGHWAY DEPARTMENT**

To Major Blauvelt, Feb. 18, 1930.

Damages to car and stock.

The Highway Department has no authority to pay money from the Highway Fund in settlement of damages. The relief, if any, to which the claimant is entitled should be obtained by application to the legislature. (Two opinions.)

200 MILITARY DEPARTMENT

To Horace F. Phelps, Feb. 19, 1930.

Expenditures by Military Board.

The Adjutant General has no authority to oppose effectively expenditures authorized by the Military Board.

Sec. 204, C. L. 1921 provides that he shall attest all vouchers, but this is purely a ministerial duty which he must perform when vouchers are approved by the majority of the Board.

February 19, 1930.

Hon. Horace F. Phelps, Chairman,
Military Affairs Investigating
Committee, 27th General Assembly,
E. & C. Building,
Denver, Colorado.

Dear Sir:

Replying to your letter of January 14, will answer the questions therein asked in the order presented:

First: In our opinion the Adjutant General has no authority which would enable him to effectively oppose expenditures of the classes mentioned. This officer is a member of the Military Board, consisting of five members. His vote has no more or no less weight than that of the other members of the board and the majority rules. True, Section 204, C. L. 1921, provides that he shall attest all vouchers, but this is a purely ministerial duty which he must perform, regardless of his personal feeling or judgment when vouchers are approved by the majority of the board.

In this connection we desire to call your attention to the fact that the authority of the Military Board to pass upon expenditures and purchases of the military department is granted by statute and is not a constitutional provision, therefore it can be changed by the General Assembly at any time it may see fit, and the power to approve or disapprove of proposed expenditures placed in the hands of one or more officers.

Second: The provision requiring all officers of the National Guard to pass a satisfactory examination before appointment and commission is already in effect, under the federal statutes and national guard regulations. While strictly speaking officers are not required to take an examination before being commissioned, they are required to take such an examination within a reasonable time thereafter or else lose their federal recognition and hence commissions. The Colorado statute now provides (Section 188):

"• • • All officers shall be appointed and commissioned by the governor in their respective commands

upon the recommendation of the commanding officer thereof, provided that all officers will be appointed and commissioned as provided for by war department orders or national guard regulations. * * * They shall be allowed a reasonable length of time from the date of such letter in which to prepare for an examination. * * *''

This statute has not been passed upon by our courts but if the provision that all officers shall be appointed by the governor upon recommendation of the commanding officer is constitutional, we can see no valid reason why the power of making recommendations could not be taken from the commanding officer and placed in the hands of the Military Board.

Third: Promotions are essentially an appointment to a new office and the answer to the second question applies to promotions as well as original appointments. In our opinion the recommendation of the commanding officer must be made and a satisfactory examination passed within a reasonable time thereafter for promotion as well as any other appointment. A statute providing for promotion only upon recommendation of the Military Board without requiring an examination and compliance with war department orders or national guard regulations would violate the Federal Act.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.
By FRED A. HARRISON,
Assistant Attorney General.

201 ELECTION OF OFFICERS

To C. G. Pierce, Feb. 19, 1930.

In incorporated towns, Construction of Ch. 180, S. L. 1929.

Which provides that on the first Tuesday in April, 1930, and on the first Tuesday in April every two years thereafter, there shall be elected a mayor, and six trustees for the term of two years, and legislates out of office the holdover trustees under the prior law. (Sec. 9061, C. L. 1921.)

202 AGRICULTURAL COLLEGE

To Dr. Charles A. Lory, Feb. 21, 1930.

Liability for damage to stock by poison distributed for rodent control.

No officer or agent of the Board of Agriculture would be liable for damages done to stock merely because such agent sold such poisons to land owners or others entitled under Sec. 9, Ch. 153, S. L. 1927.

Section 16 of said chapter expressly authorizes such sales and any damage to stock from the use of such poison would not be a natural result of the sale. Any damage resulting would arise from the negligent use of the poison and not from the sale thereof.

203 STATE ENGINEER

To M. C. Hinderlider, Feb. 21, 1930.

Deputy Water Commissioner, Salary when Commissioner is absent.

The Deputy Water Commissioner is entitled only to the salary or per diem fixed by statute for the deputy. The Water Commissioner continues to be commissioner even though he be upon an extended vacation without pay.

204 COAL MINE INSPECTION FUND

To Frank E. Gove, Feb. 21, 1930.

Interest on.

Interest earned by the Coal Mine Inspection Fund when on deposit in banks should be credited to the General Revenue Fund rather than to said Inspection Fund. (Ch. 134, S. L. 1925, Ch. 199, S. L. 1927, Sec. 67, C. L. 1921.)

205 INSURANCE COMMISSIONER

To Jackson Cochrane, Feb. 21, 1930.

Phoenix Mutual Life Co.

The premium tax provided for by Sec. 2486, C. L. 1921 cannot be collected from an insurance company which has withdrawn from the state and has ceased to do business therein.

206 ELECTION

To G. B. Donell, Feb. 24, 1930.

Chapter 180, S. L. 1929, providing for election of mayor and six trustees in incorporated towns, every two years beginning in April, 1930. (Construed.)

207 HIGHWAY DEPARTMENT

To Charles E. Sabin, Feb. 25, 1930.

Liability for claims for damage to person or property.

No provision is made by statute for payment of State Highway Department of claims for damage to person or property. Such claim is a matter for the courts or the legislature.

208 **PENITENTIARY**

To Colorado Board of Corrections, Feb. 26, 1930.

Control of Funds deposited to credit of convict.

If a convict makes any person his agent to care for such funds, he has the right to do so. If he makes no such disposition and the warden has to take possession of such funds of the convict, such custody would give him authority over the expenditure of such money only so far as not to permit such funds to be used in any way detrimental to the institution. (Art. 2, Sec. 9, Colo. Const.)

209 **BOARD OF CORRECTIONS**

To F. S. Hoag, Secretary, Feb. 26, 1930.

Reports—to Governor.

Under Sec. 542, C. L. 1921, provides that biennially, on or before Dec. 15, preceding the convening of the general assembly, the officers of the several institutions under the jurisdiction of the Colorado Board of Corrections, and the board shall transmit to the Governor a report made up to the close of the month of November next preceding, etc.

The change in the fiscal year does not change the time for the filing of such reports.

210 **SALARIES**

To I. W. Northrup, Feb. 26, 1930.

Undersheriff, fourth class B counties.

Section 7927, C. L. 1921, fixes the salaries of sheriffs and undersheriffs in first class counties, and in divisions A and B of second class counties; in all other counties, including Kiowa, the statute provides that the undersheriff and deputy sheriff shall be paid a salary fixed by the sheriff and approved by the county commissioners.

211 **STATE FAIR COMMISSION**

To J. T. Tobin, Feb. 27, 1930.

State Fair Commission has no legal authority to contract with a bond house to borrow $40,000 secured by a pledge of anticipated revenues. (Secs. 477, 478, C. L. 1921, Chap. 182, S. L. 1927.)

212 **BARBERS EXAMINING BOARD**

To R. W. Lichtenheld, Feb. 28, 1930.

Apprentices employed in State Institutions

Under Sec. 4747, as amended in 1929, the Barbers Examining Board would not be permitted to issue a license to an apprentice unless he was going to work in a barber shop wherein a regularly licensed barber is employed.

213 ELECTIONS—Incorporated Towns

To L. R. Thomas, March 4, 1930.

Construction of Ch. 180, S. L. 1929.

The Act of 1929 legislates out of office the town trustees heretofore elected for terms extending beyond April, 1930. Such legislation has been specifically approved by our Supreme Court in

In Re: Senate Resolution, etc., 12 Colo. 339.

214 SCHOOLS

To J. J. Sylvester, March 4, 1930.

School districts should not acquire shares of stock in farmers co-operative oil company, by purchase, by gift or otherwise. (Art. XI, Sec. 2, Colo. Const.)

215 ELECTIONS—Town

To E. C. Peabody, March 4, 1930.

Omission of.

Omitting the holding of elections in incorporated towns, discussed, but not favored. (Sec. 9061, C. L. 1921, Chap. 180, S. L. 1929.)

216 MORTGAGES AND TRUST DEEDS

To John S. Boggs, March 5, 1930.

Redemption from sale under—no change in time.

Secs. 5055 and 5951, C. L. 1921 are not repealed by Ch. 151, S. L. 1929. so that in no case of sale under foreclosure would a sheriff's deed or a public trustee's deed issue before the nine months after date of sale have expired.

Ch. 151, S. L. 1929, seems only to have changed the right of lienors of record to redeem after 6 months under the new law instead of before 6 months from the date of sale under the old law, and does not seem to have affected the judgment creditor's three months' period of redemption.

March 5, 1930.

Mr. John S. Boggs
County Treasurer
Burlington, Colorado

Dear Sir:

Your recent letter received. You ask, Does the redemption of land from a sale under a mortgage or trust deed, which is executed prior to the enactment of Chapter 151, Session Laws of 1929, carry a nine months' redemption period as provided in Sections 5055 and 5951, C. L. 1921.

In our opinion Sections 5055 and 5951 are not repealed by Chapter 151, Session Laws of 1929, so that in no instance of the sale in foreclosure would a sheriff's deed or a public trustee's

deed issue before the nine months have expired after date of the sale. Said Chapter 151 seems only to have changed the right of lienors of record to redeem after six months under the new law instead of before six months from the date of sale under the old law, but does not seem to have affected the judgment creditor's three months' period of redemption.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By SIDNEY P. GODSMAN,
Assistant Attorney General.

217 COUNTY ASSESSOR

To George McGee, March 6, 1930.

Compensation of Deputy.

A county assessor may employ a deputy and pay such deputy out of his personal funds and in such case it is not necessary to have the permission or approval of the county commissioners.

There is no provision of law requiring the bond of such deputy running to the People of the State, but if the assessor thinks such bond advisable, it would be proper to have the bond of such deputy run to himself as assessor. (Sec. 7940, C. L. 1921.)

218 INSURANCE—Group

To F. J. Rheinhard, March 7, 1930.

Elective Officers.

Elective officers are not employes within the meaning of Ch. 110, S. L. 1929, which authorizes cities, counties, incorporated towns and school districts to insure their employes under group insurance.

March 7, 1930.

Mr. Frank J. Rheinhard
Equitable Life Assurance Society
of the United States
620 Security Building
Denver, Colorado

Dear Sir:

You have verbally requested an expression of opinion from this office as to whether or not elective officers are employees within the meaning of Chapter 110, S. L. 1929, which authorizes counties, cities, incorporated towns and school districts and other political subdivisions of the state to insure their employees under group insurance policies.

I must advise you that the courts have always drawn a clear distinction between public officers and public employees; and

since neither the title to this chapter nor the text of the act itself speaks of public officers but only of public employees, I am clearly of the opinion that public officers as distinguished from public employees are excluded from the provisions of this statute. Moreover, Section 30 of Article V of the State Constitution provides that no law shall extend the term of any public officer or increase or diminish his salary or emolument after his election or appointment. If a political subdivision should take out insurance in behalf of a public officer after his election or appointment this would probably be considered as an increase in the emolument of his office. So for this additional reason this new act could not apply to public officers elected or appointed prior to its passage. But the first reason above assigned, viz., that a public officer is not a public employee, is, in my opinion, conclusive against the right of the political subdivision to carry insurance in his behalf.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

By CHARLES ROACH,
Deputy Attorney General.

219 **SCHOOLS**

To Charles J. Southard, March 11, 1930.

The power of a second class district to purchase real estate without a vote of the electors, discussed. Secs. 5955, 8324, 8333, 8380, 8381, C. L. 1921.)

220 **INSURANCE**

To Jackson Cochrane, March 13, 1930.

1. On lives of Minors.
2. Endowment contracts.

1. Insurance on lives of minor children is absolutely prohibited unless applied for by and issued to the natural parents.

2. Endowment contracts which contain provisions for the return of premiums paid, with 4% interest, in the event the contract holder should die before reaching a designated age, are not insurance contracts within the meaning of Sec. 1 (b), Ch. 99, S. L. 1913, and therefore may be sold to minors under the age of 15 years. (Sec. 2512, Amended by Chap. 112, S. L. 1929.)

221 CITIES AND TOWNS

To C. P. Peterson, March 13, 1930.

Public library, Erection of.

Sub. 6, Sec. 8987, C. L. 1921, gives town trustees power to contract indebtedness on the credit of the town for the purpose of erecting public buildings generally, while sub. 76 of the same section deals specifically with the subject of libraries, but makes no provision for incurring indebtedness therefor. (Chap. 122, S. L. 1929.

222 SCHOOLS

To D. B. Delzell, March 14, 1930.

Funds collected on bond forfeitures should be credited to the school fund. (Sec. 8288, C. L. 1921.)

223 TAXATION

To E. B. Morgan, March 19, 1930.

Federal Oil Leases.

Oil leases held from the Federal Government are not taxable as such.

224 PRINTING COMMISSIONER

To Alfred T. May, March 20, 1930.

Annual Report of Coal Mine Inspector.

Inasmuch as Section 3475 does not specify any other method of procuring publication of the Annual Report of the Coal Mine Inspector, said report must be published as part of the printing contract let by bids, as specified in Sec. 5414.

Modified by letters to J. Dalrymple, March 26, 1930 and February 24, 1926, in re: Printing at no charge to the state. (Sec. 5413, C. L. 1921.)

225 COURT COSTS

To J. C. Horn, March 21, 1930.

Construction of Chap. 80, page 297, S. L. 1929.

The sentence "In counties of second, third, fourth and fifth class such original docket fee shall apply upon the total fees hereinafter set forth," has been construed to mean that the original docket fee is to be applied to diminish the additional fees required in counties of the classes enumerated.

226 CORPORATION LAW

To Charles Armstrong, March 22, 1930.

Renewal or Extension of corporate existence.

Domestic corporation.

Under Sec. 50, Ch. 150, S. L. 1927, the Secretary of State should receive for filing an attempted renewal or extension of the corporate existence of a corporation, executed after the time such renewal or extension is required to be made by law for the purposes of the Act. (Sec. 2292, C. L. 1921.)

Query: As to the legality of an amendment to the corporation laws under a title such as was given to Ch. 150, S. L. 1927.

227 HAIL INSURANCE TAX

To Claude Cartright, March 22, 1930.

Indemnity tax cannot be paid separately any more than a school tax can be paid or collected separately. (Ch. 111, S. L. 1929.

228 SALARIES

To J. M. Jackson, March 25, 1930.

Legislative Reference director.

Section 3 of Chapter 124, S. L. 1927, provides for a continuing appropriation for the payment of the salaries of the Director of Legislative Reference Department and his secretary.

229 ELECTIONS

To W. E. Heginbotham, March 26, 1930.

Municipal Bonds.

Persons who are qualified voters under the registration and election laws of the state and who in the calendar year last preceding the election shall have paid a tax or become liable for the payment of a tax upon real or personal property assessed to and owned by them in the city or town where the election is held, are entitled to vote at a municipal election for the issuance of general improvement bonds. (Sec. 7530, C. L. 1921.)

230 PLUMBERS

To Harry Flynn, March 27, 1930.

Must have state license to operate in towns with no plumbing ordinance and in the surrounding territory, but may do his own plumbing without such license.

231 **ELECTIONS**

To Edward T. Fiske, March 27, 1930.

Absent Voters.

The Absent Voters' Act, Ch. 94, S. L. 1929, does not apply to municipal elections.

232 **TAXATION**

To Richard A. Toomey, March 28, 1930.

Veterans Insurance Compensation, etc., Exempt—when.

Insurance, compensation, death compensation and adjusted compensation paid by the U. S. Veterans' Bureau to conservators or guardians of insane or minor beneficiaries of said Bureau are exempt from taxation in Colorado WHEN such money is in the hands of the conservator or guardian, by deposit in checking account, savings account or certificate of deposit in bank, or when such money is invested in bonds or notes secured by first lien mortgages or deeds of trust when such investments remain under the control of the conservator or guardian.

March 28, 1930.

Richard A. Toomey, Esq.,
Regional Attorney
United States Veterans Bureau
Denver, Colorado

Dear Sir:

We are in receipt of your letter of the 26th inst., in which you request our opinion concerning the taxability of certain moneys in the hands of guardians or conservators of beneficiaries of the United States Veterans Bureau.

In this letter you state that some of the taxing authorities of the State of Colorado have imposed taxes upon estates and property of such estates derived from the United States in the hands of conservators or guardians. You request our opinion as to the authority of such officials to tax benefits, to-wit: insurance, compensation, death compensation and adjusted compensation paid by the United States Veterans Bureau to conservators or guardians of insane or minor beneficiaries of said Bureau, under the following circumstances:

1. When such money is in the hands of the conservator or guardian.

2. When the money is in the hands of the conservator or guardian by deposit in checking account, savings account, or certificate of deposit in a bank.

3. When the money is invested in bonds, to-wit, government, state, county, city and county, school district, or municipal bonds, pursuant to Chapter 181, Session

Laws of 1925, wherein such investments are not of themselves exempt from taxation.

4. When the money is invested in notes or bonds secured by first lien mortgages or deeds of trust pursuant to Chapter 181 of the Session Laws of 1925.

Section 22 of the World War Veterans' Act of 1924, as amended (Title 38, Section 454, U. S. Code) provides:

> "That the compensation, insurance, and maintenance and support allowance payable under Title II, III and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made * * *; and shall be exempt from all taxation: * * *."

The power of Congress of the United States to exempt from taxation property or agencies of the Federal Government is contained in Paragraph 2, Article VI, of the United States Constitution, which provides:

> "This Constitution, and the laws of the United States which shall be made in pursuance thereof * * * shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

In speaking of the power of a state to tax a Federal agency, Chief Justice Marshall in *McCulloch v. Maryland*, 4 Wheat. 316, 436, said:

> "The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared."

That a guardian or conservator is an agent of the United States for the purpose of disbursing pension funds to minor or incompetent wards is well settled in *United States v. Hall*, 98 U. S. 357, where the contentiton was made by the defendant that when payment of money is made to the guardian the money paid ceases to be within the constitutional control of the United States. The court said:

"But the court is unhesitatingly of a different opinion, for several reasons: 1. Because the United States, as the donors of the pensions, may, through the legislative department of the government, annex such conditions to the donation as they see fit, to insure its transmission unimpaired to the beneficiary. 2. Because the guardian no more than the agent or attorney of the pensioner is obliged by the laws of Congress to receive the fund; but if he does, he must accept it subject to the annexed conditions. 3. Because the word 'Guardian,' as used in the acts of Congress, is merely the designation of the person to whom the money granted may be paid for the use and benefit of the pensioners. 4. Because the fund proceeds from the United States, and inasmuch as the donation is a voluntary gift, the Congress may pass laws for its protection, certainly until it passes into the hands of the beneficiary, which is all that is necessary to decide in this case. 5. Because the elements of the offense defined by the act of Congress in question consist of the wrongful acts of the individual named in the indictment, wholly irrespective of the duties devolved upon him by the State law. 6. Because the theory of the defendant that the act of Congress augments, lessens, or makes any change in respect to the duties of a guardian under the State law is entirely erroneous, as the act of Congress merely provides that the pension may be paid to the person designated as guardian, for the use and benefit of the pensioner, and that the person who received the pension, if he embezzles it or fraudulently converts it to his own use, shall be guilty of a misdemeanor, and be punished as therein provided."

In *Manning v. Spry*, 121 Iowa 169, 96 N. W. 875, the court said:

"The guardian does not receive the pension as of right. Indeed, as we understand it, the government may, and frequently does, withhold pensions from one under guardianship. If a guardian does receive it, he is amenable to the department for its care and disposition. This being true, it has not reached the beneficiary until actually paid to him or expended for his benefit. While in the guardian's hands, he is a mere trustee or depositary for the general government, and the fund, no matter what its form, is not subject to taxation. In so far as the pensioner is concerned, it is still a pension, within the meaning of section 1309 of our Code."

In the case of *State Tax Commission v. Rifle*, 119 Ohio State 83, the court had under consideration the question of the applicability of the State Inheritance Tax Law to War Risk Insurance paid to an administrator of the estate of a deceased soldier, the court said on page 90:

> "It is reasonable to assume that the purpose of Congress in making the payment to the administrator of the deceased soldier was for the benefit of the government, to relieve the government of the necessity of selecting and determining the next of kin of the deceased soldier to whom payment should be made, and to place this burden upon the administrator appointed in the state of the soldier's residence. The administrator becomes a mere trustee or conduit for the government to make the payments to the persons entitled to the same under the provisions of the federal law."

This being true, the money received in payment of war risk insurance was exempt from inheritance tax.

Thus it seems unquestionably to be the law that a personal representative paid money from the Federal Government for insurance, compensation or other benefits under Section 22 of the World War Veterans' Act is an agent of the government and not of the individual. The administrator, guardian or conservator is a mere trustee or conduit through which the Act of Congress is carried out.

In conclusion, therefore, we are of the opinion that moneys paid to a guardian or conservator remain under the control of the Federal Government, and that such funds paid to a conservator or guardian of an insane or minor beneficiary from the United States Veterans' Bureau are exempt from taxation by the taxing bodies of the State of Colorado, regardless of whether such funds are in the hands of the conservator, or guardian, or are maintained in the bank (checking account, savings account, certificate of deposit), or are invested in government, state, county, city and county, school district or municipal bonds, or are invested in notes or bonds secured by first lien mortgages or deeds of trust, so long as such funds and investments remain in the hands of the guardian or conservator.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General

By FRED A. HARRISON,
Assistant Attorney General

233 **SCHOOLS**

To S. R. Chubb, March 28, 1930.

Apportionment of teachers in high schools.

High schools are apportioned teachers on the basis of enrollment and not on the census of the district; consequently they are not entitled to "additional" teachers provided for by Ch. 165, S. L. 1929.

234 **INSURANCE**

To Jackson Cochrane, March 29, 1930.

Annual and Tax Statements.

Filing of.

Insurance companies, whether in hands of receiver, or with suspended license, that have done any business in the state during the past year, should file annual statement and tax statement and pay taxes as required by the act. (Secs. 2485, 2486, C. L. 1921.)

235 **SCHOOLS**

To James A. Cook, April 1, 1930.

Contracts.

The power of outgoing school boards to contract with teachers for the ensuing year, extends to other contracts as well.

236 **SCHOOLS**

To Margaret Porter, April 10, 1930.

To annul a joint school district the statute requires a vote of the majority of all the voters of the district,—a majority of those voting not being sufficient. The consent of the county superintendent of each county concerned is also requisite.

237 **STATE PENITENTIARY**

To Chas. M. Armstrong, April 19, 1930.

License Plate Plant Insurance on.

The question of expending the $12,000 received by the Board of Corrections, covering loss by fire to the License Plate plant machinery and supplies at Canon City, is a matter of management on the part of said board, and they should use it or not, as their best judgment dictates. It should be kept as a separate fund until the board sees fit to expend it.

238 PUBLIC HIGHWAYS

To Charles E. Musser, April 21, 1930.

Width of.

County Commissioners have the right to determine the width of public highways within their jurisdiction. (Secs. 1290, 1305, C. L. 1921.)

239 PENITENTIARY

To Governor Adams, April 24, 1930.

Prisoners' "good time" allowance, additional.

Section 758, C. L. 1921, would be totally ineffective unless it is construed as giving the Board of Corrections power to make deductions greater than those expressly provided for.

240 COUNTY EMPLOYES

To Robert E. Killey, April 28, 1930.

Compensation insurance.

It is permissible under the law to purchase compensation insurance for county employes in various county offices with funds from the ordinary County Revenue Fund; and for those who are employed on road and bridge work, with funds belonging to the County Road Fund.

241 SCHOOL OF MINES

To Dr. M. F. Coolbaugh, April 29, 1930.

U. S. Mineral Leasing Act Fund—to purchase tract of land for instruction in Petroleum Engineering.

It would be lawful for the Board of Trustees to use said funds for the purchase of land to be used for the purposes of the School of Mines. (Ch. 138, S. L. 1925.)

242 COUNTY CLERK

To William Barber, April 30, 1930.

Duty in re: instruments offered for recording.

The county clerk is not charged with the duty of determining the character of an instrument, except for the purpose of charging the correct fee. When he has done what has been requested to be done with an instrument and received and accounted for the fee for so doing, he has fulfilled his duty. It is for the courts to determine the effect of the record.

243 PRISONERS' TIME

To Thos. H. Clennan, Warden, May 1, 1930.

Under Sections 8880 and 8887, C. L. 1921, the warden of the county jail is permitted to deduct time from the sentences of

prisoners who are confined on body judgments under Secs. 5964 and 5965, C. L. 1921, the same as prisoners confined under the criminal statutes. Where two constructions are possible that construction should be adopted which operates in favor of liberty. (In re: Blocker, 69 Colo. 259.)

244 GASOLINE TAX LAW

To W. A. Kirby, May 6, 1930.

Allocation of 3% tax.

Under the provisions of the Act of 1929, 3% of the Gas Tax revenue is available for highways, without limit as to size of towns. The designation of such towns lies entirely within the discretion of the State Highway Advisory Board. (Ch. 139, S. L. 1929.)

245 CITIES AND TOWNS

To Herschel Horn, May 7, 1930.

The granting of a franchise to build and operate a street railway may be by ordinance and without the vote of the taxpayers. (Sec. 8987, C. L. 1921; Sec. 9172 to 9176, C. L. 1921; Ch. 181, S. L. 1929.)

246 CITIES AND TOWNS

To Hon. J. F. Lunsford, May 7, 1930.

Under Sec. 9138, C. L. 1921, it is mandatory that the treasurer of an incorporated town, publish an annual report.

247 SCHOOLS

To W. F. Smith, May 9, 1930.

A second class district which increases its school population to that of a first class district does not function as such until it has organized by electing two additional members of the board. (Sec. 8324, C. L. 1921.)

248 STATE LAND BOARD

To Board of Land Commissioners, May 9, 1930.

Damage to State Land by water.

If the surface and seepage waters of an upper land owner would naturally drain to the state land the upper owner would have the right to put in tile and ditch, and cannot be held liable for damage, unless the flow is increased materially by use of tile or ditch, or both.

249 INSURANCE

To Jackson Cochrane, May 10, 1930.

Title and Guaranty Cos. payment of premium tax.

Title and guaranty companies are not insurance companies within the meaning of the section which provides for the premium tax. (Ch. 75, S. L. 1929, amending Sec. 2332, C. L. 1921; Sec. 2486, C. L. 1921.)

250 INSANE PERSON

To L. T. Morgan, May 13, 1930.

Estate of; Widow's allowance.

Under Sections 5347 and 5348, C. L. 1921, it is our opinion that the allowance given to a widow of an insane or mentally incompetent person (modified by 1929 S. L.), is only available if she is residing in this State; therefore, it seems reasonable that this provision should apply also to the wife of such a person.

This provision, however, does not prevent a wife, even though a non-resident from making application for her support, and the support and education of minor children, if the estate is solvent.

251 ELECTIONS—Registration

To E. E. Anderson, May 13, 1930.

Towns lying in two counties.

Where a town of more than 2000 in population lies in two counties, the county clerks of the respective counties should handle registration for an election for the portion of the town lying in their county the same as though the whole of the town were situated within the boundaries of that county.

252 ELECTIONS

To Bessie McQuown, May 13, 1930.

Registration.

In determining which of two registration acts (Act of 1911 and Act of 1917) to follow, the county clerk may rely, as to population of city, upon the announcement made by the district supervisor of U. S. Census.

Towns of from 2000 to 5000 inhabitants are governed as to registration on the part of the county clerk, by Sec. 7619, C. L. 1921 (Sec. 7604, C. L. 1921.)

253 PROBATE FEES

To Miss Anna E. Adkinson, May 15, 1930.

Construction of law in re: Probate fees, and the conflict between that law and the Inheritance Tax Law in respect to fees and costs in estates undergoing administration (Chap. 80, S. L. 1929.)

254 PROBATE FEES

To L. C. Kinnikin, May 21, 1930.

Under trusteeship following final settlement.

Neither Chapter 80, S. L. 1929, nor Secs. 5364 and 5365, C. L. 1921, suggest a different estate for the trusteeship, nor a different fee, and we do not see any authority for charging any further fee than the one which is made the basis of the settlement of the court costs at the time of settlement.

255 COAL MINE INSPECTOR

To James Dalrymple, May 26, 1930.

Under Sec. 3471 it is clear that six public officers were created by the coal mine inspection act, in addition to the one of chief inspector, and the general rule is that a public office must be filled.

It is probable that the person whose name is first on the eligible list for deputy inspector could compel his appointment to the vacant office, by court action. (Secs. 3465, 3466, C. L. 1921.)

256 HIGHWAY LAW

To M. M. Buckley, June 2, 1930.

The building of a state highway across public lands is an acceptance of the grant provided by the federal statute. (Sec. 4919, Ch. 10, U. S. Comp. Stat. 1916.)

257 VACANCIES IN OFFICE

To Thomas Annear, June 5, 1930.

District Judge.

Persons appointed by the Governor to fill vacancies in the office of district judge, hold office only until the following general election, and not for the balance of the unexpired term. (Sec. 7819, C. L. 1921.)

258 ELECTION LAW

To W. W. Platt, June 9, 1930.

Establishment of election precincts.

Under Sec. 7656, C. L. 1921, city authorities shall not make any change in election precincts within less than three months before the primary election. However, this does not apply to the county commissioners, who can make the precincts for county and state elections co-extensive with the precincts for city elections at any time not less than 30 days prior to any election. (Sec. 7705, C. L.)

Should it become necessary or expedient for a city to change its election precincts, it should be done three months before any election, either primary, general or city.

259 **SCHOOLS**

To H. F. Trampe, June 11, 1930.

H. S. Committee.

The county superintendent of schools does not participate in election of high school committee. (Sec. 8402, C. L. 1921.)

260 **SCHOOLS**

To Mrs. Lillie O. Baker, June 12, 1930.

Levy for General County Fund.

There can be no additional teachers, nor additional levy as provided by Ch. 165, S. L. 1929, where the levy for the County General Fund has already reached the maximum of five mills.

261 **ABSTRACTERS' LAW**

To P. W. Allen, June 16, 1930.

Every licensee shall have a set of abstract books or other system of indexes of records, showing in a brief comprehensive form all instruments of record or on file, affecting real estate, as indicated by the reception book in the office of the recorder of deeds, and any record which the abstracter has in his office shall show what the instrument on file or recorded is, the parties to the instrument and the date. The abstracter is not complying with the law if his records merely show a book and page number, with no other information. (Chap. 57, S. L. 1929.)

262 **ELECTIONS**

To James Hamilton, June 18, 1930.

Change of party affiliation in counties of more than 100,000 inhabitants.

Change of party affiliation in cities of more than 100,000 inhabitants may be made:

1. **By making a statement in person to officers in charge of registration at the first time and place provided for registration in such voter's county or precinct, in the year in which a primary election is to be held. Under Sec. 7, Ch. 109, S. L. 1923, the third Tuesday preceding a primary election, is such first time and place;**
2. **Or by a written request signed by the voter and witnessed by two electors, which request shall be transmitted at any time before ten days prior to such first registration day in a city and county to the Election Commission thereof.**

Also, an elector might be entitled to appear before the county clerk and recorder on the second day in January of the year in which a primary is to be held, and have his affiliation changed by virtue of the statute. (Application to Denver, stated.)

June 18, 1930.

Mr. James Hamilton,
Secretary, Election Commission,
Denver, Colorado.

Dear Sir:

In compliance with our telephone conversation, I am handing you herewith the opinion of this office relative to change of party affiliation as provided by Section 3, Chapter 98, Session Laws of 1927, in cities having a population of more than 100,000 inhabitants, for the purpose of voting at the ensuing primary election.

That portion of said Section 3, relating to the matter, reads as follows:

> "Any such voter desiring to change his party affiliation may do so by making a statement in person of such change to an officer or officers in charge of registration at the first time and place provided for registration of voters in such voters' county or precinct, in any year in which a primary election is to be held. Such change of party affiliation may also be made by a written request signed by the voter and witnessed by two electors, which request shall be transmitted not less than ten days before such first registration day, to the County Clerk of such voters' county or in the case of a city and county to the election commission thereof. Thereupon such voter's party affiliation shall be changed on the registration books and he shall only be entitled to vote at ensuing primary elections the primary ballot of the particular party with which he has so affiliated himself until he has thereafter again changed his party affiliation by the method herein provided, or has lost the same as herein provided."

You will note that such change may be made by a voter in one of two ways:

1st. By making a statement in person to an officer or officers in charge of registration at the first time and place provided for registration of voters in such voters' county, or precinct, in the year in which a primary election is to be held.

The first time and place provided for registration in the precincts in a city of the class in question, is contained in Section 7 of Chapter 109, Session Laws of 1923, as the third Tuesday preceding a primary election by a registration committee. Therefore, an elector desiring to change may appear in person before said registration committee at said time in his precinct and obtain said change.

2nd. Or such change of party affiliation may also be made by a written request signed by the voter and witnessed by two electors, which request shall be transmitted at any time before ten days prior to such first registration day in a city and county to the Election Commission thereof.

Also, an elector would perhaps be entitled to appear before the County Clerk and Recorder on the second day in January of the year in which a primary is to be held, or if the second day falls on Sunday, then on the third day of January, and have his affiliation changed by virtue of the provisions of the above cited statutes, but such right is not so clear as the other occasions above set forth, which provide an easy and simple procedure for accomplishing the desired result.

Stated another way: In Denver, this year, a voter may appear in person to change his affiliation only on August 19, 1930, before the Registration Committee in his precinct, and not in person at any other time, Or

He may by written request, as above set forth, to the Election Commission, at any time on or before August 9th, 1930, change his affiliation.

This opinion does not in any way conflict with the opinion of my predecessor in office, under date of December 1, 1927, which refers specifically to change of affiliation in cities having over 5000 inhabitants and under 100,000 inhabitants, which opinion is hereby approved by the undersigned.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.

263 CONVICTS—Citizenship of

To F. E. Crawford, Warden, June 20, 1930.

Right to make entry on Government land homestead.

A convict under parole remains a citizen of the United States and of this State, and, so far as state law is concerned, is eligible to make final proof on a Government homestead entry. (Amd. 14, U. S. Const., Art. 7, Sec. 10, Colo. Const.)

264 COUNTY COMMISSIONERS

To John C. Vivian, June 26, 1930.

Maintenance of State Highways in towns of less than 2500.

County boards may lawfully make agreements with the corporate authorities of incorporated towns of less than 2500 to take over and maintain a town street as a connecting link in the county highway. (Secs. 1386, 1401, 1407, C. L. 1921.)

265 **HIGHWAY—Over School Land.**

To L. D. Blauvelt, June 27, 1930.

Acquisition of perpetual easement over land belonging to school district.

Under Sec. 8330, C. L. 1921, the directors of a third class district, may, at a special meeting, direct the sale *or other disposition* of property, real or personal, belonging to the school district.

266 **SCHOOLS**

To W. F. Templin, July 5, 1929.

Funds.

Minimum Salary Fund.

The county treasurer must keep the county general school fund created by the Minimum Salary Law as a separate and distinct fund and must not merge or combine it with the Special or any other fund. (Secs. 8280, 8281, 8282, 8283, 8286, 8288, 8302, 8801, C. L. 1921.)

267 **CORPORATIONS**

To Edward Miller, July 11, 1930.

Change of corporate name.

Our statutes concerning corporations would not authorize a corporation doing business in this State to adopt or use an assumed or trade name; and it would be improper for the Secretary of State to accept an amendment to the Articles of such corporation, providing for such adoption or use.

268 **INDUSTRIAL TRAINING SCHOOL**

To J. S. Underwood, Lamar, July 12, 1930.

The Board of Control has no authority to convey any part of the lands belonging to it, but might properly enter into a contract subject to the approval of the general assembly to make such conveyance, where in the meantime there is danger of loss or destruction of improvements on the property. (Secs. 813, 818, C. L. 1921.)

269 **INDUSTRIAL COMMISSION**

To Industrial Commission, July 15, 1930.

State Compensation Insurance Fund Policy P-2032, Town of Eads—Liability for premium, during time the municipal light and water department were being operated by the J. C. Roberts Public Service Company.

July 15, 1930.

Industrial Commission of Colorado
State Office Building
Denver, Colorado

In re: *State Compensation Insurance Fund, Policy No. P-2032, Town of Eads.*

Gentlemen:

Your request for an opinion as to whether or not the Town of Eads, Colorado, is liable for a premium on certain items of its payroll on Policy No. P-2032 has been turned over to me for attention.

The facts briefly stated are as follows: The State Compensation Insurance Fund billed the Town of Eads for a premium for the period, July 1, 1929, to June 30, 1930, in the sum of $164.78, which covered estimated advance premium on the various phases of municipal activity including the operation of a municipal light and water department. During the months of August, September and October, 1929, the light and water departments were operated under a lease or other agreement by the J. C. Roberts Public Service Company who claimed to have taken out an insurance policy to cover its employes. The records of the Industrial Commission show that said company did take out a policy to cover this period which was cancelled flat by the Century Indemnity Company, the Insurer, as of August 1, 1929, with no record of any other policy and consequently leaving the company uninsured for these three months. As the Service Company was uninsured, the State Compensation Insurance Fund contends that it was in fact carrying the liability for any accidents that might have occurred during this period under Sections 49 and 50 of the Workmen's Compensation Act (Sec. 4423 and 4424, C. L. 1921) because it was the Insurer of the employer or owner (the Town of Eads) and being liable for any accidents that might have occurred, it is entitled to a premium for carrying this liability. Further that if there were other policies obtained by the Service Company but not reported in compliance with the law the burden to show their existence was upon the town and in the absence of any such policies, the town of Eads would recover from the Service Company the cost of the insurance, for these three months, under Sections 49 and 50.

We find Section 4382, C. L. 1921, reading as follows:

"(a) The state, and each count, city, *town*, irrigation, drainage and school district therein, and all public institutions and administrative boards thereof without regard to the number of persons in the service of any such public employer; and, *provided*, that all such pub-

lic employers shall be at all times subject to the compensation provisions of this act."

And Section 4511, C. L. 1921, provides for public appropriations for premiums, while Sections 4423 and 4424, in substance, state that where any person, company or corporation is operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof to any lessee, sublessee contractor, etc., shall be construed to be an employer and shall carry compensation and where any person, company or corporation that owns any real property or improvements thereon and that contracts out any work to be done by any contractor, etc., who shall hire four or more employes shall be an employer and shall carry insurance and these employers may deduct from the contract price, or any money due, a sufficient sum to cover the cost of the Workmen's Compensation Insurance in case the subcontractors or sublessors fail to take it out.

In *Flick v. Industrial Commission,* 78 Colo. 117, 120, the court says:

> "The argument also seems to claim that section 49 is unconstitutional because it furnishes a definition of employer different from that in section 8. That does not violate the Constitution. It is our duty to construe them together if we can, and we can. Section 49 merely adds to the definition in section 8.

And the syllabus in *Index Mines Co. v. Industrial Commission,* 82 Colo. 272, reads thus:

> "Agreement of a lessee to carry employer's liability insurance which he fails to carry out does not relieve the lessor from liability under the workmen's compensation act."

Other cases which construe Sections 49 and 50 of the Act are:

Lackey v. Industrial Commission, 80 Colo. 112, and Industrial Commission v. Continental Company, 78 Colo. 599.

In the last cited case the Continental Company had a coal yard and an employe of a contractor hauling coal for the contractor was injured and it was held that the Continental Company was liable.

See also the following cases from other jurisdictions:

Sexton v. Commn., 167 N. Y. Supp. 492, where the City of New York was building a subway and an employe of the construction company was injured and the court held the city liable.

Com. v. Milwaukee, 174 N. W. 926, where an employe of the person holding the garbage disposal contract for the city was injured and the city was held liable.

City of Chicago v. Industrial Commission, 295 Ill. 291, 129 N. E. 112, where an employe of a contractor for the city was injured and the city was held liable.

Therefore we are of the opinion that if an employee of the Service Company had been injured the State Fund would have been liable and it necessarily follows that the Fund is entitled to the premium for carrying this liability. The following case is persuasive: *State ex rel. Pratt v. Seattle*, 73 Wash. 396. In that case, fortunately, the city had held back enough money from the contractor to cover the premium and promptly impleaded the contractor in the suit. Judgment was given the State Fund for the amount of the premium.

Consequently we feel that unless the city can definitely show that Mr. Roberts was actually covered by insurance during the three months period in question, the Fund is entitled to receive the premium for this period for the reason that if he was not covered it was carrying his liability and further that as the records of the Industrial Commission show that any insurance which Mr. Roberts attempted to get was immediately cancelled, we are also of the opinion that the burden is upon the city to show that other insurance was obtained, if such were the case.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.
By ARTHUR L. OLSON,
Assistant Attorney General.

270 ELECTIONS

To Charles M. Armstrong, July 16, 1930.

Change of affiliation; When same can be made.

July 16, 1930.

Hon. Chas. M. Armstrong,
Secretary of State,
Denver, Colorado.

Dear Sir:

In reply to your verbal request in reference to the dates upon which a voter may change his party affiliations, beg to advise.

1st. In outlying precincts, in other words in precincts outside of cities having 2,000 population or more, the first precinct registration day is on Tuesday, one week preceding the primary election, and it is the last day upon which a voter may change his party affiliation. To change the party affiliation on this day, the voter must appear before the Registration Board in person.

Party affiliation in said precincts may also be changed by written request signed by the voter and two electors, which re-

quest shall be transmitted not less than ten days before the Tuesday, one week before the primary election, to the County Clerk and Recorder of the county in which the precinct is located.

2nd. The first precinct registration day in cities of 2,000 to 5,000 population is the third Tuesday preceding the day of the primary election and this is the last day upon which a voter may change his party affiliation. This change may be made on this day by the voter appearing in person before the Registration Board and requesting that his party affiliation be changed.

Party affiliation in cities of 2,000 to 5,000 may also be changed by written request signed by the voter and two electors, which request shall be transmitted not less than ten days before the third Tuesday preceding the primary election to the County Clerk and Recorder of the county in which the city is located.

3rd. In cities of 5,000 to 100,000 population, the first day of registration in the year in which the election is to be held falls on the first day of January that is not a holiday or Sunday of that year, and this is the last day upon which a voter may change his party affiliation for the reason that the statutes make no provision for precinct registration in this class of cities. The voter to make such change must appear before the County Clerk in person on said first named date.

A voter may also change his party affiliation in cities of 5,000 to 100,000 population by written request signed by the voter and two electors, which request shall be transmitted not less than ten days before January 2nd of the year in which the election is to be held to the County Clerk and Recorder in which the city is located.

4th. The first registration day in precincts in cities of over 100,000 population is the third Tuesday preceding the primary election and this is the last date upon which a voter may change his party affiliation. The voter may make this change by appearing in person before the Registration Board in his precinct and requesting that the change be made.

Party affiliation in precincts in cities of over 100,000 population may also be changed by written request signed by the voter and two electors, which request shall be transmitted not less than ten days before the third Tuesday preceding the primary election to the Election Commission.

You will note that in the cities of from 5,000 to 100,000 population, the date has passed on which party affiliation may be changed for the 1930 Primary Election.

Very truly yours,

ROBERT E. WINBOURN,
Attorney General.
By FRED A. HARRISON,
Assistant Attorney General.

271 PUBLIC SCHOOL FUNDS

To Raymond Miller, July 19, 1930.

Investment, Improvement bonds.

Local improvement bonds, though guaranteed under Ch. 181, S. L. 1923, are not bonds of towns or cities within the meaning of the statutes enumerating the securities in which the public school funds may be invested. (Chap. 169, S. L. 1929.)

272 PURE FOOD LAWS

To S. H. Loeb, July 25, 1930.

The pure Food Act does not seem to provide any method for holding for analysis goods suspected of being adulterated or during hearing or trial prior to the order of court, although upon prompt showing the court would have authority to order the goods held pending its decision. (Secs. 996 to 999, 1004, Ch. 1921.)

273 STATE LANDS

To State Land Board, July 25, 1930.

Sale to Ex-Service Men $50.00 payment required.

The first paragraph of Sec. 11 would seem to require that any service man bidding would be required to pay the $50.00, but the second paragraph seems to indicate that the $50.00 once paid, stays with the Land Board, to be paid to the next successful bidder, other than the ex-service man who made application to place the land on the market. (Sec. 1212, C. L. 1921.)

274 ELECTIONS

To E. H. Akerly, July 28, 1930.

County clerk must place candidates' names on ballots as certified to him by party assembly or by petition. A political party can nominate and elect whomever it wishes without regard to candidates' party affiliation, which candidate may or may not change as he sees fit.

Same opinion to Chas. M. Armstrong, July 31.

275 AGRICULTURAL COLLEGE

To Dr. Charles A. Lory, August 5, 1930.

Investment of Land Grant Funds.

Discretion is vested largely in the State Board of Agriculture, but funds must be invested in Colorado Securities. (See opinion to W. D. MacGinnis, Aug. 12, 1930.)

276 **SHERIFF'S FEE**

To L. E. Alderman, Aug. 6, 1930.

At executions.

The fee provided by Sec. 7154, C. L. 1921, for sheriff attending executions of condemned persons, must be accounted for as other fees and cannot be retained by the sheriff in addition to his statutory salary. (Art. XIV, Sec. 15, Colo. Const.)

277 **COUNTY SURVEYOR**

To Royal L. Westphal, Aug. 6, 1930.

Qualifications of.

Neither the Constitution nor the statutes relating to office of county surveyor lay down any qualification for such office other than that the county surveyor must be a qualified elector. No special qualifications are required.

278 **PUBLIC FUNDS**

To W. D. MacGinnis, Aug. 12, 1930.

Investment of Land Grant Funds of St. Agricultural College.

The investment of the Land Grant Funds of the State Agricultural College is vested in the State Board of Agriculture under definite statutory provisions,—preferably in municipal, school district and farm loan bonds, reported upon as to value by the county treasurer of the county in which the lands securing such bonds are located, and approved by the attorney general as to legality.

The State Board of Agriculture is not authorized to invest said funds in securities of states other than Colorado. (Chap. 4, S. L. 1915.)

279 **ELECTIONS**

To Denzel L. Yarnell, Aug. 18, 1930.

Designation by Vacancy Committee prior to Primaries.

Vacancy committees chosen by party assemblies are without power to designate the candidates upon the primary ballot, and this view has been generally accepted by election officers throughout the State.

However, if designations are tendered by such vacancy committees and accepted by the county clerk and by him caused to be placed upon the ballot, and if the persons so designated are nominated at the primary, such nominations would be valid even if the courts should ultimately decide that vacancy committees are without authority to act prior to the primary.

280 PRISONERS' TIME

To F. E. Crawford, Aug. 18, 1930.

Class A prisoners.

In recommending good time, a prisoner should be given credit for all good time given him according to his classification from the time he is placed in that classification, for each month during which the sentence is being served.

281 ELECTIONS

To C. S. Work, Aug. 18, 1930.

Vacancy Committee.

Time limit for appointments by.

This office has held repeatedly that a vacancy committee appointed by a party assembly cannot act prior to the primary election. This is a question that will ultimately have to be decided by the courts.

Since the primary law does not provide for a vacancy committee to function before a primary election it does not, necessarily, designate any time limit within which such designations may be made.

If such a committee could act at all, then in the absence of any time limit, it would follow that it could make designations up to the time the county clerk is required to prepare the ballot for the primary.

If a county clerk accepts such designations and causes them to be printed on the ballot and if the persons designated are nominated at the primary, such nominations would probably be valid.

282 ALCOHOL LAW

To C. H. McDaniel, Aug. 21, 1930.

Importation of.

1. Alcohol may be lawfully imported into this State by wholesale dealers licensed under the laws of Colorado. (Ch. 83, C. L. 1921.)

2. Alcohol and whiskey are treated separately by the statutes. Whiskey, under the constitution and Ch. 57, C. L. 1921, cannot be imported into this State except for medicinal or sacramental purposes, while alcohol, under Ch. 83, may be imported by licensed wholesale dealers, for scientific purposes.

283 **ELECTIONS**

To Fred O. Pearce, Aug. 22, 1930.

Registration.

Change of affiliation.

Where a registration board sits for three or more consecutive days in a precinct in a city of from 2000 to 5000 population, a voter may change his party affiliation on either of said days. (Ch. 98, S. L. 1927.)

284 **ELECTIONS**

To J. G. Lopez, August 23, 1930.

Acceptances.

Where the sole designee of a party assembly for a county office files his acceptance of such designation nine days after the time limited by the primary act but in ample time for the county clerk to prepare the ballot for the primary election and place his name thereon; and where a vacancy committee of such assembly designates the same person for the same office, the county clerk should print his name upon the ballot, unless restrained by the courts.

285 **ELECTIONS**

To C. R. Furrow, August 26, 1930.

Vacancy Committee.

Designations prior to primaries.

A vacancy committee appointed by a party assembly has no power to make designations of candidates for the primary ballot. However, the question has not been settled by our Supreme Court.

Consequently if such designations have been made, certified by the Secretary of State in proper form and by him transmitted to the county clerks, it is the duty of the county clerks to accept and place on the ballot the names of those whose designations have been duly and properly filed in the office of the Secretary of State.

286 **ELECTIONS**

To Vera Rosebrough, August 28, 1930.

Precincts in extended corporate limits. Registration.

Where precinct lines have been changed to coincide with enlarged corporate limits of a town and thereby placing outlying precincts within a town of from 2000 to 5000 inhabitants, the clerk and recorder should strike the names from the lists in the old outlying precincts and place them on the precinct lists within the corporate limits so enlarged.

287 ELECTIONS

To Mrs. Wm. J. A. Scott, August 29, 1930.

Residence.

If a voter has actually established a home in another precinct, entirely abandoning everything on which he might base a claim of residence in his former precinct, he would not be entitled to vote in the precinct he has left, under the absent voters' act or otherwise, but should cast his ballot in the precinct to which he has removed.

288 PRISONERS' PAROLES

To Governor Adams, September 4, 1930.

1. **Under the Constitution and the statutes of the State the power and authority to issue paroles to persons sentenced to the state penitentiary is reposed in the Governor only. (Citing statutes and authorities.)**
2. **Where the minimum sentence, reduced by good time allowances (under the Indeterminate Sentence Act), has been served and such fact is made to appear to the Governor by the prison authorities, the Governor is not compelled to issue a parole in any instance, but may exercise discretion in every case, "under such rules and regulations as he may prescribe." (Sec. 7158.)**

September 4, 1930.

Hon. William H. Adams,
Governor of Colorado,
Capitol Building,
Denver, Colorado.

Dear Governor:

On the 25th ult., you directed our attention to the parole provisions of the Colorado indeterminate sentence act and asked our opinion, in writing, upon the following questions, viz.:

> Whether or not paroles of convicts from the state penitentiary can become effective without action upon the part of the Governor; and,
>
> If, under said statutes, action upon the part of the Governor is necessary in order to make paroles effective, is such action mandatory or is it discretionary upon the part of the Governor?

Section 7, Article IV, of our State Constitution provides that:

> "The governor shall have power to grant reprieves, commutations and pardons after conviction, for all offenses except treason, and except in case of impeachment, subject to such regulations as may be prescribed by law relative to the manner of applying for pardons, but he

shall in every case where he may exercise this power, send to the general assembly at its first session thereafter, a transcript of the petition, all proceedings, and the reasons for his action."

Our indeterminate sentence act was adopted in 1899 and now comprises Sections 7156-7161, Compiled Laws of Colorado, 1921. The sections of that act pertinent to this discussion are as follows:

Sec. 7156. "When a convict is sentenced to the state penitentiary, otherwise than for life, for an offense or crime committed after the passage of this act, the court imposing the sentence shall not fix a definite term of imprisonment, but shall establish a maximum and a minimum term for which said convict may be held in said prison. The maximum term shall not be longer than the longest term fixed by law for the punishment of the offense of which he was convicted, and the minimum term shall not be less than the shortest term fixed by law for the punishment of the offense of which he was convicted."

Sec. 7158. "The governor shall have authority, under such rules and regulations as he may prescribe, to issue a parole or permit to go at large to any convict who now is, or hereafter may be, imprisoned in the said penitentiary under a sentence other than a life sentence, who may have served the minimum term pronounced by the court, or, in the absence of such minimum term pronounced by the court, the minimum term provided by law for the crime for which he was convicted; *Provided*, That any convict who shall make an assault with a deadly weapon upon any officer, employe or other convict of said penitentiary shall not be eligible to parole under this act."

Sec. 7159. "Every such convict, while on parole, shall remain in the legal custody and under the control of the commissioners of the penitentiary and shall at all times be subject to such rules and regulations as they may prescribe, and shall be subject at any time to be taken back within the enclosure of the penitentiary from which he was permitted to go at large for any reason which may be satisfactory to the commissioners and at their sole discretion; and, upon the request of the commissioners, the governor may order said paroled convict to be returned to the penitentiary. Full power to retake and return any such paroled convict to the penitentiary from which he was permitted to go at large, is hereby expressly conferred upon the governor, whose written order, when duly signed and attested by the seal of the

State of Colorado, shall be a sufficient warrant authorizing all officers named therein to return to actual custody in the penitentiary from which he was permitted to go at large any paroled convict, and it is hereby made the duty of all officers to execute said order the same as in ordinary criminal process."

Sec. 7161. "This act shall not be construed in any sense to operate as a discharge of any convict paroled under its provisions but simply a permit to any such convict to go without the enclosure of the penitentiary, and if, while so at large, he shall so behave and conduct himself as not to incur his reincarceration, then he shall be deemed to be still serving out the sentence imposed upon him by the court and shall be entitled to good time the same as if he had not been paroled. But if the said paroled prisoner shall be returned to the said penitentiary, as hereinbefore provided, then he shall serve out his original sentence as provided for in section 5 of this act."

It will be noted that Section 7156, which is the first section of the indeterminate sentence act, provides, in substance, that courts, in sentencing prisoners to the penitentiary, shall fix a maximum and a minimum term of imprisonment, while Section 7158 (hereinafter more fully discussed) provides for the issuance of paroles to convicts who "may have served the minimum term pronounced by the court."

Other sections of our statutes make provision for certain so-called good time allowances to convicts. Those statutes comprise Sections 756-758, Compiled Laws of Colorado, 1921, which read as follows:

Sec. 756. "That every convict who is now, or may hereafter be, imprisoned in the penitentiary, and who shall have performed faithfully, and all who shall hereafter perform faithfully, the duties assigned to him during his imprisonment therein, shall be entitled to a deduction from the time of his sentence for the respective years thereof, and proportionately for any part of a year, when there shall be a fractional part of a year in the sentence, to-wit: For the first year, one month; for the second year, two months; for the third year, three months; for the fourth year, four months; for the fifth year, five months; for the sixth and succeeding year, six months."

Sec. 757. "Hereafter convicts of the state penitentiary undergoing sentence in accordance with law who shall or may be engaged in work connected with said penitentiary outside the walls of said institution, and known as 'trusty prisoners' and who shall be employed

on the ranches or gardens, lime kilns or quarries, stone yards or quarries, or upon public roads and highways in this state in accordance with law, or at any other class of work without the wall of said prison, and who shall conduct themselves in accordance with the rules of the prison and perform their work in a creditable manner, may, upon approval of the warden, be granted such good time in addition to that allowed by law as the board of corrections may order, not to exceed ten (10) days in any one calendar month. This granting of additional good time is not to be construed as affecting any so called 'trusty prisoner' who shall at any time be engaged in the regular prison duties while confined within the walls of the penitentiary."

Sec. 758. "The board of corrections is hereby empowered to adopt a special rule applicable solely to convicts employed as herein authorized and contemplated, whereby convicts so employed shall be granted additional good time allowance, conditioned upon their good behavior and cheerful compliance with all rules that may be made by said board for the management and control of convicts so employed."

In view of the language of the indeterminate sentence act, as already quoted, to the effect that paroles may be granted upon the expiration of the minimum term "as pronounced by the court," the preliminary question at once arises as to whether or not, in determining the date when a prisoner is eligible to parole, good time allowances provided for by the statutes last above quoted may be deducted from the actual minimum period of imprisonment designated by the court, or whether, on the contrary, the prisoner must, in all cases, serve such full minimum period before he is, under any circumstances, entitled to apply for a parole.

These statutes relating to good time allowances and to paroles all concern the same general subject matter of discipline of convicts, and it is a well established principle that statutes *in pari materia* are to be construed and considered as a whole. (Sugar City v. Commissioners, 57 Colo. 432, 444.) It is also a well recognized rule that the laws of the State enter into and become a part of judgments rendered by its courts. (People v. Joyce, 246 Ill. 124.)

We conclude that the statutes providing for allowances of good time must be considered in interpreting the meaning of the phrase "minimum term pronounced by the court" as used in the parole section of the indeterminate sentence act.

Our opinion therefore is that these good time allowances may properly be deducted from the minimum term pronounced by the

court, in order to determine the date upon which the prisoner becomes eligible to parole.

The case of *Duehay, et al., v. Thompson* (C. C. A. 9th Circuit) 223 Fed. 305, affirming 217 Fed. 484, strongly supports this view. Moreover, our Supreme Court in the case of *In re Blocker,* 69 Colo. 259, held that, where statutes relating to terms of imprisonment of convicts are ambiguous and thus susceptible of two interpretations, that construction should be adopted which operates in favor of liberty.

Furthermore, we are advised that, ever since the enactment of this indeterminate sentence law, it has been considered by public officers charged with its administration that, in determining the time when a convict is entitled to apply for a parole, allowances under the good time statutes should be deducted from the minimum term pronounced by the court. Thus, for instance, it appears in the published Biennial Report of the State Board of Pardons for the years 1901-1902, that under date of October 17, 1901, Mr. William L. Dayton, then an eminent attorney of the Denver Bar, and a member of the State Board of Pardons, caused a letter to be addressed to the various district judges of the State for the purpose of ascertaining their views concerning the administration of the indeterminate sentence act. In that letter, Mr. Dayton said:

> "Under the law, prisoners sentenced to the penitentiary are eligible to parole when the minimum term has been served, allowing for good time as prescribed by statute."

So far as our information goes, each succeeding Governor of the State, from the time of the enactment of the indeterminate sentence law, has considered that good time allowances are properly deductible from the minimum term, in order to determine the date at which convicts are eligible to parole. We are informed that Governors Julius C. Gunter, Oliver H. Shoup, William E. Sweet and Clarence J. Morley, each uniformly acted upon this assumption. And our information is that the former Board of Pardons and the Colorado Board of Corrections always so construed the law.

The courts have very frequently held that the interpretation uniformly, and over a long period of years, placed upon an administrative statute by the public officers charged with its enforcement is entitled to great weight in determining its true meaning, where the statute itself is ambiguous. Thus, in the case of *In re Lands,* 18 Colo. 359, 367, the Court said:

> "The practical construction given to a statute by the public officers of the state, charged with the performance

of public duties in connection therewith, is always entitled to consideration, in cases of doubt."

See also:

Hessick v. Moynihan, 83 Colo. 43, 57.

The United States Supreme Court, in construing a federal statute, invoked the same principle in *Kern River Co. v. United States*, 257 U. S. 154, where the Court said:

> "Even if the meaning were not otherwise made plain, we should be slow to reject the construction thus put upon the section by the head of the department charged with administering it."

See further:

United States v. Minnesota, 270 U. S. 205,
Wisconsin v. Illinois, 278 U. S. 367; 73 L. Ed. 426.

Coming, then, to the precise questions submitted by you, as above stated, we refer again to the terms of the indeterminate sentence act, and direct attention to the fact that Section 7158, already quoted in full, provides, among other things, that:

> "The governor shall have authority, under such rules and regulations as he may prescribe, to issue a parole, or permit to go at large, to any convict who is now, or hereafter 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."

Thus it will be observed that by the clear and express language of the statute itself, the power and authority to issue paroles is reposed in the governor. There is no statute of this state which, either expressly or by any reasonable implication, vests, or purports to vest, in any other official or board whatsoever, the power to issue paroles to persons sentenced to the state penitentiary.

Moreover, many of the courts hold that a parole is equivalent to a commutation of sentence (see *Duehay v. Thompson, supra*), while other courts have said that a parole is a conditional pardon. *State v. Yates,* 183 N. C. 753; *State v. Asher* (Mo.) 246 S. W. 911, 913. Our state constitution, as already quoted, reposes in the Governor the power to grant commutations and pardons. Therefore, had our indeterminate sentence act purported to vest the power to issue paroles in any other authority than the Governor, it would have been of at least doubtful constitutionality.

Since said Section 7158 expressly provides that the Governor may issue paroles to penitentiary convicts and since no other statute makes any provision whatever for the issuance thereof, it necessarily follows that no parole can be issued except by the Gov-

ernor; that is to say, action upon the part of the Governor is absolutely essential to a valid parole.

Your last question raises the issue as to whether or not it is mandatory upon the part of the Governor to issue a parole, where the minimum sentence, as reduced by good time allowances, has been served, and such fact is made to appear to the Governor by the prison authorities.

Upon this point, we beg to advise you that we are clearly and positively of the opinion that it is not mandatory upon the Governor to issue a parole in any instance whatsoever, but that he has a discretion to exercise in every case.

The language of the statute itself clearly points to this conclusion. Thus, the statute, we repeat, provides that the Governor "*shall have authority*, under such rules and regulations as he *may* prescribe," to issue a parole to *any* convict.

We here direct attention to the provision of the statute empowering the Governor to issue paroles "*under such rules and regulations*" as he may prescribe. The statute, it thus appears, contemplated that the Governor should formulate and apply fixed, though not necessarily unalterable or inflexible, rules under which paroles would be issued. In fact, we find, for instance, that in 1901, Governor Orman formulated and promulgated a set of rules for the issuance of paroles. These rules appear to have been, from time to time thereafter, amended in minor details, by successive governors, but the procedure to be followed in applying for paroles, then established, appears to have been followed without substantial deviation by every governor since that time.

We are aware of the fact that, for a considerable period of years past, the successive governors of the State appear to have proceeded largely upon the assumption that the parole provision of our indeterminate sentence act, when construed with the good time statutory provisions, was intended to, and does, operate practically automatically, with the result that the duties of the governor in the premises are rather perfunctory in character. This impression, we think, has resulted largely from the fact that the parole rules promulgated by governors years ago, and since continued in force, devolved upon the warden of the penitentiary the duty of making recommendations as to whether or not a parole ought to be granted in each individual instance, where an application therefor is made. And, it is true that, since the aboliton of the Board of Pardons, the governor, as a practical proposition is almost wholly without effective facilities for making an independent investigation of parole applications.

But, however this may be, the language of the statute itself upon this point is so clear, positive and unequivocal in its terms that, in our opinion, no other conclusion can be deduced therefrom than that it was intended that paroles can be granted by the governor only, and that the governor must actually exercise the au-

thority reposed in him by said Section 7158 before a convict may be released upon parole; in a word, that section is not self-executing, but its operation depends upon the will of the Chief Executive.

Such indeed was the interpretation placed upon this statute at its very inception. At that time Hon. Charles S. Thomas, a very able and distinguished lawyer, afterwards a member of the United States Senate, was governor of this State. In his address to the Thirteenth General Assembly, which convened just prior to the close of his term of office, Governor Thomas said:

> "The so-called indeterminate sentence act went into operation in August, 1899. It was approved with some reluctance, but an effort has been made to give it a fair trial. The *rules adopted* under its provisions *confine its operations* to those serving for a first offense, and require that recommendations shall be made by the warden to the commissioners, and by them to the governor. Eighty-three men have been given their liberty in consequence up to the first of December last, only five of whom have violated their agreements. It is difficult to pass judgment upon this act after so short a period of experiment. Nevertheless, I am not satisfied that it is wholly desirable, or that it has tended to a decrease of crime. On the contrary, I think that crimes are lessened in proportion as the certainty of punishment for their commission is increased. The privilege of parole, added to the power of pardon, largely extends the probability of relief, and I think necessarily emboldens the criminal. The provisions of the act should certainly be restricted by statute *instead of by rule* to first offenders. To carry it further would be to indirectly sanction the repetition of offenses."

Thus it is clear that Governor Thomas was of the opinion that the parole provisions of the indeterminate sentence act were of a purely permissive and discretionary, rather than mandatory, character, for he adopted a rule limiting the operation of these parole provisions to first offenders, despite the fact that the statute itself made no distinction between first offenders and second or subsequent offenders. True, he said this limitation should have been written into the statute, but in its absence he considered that, since the statute was merely permissive in character, he could limit its operation by rules adopted by him.

Although somewhat beside the immediate subject of this opinion, we feel that we should direct attention to the extremely broad and unlimited powers purporting to be granted to the Colorado Board of Corrections by Section 758, in allowing good time to convicts employed outside the prison. A statute granting such sweeping power to an administrative board to, in effect, modify the

judgments of courts is obviously of doubtful wisdom, and in our opinion this matter in particular should receive the attention of the next General Assembly.

If it meets with your approval, this department will make an exhaustive examination and study of the statutes and court decisions of other states relating to paroles and good time allowances, to the end that you and the General Assembly may have the benefit of the legislation and experience of other states, if it shall be determined that reforms in our laws in this behalf ought to be effected.

May we also say that this department stands ready to aid you, in such manner as you may desire, in making investigation of parole applications presented to you for consideration.

Respectfully yours,

JOHN S. UNDERWOOD,
Attorney General.
CHARLES ROACH,
Deputy Attorney General.
OLIVER DEAN,
Assistant Attorney General.

RE PAROLES—MEMORANDUM OF CASES NOT CITED IN OPINION.

Power in governor to grant pardons implies power to grant paroles. 20 R. C. L. page 577.

Commutation by parole board unconstitutional as conflicting with pardoning power. 20 R. C. L. page 578, Sec. 68. Some exceptions in note to last above.

Texas Constitution gives Governor power to grant reprieves, commutations and pardons. Held that legislature can place no limitations on governor's power. Ex parte Nelson (Tex.) 209 S. W. 148.

Statute authorizing court to suspend sentence after conviction does not encroach upon constitutional power of governor to grant reprieves, and pardons. People ex rel. etc., v. Court (N. Y.) 23 L. R. A. 856.

Contra:

Snodgrass v. State (Tex.) 41 L. R. A. (NS) 1144.

Indeterminate sentence law looks to rehabilitation of persons imprisoned in the penitentiary. Garvey v. Brown, et al., 99 Kan. 122.

Under constitutional provision giving governor power to grant reprieves, commutations, paroles and pardons held that gov-

ernor has exclusive power to parole and that a statute conferring pardoning powers upon other state officers and restricting the governor is unconstitutional. Re William Ridley (Okla.) 26 L. R. A. (NS) 110. To the same effect, State v. Hamilton (Ia.) 220 N. W. 313.

Recommendation of a board may be made requisite to a pardon by the governor under a constitutional provision that the governor shall have power to grant pardons upon such conditions as may be provided by law. Laird v. Sims (Ariz.) L. R. A. 1915F, 519.

The last cited case seems to stand alone. See note appended thereto. "Reprieves, commutations and pardons" does not include "paroles" (Const.). No parole until minimum sentence served. State v. Court (Ariz.) 47 A. L. R. 401.

Power of court to inquire into motives of governor in granting power. Henry v. State, 52 L. R. A. (NS) 113.

The parole act becomes a part of every judgment. Woods v. State (Tenn), L. R. A. 1915F, on 539.

Statute providing for indefinite allowance of good time to prisoners unconstitutional as a delegation of legislative authority. Fite v. State (Tenn.), 1 L. R. A. (NS) 520.

Court will not inquire into governor's motive in granting power. Jamison v. Flanner (Kan., 1924), 35 A. L. R. 973. See also 30 A. L. R. on 241.

An act authorizing a board to parole does not violate the constitutional provision granting to the governor the power to pardon. Board v. DeMoss, 157 Ky. 289, 163 S. W. 183.

The Illinois statute provides that good time allowances may be deducted from the minimum sentence. 3 Ill. Ann. St. Chap. 38, Sec. 795. A parole is not a pardon. In re Court of Pardons, 97 N. J. Eq. 555, 129 Atl. 624, 630. A parole is a conditional pardon. Cyclopedic Law Dic. 2nd Ed., page 742.

289 **ELECTIONS**

To E. B. Cornell, Sept. 4, 1930.

Printing ballots after death of candidate, before primary.

Where the sole designee of a political assembly of a candidate for nominations for the office of District Judge dies before the primary election, his name should not be printed upon the primary ballot but appropriate spaces should be left upon the ballot to enable the electors to vote for the candidate for nomination for election for the term for which the designation was made, and a space should also be left upon the ballot to enable the voters to select a candidate for election for the balance of the old term between the November election and the beginning of the new term.

290 **ELECTIONS**

To Lida M. Oringdulph, Sept. 4, 1930.

Paroled prisoner's right to vote.

Under Art. 7, Sec. 10 of the constitution, "No person while confined in any public prison shall be entitled to vote; but every such person who was a qualified elector prior to such imprisonment, and who is released therefrom by virtue of a pardon or . . . of having served out his full term of imprisonment, shall, without further action be invested with all the rights of citizenship." . . .

While it is not clear from the language of the provision that one on parole can be said to have served his full term of imprisonment, he is not in a literal sense, confined in a public prison, and so, probably, does have the right to vote.

291 **SHERIFF'S FEES**

To William F. Haywood, Sept. 9, 1930.

Sale of property under distraint warrant for taxes.

Under Sec. 7378, C. L. 1921, the officer collecting money by virtue of distraint warrant is entitled to the regular fees and ten per cent commission, and in addition, he would be entitled to the commission provided in Sec. 7882, C. L. 1921, the amount of which dependent on the class of the county and the amount realized by the transaction.

292 **COUNTY COURT**

To Harry Benoit, Sept. 12, 1930.

The County Court in Colorado is a court of record, having jurisdiction of all probate proceedings, of all civil cases involving not more than $2,000, and of misdemeanor charges.

A summons from the County Court is accepted and served in any county in the State without any showing as to the authority of the signor, and may be served anywhere in the United States or its possessions.

293 **COUNTY AGRICULTURAL AGENT**

To Hugh Gilmore, Sept. 13, 1930.

Appointment of.

A request for the appointment of a County Agricultural agent signed by at least 100 farming taxpayers may be filed with the Board of County Commissioners, but under Sec. 3024, C. L. 1921, it is the duty of the board to determine whether such agent shall be employed and hired, and this duty cannot be delegated by the board to any other person or group, by such a method as a straw ballot.

294 **TAXATION**

To S. S. Spillars, Sept. 16, 1930.

County Equalization Bd.

Horizontal reduction.

The county board of equalization may order a horizontal reduction in valuations on property, under Sec. 15 of Art X of the State Constitution, but said section also reposes the final authority in such matters in the State board of equalization.

295 **PUBLIC TRUSTEE**

To Bertram B. Beshoar, Sept. 19, 1930.

Redemption from sales of Public Trustee.

Since sections 5055 and 5951, C. L. 1921 were not repealed by the act of 1929, those sections, providing for redemption by a judgment creditor, remain in force, and such judgment creditor would have until the expiration of the nine months' period in which to redeem from the sale. Therefore a deed by the public trustee should not be issued until the expiration of the nine months' period allowed for redemption. Consideration of this act as affects foreclosure of instruments executed prior to taking effect of 1929 act.

296 **ELECTIONS**

To Walter S. Kennedy, Sept. 19, 1930.

Acceptance of Candidates whose names are written on ballot at primary.

Under Sec. 7555 of the Election Law a person whose name is written on a primary ballot and who thus receives the most votes for the office, becomes the candidate for that office of the party on whose ballot his name is written, without the necessity of any acceptance on his part. His name should be placed on the ballot unless he files a withdrawal. (Sec. 7567, C. L. 1921.)

297 **ELECTIONS**

To H. C. Grable, Sept. 19, 1930.

Compensation of Election officials.

Under Sec. 7700, C. L. 1921, election officials would be paid at the rate of $5.00 for the first eighteen hours' work, but where certification has been made that the time expended exceeded 18 hours, the county board has the right to go back of certification and determine for itself whether compensation for more than one day should be allowed.

Mr. H. C. Grable, September 19, 1930.
County Clerk and Recorder,
Greeley, Colorado.

Dear Sir:

You have verbally asked for an opinion as to the construction and effect of Section 7700, C. L. 1921, fixing the compensation of

election officials where the county board has acted as provided in said section. Your first question in substance is, How long must election officials work in order to earn more than one day's pay of $5.00. Your second question is where it is apparent that the work could have been done within 18 hours but certification has been made that the time expended exceeded 18 hours, Has a county board the authority to go back of certification and determine for itself whether compensation for more than a day should be allowed.

On your first question, our advice is that in order to earn a second day's compensation the official must have actually worked a total of something over 18 hours. On your second question where it is apparent from the number of votes cast the work of counting same and making up the proper return could reasonably have been done in 18 hours or less the county board would be justified in allowing compensation for one day only. Section 7703 .C. L. 1921. has reference only to cities or consolidated city and county governments of which Denver is the only instance in this state.

Very truly yours,

JOHN S. UNDERWOOD,
Attorney General.

By ARTHUR L. OLSON,
Assistant Attorney General.

298 **ELECTIONS**

To Albert E. Correll, Sept. 19, 1930.

Primary Elections.

Under Sec. 7555 a person who received the most votes by having his name written in for a certain office becomes the candidate of the party for that office and should be so certified in making up the ballots.

No acceptance is required to be filed by a person so nominated and he becomes the nominee of the party without further action on his part.

Such candidate may withdraw from the nomination at any time prior to ten days before the election, by filing with the county clerk a written instrument declining such nomination, which instrument should be signed and acknowledged by such candidate before an officer authorized to take acknowledgments.

A candidate so nominated should file his expense statement, the same as any other candidate in the primary election.

299 **SCHOOLS**

To Jos. D. Grigsby, Sept. 23, 1930.

Limitation of levy.

The limitation of levy for maintenance of high schools to four mills, found in sec. 1 of ch. 158, S. L. 1929, does not prohibit additional levies for interest and principal of bonds. (Sec. 7218, C. L. 1921. Secs. 8411, 8413, 8415, C. L. 1921. Ch. 153, S. L. 1929.)

300 **HIGHWAYS**

To E. C. Middlekamp, Sept. 24, 1930.

Use of surplus funds after completion of highway project.

Where a certain amount has been allocated to a certain road district, and after the project is completed a surplus remains, neither the member of the Highway Advisory Board representing such district nor the county commissioners of such district have the right to use such surplus money for a new project in such district, not included in the Highway Budget for that year.

301 **LIBRARIES**

To B. F. Coen, September 25, 1930.

Establishment of Free County Libraries.

The legislature did not intend that the question of entering into a contract for the extension service of a library already established should be submitted to the voters.

301½ **HIGHWAY DEPARTMENT**

To L. D. Blauvelt, Sept. 10, 1930.

Authority of Department to place a minimum wage requirement in its contracts.

A state department letting its contracts to the lowest bidder has no authority to place a minimum wage provision in such contracts that will be binding upon the contractors.

302 **STATE PENITENTIARY**

To State Auditing Board, Oct. 1, 1930.

An appropriation for improvements and repairs at the institution may be used for the repair and improvement of the present boilers instead of the installation of a new boiler. (Chap. 22, S. L. 1929.)

303 **FEES AND SALARIES**

To A. M. Sloss, October 2, 1930.

Of sheriff when making investigations without warrant.

Under such circumstances a sheriff can charge no fees for the investigation made, but is entitled to actual traveling expenses, not to exceed 15 cents per mile in counties not of the first class. (Sec. 7928, C. L. 1921.)

304 **SUNDAY SHOWS**

To Ray Lieber, October 3, 1930.

The board of trustees of an incorporated town has the authority to regulate whether or not within the limits of their corporation there shall be Sunday shows, and such ordinances have been repeatedly upheld by the courts when they were not unreasonable in their terms nor unreasonable because of their discrimination when other businesses were not required to be closed on Sunday. This proposition not affected by People v. Mooney, 290 Pac. 271.

305 **STATE ENGINEER**

To M. C. Hinderlider, Oct. 3, 1930.

If complaint has been made to the State Engineer by three or more persons having property or residing near an unsafe dam, the State Engineer may, upon proper notice to the last owners of record of said dam, to tax sale certificate holders, if any, and others interested, proceed to call a hearing, at which evidence may be presented, and if he determines such dam is unsafe, he may order that the water in said dam may be lowered, or make any other order in the premises as in his judgment is necessary for safety. (Secs. 1687 to 1694.)

306 **FOOD INSPECTION**

To Walter R. Freeman, Oct. 3, 1930.

Dairy products.

Where the ordinances of a town providing for a system of food inspection for the municipality do not regulate some portion of the dairy industry which the laws of the state do authorize the state dairy commissioner to regulate, the state dairy commissioner may in co-operation with the municipal authorities so regulate the dairy industry.

307 **CITIES AND TOWNS**

To Floyd P. Gipple, Oct. 3, 1930.

Building of sidewalks.

The board of trustees in an incorporate town may in their discretion, when so empowered by ordinance, order certain sidewalks installed within the corporate limits of that town.

308 **ELECTIONS**

To John H. Kortes, Oct. 3, 1930.

A candidate whose name is written in on the ballot by voters and who receives a majority of the votes is eligible to said office. If there be a vacancy in a county office after the primary, the county central committee of that party may appoint a candidate to fill the vacancy, whose name shall appear on the ballot. (Sec. 7552, 7711, C. L. 1921.)

309 **ALCOHOL**

To German E. Ellsworth, Oct. 3, 1930.

Who may sell: "Wholesale dealers" though it is not expressly stated that they must be wholesale druggists.

Sec. 4638 of the Compiled Laws, 1921, provides that no wholesale dealer shall carry in stock alcohol in excess of five per cent of the value of his or its general merchandise. . . ."

310 **COUNTY OFFICERS**

To Blanche D. Avery, Oct. 4, 1930.

Appointments by Commissioners.

Incumbents of county offices holding same by appointment of the county commissioners, hold until successor is elected and qualified, whether that successor be elected to fill the short term or the long term. (Art. 14, Sec. 9, Colo. Const. Sec. 7552, C. L. 1921.)

311 **ELECTIONS**

To C. R. Furrow, Oct. 4, 1930.

Use of pencil on ballot.

Whether or not a pencil marked ballot should be counted at either a general or a primary election, presents a question which should be decided upon the facts of the individual case in a court of proper jurisdiction.

312 **COUNTY FUNDS**

To Ben L. Garman, Oct. 4, 1930.

Transfer from special fund of a surplus must go to county ordinary fund.

Ch. 83, S. L. 1927, is mandatory and directs how all county moneys shall be deposited by county treasurer and what securities such officer shall take therefor.

312½ **SCHOOLS**

To L. D. Blauvelt, Oct. 10, 1930.

Granting of right of way.

A school board has no authority to deed any part of its land holdings to the State Highway Department for a right of way nor to give a perpetual easement, but must obtain its authority from the electors of the district. (Sec. 8380, C. L. 1921.)

313 **SCHOOLS**

To G. G. Robertson, Oct. 13, 1930.

Where loss in collection of tax is anticipated, levy for teachers' salaries may be increased proportionately, provided that levy does not exceed five mills. (Sec. 8448, C. L. 1921.)

314 TAX SALES

To T. P. Detamore, Oct. 15, 1930.

Delinquent Hail Indemnity Tax.

Sec. 8, Ch. 111, S. L. 1929, requires that the county treasurer hold but one sale and issue one certificate covering land against which hail indemnity tax has been levied. This indemnity tax is added to and becomes a part of the lien of the general tax, and "shall be subject to all the provisions of law relating to general state taxes."

315 ELECTIONS

To Out West Printing Co., Oct. 18, 1930.

Candidate for County Clerk and Justice of Peace.

The clause of Sec. 7711, C. L. 1921, providing that the name of each person nominated shall appear on the ballot in but one place, is not broad enough to prohibit the same man from having his name placed on the ballot for justice of the peace as well as county clerk, until said offices are declared to be incompatible.

The above is also true with reference to the offices of county treasurer and precinct committeeman, since the former is a public office and the latter a party office. (Secs. 7552, 7557, 7567, C. L. 1921.)

316 TAX SALES

To R. A. Curtis, October 21, 1930.

Publication of Notice.

The period during which notice of tax sale is to be published is controlled by Ch. 161, S. L. 1923. We advise that the advertisement of a tax sale notice be published for five consecutive weeks in a weekly paper.

317 ELECTIONS

To Deputy County Clerk, Oct. 21, 1930.

Residence.

If a person voted in one county at the primary election and has since moved into another county, he will not be entitled to vote in the other county, because there is not ninety days between the primary and the date of the general election.

318 RODENT CONTROL

To Dr. C. A. Lory, Oct. 21, 1930.

Expenses of.

Under chapter 156, S. L. 1929, it is made the duty of the county commissioners to make a specific levy for the expense of rodent control, in addition to other levies, to be included in their

total levy, so that the same can be collected as other taxes are collected—such specific levy being for the purpose of providing a county revolving fund for rodent control.

319 **TAX SALES**

To C. S. Ickes, Oct. 21, 1930.

Change of date of.

If for any reason the tax sale cannot be held until after the second Monday in December, the notice of tax sale, the Tax sale certificate and the Treasurer's Deed based thereon should state the reasons for not holding it on or before the second Monday. (Hamer v. Glenn Inv. Co., 75 Colo. 423.)

319½ **HIGHWAY DEPARTMENT**

To L. D. Blauvelt, Oct. 21, 1930.

Where a state highway is about to be widened, a public utilities company desiring to place poles along the right of way, cannot assume that the State Highway Department will acquire the additional land and therefore relieve the public utilities company from the obligation to pay for the right of way for placing its poles.

320 **TAX SALES**

To W. C. Sloan, Oct. 27, 1930.

The statutes make it mandatory upon the county treasurer to hold delinquent tax sale annually, and provide a penalty for failure so to do. (Sec. 7411, C. L. 1921.)

321 **FEES AND SALARIES**

To Martin K. Slain, Oct. 30, 1930.

County Clerk fees for acknowledgments

Whenever the county clerk has been asked to take an acknowledgment on a verification of an application for the annual registration of a motor vehicle, he should charge the statutory fee therefor and account for the same as part of the fees of his office; and when county clerks are asked to take acknowledgments on outside business, they should charge the statutory fee for acknowledgments and account for it as such.

October 30, 1930.

Mr. Martin K. Slain,
County Clerk,
Saguache, Colorado.

Dear Sir:

In your recent request, you ask whether the county clerk should charge an acknowledgment fee when he is requested to take the acknowledgment on a verification to application for the annual

registration or re-registration of a motor vehicle, and whether to charge such acknowledgment fee on outside business. We take it that by "outside business," you refer to when general instruments come in for record which do not constitute part of the routine work of the county clerk.

Section 1337, C. L. 1921, states:

> "* * * such application to be verified under oath by a notary public, county clerk or other officer authorized by law to administer oaths."

The motor vehicle registration law further specifies the duties of the county clerk as the authorized agent of the Secretary of State in the administration of that act. By the language of the quotation above, we believe that the act of taking an acknowledgment is the exercising of an authority which follows the office of county clerk, rather than an authority which follows the office of authorized agent of the Secretary of State for the administration of the act.

Our Supreme Court has said in Glaister vs. Kit Carson County, 22 C. A. 228, 229:

> "So far as the federal statute mentioned can be said to affect the matter in controversy at all, the authority to do the things and receive the fees therefor, as in the act provided, was conferred upon the judge or clerk *virtute officii*, and not in his individual capacity. The authority follows the office, and is by no means a personal right or privilege of the occupant for the time, who is empowered to perform the services and receive the prescribed fees only by reason of his incumbency of the office."

Therefore, in our opinion, whenever it happens to be the county clerk who has been asked to take an acknowledgment on a verification of an application for the annual registration of a motor vehicle, such clerk should charge the statutory fee therefor and account for the same as part of the fees of his office.

From this reasoning it is also our opinion, that county clerks when asked to take acknowledgments on outside business should charge the statutory fee for acknowledgments, and account for it as such.

Yours very truly,

JOHN S. UNDERWOOD,
Attorney General.

By SIDNEY P. GODSMAN,
Assistant Attorney General.

322 RODENT CONTROL

To F. A. Anderson, October 30, 1930.

Collection of tax from owner of land.

Ch. 153, S. L. 1927, directs the Rodent Control Department of the State Agricultural College, in case it is unable to obtain payment of its proportionate cost of rodent control for that district, to notify the county commissioners, who reimburse the department out of their county revolving fund, or other funds, and the commissioners in turn give the land owner four months' notice to show cause why he should not pay the county such sum, and upon his failure to do this, the commissioners certify to the county treasurer the amount of such unpaid tax against the land owner's land; then the treasurer adds the amount thereof to any other tax on said land and collects as other taxes are collected. If the requirement for the four months' notice cannot be met in any given year, such tax cannot be added and collected with other taxes until the following year. Ch. 156, S. L. 1929.

323 ELECTIONS

To B. C. Walden, November 3, 1930.

A legal elector under bond to appear at District Court is not disqualified from voting or from being elected to office. Only those confined in prison are denied franchise.

324 INSURANCE—Mutual

To Jackson Cochrane, November 7, 1930.

A mutual life insurance company authorized to do business in a foreign state may be permitted to write insurance against bodily injury or death by accident and disability by sickness, although the statutes of Colorado forbids the writing of life insurance in this State by mutual life companies. Sec. 2562, 2570, C. L. 1921.

325 SCHOOLS

To Alice Cook Fuller, November 7, 1930.

A high school pupil whose home is in a National Park but within the boundaries of a school district, is entitled to all the rights and benefits of any pupil, including payment of tuition in another district.

326 CHATTEL MORTGAGE

To M. D. Haynes, November 8, 1930.

When superior to ordinance for confiscation.

Before a mortgagee can be divested of his interest in an automobile under a search warrant for intoxicating liquor authorized by a town ordinance, the search warrant must first have been issued.

327 TAX SALE CERTIFICATES

To John S. Boggs, November 8, 1930.

Sale at public auction.

A board of county commissioners could not dispose of tax sale certificates to the county at public auction for the reason that the statutes place in the commissioners discretion as to what amount the counties shall receive for the sale of assignment of tax sale certificates if they are sold for less the face, penalties and subsequent tax. Sec. 7422, C. L. 1921, Am. by Ch. 152, S. L. 1927.

328 ELECTION LAWS

To C. S. Work, November 11, 1930.

Absent Voters ballot.

Under the general rule of law—that statutes giving directions as to the mode and manner of conducting elections will be construed by the courts as directory, unless a non-compliance with their terms is expressly declared to be fatal or essential to the validity of the election—an absentee voter's ballot which appears to have been voted on a date prior to the date of the general election, should be accepted and counted, unless there is indication of bad faith or fraud. Ch. 94, S. L. 1927.

November 11, 1930.

Mr. C. S. Work,
County Clerk, Clear Creek County,
Georgetown, Colorado.

Dear Sir:

By telephone, on the 10th inst., you asked this office for an opinion upon the following question:

> Whether the County Canvassing Board of your County should accept and count, or reject, the ballot of an absentee voter which appears to have been voted on a date prior to the date of the general election, November 4th.

The only provision of the so-called "Absent Voting Law" making any mention of the time when ballots thereunder shall be voted appears in the first section thereof (Acts of 1929, page 332), where it is provided that such voter "may cast his or her ballot at such general or primary election *on the day thereof* under the regulations herein provided." Section 3 of the Act, covering the manner of voting such absentee ballot, makes no mention of the time when the ballot shall be voted.

The general rule of law is that statutes giving directions as to the mode and manner of conducting elections will be construed by the courts as directory, unless a non-compliance with their terms is

expressly declared to be fatal, or essential, to the validity of the election. Under that rule, it is my opinion that such ballot should be accepted, and counted, by the board, even though it appears to have been voted prior to election day, unless there is some indication of bad faith, or fraud, in connection therewith.

Very truly yours,

JOHN S. UNDERWOOD,
Attorney General.

329 **ELECTIONS**

To B. B. Allen, November 13, 1930.

Absentee voters ballot.

County canvassing board should count absentee ballot even though it appears to have been voted before seven A. M. or after seven P. M. of election day, whether voted in or out of state, provided voter is properly registered and is not shown to have voted otherwise in this election.

330 **PROBATE FEES**

To Carra M. Shackleford, November 13, 1930.

Except as set forth in Ch. 80, S. L. 1929, there should be no extra charge made in an estate once started for the filing of petition for revocation of letters of administration and proceedings filed thereunder.

331 **ELECTIONS**

To Edwin C. Sutton, November 18, 1930.

Qualifications for office of coroner.

There are no professional or business qualifications necessary for an elector to hold the office of county coroner. The only requirements are that candidates must be qualified electors and have resided in the county for one year prior to election. (Art. 14, Sec. 10 Colo. Const.)

332 **GRAND LARCENY**

To James T. Locke, November 20, 1930.

The language of Sec. 5098, C. L. 1921, is not broad enough to create the offense of grand larceny without stating the value of the subject. The common law distinction between grand larceny and petty larceny obtains in this state. (Sec. 5098, C. L. 1921, must be read with Secs. 6719-6738.)

333 CITIES AND TOWNS

To George Rowe, November 25, 1930.

Non-residents.

The statute does not make it unlawful for town officers who have ceased to reside within the limits of the town to retain their position on the town board, but Sec. 9066, C. L. 1921, provides that when any town officer shall cease to reside within the limits of the corporation it shall be deemed good ground for removal from office. Sec. 9162, C. L. 1921.

334 SCHOOLS

To Moulton Chambers, November 29, 1930.

Tax levies.

Sec. 7214, C. L. 1921, amended by Ch. 153, S. L. 1929, limiting tax levies, applies to all school districts, regardless of class. Secs. 7216, 8380, C. L. 1921.

335 PROBATE FEES

To Anna E. Adkisson, December 5, 1930.

Change in Inventory.

The inventory value contemplated by Ch. 80, S. L. 1929, is the gross value. If, after filing an inventory the facts demonstrate that the inventory value is too high, an amended inventory should be filed, or could be filed as the basis for retaxing the costs which should be collected from the estate.

336 TAX SALES

To Clem W. Collins, December 5, 1930.

Redemption from.

"When selling real estate for taxes, the county treasurer is required to include taxes, interest and charges assessed against the owner thereof on personal property. (Sec. 7204, C. L. 1921.) A mortgagee may, *before sale*, pay the taxes on the real estate only, but *after sale* he can redeem only by paying the entire amount bid at tax sale." (Opinion No. 50 Report of Atty. General, 1927-28.)

337 COUNTY COMMISSIONERS

To J. A. Carruthers, Co. Atty., December 6, 1930.

Authority to employ Welfare Worker and Assistant.

The legislature of this State has repeatedly devolved upon the boards of county commissioners the duty of looking after the poor within the jurisdiction of their counties, and the Supreme Court of Colorado has decided in several cases that such powers as are expressly conferred on a board of county commissioners include, in addition, such implied powers as are reasonably necessary to the

efficient execution of its powers and duties. (Cases cited.) However, so long as the authority is implied and not expressed, if the authority is questioned, it would take a suit to determine the issue.

December 6. 1930.

Mr. J. A. Carruthers,
County Attorney,
El Paso County,
Colorado Springs, Colorado.

Dear Sir:

In response to your recent letter and consultation concerning the same, will say that we understand the facts of your proposition to be as follows:

That in El Paso County, there are a great number of poor and indigent people who need assistance; that there are over three hundrd per month of such cases, and the amount expended on such cases in a year's time amounts to over $100,000.00, which money is spent on the order and under the supervision of the Board of County Commissioners of El Paso County; that to aid the Board of County Commissioners and the chairman thereof, as Superintendent of the Poor, in conducting and investigating the necessity and need of such expenditures, the County Commissioners have employed a person to the position which they entitle "Social Welfare Worker," together with another to assist in such investigations and the making of the necessary reports thereon; that there are two questions arising under these facts:

1st—Has the Board of County Commissioners the authority to expend the money to employ such social welfare worker and assistant?

2nd—If they are not authorized to expend such money, are the members of the Board personally liable for the amount so expended?

Sections 8676, 8706 to 8712, 8905, 8907 to 8919, C. L. 1921, show that the legislature of this State has repeatedly in various ways devolved upon the Board of County Commissioners the duty of looking after the poor within the jurisdiction of their counties.

The first question then is whether or not, in exercising that duty of caring for the poor, the Commissioners can hire help to do the routine work of investigating paupers' claims and making the necessary reports when the statute has not expressly authorized the particular employment in question.

In looking through the authorities we find that Colorado decisions, as to the implied powers of County Commissioners in such cases, are among the leading expressions on this subject by the courts.

In the case of Gunnison County v. Davis, 27 C. A. 501, 502, our court said:

> "The Board of County Commissioners possesses such powers as are expressly conferred upon it by the constitution and statutes, and in addition thereto such implied powers as are reasonably necessary to the efficient execution of its powers and duties. *Roberts v. The People*, 9 Colo. 458, 13 Pac. 630; *Chase v. Boulder County*, 37 Colo. 268, 271, 86 Pac., 1011, 11 Ann. Cas., 483; *Robbins v. County Commissioners*, 50 Colo., 610, 615. 115 Pac. 526."

Reference to the other cases there cited will show the position our Supreme Court has taken in past cases, but on slightly different facts. However, the principle involved is the same as in the instant case. It seems evident that the chairman of the Board of County Commissioners, as Superintendent of the Poor, would be physically unable to carry out the statutory imposed duty of caring for the poor and to attend to his many other duties as County Commissioner, if it would be said that he must personally do all of the work of the contacting and investigating poor persons and personally making the reports thereof, which the above cited sections say the "Commissioners of each county in the state shall *cause* to be kept." In other words, in our opinion, it would seem by the language of the Gunnison County case, supra. that "in addition" to the statutory power in the County Commissioner to care for the poor of El Paso County "such implied powers as are reasonably necessary to the efficient execution of its express powers and duties" in regard to the poor would include implied power in the County Commissioners to hire such clerical help as is necessary so to do, no matter what name or title they give to the clerk who does that work.

Looking further at the authorities from other states, we find the following expressions, which are along the same line:

> "The board of supervisors of a county is vested with such powers of local legislation and administration as are conferred upon it by the legislature. Its power is coextensive with the power expressly granted to it or which is necessarily or reasonably implied from the powers so expressly conferred."

Wadsworth v. Board of Supervisors, 217 N. Y. 484, 490. In a Utah case the following was said:

> "It is quite true, as contended by the county, that the doctrine that county commissioners can exercise such powers only as are expressly or by necessary implication conferred upon them by the statute is elementary. The duty to require all county officers to 'faithfully perform their duties' and to 'direct prosecutions for delinquencies' is expressly imposed upon the commissioners. The duty

being imposed, the power to discharge such duty and to make it effective is therefore necessarily implied. The statute does not, as the county contends, limit the commissioners to actions only in which the county is pecuniarily interested and to which it is a party. The statute having imposed no such limitation, the courts are not authorized to impose one. Moreover, as pointed out by the Supreme Court of California in Coffey v. Superior Court, supra, the several statutes provide for cumulative remedies against delinquent officers. Why then may not the county commissioners, upon whom is cast the special duty to see that the laws are enforced in the county and to prosecute delinquent officers who fail or neglect to perform their official duties in that regard, either inaugurate or direct prosecutions and *defray the expenses necessarily incurred* out of available county funds? And in case the county attorney is the accused party, or is otherwise disqualified, *why may not such commissioners* employ *other counsel and allow them reasonable compensation for their services? If they may not do that, then they cannot discharge the duties imposed on them by the statute.* Again, why say that the commissioners cannot employ counsel except in cases to which the county is a party or in which it has direct pecuniary interest? Are not the taxpayers interested in having the laws enforced? Is it not to their interest to have the officers discharge their official duties? Is it not a notorious fact, universally acknowledged, that the real weakness of popular local government lies in the lax enforcement of the laws relating to what are known as police powers by the local officers whose duty it is to enforce them? Is it not a matter of general knowledge that public officers, upon whom the taxpayers rely for protection, too often shut their eyes to the offenses committed by gamblers, confidence men, prostitutes, and like offenders? Where such conditions prevail, and every one knows that they do now and then prevail, of what use are our penal laws? Under our form and construction of government all communities must rely upon the honesty and integrity of their officers. If they refuse to arrest and prosecute gamblers, government becomes a mere farce. As pointed out by the Supreme Court of California the Legislature had the power, and by the enactment of the several statutes has provided cumulative remedies by which officers who knowingly and willfully fail and neglect to perform their official duties may be, expeditiously and without great expense, removed from office. Removal from office is the only penalty that such statutes impose. So far as the pleadings show the county commissioners, in

good faith, attempted to discharge their legal duty as they understood the law. They should be commended rather than penalized for that so long as their is any law justifying their acts and conduct, although they may have acted irregularly and erroneously." (Italics ours.)

Carbon County v. Hamilton et al., 160 Pac. 765, 768.

The Nebraska Supreme Court said in the case of Lancaster County v. Green, 54 Nebr. 98, 103:

"The holding of this court in *State v. Lincoln County*, supra, was, in effect, that county commissioners of a county, acting for it, have generally only such powers as are specially granted to them by statute or such as are incidentally necessary to carry into effect those granted. The discussion of the word 'necessary' above quoted illustrates the sense in which that word as used by this court should be understood. *The county commissioners, therefore, are clothed not only with the powers expressly conferred upon them by statute, but they also possess such powers as are requisite to enable them to discharge the official duties devolved upon them by law.* It was not practicable in advance to enumerate all the powers which the board of county commissioners might be permitted to exercise. To cover all contingencies very general language was employed, and from these considerations it necessarily results that the question whether or not the board has exceeded its powers must be determined upon the circumstances of each case as it arises." (Italics ours.)

We call special attention to the closing sentence of the last quotation, which, after all, we believe controls regardless of our opinion that the Commissioners have the implied power as indicated above. That is to say, as long as the authority is implied and not expressed, if the authority is questioned, it would take a suit to determine the issue and we cannot anticipate what such a decision would be, so that our opinion can only be advisory in any event.

The District Attorney is the official advisor of the County Commissioners and he should be consulted before final action is taken.

As to the personal liability of a member of the Board of County Commissioners for the illegal expenditures, will say that each individual case must be decided upon its own merits. However, we call attention to the following statute and citations: Section 8727, C. L. 1921. In construing this section, Judge Cunningham said in Morris v. Board of County Commissioners, 25 C. A. 416:

"For the county must go farther and show that the commissioners, in so voting to allow the bill did so *wrongfully* and *fraudulently* and with *knowledge* that the bill was unlawful." (Italics ours.)

which case further holds the word "misappropriations" contemplates something more than mere mistake of judgment in the allowance of a bill. It implies tortious or fraudulent conduct and that this statute is not penal since the amount recoverable is limited to compensation in damages, which negatives the idea of punishment.

See also:

People v. White, 81 Colo. 315, 255 Pac. 453 (suit v. White for stamps, etc., as County Clerk);

Whalen v. People, 74 Colo. 417, 222 Pac. 398 (indictment v. Whalen as Co. Comr. Gunnison Co. for illegal expenditure for intox. liquors under Section 6819 C. L. Colo. 1921.)"

On the second question, however, we consider that the commissioners should consult their own private attorneys as to their own personal liability.

Yours very truly,

JOHN S. UNDERWOOD,
Attorney General,

By SIDNEY P. GODSMAN,
Assistant Attorney General.

338 DISTRAINT WARRANTS

To John L. Stivers, December 15, 1930.

Service of.

Upon the proper issuance of a distraint warrant directed to the sheriff, it is his duty, under Sec. 8758, C. L. 1921 and other sections, to serve said distraint warrant. Secs. 7380, 7376, 7461, 7378, 7884, 7885, 8767.

December 15, 1930.

Mr. John L. Stivers.
County Attorney,
Montrose, Colorado.

Dear Sir:

Your letter of November 25 was received in due course, but answer thereto has been delayed by press of other business in the office.

You ask the opinion of this office on the question as to whether it is the duty of the county sheriff to serve a distraint warrant for taxes issued by the county treasurer of your county.

Sec. 7380, C. L. 1921, covering the question of distraint warrants, provides:

> "If the treasurer has reason to believe that any person charged with taxes upon personal property is about to remove such property from the county * * * such treasurer may * * * proceed to collect the same with costs and charges, by distraint and sale of any personal property * * *."

Sec. 7376 reads as follows:

> "When the treasurer distrains goods he may keep them at the expense of the owner and shall give notice of the time of their sale within five days after the day of taking * * * but he may adjourn the sale from time to time. * * *."

You will note that neither of the above sections makes any provision regarding the service of such distraint warrants by an officer. However, Sec. 7378 reads as follows:

> "The officer collecting money by virtue of such distress shall receive the same compensation as is allowed by law to the sheriff of the same county for the execution of a fieri facias, to be collected in addition to the amount due for taxes, interest and penalties, together with ten per cent of the amount of the tax in addition thereto; and the proceedings in all other respects shall, as nearly as practicable, be the same as pertain to the execution of said writ in other cases."

I call your attention to the last phrase of the above quoted section:

> "* * * And the proceedings in all other respects shall, as nearly as practicable, be the same as pertain to the execution of said writ (fieri facias) in other cases."

From our investigation we do not find that the Supreme Court of Colorado has ever passed upon the question which you ask, nor are we able to get much comfort from the text books or the decisions in other states; finding no case bearing upon the direct point which you have in mind.

It seems, therefore, that the question must rest upon a decision as to just what is the character of a distraint warrant.

Sec. 8758, C. L. 1921, reads as follows:

> "The sheriff in person, or by his undersheriff or deputy, shall serve and execute, according to law, all

> processes, writs, precepts and orders issued or made by lawful authority and to him directed, and shall attend upon the several courts of record held in his county."

Secs. 7884 and 8767 contain similar provisions and Secs. 7885 and 8767 relate to penalties for the failure of the sheriff to serve papers as provided in the sections last above quoted and mentioned.

I again call your attention to Sec. 7378 which refers to the officer making the collection and provides that the proceedings under a distraint warrant shall, as nearly as practicable, be the same as pertains to the execution of a writ of fieri facias. Sec. 7461 contains a provision, that the sheriff of the proper county shall, under the conditions in that section, serve the distraint warrant.

In the case of *Haley v. Elliott*, 16 Colo. 159, at page 162, the court said:

> "The listing, valuation and tax levy have been likened to a judgment; and the 'warrant to collect' has been spoken of as somewhat analogous to an execution."

Again in the case of *Schwed v. Hartwiz*, 23 Colo. 187, at page 189, the court said:

> "The publication of a notice of a tax sale is in the nature of a service of process."

While these quotations of decisions from our Supreme Court are, of course, not directly in point on the question under consideration, they seem to carry with them the idea of the court that a distraint warrant or tax notice is in the nature of a writ, an execution or process of some character.

It is our opinion, therefore, that upon the proper issuance of a distraint warrant directed to the sheriff, it is his duty under Sec. 8758 and the other like sections to which reference is made above, to serve said distraint warrant.

As we have above indicated, however, this would seem to be a very close question and one upon which there are no very enlightening court decisions or statements in the text books. For this reason, of course, it is one which in the final analysis would have to be determined by the courts.

Very truly yours,

JOHN S. UNDERWOOD,
Attorney General.

By ARTHUR L. OLSON,
Assistant Attorney General.

339 FEES AND SALARIES

To E. J. Bond, December 15, 1930.

Naturalization.

Moneys received by clerks of the District Court as fees in naturalization cases must be accounted for to the county as are other fees. Sec. 7879, C. L. 1921.

340 LEGAL NOTICES

To Raymond Stebbins, December 18, 1930.

"General circulation."

Any notice or other written matter required to be published in a newspaper by any law of this State is a legal notice.

Any newspaper coming within the classifications of Sec. 3, Ch. 139, S. L. 1923, is a proper newspaper in which to publish legal notices of advertisements, provided that such newspaper has had the circulation prescribed by Sec. 4 of said chapter prior to the first insertion of such notice of advertisement.

341 INDUSTRIAL COMMISSION

To Industrial Commission of Colorado, December 30, 1930.

Jurisdiction over employes of railroads engaged in interstate commerce. "The true test of employment in such commerce is—Was the employe at the time of the injury engaged in interstate transportation, or on work so closely related to it as to be practically a part of it?" (Freeman v. Grove, 75 Colo., 566, 568.) Also: Federal Transportation Act.

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NOTE—Opinion number follows each lead.

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