BIENNIAL REPORT
OF
PAUL P. PROSSER
ATTORNEY GENERAL
OF COLORADO
1933 - 1934

Biennial Report

of the

ATTORNEY GENERAL

of the

State of Colorado

Years 1933-1934

PAUL P. PROSSER
Attorney General

THE BRADFORD-ROBINSON PTG. CO.
DENVER, COLORADO
1935

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
Clarence L. Ireland	1931-1932
Paul P. Prosser	1933-1934

STATE OF COLORADO—DEPARTMENT OF LAW

1. Division of Legal Affairs
   Paul P. Prosser, Attorney General
   Norris C. Bakke, Deputy Attorney General
   Charles Roach, First Assistant Attorney General

   Assistant Attorneys General

   Shrader P. Howell — Oliver Dean
   [1]Charles H. Queary — M. S. Ginsberg
   Hazel M. Costello — Pierpont Fuller, Jr.
   Richard E. Conour — J. Glenn Donaldson
   [2]Walter F. Scherer

   Stenographic and Clerical Assistants

   Miss Margaret E. Fallon — Ann Landy
   Mrs. Elizabeth D. Patten

2. Inheritance Tax Commission
   George Hetherington, Inheritance Tax Commissioner and Assistant Attorney General
   Arthur M. Morris — O. S. Brinker

   Deputy Inheritance Tax Commissioners

   G. W. Moscript, Inheritance Tax Appraiser

   Stenographic and Clerical Assistants

   Mrs. Margaret M. Kranich — Mrs. Marie A. Powell
   Mrs. Aimee Meredith

3. Division of Securities
   Paul P. Prosser, Ex-Officio Commissioner of Securities
   Walter F. Scherer, Assistant Commissioner of Securities
   [3]Theodore Chisholm, Assistant Commissioner of Securities

4. Legislative Reference Office
   [4]Allen Moore, Director
   Charles H. Queary, Director
   Clair T. Sippel, Secretary

5. Public Utilities Commission

   Commissioners

   Edward E. Wheeler, Chairman — Worth Allen
   Dan S. Jones

6. Division of Commerce
   (a) State Bank Commission
   Grant McFerson, Commissioner
   (b) State Insurance Department
   Jackson Cochrane, Commissioner
   (c) Building and Loan Commission
   James R. McClelland, Commissioner

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[1]Appointed Legislative Reference Director November 19, 1934.
[2]Appointed December 1, 1934.
[3]Appointed December 1, 1934, to succeed Walter F. Scherer.
[4]Resigned August 1, 1934.

BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF COLORADO

SCHEDULE I

To His Excellency,

EDWIN C. JOHNSON,
Governor of the State of Colorado.

Sir:

Complying with my official duty, I hereby respectfully submit a report of the office of Attorney General for the biennial period from January 10, 1933, to and including January 7, 1935.

I.

CONDUCT OF THE OFFICE

(1) *Increased Work of the Office.*

Twenty-five Attorneys General of Colorado, preceding me, have come and gone; but never have the demands upon this office been greater, never have its duties been more multitudinous, never has its responsibility been of such far-reaching importance, as during the biennial period of 1933-1934.

Unparalleled economic conditions have combined to produce an appalling emergency in Colorado, as in the Nation, and out of this emergency there have arisen continuously for the consideration of this office innumerable questions relating to our State, county and municipal governments, the like of which have never been presented before.

Every department of our State government, every agency of the State, every one of our State institutions have all been confronted during this emergency with many novel and unusual questions, which have been referred to this office for determination.

In the consideration of laws designed to relieve the existing emergency in Colorado, members of the 29th General Assembly, at

their regular session and at their two extraordinary sessions, obtained opinions from this office in respect to many difficult and vexatious questions; and some of the laws actually enacted by that body for the above-mentioned purpose involved Constitutional questions that were without precedent in the jurisprudence of the State.

Moreover, legislation enacted by the Congress and intended to relieve the existing emergency in the Nation, has served to bring to this office, and still serves to bring to this office, for its consideration a series of questions that are at once novel and difficult.

All of these questions have been so numerous, as they have been presented from time to time, that the routine work of the office in giving opinions has been twice as great as that during any other previous biennium.

In addition to the vast amount of labor that has been placed upon the office simply as a result of the emergency in the State and in the Nation, the duties of the office have been greatly augmented in practically every branch of its work.

(2) *Increased Scope of the Office.*

The official scope and authority of this office was increased by the reorganization of our State government under the Administrative Code, that great constructive measure enacted by the 29th General Assembly, which makes the Attorney General the head of the Department of Law.

(3) *Office has been conducted as a Law Office.*

Even in normal times the duties resting upon the Attorney General's office are multitudinous. They relate to and affect every department of State government, every administrative official of the State from the Governor on down, every head of the various institutions of the State, and in numerous instances they relate to and affect various district and county officers.

During these times of stress and transition it has been the constant endeavor of every member of the Attorney General's staff, individually and collectively, to give full and complete cooperation to the various officials just mentioned. All of these various officers have had vexatious questions to arise, in respect to which they have requested opinions from the Attorney General. Indeed, some of the most difficult problems that have been presented to this office have come from county officers, in respect to matters that are largely of local concern.

In handling the infinitude of legal affairs that require the attention of the Attorney General we have conducted this office as a law office. We have not tried to "play politics," and no official conduct on the part of the Attorney General has been dictated by partisan expediency.

(4) *Membership on Executive Council.*

As a member of the Executive Council, which is charged with the serious responsibility of exercising supervision over the fiscal affairs of the State, it has been, as you know, the constant endeavor both of myself, as Attorney General, and of Mr. Norris C. Bakke, as Deputy Attorney General, to give to your administrative program our full cooperation, to the end that increasing economy and efficiency may be had in the administration of the State's affairs.

II.

INTERSTATE WATER CONTROVERSIES

(1) *Pending Suits in United States Supreme Court.*

Regarded always by me as being of first importance in the legal affairs of the State are the suits relating to the waters of our inter-state rivers.

More precious, even, than the gold in our hills are the waters of these inter-state rivers.

You, as Governor, are entirely familiar with the acute controversies that have developed as between Colorado and certain of her sister states on account of the competitive demands upon the limited supply of waters afforded by these inter-state streams.

Two of these controversies have resolved themselves into suits now pending before the Supreme Court of the United States, which, sitting as a sort of high court of arbitration, must decide these controversies between quasi-sovereignties according to the principle of equitable apportionment.

One of these suits now pending in the Supreme Court of the United States is that of *Wyoming v. Colorado,* involving the waters of the Laramie River; the other is that of *Colorado v. Kansas,* involving the waters of the Arkansas River; and the respective controversies involved in both of these suits have been before the Supreme Court of the United States over a period of many years.

(2) *Status of Wyoming v. Colorado.*

In the case of *Wyoming v. Colorado,* still pending in the Supreme Court of the United States, both Wyoming and Colorado have completed the taking before two Special Commissioners of certain additional testimony required in that suit. Both Wyoming and Colorado have prepared their respective abstracts of such testimony, and these abstracts, which are now in the hands of the two Commissioners, will be forwarded within the next few weeks to the Clerk of the Supreme Court of the United States. Upon the receipt of such abstracts of the testimony, the Supreme Court of the United States will order them to be opened and published, and thereafter the same will be printed in accordance with the order of that court. Following the printing of such abstracts of the testimony, briefs

will be filed, and eventually a supplemental decree will be entered by that court, which, I anticipate, will definitely fix and determine the rights of Colorado water-users in and to the waters of the Laramie River.

(3) *Status of Kansas v. Colorado.*

In *Kansas v. Colorado,* involving the waters of the Arkansas River, a Special Commissioner was also appointed by the Supreme Court of the United States to take certain additional testimony. Testimony in chief on behalf of Colorado, as well as testimony on behalf of Kansas, has now been taken; and testimony in rebuttal will be shortly taken on behalf of Colorado. Here, again, is an inter-state water controversy between Kansas and Colorado, quasi-sovereignties, which only the Supreme Court of the United States can definitely decide and determine.

However, both Kansas and Colorado have made application to the Public Works Administration of the United States Government for the construction of the Caddoa Reservoir. This application has since been taken up with the Federal Administration of Unemployment Relief, and an allocation has by him been made of $30,000 for preliminary surveys. If the Caddoa Dam should be constructed, the flood waters of the Arkansas River, now going each year to waste, would be conserved and developed for the use of both Kansas and Colorado; and the construction of such a project, which this office has vigorously advocated in conjunction with you and the State Engineer, would remove the present causes for controversy in respect to that river as between Kansas and Colorado.

III.

OTHER INTER-STATE WATER MATTERS

(1) *Arizona v. California et al.*

In the case of *Arizona v. California et al.*, 292 U. S. 341, in which the State of Colorado was also a party defendant, the State of Arizona filed a motion before the Supreme Court of the United States, asking leave to file a bill of complaint for the purpose of perpetuating the testimony of certain witnesses who had participated in the negotiation of the Colorado River Compact.

Colorado, Nevada, New Mexico, Utah and Wyoming, after a conference had at Denver between representatives of those states, filed a joint return to the rule of the Supreme Court of the United States to show cause why leave to file such bill should not be granted to Arizona.

The motion of Arizona for leave to file such bill was denied by the Supreme Court of the United States.

(2) *M. C. Hinderlider, as State Engineer of the State of Colorado, et al. etc., Appellants, v. La Plata River & Cherry Creek Ditch Company, Appellee.*

This case (291 U. S. 650) which involved the compact between New Mexico and Colorado in respect to the use of the waters of the La Plata River, was an attempted appeal from the judgment rendered therein by the Supreme Court of Colorado (93 Colo. 128).

The Supreme Court of the United States declined to take jurisdiction in this case, and dismissed the appeal for want of a final judgment. The case is now pending in the District Court of La Plata County, to which a remittitur was ordered by the Supreme Court of Colorado.

(3) *Rio Grande Compact.*

A meeting of the Commissioners of the signatory States of Colorado, New Mexico and Texas was held at Santa Fe on December 10-11, 1934, for the purpose of agreeing upon an extension of the present Compact, or of negotiating a new one, in respect to the use of the waters of the Rio Grande River. The present Compact will expire June 1, 1935; and in all negotiations which will be held in the meantime for the extension of such Compact, or for the execution of a new one, this office will give its fullest cooperation as counsel to Mr. M. C. Hinderlider, Interstate River Commissioner.

(4) *Proposed Compact relating to Republican and Arickaree Rivers.*

There is also pending the proposal of negotiating a compact between the State of Colorado and the State of Nebraska, in respect to the utilization and disposition of the waters of the North and South Forks of the Republican River and of the Arickaree River. A compact, in tentative form, covering this subject has already been prepared but no such compact can be negotiated until legislative authorization is obtained therefor. This office will cooperate with Mr. Hinderlider, the Interstate River Commissioner, in preparing for the consideration of the 30th General Assembly a bill authorizing the appointment by you of a commissioner for the purpose of negotiating a compact covering this subject.

(5) *Proposed Arizona Contract.*

I now point out another matter which this office has regarded as being of vital importance to the State of Colorado.

I refer to the proposed contract, heretofore submitted to Honorable Harold L. Ickes, Secretary of the Interior, by the State of Arizona whereby that State sought an agreement with the United States Government for the storage and delivery of 2,800,000 acre-feet of water from the Boulder Canyon Reservoir.

So grossly inequitable did this office regard this proposed contract from the standpoint of Colorado and the other upper-basin States, that we enlisted your aid as Governor in asking permission of the Secretary of the Interior for the four upper-basin States to file a protest against his execution of such proposed contract, together with a brief or briefs in support thereof.

At your request, such permission was granted by the Secretary of the Interior; and thereafter the four upper-basin States duly filed their joint protest against his execution of said proposed contract, together with a joint brief in support thereof. In the preparation of this joint protest and brief, this office was represented by Mr. Charles Roach, First Assistant Attorney General, and Mr. Shrader P. Howell, Assistant Attorney General, both of whom gave to the matter much care and attention. A joint protest and supporting brief were also filed on behalf of the States of California and Nevada.

Thereafter, and again with your cooperation, the Secretary of the Interior was induced to grant a hearing of these protests of said upper and lower-basin States against said proposed contract, so tendered to him for execution by the State of Arizona, on December 17, 1934. At such hearing the State of Colorado was represented by myself as Attorney General and by Mr. Roach, First Assistant Attorney General, and Mr. Howell, Assistant Attorney General.

After hearing the arguments on these protests, and particularly the joint protest of the four upper-basin States, the Secretary of the Interior held the contract tendered by the State of Arizona to be unfair and inequitable and announced that he would not execute the same.

Although Mr. Secretary Ickes denounced the contract tendered to him at that time by the State of Arizona as inequitable, nevertheless he strongly suggested that all of the other States in the Colorado River Basin join in a constructive effort to work out a contract, to be executed by him with Arizona, that would satisfy Arizona and at the same time would safeguard the interests of such other States.

The claims of the State of Arizona, which continues to remain outside of the Colorado River Compact, in and to the waters of that river will continue to be regarded by this office as of very vital concern to the State of Colorado.

IV.

INTERSTATE CRIME COMPACTS

It was my privilege to attend the recent Conference on Crime, called by Honorable Homer S. Cummings, Attorney General of the United States, and held at Washington, D. C., from December 10 to December 11, last, and I returned from it profoundly impressed with the possibilities afforded by the device of interstate compacts as a means of suppressing crime, of circumventing the activities of modern gangsters and criminals, and of enforcing generally the re-

spective criminal laws and policies of States that may enter into such compacts.

A very definite and direct challenge to each and all of the States for cooperation with the United States Government in this manner was laid down by the 73rd Congress by its enactment of that certain act (Public No. 293, H. R. 7353), approved June 6, 1934, whereby the Congress has given a blanket consent in advance to all agreements or compacts entered into by any two or more States "for cooperative effort and mutual assistance in the prevention of crime and in the enforcement of their respective criminal laws and policies, and to establish such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts."

I recommend to you, therefore, that you propose to the 30th General Assembly, which will shortly convene, the enactment of a law authorizing you, as Governor, to appoint one or more commissioners for the purpose of negotiating on behalf of the State of Colorado (with due regard to any Constitutional limitations), any agreement or compact with any other State or States that may be designed to accomplish the wholesome purposes contemplated by the 73rd Congress; and if you approve this recommendation I shall be glad personally to prepare for introduction into the 30th General Assembly that kind of a measure which you may feel will be best calculated to obtain these most desirable ends.

V.

INHERITANCE TAX DIVISION

Through this division of the Department of Law there has been collected during the period from December 1, 1932, to November 30, 1934, the sum of $1,691,642.00, which is a very creditable showing in view of the financial conditions and depreciation in value of assets belonging to estates.

The amount expended by this division for the same period, including salaries and all expenses, was $36,451.85, as follows:

December 1, 1932, to July 1, 1933, 7 months.....$14,341.28
July 1, 1933, to November 30, 1934, 17 months.... 22,110.57

The sum of $18,247.41 was also collected under the Old Age Pension Act.

There has also been turned over to the State Treasurer the sum of $32,921.03 collected from escheat estates.

The expenses of this division were only 2 per cent of the amount collected, and they were lower than for any previous period.

That number of Treasurer's receipts issued on estates examined, being receipts numbered 58209 to 64053, inclusive, show that 5,845 estates have been handled during this period.

In January, 1933, it was found by Mr. George Hetherington, the incoming Commissioner, that the Inheritance Tax Act of 1927,

then in effect, was too restricted in its application and was not bringing to the State proper returns from this form of taxation. Accordingly, a new and more flexible bill was drawn by Mr. Hetherington, in conjunction with the Attorney General's office, for introduction into the 29th General Assembly. This bill was introduced into the House of Representatives by Representative Moses Smith, of Weld County, and was unanimously passed by both the House and the Senate. It was approved by you as Governor on May 16, 1933, since which time it has been in effect as a law. This act of 1933 has operated to bring into the Treasury of the State of Colorado more than $200,000.00 in excess of the taxes that would have been payable under the act of 1927.

Important changes were made in the act of 1933, including the removal of the exemption on gifts to foreign charities. The act of 1927 provided that all gifts to charities should be exempt from taxation anywhere in the world, but the act of 1933 limits these exemptions to gifts for charities only when used within this State.

Notwithstanding rigid curtailment of expenses the collections for the first fiscal year ending June 30, 1934, amount to $1,119,675.27. In addition there was also collected during this period the sum of $10,630.67 for the Old Age Pension Fund. This amount, the largest ever made in any one year, was materially increased by the change in the law with reference to the exemption of gifts to foreign charities.

CONCLUSION

In concluding this report, it is only just and proper that I express my gratitude to the members of the Attorney General's staff who have worked so faithfully, so zealously and so harmoniously with me in handling, in a lawyer-like way, the many legal questions that have been presented to this office during the past two years.

We have striven during these past two years, as we shall strive during the next two years, to command and to maintain for this office the respect and confidence of the lawyers of Colorado and of the courts of Colorado, including, particularly, our Supreme Court, in which we are required to appear in so many cases.

I acknowledge a debt of gratitude:

To Norris C. Bakke, Deputy Attorney General, for the capable manner in which he has supervised the routine of the office, and has given opinions and tried cases.

To Charles Roach, First Assistant Attorney General, who is an expert on the Constitutional and statutory law of Colorado, and who is now, as he for many years has been, the mainstay of the Attorney General's office.

To Shrader P. Howell, Assistant Attorney General, for the highly efficient manner in which he has handled our interstate water controversies.

To Oliver Dean, Assistant Attorney General, a veteran of this office, for the highly capable manner in which he has handled many important matters relating to highways and to excise taxation.

To Richard Conour, Assistant Attorney General, for his highly capable services in cases involving public utilities.

To Pierpont Fuller, Jr., Assistant Attorney General, for his brilliant services both as an office lawyer and as a trial lawyer in behalf of the State.

To Morris S. Ginsberg, Assistant Attorney General, who has handled the largely increased number of compensation cases in a highly expert and efficient manner.

To Hazel M. Costello, Assistant Attorney General, for her able and invaluable services in handling questions relating to the public schools.

To J. Glenn Donaldson, Assistant Attorney General, for his capable and efficient services, in handling highly important matters originating in the office of the State Insurance Commissioner and of the State Building and Loan Commissioner.

To Charles Queary (now Director of the Legislative Reference Office), and to Walter F. Scherer, Assistant Attorney General, for the fair, thorough and capable manner in which they have presented criminal cases to the Supreme Court.

And to George Hetherington, Assistant Attorney General and Inheritance Tax Commissioner, and to his deputies, O. S. Brinker and A. M. Morris, for the intelligent, capable and efficient manner in which they have enforced, applied and extended the Inheritance Tax Law of Colorado.

Respectfully submitted,

PAUL P. PROSSER,
Attorney General.

TOTAL REVENUE

Biennially

Attorney General's Office

INHERITANCE TAX DEPARTMENT

O.S.B.

Hundred Thousand Dollars

21
20
19
18
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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 '31-'32 '33-'34

SCHEDULE II

LIST OF ALL CASES, PENDING AND DISPOSED OF, IN ALL COURTS

1933-1934

CASES IN THE SUPREME COURT OF THE UNITED STATES

No. 15. Original. October Term 1927. *State of Colordao 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.

No. 20. October Term 1930. *State of Wyoming v. State of Colorado.* Construction of former Wyoming-Colorado decree to enjoin use of waters of Laramie River. Pending.

No. 137. *Colorado Central Power Co. v. Colorado Tax Commission.* Petition for writ of certiorari denied October 24, 1934.

No. 138. *Colorado Central Power Company v. Colorado Tax Commission.* Petition for writ of certiorari denied October 24, 1934.

No. 139. *Colorado Central Power Company v. Colorado Tax Commission.* Petition for writ of certiorari denied October 24, 1934.

No. 499. *Moffat Tunnel League et al. v. United States Interstate Commerce Commission.* Appealed from United States District Court. Affirmed April 10, 1933.

No. 19. Original. *State of Colorado v. Symes.* Mandamus in re Henry Dierks. Motion for leave to file petition for mandamus. Denied October 17, 1933.

No. ..... Original. October Term 1932. *State of Alabama v. State of Arizona et al.* Suit to enjoin various states from enforcing laws relating to convict-made goods. Motion for leave to file complaint denied February 5, 1934.

No. 588. October Term 1933. *M. C. Hinderlider as State Engineer et al. v. The La Plata River and Cherry Creek Ditch Company.* Appeal from judgment of Colorado Supreme Court involving rights of appropriators on Interstate Stream. Dismised for want of final judgment March 12, 1934.

No. ..... October Term 1933. *State of Arizona v. State of California et al.* Motion for leave to file Bill to perpetuate testimony. Denied May 21, 1934.

No. ..... October Term 1933. *Dill v. People of the State of Colorado.* Petition for appeal; order allowing appeal. Dismissed for want of Federal question May 21, 1934.

No. 568. *U. S. Building and Loan Ass'n et al v. McClelland.* Petition for writ of certiorari. Pending.

CASES IN THE UNITED STATES DISTRICT COURT

No. 52527. (N. Y.) *In the matter of Kountze Brothers et al.* (bankrupt). Claim of State of Colorado for money on deposit for payment of bond interest. Pending.

No. 7548. (Colorado Bankruptcy) Ref. No. 3171. *In the matter of J. Fred Roberts & Sons Construction Company.* Involving road building contract. Money paid into bankruptcy court by Highway Department January 26, 1934.

No. 10022. *American Bridge Company v. J. Fred Roberts & Sons Construction Company et al.* Involving road building contract. See case No. 7548.

No. 10051. *Great American Indemnity Company v. J. Fred Roberts.* Involving road building contract. See case No. 7548. Highway Department relieved of all liability January 26, 1934.

No. 10266. *United States Building and Loan Association et al. v. McClelland as State Building and Loan Commisisoner.* Petition for injunction and receiver. Dismissed March 12, 1934.

No. 10286. *Murphy and others similarly situated v. United States Building and Loan Association and McClelland as State Building and Loan Commissioner.* Petition for injunction and receiver. Dismissed without prejudice April 25, 1934.

No. ..... *Regents of the University of Colorado v. National Surety Company.* Removed from Denver District Court. Pending.

No. 103777. *School of Mines v. Adams, Receiver of Ruby National Bank of Golden, Colorado.* Suit to establish preferred claim. Pending.

INTERSTATE COMPACT

BEFORE THE DEPARTMENT OF THE INTERIOR.

In re proposed contract of the State of Arizona for storage and delivery of water in Boulder Dam. Contract requested by Arizona denied December 18, 1934.

BEFORE THE INTERSTATE COMMERCE COMMISSION

Finance Docket Number

9135. Intervention of State of Colorado on rehearing of application of The Colorado and Southern Railway Company and The Denver and Rio Grande Western Railroad Company for authority to abandon the Pitkin Branch of the Colorado and Southern Railway Company in Gunnison County, Colorado, operated by The Denver & Rio Grande Western Railroad Company. Application granted May 8, 1934, to become effective thirty days after date.

9386. Intervention of State of Colorado in application of The Denver and Rio Grande Western Railroad Company for authority to abandon its Lake City Branch in Gunnison and Hinsdale Counties, after authority had been granted. Petition for rehearing filed June 15, 1933, and denied. Abandonment became effective October 20, 1933.

9556. Application of The Denver-Intermountain and Summit Railway Company for authority to acquire and operate the South Park Branch of the Colorado and Southern Railway Company. Application denied November 29, 1933. Rehearing denied July 2, 1934. This application was heard in conjunction with a similar application in Finance Docket No. 9582.

9582. Application of The Denver, Leadville and Alma Railroad Company for authority to acquire and operate the South Park Branch of the Colorado and Southern Railway Company. Application denied November 29, 1933. This application was heard in conjunction with a similar application in Finance Docket No. 9556.

10105. Application of The Denver and Rio Grande Western Railroad Company for authority to abandon its Pagosa Springs Branch in Archuleta County, Colorado. Application granted August 10, 1934, abandonment to become effective six months after date. Pending on petition for rehearing.

10439. Application of The Grand River Valley Railroad Company for authority to abandon its entire line in Mesa County, Colorado. Abandonment allowed, effective January 1, 1935. Order dated October 18, 1934.

Ex Parte No. 115. Application of all rail carriers to increase rates in all territories. Pending.

25123 and 25449. The St. Louis Livestock Exchange et al. v. The Alton Railroad Company et al. "Sale in transit" case which was decided favorably to Colorado livestock interests and "sale in transit" privileges retained.

CIVIL CASES IN THE SUPREME COURT OF COLORADO

Finance Docket Number

12735. *Eastenes v. Adams, et al.* Error to the District Court of Weld County. Affirmed September 18, 1933.

12736. *Hinderlider, et al. v. Everett, et al.* Error to the District Court of Chaffee County, involving supervision of the upper Arkansas River. Reversed and remanded January 23, 1933.

12796. *The La Plata River and Cherry Creek Ditch Company v. M. C. Hinderlider, et al.* Error to the District Court of La Plata County. Action involving rights of appropriators upon interstate stream covered by an interstate compact. Judgment reversed July 10, 1933. Appealed to Supreme Court of the United States (Oct. Term 1933, No. 588).

12817. *Bordner v. County Commissioners.* Error to the District Court of Baca County. Suit to recover taxes. Affirmed December 27, 1932.

12920. *Trustees State Normal School v. Wightman.* Error to the District Court of Gunnison County. Judgment awarded to plaintiff upon contract of employment. Affirmed September 11, 1933. Settled November 20, 1934.

12949. *Colorado Tax Commission v. Colorado Central Power Company.* Error to the District Court of Jefferson County. Action for refund of taxes. Judgment in favor of plaintiff. Reversed February 5, 1934. Appealed to United States Supreme Court. No. 137.

12959. *Colorado Tax Commission v. Denver Bible Institute.* Error to the District Court of Adams County. Action for recovery of taxes. Judgment entered in favor of plaintiff. Affirmed March 5, 1934.

12962. *Colorado Tax Commission v. Midland Terminal Railway Company.* Error to the District Court of El Paso County. Action for refund of taxes. Assessed valuation of railroad reduced. Judgment reversed June 26, 1933.

12963. *Colorado Tax Commission v. Midland Terminal Railway Company.* Error to the District Court of Teller County. Action for refund of taxes. Assessed valuation of railroad reduced. Judgment reversed June 26, 1933.

12990. *Colorado Tax Commission v. Colorado Central Power Company.* Error to the District Court of Arapahoe County. Consolidated with Case No. 12949.

12991. *Colorado Tax Commission v. Colorado Central Power Company.* Error to the District Court of Weld County. Consolidated with Case No. 12949.

13017. *Kemp et al. as Members of the Board of County Commissioners of Adams County v. Pillar of Fire.* Error to the District Court of Adams County. Action relating to tax exemption. Judgment affirmed December 11, 1933.

13024. *Parry & Jones v. Board of Corrections.* Error to the District Court of Pueblo County. Action involving judgment on arbitrators award. Judgment set aside. Affirmed December 4, 1933.

13069. *In the Matter of the Petition of the Pacific States Life Ins. Company et al. for an order approving the withdrawal of securities.* Error to the District Court of Denver, which permitted withdrawal. Reversed November 6, 1933.

13109. *San Luis Power & Water Co. v. Fred Trujillo, as Treasurer of the County of Costilla.* Error to the District Court of Costilla County. Judgment entered in favor of plaintiff for back taxes. Affirmed October 16, 1933.

13121. *People v. Sheldon E. Tucker.* Attorney General's office is taking no part in this case. Affirmed on rehearing, the court being equally divided. December 17, 1934.

13126. *People v. Home Oil and Supply Company.* Error to the District Court of City and County of Denver. Action for collection of four-cent gasoline tax. Reversed with directions to District Court to enter judgment in favor of the State for the full amount. May 28, 1934. Judgment satisfied.

13133. *Albert Schwilke v. The People of the State of Colorado.* Citation for contempt of court for violation of injunction issued by District Court of City and County of Denver, enjoining Schwilke from operating as a common or private carrier by motor vehicle, wherein Schwilke was found guilty of contempt and sentenced to serve six months in jail. This was a test case, the decision in which would have followed the decision in Bushnell v. The People, No. 13108. By agreement, case remanded to District Court where Schwilke pleaded guilty and was fined $25.00 and costs.

13140. *Ovid M. Ludlow v. The People of the State of Colorado.* Injunction granted by District Court of Larimer County to enjoin alleged operation of motor vehicles for hire. By stipulation this case followed case of Bushnell v. People, No. 13108.

13141. *Ralph E. Kimble v. The People of the State of Colorado.* This was a companion case of Bushnell v. People No. 13108, and Ludlow v. People, No. 13140, and follows the decisions in those cases. Judgment of District Court enjoining the illegal operation of motor vehicles for hire. Affirmed January 30, 1933.

13148. *The Denver and Rio Grande Western Railroad Company v. Public Utilities Commission.* Writ of error to review judgment of District Court of City and County of Denver, sustaining order of Public Utilities Commission reducing rates on livestock movements within the state. Dismissed at request of railroad company.

13166. *People ex rel. Moore v. Lory, et al.* Error to the District Court of Larimer County. Suit on teacher's contract. Judgment affirmed April 9, 1934.

13178. *People v. Montgomery.* Error to the District Court of Boulder County. Action to restrain illegal operation of motor vehicle. Injunction denied. Affirmed January 30, 1933.

13180. *Danks et al. as Board of Commissioners of the Soldiers & Sailors Home v. Fannie McManis Hermann.* Error to the County Court of Rio Grande County. Action to set aside order of final settlement and distribution in the matter of the estate of William McManis, deceased. Judgment affirmed March 26, 1934.

13207. *Public Utilities Commission et al. v. Town of Erie et al.* An order of the Public Utilities Commission permitting the discontinuance of a railroad station at Erie was set aside by the District Court of Boulder County. Judgment reversed January 7, 1933. Rehearing denied January 30, 1933.

13235. *People ex rel. Park Reservoir Co. v. Hinderlider, et al.* Case involving water appropriations. Error to the District Court of Delta County. Pending.

13266. *L. M. Maitland v. People.* Prosecution for killing deer in game refuge. Affirmed June 5, 1933.

13283. *Petition of Irving Phillips for writ of habeas corpus.* Error to the District Court of Fremont County which held that Juvenile Courts have jurisdiction to try persons for felonies. Reversed August 15, 1933.

13328. *People ex rel. Earl Wettengel, District Attorney, vs. Hon. George F. Dunklee, Judge of District Court.* Mandamus. (Habitual Criminal Act) Attorney General's office declined to take part.

People ex rel. Sharer v. District Court of El Paso County. Suit for writ of prohibition. Denied July 22, 1933.

13358. *Riverside Reservoir and Land Co. v. Hinderlider et al.* Case involving water rights. Error to the District Court of Weld County. Pending.

13359. *Bijou Irrigation District v. Hinderlider et al.* Case involving water rights. Pending.

13361. *Bowles v. Miller et al., constituting State Board of Land Commissioners.* Construction of a reservation in a parcel of state land. Error to the District Court of .....County. Pending.

13367. *The People of the State of Colorado, ex rel. The Industrial Commission of Colorado v. Aladdin Theatre Corp. et al.* Error to the District Court of City and County of Denver. Pending.

13368. *The People of the State of Colorado, ex rel. The Industrial Commission v. Amusement Enterprises, Inc. et al.* Error to the District Court of the City and County of Denver. Pending.

13380. *Walker v. Bedford, et al.* Injunction to restrain collection of special Motor Vehicle Tax. (U. R. Tax Case) Error to District Court of Denver. Reversed with direction to grant injunction prayed for October 18, 1933. Rehearing denied November 1, 1933.

13382. *Consolidated Motor Freight Inc. v. Bedford, et al.* (U. R. Tax Case) Argued and submitted with case No. 13380. Reversed October 18, 1933. Rehearing denied November 1, 1933.

13433. *In re Senate Resolution No. 2.* Original Proceeding. Request for opinion on constitutionality of proposed issue of certificates of indebtedness for highway construction. Declared unconstitutional December 26, 1933.

13440. *In the matter of the Estate of John Kwatkowski, Deceased.* The State of Colorado v. John Reindl, as Executor of the Last Will and Testament of John Kwatkowski, Deceased, and Mary E. Canfield. Judgment reversed with directions, February 5, 1934.

13451. *United States Building & Loan Association et al. vs. McClelland as State Commissioner of Buildnig and Loan Associations.* Injunction. Error to the District Court of Denver which refused the injunction. Affirmed July 9, 1934. Rehearing denied September 10, 1934.

13463. *In re Interrogatories of Senate.* Request for opinion on constitutionality of H. B. No. 45 (2nd Ex. Sess.) Declared unconstitutional March 12, 1934.

13481. *The Colorado Utilities Corporation v. The Public Utilities Commission.* Action to review an order of the Public Utilities Commission. Error to the District Court of the City and County of Denver. Pending.

13487. *Godman v. Prosser as Attorney General et al.* Petition for temporary injunction pending appeal from District Court of Denver. Highway condemnation. Injunction denied March 8, 1934. Writ of error denied August 2, 1934.

13546. *Scanland, Klatt & Walker v. Board of County Commissioners of Jefferson County.* Condemnation. Error to the District Court of Jefferson County. Pending.

13553. *Armstrong as Secretary of State v. Mitten and Wolcott.* Petition for declaratory judgment on constitutionality of reapportionment statute. Error to District Court of Denver which held Act unconstitutional. Affirmed July 2, 1934.

13555. *Highland Utilities Company v. The Public Utilities Commission.* Action to review an order of the Public Utilities Commission requiring the continuance of service in town of Kit Carson. Error to the District Court of the City and County of Denver. Pending.

13576. *People ex rel. Board of County Commissioners of Boulder County v. Burger, County Clerk, Massachusetts Bonding and Insurance Company and Homer F. Bedford, State Treasurer.* Suit on bond for motor vehicle license fees lost in bank which failed. Dismissed by stipulation October 5, 1934.

13585. *James Dikeou v. People ex rel. Maxine Cassidente, a minor.* Error to Juvenile Court of Denver which entered order requiring defendant to support illegitimate child. Affirmed October 15, 1934.

13596. *State v. Tolbert et al.* Injunction to restrain illegal use of motor fuel. Error to the District Court of Baca County. Pending.

13608. *People ex rel. Haraway, Land and Davies v. Armstrong as Secretary of State et al.* Suit to invalidate petition for initiated law (Chain Store Tax). Error to District Court of Denver which upheld petition. Affirmed September, 1934.

13611. *Johnson et al. v. Kelly.* Civil service case. Mandamus to recover state office. Error to the District Court of Denver which granted the writ as prayed for. Pending.

Horton et al. v. The Fountain Valley School. Tax exemption case. Pending.

CRIMINAL CASES IN THE SUPREME COURT OF COLORADO

No.	Title	Crime	Disposition
12673	Lord v. People	Juvenile Delinquency	Pending.
12989	Updike v. People	False Pretenses	Affirmed January 7, 1933.
13067	Drinkgern and Schnell v. People	Violation of State Banking Laws	Reversed September 10, 1933.
13108	Bushnell v. People	Violation Motor Vehicle Laws	Affirmed January 30, 1933.
13130	Mukuri et al. v. People	Conspiracy to Commit Arson	Affirmed March 6, 1933.
13135	Ingles v. People	Murder	Reversed April 17, 1933.
13161	Moss v. People	Murder	Affirmed December 27, 1933.
13174	Cole et al v. People	Violation of State Banking Laws	Affirmed January 7, 1933.
13190	Dill v. People	Confidence Game and Swindling	Affirmed November 27, 1933—Appealed to Supreme Court of the United States. Appeal dismissed May 21, 1934.
13201	Collins v. People	Criminal Contempt	Reversed April 24, 1933.
13224	Sharer v. People	Forgery	Reversed April 24, 1933.
13231	Miller v. People	Cattle Stealing	Affirmed April 3, 1933.
13293	Kloberdanz v. People	Operation of Distillery	Reversed April 16, 1934.
13299	Jones v. People	Operation of Distillery	Affirmed September 18, 1933.
13313	Saiz v. People	Murder	Affirmed September 18, 1933. Appealed to United States District Court.
13319	Feste v. People	Resisting Officer	Affirmed August 15, 1933.
13362	Rowan v. People	Robbery	Affirmed November 6, 1933.
13363	Carson v. People	Robbery	Affirmed November 6, 1933.
13366	Reger v. People	Statutory Rape	Affirmed August 24, 1933.
13381	Militello v. People	Arson	Affirmed October 29, 1934.
13397	Sharer v. People	Embezzlement	Pending.
13405	Carlson and Schuppe v. People	Burglary and Grand Larceny	Affirmed November 27, 1933.
13419	Boegel v. People	Statutory Rape	Affirmed July 23, 1934.
13445	Reppin v. People	Murder	Reversed June 18, 1934.
13452	Chilton and Larson v. People	Confidence Game	Reversed July 2, 1934.
13502	Smalley v. People	Aggravated Robbery (Habitual Criminal Act)	Pending.
13539	Treece v. People	Perjury	Reversed December 17, 1934.

CRIMINAL CASES IN THE SUPREME COURT OF COLORADO

No.	Title	Crime	Disposition
13544	Longwell and Clark v. People	Burglary and Larceny	Affirmed October 1, 1934.
13549	West v. People	Embezzlement	Pending.
	Blackett v. People	Embezzlement	Pending.
13552	Frady v. People	Murder	Affirmed December 27, 1934.
13557	Dockerty and Lombardi with aliases	Aggravated Robbery	Pending.
13562	Furlong and Cline v. People	Violation of Money Lenders' Act	Reversed November 19, 1934.
13567	Gronert v. People	Violation of Money Lenders' Act	Reversed October 22, 1934.
13569	Letras v. People	Violation of Live Stock Laws	Dismissed December 10, 1934.
13572	Graham v. People	Murder	Reversed October 29, 1934.
13581	Schreiner v. People	Statutory Rape	Affirmed September 24, 1934.
13582	Collingwood v. People	Practice of Medicine Without a License	Affirmed October 15, 1934.
13588	Pacheco and Pacheco v. People	Murder	Pending.
13607	Huffman v. People	Murder	Reversed December 17, 1934.
13614	Lewis, Saunders and Westcott v. People	Embezzlement	Pending.
13632	Schtul v. People	Malicious Mischief	Pending.
13606	Davis v. People	Confidence Game	Pending.
13637	Newton v. People	Cattle Stealing	Pending.

WORKMEN'S COMPENSATION CASES IN THE SUPREME COURT OF COLORADO

No.	Title of Cause	Judgment of Lower Court	Status
13233	The Rocky Mountain Fuel Co. et al. v. The Ind. Com. and Darvin Wilson	Award Affirmed	Judgment Affirmed May 13, 1933
13234	Colo Fuel & Iron Co. v. Ind. Com. and Vasquez	Award Affirmed	Judgment Reversed August 7, 1933
13236	London Guarantee & Accident Co. Ltd. et al. v. Clyde Sauer and Ind. Com.	Award Affirmed	Judgment Affirmed May 15, 1933
13249	C. M. Roper v. Ind. Com. et al.	Award Affirmed	Judgment Affirmed September 5, 1933
13276	Ind. Com. and Frank X. Meile v. Cooperative Oil Co.	Award Set Aside	Judgment Reversed With Directions August 7, 1933
13291	Clayton Coal Co. et al. v. Ind. Com. and Mary Tsikiris	Award Affirmed	Judgment Affirmed July 3, 1933
13302	Richard O. Lockard v. Ind. Com. et al.	Award Affirmed	Judgment Affirmed August 2, 1933
13304	William Winteroth v. Ind. Com. et al.	Award Affirmed	Judgment Affirmed May 29, 1933
13312	Ind. Com. et al. v. Margaret W. Swanson	Award Set Aside	Judgment Affirmed October 9, 1933
13342	Emily Rogers v. Ind. Com. et al.	Award Affirmed	Judgment Affirmed December 11, 1933
13343	F. R. Poole v. Ind. Com. et al.	Award Affirmed	Judgment Affirmed January 8, 1934
13353	Ind. Com. et al. v. Charles F. Moynihan	Award Set Aside	Judgment Affirmed January 22, 1934
13399	Central Surety and Ins. Co. et al. v. Ind. Com. and Lard	Award Affirmed	Judgment Reversed and Cause Remanded February 13, 1934
13401	Clayton Coal Co et al. v. Mike Zak and Ind. Com.	Award Affirmed	Judgment Affirmed December 22, 1933
13404	John Reynolds and Ind. Com. v. Fraker Coal Co. et al.	Award Set Aside	Judgment Reversed With Directions December 18, 1933
13408	Ind. Com. and Susman v. State Comp. Ins. Fund et al.	Award Set Aside	Judgment Affirmed January 22, 1934
13409	Post Printing & Publishing Co. et al. v. Russell Erickson and Ind. Com.	Award Affirmed	Judgment Reversed With Directions February 26, 1933

No.	Title of Cause	Judgment of Lower Court	Status
13410	The Empire Zinc Co. v. Ind. Com. and Vasquez	Award Affirmed	Judgment Affirmed December 22, 1933
13418	Carl H. McKune v. Ind. Com. et al.	Award Set Aside	Judgment Reversed and Cause Remanded March 9, 1934
13424	Wm. L. Sherratt and Ind. Com. v. Rocky Mtn. Fuel Co. et al.	Award Set Aside	Judgment Affirmed January 29, 1934
13425	Hayden Bros. Coal Co. et al. v. Ind. Com. and Uzenski	Award Affirmed	Judgment Affirmed January 29, 1934
13427	Boulder Valley Coal Co. et al. v. Paul Shipka and Ind. Com.	Award Affirmed	Judgment Affirmed February 26, 1933
13441	Elizabeth Peer v. Ind. Com. et al.	Award Affirmed	Judgment Affirmed February 5, 1934
13442	The Driscoll Construction Co. et al. v. Ind. Com. & W. A. Erker	Award Affirmed	Judgment Affirmed April 2, 1934
13457	The Rocky Mtn. Fuel Co. et al. v. Stanley Kruzic and Ind. Com.	Award Affirmed	Judgment Reversed February 26, 1933
13458	Theophile Jabot v. Ind. Co. et al.	Award Affirmed	Judgment Affirmed March 5, 1934
13466	Ind. Com. et al. v. M. Radovich.	Award Set Aside	Judgment Reversed With Directions March 5, 1934
13469	David Allan et al. v. Ind. Com. and Gettler	Award Affirmed	Judgment Affirmed March 19, 1934
13472	Ind. Com. et al. v. Paul H. Lindvay	Award Set Aside	Judgment Reversed With Directions March 19, 1934
13521	London Guarantee & Accident Co. et al. v. Ind. Com and Rowland.	Award Affirmed	Judgment Reversed With Directions July 16, 1934
13529	M'Clain Chevrolet Co. et al. v. Ind. Com. and Bottleman	Award Set Aside	Judgment Affirmed June 18, 1934
13541	The State Comp. Ins. Fund et al. v Industrial Com. and Haggarty	Award Affirmed	Judgment Affirmed July 16, 1934
13547	Ind. Com. and Meininger v. Wm. L. Montgomery	Award Set Aside	Judgment Reversed With Directions September 17, 1934
13559	Clayton Coal Co. et al. v. Ind. Com. and De Santis	Award Affirmed	Judgment Affirmed July 23, 1934
13573	August Frank v. Ind. Com. and Black Diamond Fuel Co.	Award Affirmed	Pending

No.	Title of Cause	Judgment of Lower Court	Status
13592	Marie E. Clarke v. Ind. Com. and Mary Clarke et al.	Award Affirmed	Judgment Affirmed October 1, 1934
13616	John B. Pollard v. Ind. Com. et al.	Award Affirmed	Judgment Affirmed November 19, 1934
13619	The Rocky Mtn. Fuel Co. et al. v. Ind. Com. & Arthur Cannivez.	Award Affirmed	Pending
13625	London Guarantee and Accident Co. et al. v. Ind. Com. and Fay McCoy	Award Affirmed	Pending
13635	Gus Kosmos v. Ind. Com. and The Colorado Fuel & Iron Co.	Award Affirmed	Motion to Dismiss Writ of Error Granted

CASES IN THE DISTRICT COURTS

Adams County

Number

3431. *Board of County Commissioners & State Highway Department v. Pomponio et al.* Condemnation. Pending.

3467. *State of Colorado v. Chase et al.* Application for receiver. Land Board case. Receiver appointed September 29, 1934.

Arapahoe County

..... *Board of County Commissioners v. D. E. Trogler, Public Trustee, et al.* Condemnation proceeding. Pending.

2809. *People v. Dunn, et al.* Action on bond in matter of escheat estate of Peter Franzen. Judgment for defendant October 20, 1934. To be appealed.

2810. *People v. Cartwright, et al.* Action on bond in matter of escheat estate of Peter Franzen. Judgment for defendant October 29, 1934. To be appealed.

..... *In re Estate of Mary Boyle, Deceased.* Appeal from County Court. Escheat case. Pending.

2797. *Colorado Central Power Co. v. Board of County Commissioners of Arapahoe County.* This case held pending outcome of appeal to Supreme Court. Dismissed.

4051. *Cline et al. v. Hanson, et al.* Tax exemption case involving property belonging to Order of the Eastern Star. Pending.

Archuleta County

..... *People ex rel. State Highway Department v. Graves.* Prosecution for obtaining money by false pretenses. This office has been asked to assist the District Attorney.

Boulder County

9432. *People ex rel. Board of County Commissioners of Boulder County v. Burger, County Clerk, Massachusetts Bonding & Insurance Corporation and Homer F. Bedford, State Treasurer.* Suit on bond for motor vehicle license fees lost in bank which failed. Judgment for defendant on demurrer March 17, 1934. Appealed to Supreme Court, Case No. 13576. Dismissed.

Baca County

1505. *State v. Tolbert et al.* Injunction to restrain importation of motor fuel without license. Judgment for defendants on demurrer. Appealed to Supreme Court, Case No. 13596.

Number

Chaffee County

3147. *Reorganized Catlin Consolidated Canal Co. v. Sunny Side Ditch, Hinderlider et al.* Action to enjoin use of water. Hinderlider nominal defendant. No action to be taken by this office. Pending.

Clear Creek County

..... *E. M. Patrick v. Board of County Commissioners.* Action to recover taxes. Pending.

8851. *State Highway Department v. Millard Oil Co.* Condemnation proceeding for right of way. Judgment for petitioners. Pending.

8871. *Radium Hot Springs v. W. E. Walthers, Treasurer of Clear Creek County et al.* Tax case. Taken under advisement October 27, 1934. Pending.

8906. *Board of County Commissioners of Clear Creek County and State Highway Department v. Red Elephant Mining Company.* Condemnation for highway. Judgment on Commissioner's findings March 31, 1934. Pending.

Delta County

..... *People ex rel. Park Reservoir v. Hinderlider, et al.* Mandamus action relating to use of water. Decree entered in favor of defendants December, 1932. Writ of error December 22, 1933, No. 13235.

Denver County

..... *People ex rel. Pueblo-San Luis Valley Transportation Co. et al. v. Armstrong.* Mandamus action to enjoin Secretary of State from collecting penalty for non-payment of certain corporation fees. Pending.

..... *People v. Porter.* Action by surety company to recover money paid under bond, for taxes. This office has no further interest in case. Judgment for plaintiff.

31408. *In the Matter of the Petition of Orangel Helton for a Writ of Habeas Corpus.* Granted December 29, 1932.

31457. *In the matter of Petition of Fred B. Sleuder for Habeas Corpus Writ.* Involving jurisdiction of Juvenile Court. Venue changed to Fremont County.

31558. *People v. Bennight.* Attorney General not directly interested. Gave rise to Supreme Court case upon question of interpretation of Habitual Criminal Act, see People ex rel. Wettengel v. Dunklee No. 13328.

Number

31714. *In the Matter of the Petition of Fred B. Sleuder for a Writ of Habeas Corpus.* Granted August 31, 1933.

110717. *Sam Bernstein v. State of Colorado, et al.* Suit for money. Pending.

A-1359. *Murphy v. Federal Building & Loan Association, et al.* Money demand. Pending.

A-2719. *People ex rel. Ireland v. Iliff, et al.* Action for appointment of trustees, and accounting in estate of Wm. Barth. Pending.

A-3047. *W. E. Hearon et al. v. Security Savings and Loan Association and Eli Gross as State Building and Loan Commissioner.* Application for receivership. Granted. Pending.

A-3672. *Regents of University of Colorado v. Colonial Drug and Sales Company.* Action to recover money paid for alcohol for the medical department, which was not delivered. Pending.

A-3783. *Morrato, et al. v. Civil Service Commission, et al.* Action to enjoin Flebbe from exercising the powers of Deputy Building and Loan Commissioner. Dismissed October 12, 1934.

A-3963. *People v. Ruybal, et al.* Action on bond to collect land rental. Settled.

A-4623. *Carl Schwab v. Public Utilities Commission.* Writ of certiorari to review an order of the Commission. Dismissed after decision in Bushnell v. People, No. 13108.

A-4987. *People v. Nesbit & Hayward, Partners.* Action to recover gas tax. Judgment by default September 10, 1934.

A-5009. *Colorado Seminary v. Denver, et al.* Action to enjoin collection of taxes. Injunction granted as to part of tax March, 1933. Appealed to Supreme Court.

..... *Chalmers v. Board of Medical Examiners.* Suit to review action of Board of Medical Examiners in revoking license. Pending.

..... *People ex rel. Morrato v. Fred W. Flebbe.* Action to test the right of Flebbe to hold the office of Deputy Building and Loan Commissioner. Flebbe failed to pass examination. Dismissed.

A-5487. *Alvin L. Musser v. Public Utilities Commission.* Writ of certiorari to review an order of the Commission. Dismissed after decision in Bushnell v. People, No. 13108.

Number

A-5530. *Lillian Freeman v. Charles Eldridge, et al.* Suit for damages. Pending.

..... *J. Graham Orr, Jr. v. Longworth, School District No. 1 et al.* Disclaimer of State filed February 28, 1933. Pending.

A-5894. *E. J. Yetter et al. as Board of Directors of the Ramoth-Gilead Home v. The Ramoth-Gilead Home, Paul Prosser as Attorney General, et al.* Application for leave to file amendment to Articles of Incorporation. Dismissed March 6, 1933.

A-6445. *The People ex rel. Public Utilities Commission v. Longhorn Stages and A. E. Gasnell.* Action for injunction to enjoin transportation of passengers and express interstate without authority. Defendants ceased operations and action was not pressed. Dismissed October 12, 1934.

A-6493. *In the Matter of the Application of the Industrial Commission of Colorado for the Issuance of a Citation against James Walsh.* Petition for citation directing James Walsh to show cause why he should not be ordered to comply with order of Industrial Commission. James Walsh complies with Commission's order. Cause dismissed.

A-6535. *The General Motors Acceptance Corporation v. Worth Allen, et al.* Action to enjoin Commission from selling a motor truck for delinquent highway compensation taxes, upon which the company held a mortgage. Judgment for company and injunction issued.

A-6598. *Colorado Utilities Corporation v. The Public Utilities Commission et al.* Writ of certiorari to review an order of the Commission dismissing a complaint filed before the Commission by Colorado Utilities Corporation against Moffat Coal Co. On review of record made by Commission the order was sustained. Pending in Supreme Court, No. 13481.

A-6657. *The Industrial Commission of Colorado v. Grant Shields and National Surety Company.* Action to recover money due State Compensation Insurance Fund for premium workmen's compensation insurance policy. Default judgment taken against defendant Shields. Action pending against defendant, National Surety Company.

A-6718. *Industrial Insurance Co. v. Cochrane, Commissioner of Insurance.* Petition for order to withdraw securities. Order entered May 24, 1933.

A-6876. *The People of the State of Colorado ex rel. The Industrial Commission of Colorado v. Aladdin Theatres, Corp. et al.* Petition for mandatory writ. Writ issued. Petition dismissed and writ dissolved on defendants' motion. Appealed to Supreme Court.

Number

A-6879. *The People of the State of Colorado, ex rel. The Industrial Commission of Colorado v. Amusement Enterprises Inc. et al.* Petition for mandatory writ. Writ issued. Petition dismissed and writ dissolved on defendants' motion. Appealed to Supreme Court.

A-6880. *The People of the State of Colorado, ex rel. The Industrial Commission of Colorado v. Colorado Consolidated Theatres Corp. et al.* Petition for mandatory writ. Writ issued. Theatres formerly operated by defendant corporation were taken over by defendants in Cause No. A-6876. Cause to be dismissed on plaintiffs' motion.

A-7018. *McKee & Cline v. Stevens et al. as members of State Board of Stock Inspection Commissioners.* Suit for money had and received from sale of estrays. Dismissed with prejudice upon settlement June 15, 1934.

A-7093. *State v. Philip P. Zinn et al., doing business as The West Denver Coal & Oil Company.* Money demand. Gas tax case. Pending.

A-7175. *People ex rel. Kuskulis v. Johnson et al.* Civil service case. Mandamus to recover state office. Judgment for respondents, writ denied January 11, 1934.

..... *Ph. Zang Brewing Co. et al. v. Phillips A. Zang et al. and Charles Armstrong as Secretary of State.* Suit for injunction and damages. Attorney General taking no part.

A-7336. *Highland Utilities Corp. v. Public Utilities Commission et al.* Writ of certiorari to review an order of the Commission restraining utility company from abandoning service in town of Kit Carson. On review of Commission's record, the order was sustained. Pending in Supreme Court, No. 13555.

A-7447. *People ex rel. May v. Johnson et al.* Civil Service case. Mandamus to recover state office. Writ granted January 9, 1934.

A-7633. *Walker v. Bedford et al.* (U. R. Tax case.) Application for writ of injunction to restrain collection of special motor vehicle tax. Judgment for defendants September 1, 1933. Appealed. Case No. 13380.

A-7650. *Munro v. Bedford et al.* (U. R. Tax case.) Consolidated with No. A-7633. Judgment for defendants September 1, 1933. Appealed. Case No. 13382.

A-7736. *People ex rel. Hedlund Abstract Company v. Hubbard et al. as members of Abstracters Board of Examiners.* Mandamus for license. Peremptory writ issued November 14, 1933.

Number

A-7754. *The Weicker Transfer and Storage Company v. The Public Utilities Commission et al.* Writ of certiorari to review an order of the Commission requiring the Weicker Company to cease and desist from charging certain shipper's rates less than those prescribed by the company's tariffs on file with the Commission. Pending.

A-7940. *State v. Denver Union Oil Company.* Gas tax case. Tax paid. Case dismissed, 1934.

A-8683. *United States Building & Loan Association et al. v. McClelland as State Commissioner of Building and Loan Associations.* Application for writ of injunction. Judgment for defendant on demurrer December 30, 1933. Appealed to Supreme Court, Case No. 13451.

A-8741. *People ex rel. McClelland as State Commissioner of Building Associations v. Leach et al., employes and officers of The United States Building & Loan Association et al.* Suit for injunction. Dismissed without prejudice January 16, 1934.

A-8808. *State v. Denver Union Oil Company et al.* Suit for gas tax. Judgment for plaintiff September 27, 1934. Appeal to be taken.

A-8984. *Godman v. Prosser as Attorney General et al.* Injunction to restrain condemnation for highway. Dismissed February 19, 1934.

A-9002. *Riss and Company, Inc. v. The Public Utilities Commission et al.* Writ of certiorari to review an order of the Commission holding that Riss and Company, Inc., was a motor vehicle common carrier and not a mere freight broker. Writ dismissed.

A-9273. *Mitten and Wolcott v. Armstrong as Secretary of State.* Suit for declaratory judgment in re reapportionment act. Declared unconstitutional May 24, 1934. Appealed to Supreme Court, Case No. 13553.

A-9305. *United States Building and Loan v. United Securities Corp.* Suit to set aside conveyance and recover assets. Dismissed June 2, 1934.

A-9323. *Collingwood v. State Board of Medical Examiners.* Mandamus to compel issuance of license. Pending.

A-9724. *Tolland Company et al. v. The Public Utilities Commission.* Writ of certiorari to review an order of the Commission authorizing the Denver and Salt Lake R. Co. to abandon its station at Tolland, Colorado. Pending.

Number

A-9750. *People ex rel. Williams and Beck v. Civil Service Commission of the State of Colorado and Homer F. Bedford.* Mandamus to recover state office. Motion for non-suit granted June 29, 1934.

A-9859. *People ex rel. Kelly v. Johnson, Governor, et al.* Civil Service case. Mandamus to recover state office. Writ issued. Appealed to Supreme Court.

A-9940. *William Vernon et al. v. The Pacific States Life Insurance Company, Jackson Cochrane as Commissioner of Insurance et al.* For injunction and construction of statute. Partial injunction granted, interim decree entered December 10, 1934.

A-10394. *Agnes Memorial Sanatorium v. Phipps and Prosser as Attorney General.* Suit for construction of charitable trust. Order entered according to prayer of complaint.

A-10431. *People v. Swanson, Helgesen and Munson.* Suit on Bond for grazing lease. Pending.

A-10525. *The Home Gas and Electric Company v. The Public Utilities Commission.* Writ of certiorari to review an order of the Commission reducing electric light and power rates in City of Greeley and nearby towns. Pending.

A-10537. *People ex rel. Haraway, Doud and Davis v. Armstrong as Secretary of State et al.* Suit to invalidate petition for initiated act. Petition upheld. Case dismissed September 10, 1934. Appealed to Supreme Court, Case No. 13608.

A-10822. *Leo L. Spears et al. v. The Public Utilities Commission.* Writ of certiorari to review an order of the Commission dismissing complaint against rates of Public Service Company for want of jurisdiction. Judgment sustaining order of Commission.

A-10834. *Regents of the University of Colorado v. National Surety Corp.* Removed to United States District Court October 30, 1934.

Douglas County

22425. *M. E. Hyde v. Town of Castle Rock.* Suit on judgment bonds. Pending in Supreme Court.

Eagle County

948. *Town of Gypsum and State Highway Department v. Mosher et al.* Condemnation. Pending.

Number

Elbert County

..... *Board of Commissioners v. Heald, et al.* Condemnation proceeding. Pending.

819. *Board of County Commissioners and State Highway Department v. Heald et al.* Condemnation. Pending.

..... *Board of County Commissioners and State Highway Department v. Blomquist et al.* Condemnation. Pending.

..... *Board of County Commissioners and State Highway Department v. The Porter Thompson Company et al.* Condemnation. Pending.

930. *The People ex rel. The Public Utilities Commission v. A. B. Lemley and N. G. Ruth.* Action for injunction to enjoin unlawful operation as motor vehicle carriers. Pending.

El Paso County

18429. *Phi Gamma Delta v. Albert H. Horton, as Treasurer.* Suit to enjoin collection of taxes on fraternity house. Pending.

18670. *Midland Terminal Ry. Co. v. Colorado Tax Commission.* Action to recover taxes. Pending.

18854. *Fountain Valley School v. Horton, et al.* Action to enjoin the assessment and collection of taxes. Injunction granted as to part of property January 8, 1934; appealed to Supreme Court.

18874. *People ex rel. v. Dollar Building & Loan Association.* Action to place company in receivership. Receiver appointed. Pending.

19008. *Weicker Transportation Company, A. J. Borck and U. S. Read v. Public Utilities Commission et al.* Writ of certiorari to review an order of the Commission concerning certain joint rates made effective by petitioners. Dismissed March 8, 1933.

18902. *People ex rel. v. City Savings Building and Loan Association.* Application to place company in receivership. Receiver appointed. Pending.

18914. *People ex rel. v. Home Savings Building & Loan Association.* Application to have receiver appointed for company. Receiver appointed. Pending.

19125. *Midland Terminal Ry. Co. v. Colorado Tax Commission.* Pending.

19395. *Colorado Title and Trust Company v. Grant McFerson as State Bank Commissioner.* Action for declaratory judgment. Judgment for plaintiff, August 19, 1933.

Number

19551. *Midland Terminal Ry. Co. v. Colorado Tax Commission.* Pending.

19645. *May Engelbrecht v. James McCoy, Administrator and People of the State of Colorado.* Action for specific performance of contract to make a will. Pending.

19612. *City of Colorado Springs v. Joe Pallas and Paul Prosser as Attorney General.* Petition for declaratory judgment. Judgment for defendant on demurrer, 1934.

19852. *Colorado Title & Trust Company v. Myers et al.* Suit for appointment of successor trustee. Order entered according to prayer of petition.

Fremont County

..... *Industrial Commission v. Tony Santarelle.* Action to recover penalty. Order of Commission complied with. Case dismissed.

..... *Petition of Fred B. Sleuder for Writ of Habeas Corpus.* Involving jurisdiction of Juvenile Court. Venue changed from Denver County. Case No. 31457. Dismissed February 20, 1933.

..... *People ex rel. P. U. C. v. Kaufman et al.* Action to enjoin 23 coal truckers from operating without proper authority. Pending. Filed December 20, 1934.

Garfield County

2771. *Standard Shale Company v. County Commissioners and State Tax Commission.* Action for refund of taxes. Pending.

..... *Board of Trustees of the Town of Rifle and the State Highway Department v. Dunham.* Condemnation proceedings. Pending.

3019. *The City of Glenwood Springs v. The Public Utilities Commission, the Glenwood Light and Power Company, Intervener.* Writ of certiorari to review an order reducing electric light and power rates in City of Glenwood Springs, Colorado. On review, court further reduced valuation found by Commission. Now pending in Supreme Court on writ of error.

Grand County

..... *State Highway Department and Board of County Commissioners v. Thompson et al.* Condemnation for highway. Pending.

Number

Huerfano County

2184. *J. G. Tompkins v. State Highway Department et al.* Suit for damages for land taken for highway construction. Dismissed with prejudice by stipulation March 30, 1933.

Jefferson County

3100. *State Land Board v. Orr, et al.* Unlawful detainer. Pending outcome of Case No. 3127.

3127. *People v. Board of County Commissioners.* Action for resurvey of land. Pending.

3659. *Jewish Consumptive Relief Society v. Koenig as County Treasurer et al.* Tax exemption case. Pending.

Kit Carson County

2756. *People v. Nelson et al.* Action to establish boundaries of Sec. 36, T. 10 S., R. 42 W. Decree entered in favor of plaintiff March 7, 1933.

..... *Lord v. Vail personally and as State Highway Engineer.* Injunction. Pending.

Kiowa County

..... *State v. Aldrich et al.* Suit for injunction. Gas tax case. Permanent injunction granted October 9, 1933.

Lake County

6430. *City of Leadville v. Public Utilities Commission et al.* Writ of certiorari to review an order of Public Utilities Commission. Dismissed.

La Plata County

..... *Lynch v. State Board of Cosmetology.* Action for license. Pending.

Larimer County

6586. *The People of the State of Colorado v. Rulph E. Kimble.* Citation for contempt of court for violation of injunction issued by District Court of Larimer County prohibiting Kimble from engaging in the business of a private carrier by motor vehicle without first having obtained a permit from the Public Utilities Commission. Kimble found guilty of contempt and fined.

7081. *The Tolliver-Kinney Mercantile Co. v. The Public Utilities Commission.* Action in replevin to recover a truck distrained by the Commission for delinquent highway compensation taxes. Taxes paid and action dismissed.

Number

Las Animas County

..... *People v. Murphy C. Barrack, doing business as Southern Motor Company in Trinidad, Colorado.* Injunction suit under NIRA Automobile Code. Injunction denied September 1, 1934.

Lincoln County

..... *Kistler v. Thompson and State Board of Land Commissioners.* Suit to compel performance of contract. Pending.

Logan County

6111. *People v. F. A. Murke, doing business as Murke Oil Company.* Money demand for gas tax. Case dismissed upon payment of tax and penalty May 8, 1933.

6112. *People v. E. E. Collier, doing business as Collier Oil Co. et al.* Money demand for gas tax. Dismissed May 8, 1933.

6198. *Sweet v. Henning, Treasurer of the Town of Peetz.* Mandamas to force payment of municipal bonds. State Board of Agriculture interested. State's claim allowed January 18, 1934.

Mesa County

7. *People v. Earle Shaw, doing business as Shaw Motors Inc. in Grand Junction.* Injunction to restrain violation of NIRA Automobile Code. Pending.

Moffat County

..... *People v. M. E. McMahon as County Clerk of Moffat County and The United States Fidelity and Guaranty Company.* Suit to recover motor vehicle license fees. Judgment for plaintiff. Satisfied July 3, 1934.

Montrose County

..... *In re Estate of John Kwatkowski, deceased.* Escheat case. Court held a joint tenancy created and no part of estate escheated. Reversed by Supreme Court February 3, 1934 (Case No. 13,440) which ordered lower court to pay half of estate to escheat fund upon final settlement. Pending.

7. *People v. Vincent E. Holland, doing business as Holland Bros. Garage.* Injunction to restrain violation of NIRA Automobile Code. Pending.

Pitkin County

2612. *Aspen State Bank v. Board of County Commissioners and Killey as County Treasurer.* Motion of Colorado Tax Commission for leave to intervene dropped.

Number

Phillips County

2015. *Carlson et al. v. Austin et al. as County Commissioners of Phillips County and State Board of Land Commissioners.* Suit to establish disputed boundaries. Pending.

Prowers County

..... *City of Lamar v. The Public Utilities Commission.* Writ of certiorari to review an order of the Commission allowing operation to the Town of Granada. Pending.

Park County

1932. *Miller v. Barkley, Water Commissioner.* Injunction to restrain use of water and for damages. Pending.

1959. *Northern Colorado Irrigation Company et al. v. Miller et al.* Action involving water priorities. Temporary injunction granted. Pending.

Pueblo County

22830. *People ex rel. Attorney General v. Railway Savings & Building Association.* Application for receiver. Granted. Association discharged from receivership subject to general supervision of the Building and Loan Department February, 1934.

..... *Y. W. C. A. as Trustee v. Paul P. Prosser as Attorney General et al.* Construction of charitable trust. Decree pursuant to prayer of complaint June 22, 1933.

23919. *Forbush & Company v. Bedford as State Treasurer.* Suit to recover gas tax. Pending.

Routt County

..... *State Highway Department v. Otto, et al.* Condemnation proceeding for right of way. Pending.

Rio Grande County

3829. *People v. McGuire as Treasurer of Rio Grande County.* Mandamus. Pending.

Teller County

4446. *Midland Terminal Ry. Co. v. Colorado Tax Commission.* Pending.

4460. *Midland Terminal Ry. Co. v. Colorado Tax Commission.* Pending.

4479. *Midland Terminal Ry. Co. v. Colorado Tax Commission.* Pending.

Number

Washington County

2845. *L. M. Atwood v. Washington County and The State of Colorado.* Highway case. Dismissed May 31, 1933.

..... *Otis Investment Company v. State Highway Department of Colorado.* Suit to recover for gravel used in highway construction. Pending.

Weld County

7634. *Morrison v. Adams, et al.* Damages growing out of coal strike.

7635. *Nelson v. Adams, et al.* Damages growing out of coal strike.

7636. *Morrison v. Adams, et al.* Damages growing out of coal strike.

7637. *Sparros v. Adams, et al.* Damages growing out of coal strike.

7638. *Herrera v. Adams, et al.* Damages growing out of coal strike.

7639. *Mazzine v. Adams, et al.* Damages growing out of coal strike.

7640. *Brierley v. Adams, et al.* Damages growing out of coal strike.

7641. *Zarini v. Adams, et al.* Damages growing out of coal strike.

7642. *Georgeff v. Adams, et al.* Damages growing out of coal strike.

7643. *Jacovette v. Adams, et al.* Damages growing out of coal strike.

7644. *Milo v. Adams, et al.* Damages growing out of coal strike.

7645. *Brandon v. Adams, et al.* Damages growing out of coal strike.

7646. *Bottinelli v. Adams, et al.* Damages growing out of coal strike.

7647. *Krivokopich v. Adams, et al.* Damages growing out of coal strike.

7648. *Pappas v. Adams, et al.* Damages growing out of coal strike.

7649. *Sokrodia v. Adams, et al.* Damages growing out of coal strike.

7650. *Bullich v. Adams, et al.* Damages growing out of coal strike.

(Above 17 cases dismissed November 17, 1933, for want of prosecution.)

Number

8492. *In the matter of the adjudication of priorities of water rights in Irrigation District No. 1.* Claim of State Land Board. Rosener Reservoir. Continued pending convenience of the court.

8427. *School District No. 32 in County of Weld v. Jesse R. Patterson as County Treasurer.* Injunction. Pending.

6930. *Dolia Myshne v. Frasier and Armentrout, Trustees of the State Normal School.* Suit by student to compel reinstatement and for damages. Judgment for defendants May 13, 1933.

6932. *Earl Darley v. Frasier and Armentrout, Trustees of The State Normal School.* Suit by student to compel reinstatement and for damages. Case dismissed with prejudice May 2, 1933.

8850. *Capron v. Bedford, Treasurer of the State of Colorado et al.* Injunction to restrain collection of motor vehicle taxes. Pending.

8889. *Hoyt et al. v. Trustees of the State Normal School.* Injunction to restrain construction of a dormitory. Judgment for defendants September 8, 1934. To be appealed.

Yuma County

2901. *M. E. Christ et al. v. Henry Armknecht et al.* Mortgage foreclosure involving Board of Regents. Judgment in favor of Regents, October 2, 1934.

2886. *Neikirk et al. v. Anderson et al.* Boundary dispute. Land Board interested. Findings and decree in favor of Land Board February 20, 1934.

..... *Hisington v. Board of Chiropractic Examiners.* Petition for writ of certiorari (for license). Dismissed.

WORKMEN'S COMPENSATION CASES IN THE DISTRICT COURTS OF COLORADO.

(Action to Set Aside Awards of the Industrial Commission of Colorado.)

Boulder County

Title	No.	Judgment of the District Court
Frank v. Ind. Com. et al.		Award affirmed (Pending in Supreme Court)

Denver County

Aetna Life Insurance Co. et al. v. Ind. Com. and Dick	A-6505	Settled and dismissed
Allodial Realty Co. v. Ind. Com. and Pierce	A-7488	Dismissed
Allan, et al. v. Ind. Com. and Gettler		Award affirmed (Judgment affirmed in Supreme Court)
Allodial Realty Co. v. Ind. Com. and Pierce	A-8703	Award affirmed
Blixt v. Ind. Com. et al.	A-11417	Pending
Botleman v. Ind. Com. et al.	A-8792	Award set aside (Judgment affirmed in Supreme Court)
Boulder Valley Coal Co. et al. v. Ind. Com. and Shipka	A-8013	Award affirmed (Judgment affirmed in Supreme Court)
Central Surety Co. et al. v. Ind. Com. and Lard	A-6806	Award affirmed (Judgment reversed in Supreme Court)
Clarke v. Ind. Com. et al.		Award affirmed (Judgment affirmed in Supreme Court)
Clayton Coal Co. et al. v. Ind. Com. and Zak	A-7274	Award affirmed (Judgment affirmed in Supreme Court)
Clayton Coal Co et al. v. Ind. Com. and Tsikiris		Award affirmed (Judgment affirmed in Supreme Court)
Clayton Coal Co. et al. v. Ind. Com. and De Santis	A-9302	Award affirmed (Judgment affirmed in Supreme Court)
Colo. Fuel and Iron Co. v. Ind. Com. and Vasquez		Award affirmed (Judgment reversed in Supreme Court)
Continental Grocery Corp. et al. v. Ind. Com. and Hale		Dismissed
Danielson, et al. v. Ind. Com. and Ness	A-10882	Award affirmed
Davis v. Ind. Com. et al.	A-8687	Award affirmed
Denver Tramway Co. v. Ind. Com. and Hull	A-9745	Remanded to Ind. Com. for further action
Dorchak v. Ind. Com. et al.		Pending
Driscoll Const. Company, et al. v. Ind. Com. and Erker	A-6990	Award affirmed (Judgment affirmed in Supreme Court)
Empire Zinc Co. v. Ind. Com. and Vasquez		Dismissed

Title	No.	Judgment of the District Court
Empire Zinc Co. v. Ind. Com. and Vasquez	A-6704	Award affirmed (Judgment affirmed in Supreme Court)
Fraker Coal Co. et al. v. Ind. Com. and Reynolds	A-7578	Award set aside (Judgment reversed in Supreme Court)
Hayden Bros. Coal Co. et al. v. Ind. Com. and Uzenski	A-7784	Award affirmed Judgment affirmed in Supreme Court)
Heinel v. Ind. Com. et al.	A-9262	Award affirmed
Hope v. Ind. Com. et al.	A-8283	Award affirmed
Iowa Gold Mining Co. et al. v. Ind. Com. and Holt		Award affirmed
Jabot v. Ind. Com. et al.	A-7713	Award affirmed (Judgment affirmed in Supreme Court)
Kemper, Kelly and Kitch, et al. v. Ind. Com. and La Pier		Remanded to Ind. Com. for further action
Knox, et al. v. Ind. Com., McKune et al		Award set aside as to the lessors (Judgment affirmed in part and reversed in part in Supreme Court)
Lang v. Ind. Com. et al.	A-7490	Remanded to Ind. Com. for further action
Leyden v. Ind. Com. et al.	A-8496	Award affirmed
Lloyds Casualty Co. et al. v. Ind. Com. and Curtis		Dismissed
Lockard v. Ind. Com. et al.	A-5814	Award affirmed (Judgment affirmed in Supreme Court)
London Guarantee and Accident Co. et al. v. Ind. Com. and Sauer		Award affirmed (Judgment affirmed in Supreme Court)
London Guarantee and Accident Co. et al. v. Ind. Com. and Bradley		Settled and dismissed
London Guarantee and Accident Co. et al. v. Ind. Com. and Clayton		Award affirmed
London Guarantee and Accident Co. et al. v. Ind. Com. and Force		Award affirmed
London Guarantee and Accident Co. et al. v. Ind. Com. and Rowland	A-8727	Award affirmed (Judgment reversed in Supreme Court)
London Guarantee and Accident Co. et al. v. Ind. Com. and McCoy	A-9018	Award affirmed (Pending in Supreme Court)
London Guarantee and Accident Co. et al. v. Ind. Com. and Winteroth	A-9237	Award affirmed
London Guarantee and Accident Co. et al. v. Ind. Com. and Coffeen		Award affirmed
McFadden v. Ind. Com. et al. McLain Chevrolet Co. v. Ind. Com. and Botleman		Award vacated
Moffat Coal Co. et al. v. Ind. Com. and Podbelsk	A-10836	Award affirmed
Montgomery v. Ind. Com. and Meininger	A-9094	Award set aside (Judgment reversed in Supreme Court)
Morey Merc. Co. et al. v. Ind. Com. and Flynt		Pending
Morrow v. Ind. Com. et al.	A-9919	Pending
Moynihan v. Ind. Com. et al.		Award set aside (Judgment affirmed in Supreme Court)

Title	No.	Judgment of the District Court
Nixon v. Ind. Com. et al.	A-10839	Pending
Peyton v. Ind. Com. et al.		Award affirmed
Pollard v. Ind. Com. et al.	A-8874	Award affirmed (Judgment affirmed in Supreme Court)
Post Printing and Publishing Co. et al. v. Ind. Com. and Erickson	A-6949	Award affirmed (Judgment reversed in Supreme Court)
Post Printing and Publishing Co. et al. v. Ind. Com. and Marvin	A-7558	Award affirmed
Radovich v. Ind. Com. et al.	A-8200	Award set aside (Judgment reversed in Supreme Court)
Rocky Mt. Fuel Co. et al. v. Ind. Com. and Wilson		Award affirmed (Judgment affirmed in Supreme Court)
Rocky Mt. Fuel Co. et al. v. Ind. Com. and Sherratt	A-7387	Award set aside (Judgment affirmed in Supreme Court)
Rocky Mt. Fuel Co. et al. v. Ind. Com. and Fossat	A-9434	Award set aside
Rocky Mt. Fuel Co. et al. v. Ind. Com. and Kruzic		Award affirmed (Judgment reversed in Supreme Court)
Rocky Mt. Fuel Co. et al. v. Ind. Com. and Canivez		Award affirmed (Pending in Supreme Court)
Rocky Mt. Fuel Co. et al. v. Ind. Com. and Sherratt	A-11202	Pending
Roeder v. Ind. Com. and Hofman	A-8879	Pending
Rogers v. Ind. Com. et al.		Award affirmed (Judgment affirmed in Supreme Court)
Russell Coal Co. et al. v. Ind. Com. and De Santis	A-7033	Award set aside
Standard Accident Ins. Co. et al. v. Ind. Com. and Bostwick	A-8583	Award affirmed
Standard Accident Ins. Co. et al. v. Ind. Com. and Catlin	A-6394	Award affirmed
Standard Accident Ins. Co. et al. v. Ind. Com. and Dansdill	A-10435	Pending
State Comp. Ins. Fund et al. v. Ind. Com. and Susman	A-6371	Award set aside (Judgment affirmed in Supreme Court)
State Comp. Ins. Fund et al. v. Ind. Com. and Haggerty	A-6438	Award affirmed (Judgment affirmed in Supreme Court)
State Comp. Ins. Fund et al. v. Ind. Com. and Hall	A-6522	Award set aside
Swanson v. Ind. Com. et al.		Award set aside (Judgment affirmed in Supreme Court)
Ule v. Ind. Com. et al.	A-10463	Pending
United States Fidelity and Guaranty Co. et al. v. Ind. Com. and Coxe		Award affirmed
United States Fidelity and Guaranty Co. et al. v. Ind. Com. and Hungate	A-6306	Award set aside
United States Fidelity and Guaranty Co. et al. v. Ind. Com. Fleming et al.	A-10762	Pending
United States Fidelity and Guaranty Co. et al. v. Ind. Com. and Yunger	A-11334	Pending
Vreeland Radio Corp. et al. v. Ind. Com. and Morgan		Award affirmed
White et al. v. Ind. Com. et al.	A-11007	Pending

Title	No.	Judgment of the District Court
Winteroth v. Ind. Com. et al.		Award affirmed (Judgment affirmed in Supreme Court)
Zupet v. Ind. Com. et al.	A-9260	Dismissed

El Paso County

Golden Cycle Corp. v. Ind. Com. and Brooks	19713	Award affirmed
Martinez v. Ind. Com. et al.		Award affirmed
Pikes Peak Fuel Co. v. Ind. Com. and Nickell	19714	Award affirmed
Pikes Peak Fuel Co. v Ind. Com. and Kapsimalis	19777	Settled and dismissed

Huerfano County

Kosmos v. Ind. Com. et al.		Award affirmed (Motion to dismiss writ of error granted)
Taylor v. Ind. Com. et al.		Dismissed

Larimer County

Kyle v. Ind. Com. et al.		Award affirmed
Wright v. Ind. Com. et al.	7003	Award affirmed

Las Animas County

Nucci v. Ind. Com. et al.		Pending
Sefcek v. Ind. Com. et al.		Award affirmed

Logan County

McBride, et al. v. Ind. Com. et al.	6207	Award affirmed

Morgan County

Dregman, et al. v. Ind. Com. et al.		Award affirmed
Keeler v. Ind. Com. et al.		Award affirmed
Peer v. Ind. Com. et al.		Award affirmed (Judgment affirmed in Supreme Court)

Phillips County

Cooperative Oil Co. v. Ind. Com. and Meile		Award set aside (Judgment reversed in Supreme Court)

Pueblo County

Ashley Lumber Co. et al. v. Ind. Com. and Crites		Dismissed
Century Indemnity Co. et al. v. Ind. Com. and Klipfel		Pending
Grove Drug Co. v. Ind. Com. and Williams		Award affirmed
Lindvay v. Ind. Com. et al.	23278	Award set aside (Judgment reversed in Supreme Court)
Poole v. Ind. Com. et al.		Award affirmed (Judgment affirmed in Supreme Court)
Roper v. Ind. Com. et al.		Petition for writ of mandamus denied. (Judgment affirmed in Supreme Court)

Summit County

Springmeyer v. Ind. Com. et al.	1714	Pending

Weld County

Ralston v. Ind. Com.	8685	Award affirmed

CASES IN COUNTY COURTS

Denver County

No. 51665 *In the matter of the appraisal of the estate of Charles W. Waterman for the purpose of Inheritance Tax.* Judgment for Protestants May 16, 1934.

..... *McDonald v. Romstetter and Official Colorado State Relief Committee.* Appealed from justice court. Pending.

ESCHEAT AND PROBATE CASES IN COUNTY COURTS.

Arapahoe County

Estate of Barnhardt Peterson, deceased.
Pending.

Estate of Edward Shortell, deceased.
Pending.

Estate of Mary O'Boyle, deceased.
Pending.

Chaffee County

Estate of William H. Huffman, deceased.
Pending.

Estate of Steve Stozonich, deceased.
Pending.

Estate of George Woods, deceased.
Estated closed and money paid to State Treasurer.

Clear Creek County

Estate of Charles J. Olson, deceased.
Pending.

Estate of Henry Schluter, deceased.
Pending.

Costilla County

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

Denver County

Estate of Charles Aickelin, deceased.
Money paid to heirs upon court order.

Estate of Andrew Anderson, also known as Carl Hanson, Charles Borg.
Pending.

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

Estate of Edward Campbell, deceased.
Pending.

Estate of Nick Constantine, deceased.
Money paid to heirs upon court order.

Estate of John W. Davis, deceased.
Petition for order requiring Treasurer to pay money to heirs. Pending.

Estate of John Thomas Ekenstan, deceased.
Money paid to heirs upon court order.

Estate of Harry Faltrick, deceased.
Estate closed and money paid to State Treasurer.

Estate of William A. Faust, deceased.
Money paid to heirs upon court order.

Estate of Joseph Kuesch, deceased.
Pending.

Estate of Fred Kremers, deceased.
Estate closed and money paid to State Treasurer.

Estate of Alice A. Land, deceased.
Estate closed and money paid to State Treasurer.

Estate of Frank Lawrence, deceased.
Estate closed and money paid to State Treasurer.

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

Estate of Arthur McVaugh, deceased.
Estate closed and money paid to State Treasurer.

Estate of D. J. Miller, deceased.
Estate closed and money paid to State Treasurer.

Estate of Michail O'Keef, deceased.
Estate closed and money paid to State Treasurer.

Estate of Louis Peters, deceased.
Estate closed and money paid to State Treasurer.

Estate of Etta M. Reyonlds, deceased.
Estate closed and money paid to State Treasurer.

Estate of Albert Rogers, deceased.
Pending.

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

Estate of William Sommers, deceased.
Estate closed and money paid to State Treasurer.

Estate of Charles E. Vaillencourt, deceased.
Petition for order requiring treasurer to pay money to heirs. Pending.

Estate of Mary Whalen, deceased.
Pending.

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

Dolores County

Estate of James Best, deceased.
Pending.

Elbert County

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

El Paso County

Estate of Frank Hayes, deceased.
Pending.

Estate of Charles B. Ferrin, deceased.
Money paid to heirs upon court order.

Estate of Edward A. From, deceased.
Estate closed and money paid to State Treasurer.

Estate of Axel Johnson, deceased.
Pending.

Estate of Elizabeth Pye, deceased.
Estate closed and money paid to State Treasurer.

Estate of Maggie Sullivan, deceased.
Estate closed and money paid to State Treasurer.

Estate of Joe M. Van Kirk, deceased.
Money paid to heirs upon court order.

Fremont County

Estate of Carlos Brown, deceased.
Estate closed and money paid to State Treasurer.

Estate of Edward Garland, deceased.
Pending.

Garfield County

Estate of W. E. Goodrich, deceased.
Pending.

Huerfano County

Estate of Silas O. Tartar, deceased.
Estate closed and money paid to State Treasurer.

Jackson County

Estate of George B. Clark, deceased.
Estate closed and money paid to State Treasurer.

Jefferson County

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

La Plata County

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

Estate of John Webb, deceased.
Pending.

Las Animas County

Estate of Hengo Borath, deceased.
Estate closed and money paid to State Treasurer.

Estate of Antonio Mata, deceased.
Estate closed and money paid to State Treasurer.

Lincoln County

Estate of Marie J. Turner, deceased.
Estate closed and money paid to State Treasurer.

Logan County

Estate of Margaret R. O'Brien, deceased.
Pending.

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

Mesa County

Estate of Frank O'Neal, deceased.
Estate closed and money paid to State Treasurer.

Moffat County

Estate of A. B. Dill, deceased.
Estate closed and money paid to State Treasurer.

Montrose County

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

Morgan County

Estate of Jane O'Hara, deceased.
Estate closed and money paid to State Treasurer.
Estate of Katherine Peterson, deceased.
Estate closed and money paid to State Treasurer.

Pueblo County

Estate of Agnes M. Hicks, deceased.
Pending.
Estate of John Henry Waite, deceased.
Estate closed and money paid to State Treasurer.

Rio Blanco County

Estate of Jacob Krenger, deceased.
Estate closed and money paid to State Treasurer.

Saguache County

Estate of Thomas H. Thompson, deceased.
Pending.

San Miguel County

Estate of Andrew Bivens, deceased.
Pending.
Estate of Charles Loss, deceased.
Pending.

Summit County

Estate of Thomas Catney, deceased.
Estate closed and money paid to State Treasurer.

Teller County

Estate of Edward Kendall, deceased.
Estate closed and money paid to State Treasurer.

Washington County

Estate of Eugene Proudy, deceased.
Pending.

CASES IN THE JUSTICE OF THE PEACE COURTS

Denver County

People v. Max Schiff and Colorado Paper Products Co. Claim for damages on behalf of Boiler Inspector. Judgment for plaintiff satisfied April 20, 1933.

Colorado State Board of Examiners of Architects v. Redding and Jones. Money demand on short check. Judgment by default July 10, 1933.

McDonald v. Ramstetter and Official Colorado State Relief Committee. Suit to garnish Federal Relief Funds. Judgment for defendant garnishees January 5, 1933. Appealed to County Court.

Arapahoe County

Green v. Dunlap. Case involving money held by Highway Department. Money paid over according to finding of court.

RECAPITULATION

In the United States Supreme Court—Cases disposed of, 9; cases pending, 3; total, 12.

In the United States District Courts—Cases disposed of, 5; cases pending, 3; total, 8.

Before the Interstate Commerce Commission—Cases disposed of, 8; cases pending, 1; total, 9.

Before the Secretary of the Interior—Cases disposed of, 1; cases pending, 0; total, 1.

In the Colorado Supreme Court (Civil)—Cases disposed of, 40; cases pending, 11; total, 51.

In the Colorado Supreme Court (Criminal)—Cases disposed of, 33; cases pending, 10; total, 43.

In the Colorado Supreme Court (Workmen's Compensation)—Cases disposed of, 37; cases pending, 3; total, 40.

In the Colorado District Courts (Misc.)—Cases disposed of, 102; cases pending, 63; total, 165.

In the Colorado District Courts (Workmen's Compensation)—Cases disposed of, 87; cases pending, 15; total, 102.

In Colorado County Courts (Misc.)—Cases disposed of, 1; cases pending, 1; total, 2.

In Colorado County Courts (Escheat and Probate)—Cases disposed of, 45; cases pending, 26; total, 71.

In the Justice of the Peace Courts—Cases disposed of, 4; cases pending, 0; total, 4.

Before the Colorado Civil Service Commission—Hearings held, 10.

Total number of cases disposed of 382

Total number of cases pending 136

Total number of cases handled during biennial period 518

Extraditions handled 178

Extradition hearings before the Governor 34

SCHEDULE III

OPINIONS AND SYLLABI OF OPINIONS

RENDERED DURING THE BIENNIAL PERIOD

1933-1934

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

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1 SCHOOLS

To Miss Olga Hellback, December 29, 1932.

Funds.

Ch. 83, S. L. 1927, provides that the county treasurer shall deposit all of the funds that shall come into his possession by virtue of his office in one or more responsible banks, and such bank or banks shall pay interest on the average daily balances at such rates as may be agreed upon and shall credit the same to the account of such Treasurer monthly. The act further provides that all interest so paid shall be and become a part of the General Fund of the County.

2 COLORADO PSYCHOPATHIC HOSPITAL

To Dr. O. C. Lester, January 9, 1933.

Duties of Superintendent.

The Regents of the State University are charged with the general supervision and government of the Colorado Psychopathic Hospital and should require the Superintendent to give his entire time and attention to the work thereof, in accordance with Sec. 6, Ch. 169, S. L. 1919.

3 COUNTY OFFICERS

To Chas. F. Rumbaugh, January 10, 1933.

Vacancy in Office of County Judge.

Reversing Opinion No. 317, Attorney General's Report, 1931-1932 and holding vacancy exists in office when person elected dies before qualifying, as of the date of the beginning of the new term.

4 APPROPRIATIONS

To Benjamin F. Stapleton, January 24, 1933.

Legislative Department.

The appropriation for ordinary expenses of the Legislative Department is undoubtedly of the first class and is entitled to priority of payment (Sec. 288, p. 278, C. L. 1921).

5 SCHOOLS

C. C. McCune, January 27, 1933.

Vacancy on High School Board.

May be filled by the County Superintendent and the officer so appointed shall hold office only until the next ensuing election.

In case of failure on the part of the school board to elect a director at the election after the appointment by the county superintendent, the officer so appointed may, under Sec. 8277, C. L. 1921, hold office until his successor is duly elected and qualified.

Campbell v. The People, 78 Colo., 131.

6 COUNTY COMMISSIONERS

Powers in re: Management of County Poor Farm.

To Byron G. Rogers, January 28, 1933.

Lease of Farm in Bent County.

A county board cannot commit the county to a perpetual obligation. (50 Colo. 610.)

A county board is a continuous body and has the right to enter into *reasonable* contracts extending into the future. (6 Colo. App. 269; 88 Colo. 159.)

A verbal lease for one year, beginning in the future, is not obnoxious to the Statute of Frauds. (Sears v. Smith, 3 Colo. 387.)

A county has the right to acquire a poor farm and the statutes do not designate any particular manner in which it shall be managed. (27 Colo. App. 501.)

7 COUNTY COMMISSIONERS

To Royal Fisher, Jan. 28, 1933.

Must act as a unit.

A board of county commissioners must act as a unit and be governed by the majority action. (Secs. 8672, 8682, C. L. '21.)

8 SCHOOLS

To Inez Johnson Lewis, January 30, 1933.

Warrants.

County treasurers should pay school district warrants in the order of their registration. (Secs. 8356, 8802, 8302, 8801, 8692, 8693, 8694, 8799, 8286, 8333, C. L. '21; 11 Colo. 134; 57 Colo. 22; 18 Colo. 359; 83 Colo. 43; 87 Colo. 567; 257 U. S. 154; 270 U. S. 205; 278 U. S. 367.)

See S. L. 1933, Ch. 169, declaring intention of act in accord with above opinion.

9 SEAL OF THE STATE

To E. D. Foster, February 1, 1933.

Use for advertising purposes.

The design of the seal of the State may lawfully be used by the Colorado Board of Immigration on silver pieces to be sold under the auspices of the Board of Immigration for the purpose of advertising the resources of the State.

10 MORTGAGES

To J. L. Beatty, Public Trustee, February 2, 1933.

Redemption by judgment creditors.

The rights of judgment creditors are set out in Sections 5055 and 5951, C. L. 1921, which do not require that they give notice of intention to redeem.

11 SCHOOL LAW

Walters, Cramer and Graeberger, February 2, 1933.

Teachers' salaries.

1. A school district which contracts with its teachers to pay less than $75 per month as commanded by the Minimum Salary Law, may, nevertheless, receive its pro rata amount of the General County Fund;

2. The General County Fund may not be used for general operating expenses of the district, but must be reserved for the payment of the teachers' minimum salaries;

3. A teacher who teaches without protest under a contract with a district for less than $75 per month, waives a right of action against the district for the minimum salary of $75 per month.

12 COUNTIES

To W. S. Kennedy, Feb. 3, 1933.

Warrants registered.

Since Sections 8800 and 8808, C. L. 1921, provide for registration of county warrants by the County Treasurer and Sec. 8816 provides a penalty for failure of the County Treasurer to register warrants, the county treasurer should register all warrants issued by the county board, rather than take upon himself the responsibility of determining whether or not any particular warrant should be registered.

13 SCHOOL LAW

To Colo. Tax Commission, February 3, 1933.

The Colorado Tax Commission has authority to order the county commissioners to make the proper levy provided by Sec. 8448, C. L. 1921, and may enforce such orders by appropriate action. (Sec. 7334, C. L. '21.)

14 TAX SALES

To L. B. Blair, February 6, 1933.

The assignee of a tax sale from a county is the only person who is bound to pay subsequent taxes, and the subsequent taxes which he pays are those which are assessed subsequent to the tax sale and prior to date of assignment.

If an individual is the purchaser and receives a tax sale certificate directly from the treasurer he is not required to take into account any subsequent taxes which may be assessed before asking for a deed. (Supplementary Opinion attached.) (70 Colo. 77; 65 Colo. 385; 40 Colo. 89; 52 Colo. 540; 23 Colo. App. 399.) (Sec. 9475, 9496, 7409, 7416, 7422, 7423, C. L. '21; S. L. 1927, p. 612.)

15 SCHOOL LAW

To Olga Hellbeck, Feb. 6, 1933.

Method of consolidating first class districts.

School board may submit question to electors or one-fourth of electors may petition. Qualified elector defined by Sec. 8328, C. L. '21. (Sec. 8315, C. L. 1921; Sec. 165, School Laws, 1927.)

16 SCHOOL LAW

To Eleanor C. Williams, February 7, 1933.

Method of effecting the annexation of contiguous territory to a school district.

A petition signed by a majority of the legal voters residing within the territory to be annexed must be filed with the county superintendent, who shall fix a time for hearing and give written notice of the hearing to the districts involved.

17 STATE OFFICERS

To Ray H. Talbot, Feb. 6, 1933.

Incompatible offices.

The Lieutenant-Governor is not a senator nor Representative but is expressly declared to be an officer of the Executive Department of State;

The duties of State Fair Commissioner are not incompatible with the duties of Lieutenant-Governor; which is also the case with respect to the duties of the office of Commissioner of Parks and Highways of Pueblo County, neither of which is incompatible with the other.

February 6, 1933.

Hon. Ray H. Talbot,
Lieutenant-Governor of Colorado,
State Capitol,
Denver, Colorado.

Dear Governor:

You have orally requested my opinion upon the question as to whether or not you, as Lieutenant-Governor, may also lawfully hold at the same time the position of member of the Colorado State Fair Commission and the office of Commissioner of Parks, Highways and Lighting of Pueblo.

The office of Lieutenant-Governor exists by virtue of the provisions of Section 1 of Article IV of our State Constitution, and Section 19 of the same article provides that the Lieutenant-Governor shall receive for his services "a salary to be established by law." Section 7912, C. L. 1921, provides that "the Lieutenant-Governor shall receive an annual salary of one thousand dollars."

Membership on the Colorado State Fair Commission rests on appointment by the Governor pursuant to the authority conferred by Section 477, C. L. 1921, which also specifically provides that members of said commission "shall serve without pay except traveling and actual expenses."

The office of Commissioner of Parks, Highways and Lighting of Pueblo is an elective office, existing by virtue of the provisions of Section 1 of Article II of the Charter of Pueblo, as amended November 4, 1913. Section 6 of Article VI, of said Charter, provides that such Commissioner "shall be paid a salary of Twenty-seven Hundred ($2,700.00) Dollars per annum;" and Section 7 of Article VI, of said Charter, provides that such Commissioner shall give bond in the sum of $10,000.00, conditioned that he "shall well and faithfully perform all of the duties of his office and shall account for and turn over all money, property and books of the city coming into his hands."

It may be first noted, in passing, that Section 8 of Article V of our State Constitution (Providing that "no senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under this State"), has no application to the question now presented for the simple reason that the Lieutenant-Governor is not a senator or representative. By Section 1 of Article IV the Lieutenant-Governor is expressly declared to be an officer of the Executive Department of the State government.

Furthermore, it is at once obvious that your duties as a member of the Colorado State Fair Commission are not to the slighest extent incompatible with your duties as Lieutenant-Governor and as Commissioner of Parks, Highways and Lighting of Pueblo. Under the provisions of Section 477, C. L. 1921, *supra,* you were

appointed as a member of the Colorado State Fair Commission as a resident of Pueblo County, and your duties as such relate to the control and management of the state fair which is held annually in the City of Puebo. These duties in connection with the holding of the state fair in the city where you reside are not continuous, but occasional, transient and incidental; and it readily appears that they are not incompatible with your duties as Lieutenant-Governor and as Commissioner of Parks, Highways and Lighting. Moreover, there is no constitutional or statutory prohibition against the Lieutenant-Governor's holding at the same time the position of member of the Colorado State Fair Commission.

It follows that any question of incompatibility between the aforementioned positions now held by you could only arise in respect to the office of Lieutenant-Governor and the office of Commissioner of Parks, Highways and Lighting of Pueblo.

There is no inhibition in either the Constitution or statutes of this State which would prevent the Lieutenant-Governor from also holding at the same time the office of Commissioner of Pueblo.

Nor, in my opinion, is there any incompatibility between these two offices under the principles and doctrine of the common law.

The ordinary duties of the Lieutenant-Governor arise under Section 14 of Article IV of the State Constitution providing that he "shall be president of the Senate," and under the provision of Section 13 of Artice IV, to the effect that he shall act as Governor during the latter's absence from the State. It may also be noted in this connection that the Lieutenant-Governor is expressly excepted from the provision of Section 1, of said Article IV, requiring the officers of the Executive Department to "reside at the seat of government."

The functions of the office of Commissioner of Parks, Highways and Lighting of Pueblo are defined by Sections 4 and 5 of Article V of the Charter of Pueblo, and they pertain exclusively to that city. By Section 9 of Article VI of said Charter it is further provided as follows:

> "All persons holding any office or employment under the city, whether elective or appointive, shall be required to engage in the actual work of the office or employment so held, to the extent that their services may be necessary for the full and complete discharge of the duties of such office or employment, and a failure so to do shall be ground for removal."

Considering the respective duties and functions of the Lieutenant-Governor and of the Commissioner of Parks, Highways and Lighting of Pueblo, it is my opinion that they are not in any manner or to any extent inconsistent or repugnant, or such as to

render it improper for the incumbent of one of such offices to occupy at the same time the other.

46 Corpus Juris, pp. 941-943;
Mechem, Public Officers, Sec. 422, pp. 268-269;
Condon v. Knapp (1920), 106 Kans. 206, 187 Pac. 660;
State ex rel. Tzschuck v. Weston (1876), 4 Neb. 234.

The general rule here applicable is laid down in 46 Corpus Juris, at pages 941-943, *supra,* as follows:

> "At common law the holding of one office does *not* of itself disqualify the incumbent from holding another office at the same time, provided there is *no inconsistency* in the functions of the two offices in question. * * * The inconsistency, which at common law makes offices incompatible, does *not* consist in the physical impossibility to discharge the duties of both offices, but lies rather in a *conflict of interest,* as where one is subordinate to the other and subject in some degree to the supervisory power of its incumbent, or where the incumbent of one of the offices has the power to remove the incumbent of the other or to audit the accounts of the other." (Italics mine.)

So, also, in reference to the inconsistency in functions which would render two offices incompatible, it is said in Mechem on Public Officers, at Sec. 422, page 269, *supra*:

> "It must be an *inconsistency in the functions* of the two offices, such as judge and clerk of the same court, claimant and auditor, and the like." (Italics mine.)

In *Condon v. Knapp, supra,* the Supreme Court of Kansas, in holding that the office of assistant chief food and drug inspector and of hotel commissioner were not incompatible, said (187 Pac., at page 661):

> "Unless prohibited by constitutional provision or statutory law, one person may hold two offices if their duties are not incompatible with each other. * * *
>
> "There is no prohibition against one person holding the office of assistant chief food and drug inspector and that of hotel commissioner. No incompatibility is shown to the court or perceived by it."

So, too, in *State ex rel. Tzschuck v. Weston, supra,* a leading case, the Supreme Court of Nebraska held that the offices of Secretary of State and Adjutant General were not incompatible. In the course of its opinion the court said (4 Neb., at page 342):

> "Nor do we see any reason why the person who happens to hold the office of secretary of state may not, at the same time, hold that of adjutant general. It is true that the duties of the two offices are entirely dissimilar,

but they are in no respect antagonistic, and, so long as the incumbent is willing to undertake the performance of both, in the absence of a law prohibiting it, we are of the opinion he may do so."

Applying the rule laid down by the authorities from which I have just quoted to the question now under consideration, it would seem plain that, although the duties of Lieutenant-Governor and of Commissioner of Parks, Highways and Lighting of Pueblo are entirely dissimilar in their nature and character, yet they are in no respect inconsistent and repugnant; and, therefore, they are *not* incompatible.

Nor does the fact of your absence from Pueblo on account of your duties as Lieutenant-Governor during the session of the General Assembly render such duties, for the time being, incompatible with your duties as said Commissioner of Parks, Highways and Lighting of Pueblo.

As said in 46 Corpus Juris, at page 942, hereinbefore quoted:

"* * * The inconsistency, which at common law makes offices incompatible, does *not* consist in physical impossibility to discharge the duties of both offices." (Italics mine.)

And in 22 Ruling Case Law, at page 413, the same rule is stated as follows:

"* * * Nor does incompatibiity consist of the physical disability of discharging the duties of both offices at the same time."

So, too, it is said in Mechem on Public Officers, Sec. 422, at page 269, *supra*:

"It seems to be well settled that the mere physical impossibility of one person's performing the duties of the two offices as from the lack of time or the inability to be in two places at the same moment, is not the incompatibility here referred to."

So, even if it were physically impossibe during the session of the General Assembly for you to discharge the duties of both the office of Lieutenant-Governor and of Commissioner of Parks, Highways and Lighting of Pueblo, that fact, of itself, would still not render those offices incompatible.

However, in my opinion, your temporary presence as Lieutenant-Governor at the seat of government during the session of the General Assembly does *not* render it physically impossible for you to perform your duties as Commissioner of Parks, Highways and Lighting of Pueblo. Even while here in the performance of your duties as the presiding officer of the Senate, you are still

within such a comparatively short distance from Pueblo that it may be easily covered by motor or rail, in about three hours. In an emergency you could cover the same distance in an aeroplane in a little more than an hour. The long distance telephone constantly affords you while here the opportunity of immediate communication with any other officer of Pueblo, and particularly with the employes of your department. Moreover, you are afforded frequent opportunities to return to Pueblo during adjournments of the Senate; and, if necessity required it, you could without doubt personally visit that city practically every twenty-four hours in connection with the performance of your official duties there as Commissioner without its interfering with the performance of your official duties here as Lieutenant-Governor. These facts are ample to demonstrate, I submit, that your official duties as Lieutenant-Governor do *not* render it physically impossible for you to perform your official duties as Commissioner of Parks, Highways and Lighting at Pueblo; and that, notwithstanding your temporary presence here during the session of the General Assembly, you are not thereby prevented from engaging in the actual work of your office as Commissioner to the extent that your services "may be necessary for the full and complete discharge of the duties of such office," as required by Section 9 of Article VI of the Charter of Pueblo to which reference has hereinbefore been made.

It is, therefore, my opinion that you may lawfully and properly hold both the office of Lieutenant-Governor and that of Commissioner of Parks, Highways and Lighting of Pueblo at the same time, and that you are further entitled to receive the emoluments of each.

In conclusion, let me invite your attention to the opinion of former Attorney General Clarence L. Ireland, given to Governor William H. Adams under date of May 1, 1931 (and appearing in the Biennial Report of the Attorney General for 1931-1932, at page 76) in which it was held that there was no incompatibility between the office of Lieutenant-Governor and the office of Secretary to the Governor.

Respectfully submitted,

PAUL P. PROSSER,
Attorney General.

18 AUDITING BOARD

To Governor Johnson, Feb. 8, 1933.

Authority of Board to purchase supplies.

The power of the Auditing Board, granted by Secs. 277 and 279, C. L. 1921, as amended, is not the power to *purchase,* but the power to *authorize* the purchase of necessary supplies by the chief officers of the executive and judicial departments.

19 AUDITING BOARD

To Senator Elliott, February 9, 1933.

Authority of Board to control appropriations for or supervise expenditures of Legislative Department.

February 9, 1933.

Senator David Elliott,
State Capitol,
Denver, Colorado.

Dear Senator:

You request my opinion as to whether or not the Auditing Board has authority to control appropriations, or to supervise expenditures, made or incurred for or on behalf of the Legislative department of the State government.

There is no Constitutional or statutory provision whereby such authority is expressly conferred upon the Auditing Board, or from which it could be implied.

Indeed, Section 277, C. L. 1921, as amended by the Twenty-eighth General Assembly in 1931 (Chapter 53, Session Laws 1931, page 159), provides that the Auditing Board shall have control and direction of "all appropriations made by the General Assembly for the several *Executive* and *Judicial departments and State Institutions, Boards and Bureaus;*" and Section 279, C. L. 1921, as amended in 1931 (Chapter 53, Session Laws 1931, pages 159-160), providing for the exercise of such authority over expenditures for "necessary supplies, printing, postage, stationery, telephone, telegraph, expenses and miscellaneous charges," relates specifically only to those expenditures aforementioned that are proposed to be made by the "several branches of the Executive and Judicial departments."

It is plain that the authority conferred upon the Auditing Board by Sections 277 and 279, C. L. 1921, as amended. in respect to directing and controlling appropriations and to supervising expenditures, relates only to the Executive and Judicial departments.

It is, therefore, my opinion that, in the absence of statutory authority therefor, the Auditing Board has, and would have, no power whatsover to control or to direct appropriations, or to supervise expenditures, made or incurred for or on behalf of the Legislative department.

This confirms the oral opinion expressed yesterday by me at the weekly meeting of the Auditing Board, of which you saw mention in the public press.

Respectfully,

PAUL P. PROSSER,
Attorney General.

20 COLORADO STATE HOSPITAL

To F. H. Zimmerman, February 16, 1933.

The Colorado State Hospital is not obliged to receive patients either for observation or pending the action of the proper county lunacy commission. (Secs. 550, 551, 573, C. L. '21.)

21 OFFICERS

To F. D. Allen, Feb. 17, 1933.

Bonds of.

The giving of bond by Deputy District Attorney is required and is a necessary expense of the county and the county should pay the premium thereon in accordance with Secs. 5992, 7992, C. L. 1921. (29 Colo. 169; 57 Colo. 106.)

22 RATIFICATION OF AMENDMENT TO U. S. CONSTITUTION

To Governor Johnson, Feb. 24, 1933.

Proposal to call a convention to ratify amendment repealing the 18th Amendment to the U. S. Constitution—said convention delegates to be elected by present Legislature:

1. **Proposed method of ratification is unconstitutional: because not contemplated by Congressional Resolution (see political platforms);**
2. **Opposed to clear intent and purpose of Federal Constitution—**
   - **(a) See wording,**
   - **(b) See interpretation of "convention" by Original Convention and by original 13 states which ratified the Constitution.**

February 24, 1933.

Hon. Edwin C. Johnson,
Governor of Colorado,
Capitol Building,
Denver, Colorado.

My Dear Governor:

You have requested the opinion of this office concerning a proposed Senate Joint Resolution, introduced in the Senate yesterday, entitled, "SENATE JOINT RESOLUTION NO. 12 (By Senator Quiat) PROVIDING FOR THE ELECTION OF DELEGATES TO AND THE CALLING OF A CONVENTION FOR THE PURPOSE OF RATIFYING THE PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES REPEALING THE EIGHTEENTH AMENDMENT AND PROVIDING FOR THE REGULATION OF THE TRANSPORTATION OR IMPORTATION OF INTOXICATING LIQUORS INTO ANY STATE, TERRITORY OR POSSESSION OF THE UNITED STATES."

This resolution recites, in substance, that the Congress of the

United States has resolved that an "Article be proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the conventions of three-fourths of the several States."

The proposed resolution then sets forth the Article as submitted by the Congress, and which Article reads as follows:

"Article .....

"Section 1. The eighteenth article of amendment to the constitution of the United States is hereby repealed.

"Section 2. The transportation or importation into any state, territory or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

"Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the constitution by the conventions of the several states, as provided in the constitution within seven years from the date of the submission hereof to the states by the congress."

The proposed resolution then provides that a Convention be called to convene at the State Capitol on Wednesday, March 1, 1933, "for the purpose of acting upon the ratification of the said proposed amendment to the Constitution of the United States." And that said Convention shall consist of the Lieutenant-Governor, who shall act as its presiding officer, and thirty-four delegates, twelve of whom shall be elected by the Senate with the concurrence of the House of Representatives, and that twenty-two delegates shall be elected by the House of Representatives with the concurrence of the Senate, and that the Lieutenant-Governor shall vote only in case of a tie, and further that a majority of the delegates so elected shall constitute a quorum for the transaction of business, and that if and when such convention shall ratify the proposed amendment to the Federal constitution, certified copies of the resolution of ratification shall be forwarded to the Governor of this State, the President of the United States, the Secretary of State of the United States, and to the President of the Senate and the Speaker of the House of Representatives of the Congress of the United States.

The question submitted by you is whether or not a convention, composed as contemplated by this resolution, would be a legal convention, and whether ratification or rejection of the proposed amendment by such assembly would be legally effective.

The first question that naturally arises is whether or not a convention, so constituted, would conform to the purpose and intent of the congressional resolution above recited. Upon this point it is pertinent to note the language of the political platforms of

the Democratic and Republican parties, respectively, adopted at their National Conventions of 1932, upon the subject of the Federal amendment now proposed to be repealed.

The Democratic plank is summarized as follows:

> "We favor the repeal of the Eighteenth Amendment. To effect such repeal we demand that the Congress immediately propose a Constitutional Amendment to truly representative conventions in the states called to act solely on that proposal. We urge the enactment of such measures by the several states as will actually promote temperance, effectivey prevent the return of the saloon and bring the liquor traffic into the open under complete supervision and control by the states."

The Republican plank provides, in part, as follows:

> "Such an amendment should be promptly submitted to the States by Congress, to be acted upon by State conventions called for that sole purpose in accordance with the provisions of Article V of the Constitution and adequately safeguarded so as to be truly representative."
>
> (See World Almanac, 1933, pages 923, 925.)

There is a strong presumption that the Congress, in its resolution submitting the proposed amendment to the States for ratification or rejection, used the word "convention" in the sense in which that word was used in the respective party platforms of 1932, and it is clear from the excerpts above quoted that both of the major political parties intended that the proposed repealing or modifying amendment of the Eighteenth Amendment should be ratified or rejected by conventions chosen by the people of the several states for that express purpose.

It inevitably follows that the election of the members of a state convention by a state legislature, rather than by the people themselves, would be a perversion of the real meaning and intent of the congressional resolution, and this consideration alone suffices to raise a serious doubt as to whether a convention, constituted as provided by the Senate Joint Resolution, would be empowered to act.

But this brings us to a much more fundamental question, the solution of which is, in our opinion, absolutely decisive of this matter.

Section 1 of Article V of the Federal Constitution provides, *inter alia,* that:

> "The congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this convention, or, on the application of the legislatures of two-thirds of the several states, shall call a convention for

> proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this constitution, when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the congress; * * *."

Section 1 of Article VII reads as follows:

> "The ratification of the conventions of nine states shall be sufficient for the establishment of this constitution between states so ratifying the same."

We direct attention particularly to the clause in Section 1 of Article V, which provides that proposed amendments shall be valid "when ratified by the legislatures of three-fourths of the several states, or by conventions in three-fourths thereof." We respectfully submit that when the authors of the constitution provided, in express language that proposed amendments thereof may be ratified by the legislatures of the several states, *or* by conventions in the several states, they intended to provide two separate, distinct and substantially different alternative modes or methods of ratification, otherwise the words "or by conventions in" the several states would be a mere idle gesture and that immortal document does not abound in idle gestures.

Ratification or rejection by a convention elected by a state legislature would inevitably be to all intents and purposes ratification or rejection by the legislature itself, for the reason that the legislature would, in all human probability, elect delegates who would vote in accordance with its wishes. Thus, the so-called convention would not be an independent body, such as the constitution obviously contemplated, but a mere echo of the will of the legislature. Nothing could be plainer than that such a convention would not afford the alternative method of ratification or rejection expressly provided for by the plain terms of the Federal constitution, but would be a palpable circumvention and betrayal of the substantial purpose and intent of the National constitution.

The argument, as I have been informed, has already been advanced that the Philadelphia convention of 1787, which framed the Federal constitution itself, was composed of delegates selected by the legislatures of the several states, and that therefore an amendment thereto could be lawfully ratified or rejected by conventions selected by the several state legislatures. Such an argument is palpably unsound. In the first place, it will be noted that the Philadelphia convention was not assembled for the purpose of proposing a new constitution at all. It was assembled for the express purpose only of amending and revising the articles of confederation. This is amply proved by the terms of the resolu-

tion of the Continental Congress, adopted February 21, 1787, which reads as follows:

> "Whereas there is provision in the Articles of Confederation and perpetual union, for making alterations therein, * * * And whereas experience hath evinced that there are defects in the present Confederation, as a mean to remedy which, several of the States * * * have suggested a convention for the purposes expressed in the following resolution. * * *
>
> "Resolved, that in the opinion of Congress, it is expedient, that on the second Monday in May next, a Convention of Delegates, who shall have been appointed by the several states, be held at Philadelphia, for the sole and express purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures, such alterations and provisions therein, as shall, when agreed to in Congress, and confirmed by the States, render the federal constitution adequate to the exigencies of Government, and the preservation of the Union."
>
> (See "The Framing of the Constitution of the United States" by Max Farrand, page 28.)

Moreover, it must be observed that the Philadelphia convention did not undertake to promulgate or establish a constitution at all. It merely undertook to propose a constitution to be later ratified in the manner expressly provided by Article VII above quoted. In other words, the work of that convention was a mere proposal, rather than a ratification, just as the congressional resolution is a mere proposal and not a ratification of anything. The essential point to be inquired into is the manner in which the constitution itself was ratified, not the manner in which it was proposed, and it is utterly without significance that the constitution was proposed by delegates chosen by the legislatures of the several states. Article VII provides that the constitution shall be ratified by conventions in the several states and it will be presumed that the word "convention" in Artice VII has the same meaning and significance as the word "convention" in Article V, for, it is a fundamental rule of statutory and constitutional construction that a particular technical term used therein has the same significance wherever it appears, unless the context clearly indicates otherwise. This proposition, as is well known, could be supported by abundant authorities.

What, then, was understood to be the significance of the word "convention," as used in Article VII as well as in Article V? We turn to the history of the times for the answer to this question, and that answer is conclusive of this inquiry. We find that every one of the thirteen states, which finally ratified the Federal constitution, did so through the medium of conventions chosen

directly by the people of the respective states, rather than through the medium of their several legislatures, and that such was the intention of, the makers of the constitution is, as already pointed out, clearly indicated by the proceedings of the Philadelphia convention. Thus, it appears that on May 29th, 1787, Delegate John Randolph of Virginia proposed the following resolution:

> "The amendments which shall be offered to the Confederation by the Convention ought at a proper time or times, after the approbation of Congress, to be submitted to an assembly or assemblies of Representatives recommended by the several Legislatures, to be expressly chosen by the people, to consider and decide thereon."

And on July 23rd following, that resolution was adopted after a resolution proposed by Delegate Ellsworth of Connecticut had been voted down. See "The Making of the Constitution" by Charles Warren, pages 346-350. And as plainly manifested, each of the states ratified by conventions chosen by the people thereof.

> "When the Constitution was actually submitted to the State Conventions for ratification in 1787-1788, the State Legislatures voted in Massachusetts, Pennsylvania, Delaware, Maryland, North Carolina, South Carolina and Georgia, that persons qualified to vote for members of the lower House of the Legislature might vote for members of the Convention; in New York, the straight principle of manhood suffrage was adopted in the election of delegates to the ratifying convention; in Connecticut, those 'qualified by law to vote in the town meetings' could vote for members of the Convention: in New Hampshire, the duly qualified voters for members of the lower House, together with certain additional classes. See *An Economic Interpretation of the Constitution* (1918) by Charles A. Beard, 240-242.
>
> "In Virginia, the Assembly voted, Oct. 25, 1787: 'Resolved that every citizen being a freeholder in this Commonwealth be eligible to a seat in the Convention, and that the people, therefore, be not restrained in their choice of delegates by any of those legal or constitutional restrictions which confine them in their choice of Members of the Legislature'."
>
> See same Volume, page 352;
>
> Also Bryce's American Commonwealth, Ch. 3, Part 1;
>
> Elliott's Debates on the Federal Constitution, page 215.

There is another well known fundamental rule of statutory and constitutional construction—that where the meaning of a term

used in a statute or constitution is in doubt the construction accorded thereto at or about the time the statute or constitution was adopted is of the utmost importance—and we have amply shown by contemporaneous history that the term "convention," as used in Articles V and VII, was understood to mean a body altogether independent of a state legislature, and in fact a body composed of members chosen by the people themselves.

No proposed amendment to the Federal constitution has ever been before submitted to conventions in the several states rather than to the legislatures themselves, and we, therefore, are without further precedent to guide us, and the precedent established by all the states in ratifying the original document is, therefore, as we submit, entirely conclusive of this controversy and affords the only lawful and proper course to be followed in the present instance. The course suggested, of choosing a mere rubber stamp convention, would be in such obvious contravention of constitutional intent, as shown by the language of the document itself in the history of the times, that it ought not to be tolerated or even seriously considered.

Finally, it has been urged that ratification or rejection of the proposed amendment in the manner and form contemplated by the Senate Joint Resolution would be economical and result in the saving of expense to the taxpayers. In this behalf let it be observed that the congressional resolution itself allows seven years for ratification or rejection of the proposed amendment. A convention called and chosen in the manner contemplated by the constitution would not be unduly expensive. In view of the seven-year period allowed, no special session is essential. The Thirtieth General Assembly, in regular session, could enact the necessary legislation for the calling of the convention and the election of members thereof. The members could be elected at the General Election in 1936, and naturally, the convention could assemble and conclude its labor within a brief time thereafter, and the whole matter could be concluded long before the seven-year period allowed by Congress shall have elapsed.

Respectfully yours,

PAUL P. PROSSER,
Attorney General.
CHARLES ROACH,
First Assistant.

23 SCHOOLS

To Omer T. Mallory, Feb. 27, 1933.

Teachers' salaries.

1. If teacher enters into a contract for a monthly salary less than that provided by statute, the contract is valid and the teacher

cannot recover against the district for any further amount on account of the minimum salary act.

2. If a district hires a teacher for less than the minimum salary provided by law, the benefit would inure to the county generally rather than to the school district itself, and the result would be that in making the apportionment for the following year, the surplus saved would be taken into consideration and the district would receive less out of the general county school fund.

24 GOVERNOR—(Special Sessions of General Assembly)

To Governor Johnson, March 6, 1933.

Special sessions.

The governor may, on extraordinary occasions by proclamation, convene the General Assembly in special session (Colo. Const., Secs. 7, 9, Art. IV):

He is the sole judge of what is an "extraordinary occasion;" but he manifestly could not call a special session upon the day and hour set for the regular session, nor during the first fifteen days of the regular session (9 Colo. 642; 19 Colo. 333; 56 A. L. R. 706);

Could call a special session during recess of general session;

Only such business as is named in the proclamation can be transacted, at such special session. (Const. Art. V, Sec. 19; 126 Fed. 317.)

25 PUBLIC FUNDS

To Thomas Annear, March 7, 1933.

Warrants issued during Bank Moratorium.

Warrants drawn by the State Compensation Insurance Fund upon the State Treasurer during the present banking moratorium, would be entirely valid and negotiable in the ordinary course of trade, and would without doubt be accepted for deposit upon the opening of banks for business, or for exchange for clearing house certificates or other form of temporary circulating medium.

2. The State Treasurer would be fully authorized to cash such warrants if funds are available.

3. There is no reason why the Compensation Fund should not continue to issue such warrants during the present moratorium.

26 TAXES

To L. I. Dawson, March 8, 1933.

Partial payments.

A taxpayer may pay taxes on separately assessed property, or may pay different taxes, such as a tax on realty or a tax on

personalty, but he may not require a division of either the property or the tax.

Sec. 1253, Cooley on Taxation;
Opinion No. 19, p. 65, Rept. Atty. Gen'l., 1929-30.

27 TAXATION—(Natural Gas Pipelines)

To Albert LaFollette, March 14, 1933.

H. B. 561—Unconstitutional.

1. Pipeline companies conveying natural gas from one state to another are engaged in interstate commerce. A tax sought to be imposed on such a company would constitute an unwarranted regulation of interstate commerce; and a bill providing for such a tax would be unconstitutional. (266 U. S. 555; 280 U. S. 338; 283 U. S. 465; P. U. R. 1928D, 507; P. U. R. 1928E, 728; P. U. R. 1928A, 830; P. U. R. 1929B, 330.)

2. Such tax would be an expense of operation and could, and probably would, be passed on to the consumer.

28 INITIATIVE AND REFERENDUM

To Governor Johnson, March 14, 1933.

Reapportionment Act, voted at General Election, 1932.

1. "The veto power of the governor shall not extend to measures initiated by or referred to the people," and failure of the governor to proclaim the adoption of such a measure could not affect its constitutionality. The Act is constitutional.

2. The General Assembly may amend or repeal initiated measures.

3. Inasmuch as the initiated act of 1932 effected a valid and constitutional reapportionment, but inasmuch as no state or federal census has intervened since such reapportionment was made (as required by Secs. 45 and 46, Art. V, Const.), the 29th General Assembly is without power to effect a new reapportionment.

4. The courts hold that minor discrepancies and imperfections in a reapportionment act do not invalidate it where constitutional requirements are substantially complied with. (Citing People v. Thompson, 155 Ill. 477.)

March 14, 1933.

Hon. Edwin C. Johnson,
Governor of Colorado,
Capitol Building,
Denver, Colorado.

Dear Governor:

You have directed our attention to the initiated act adopted by the people at the last November general election entitled "AN ACT FIXING THE RATIOS FOR AND ESTABLISHING THE AP-

PORTIONMENT OF SENATORS AND REPRESENTATIVES OF THE GENERAL ASSEMBLY OF THE STATE OF COLORADO," and have requested our opinion upon the following questions:

1. Is the initiated reapportionment measure adopted by the people at the last General Election constitutional and was such measure properly enacted?

2. Can the General Assembly repeal or amend initiated measures?

3. Can the Twenty-ninth General Assembly reapportion Colorado?

Sections 45 and 46, respectively, of Article V of the State Constitution read as follows:

"Sec. 45. The general assembly shall provide by law for an enumeration of the inhabitants of the state, in the year of our Lord 1885, and every tenth year thereafter; and at the session next following such enumeration, and also at the session next following an enumeration made by the authority of the United States, shall revise and adjust the apportionment for senators and representatives, on the basis of such enumeration according to ratios to be fixed by law."

"Sec. 46. The senate shall consist of twenty-six and the house of representatives of forty-nine members, which number shall not be increased until the year of our Lord one thousand eight hundred and ninety, after which time the general assembly may increase the number of senators and representatives, preserving as near as may be the present proportion as to the number in each house; Provided, That the aggregate number of senators and representatives shall never exceed one hundred."

The first apportionment of senators and representatives in the General Assembly was provided by the Constitution itself in Sections 48 and 49 of the same Article.

Since the adoption of the Constitution the General Assembly has, from time to time, enacted laws providing for reapportionment. Those statutes are published as follows: Session Laws of 1881, page 20; Session Laws of 1891, page 22; Session Laws of 1901, Chapter 2, page 20 (amended by Session Laws of 1909, Chapter 198); Session Laws of 1913, Chapter 131, page 519, (amended by Session Laws of 1917, Chapter 111).

It will be observed that Section 45, above quoted, provides, in substance, that reapportionments shall be made at "the session next following" the taking of each State or Federal census, and this at once raises the question as to whether or not a reapportionment can

lawfully be effected by an initiated measure rather than by an Act of the General Assembly. Our initiative and referendum provision was written into the Constitution in 1910 as an amendment to Section 1 of said Article V. That amendment provides, in general terms, that the people may initiate laws and constitutional amendments, but makes no specific reference to the matter of reapportionments for senators and representatives in the General Assembly. It might, therefore, be contended that the initiative amendment of 1910, which is couched in general terms, did not have the effect of amending or modifying said Section 45, which specifically reposes the power of reapportionment in the General Assembly itself. However, this matter is, we think, definitely determined by a recent decision of the Supreme Court of the State of Washington.

Section 1 of Article II of the constitution of that State, as originally adopted, provides for a state senate and house of representatives which shall be known as the "Legislature" Section 3 of the same Article provides that "the legislature shall" at the next session after each census "apportion and district anew the members of the senate and house of representatives, according to the number of inhabitants * * *."

In 1912, said Section 1 of Article II of the Washington Constitution was amended by providing an initiative and referendum system very similar to our own. It will thus be seen that the situation in Washington, so far as constitutional provisions are concerned, is strikingly similar to that which exists in Colorado, for in Washington, as here, the original Constitution expressly provided for periodical reapportionments by the legislative department, and in Washington, as here, an initiative provision, in general terms, was afterwards written into the State Constitution.

In *State ex rel. Miller v. Hinkle,* 156 Wash. 289, it appears that in 1930 a petition to initiate a reapportionment law was tendered for filing in the office of the Secretary of State of the State of Washington. The Secretary of State refused to file such petition and an action in mandamus was brought by the sponsors of the petition to require it to be filed. The contention was advanced by the respondent Secretary of State in that case that he was not required to file the petition because, as he alleged, a reapportionment law could not lawfully be adopted under the initiative provisions of the Washington Constitution. The result was an original action in mandamus brought in the Supreme Court of the State. The court held that a reapportionment measure is a "law" within the meaning of the initiative provision of the Washington Constitution and that, therefore, the people, acting under such provision of their constitution, had concurrent power with the legislature of the State to effect a reapportionment of the members of the legislature of the State. We find no court decision contrary to the doctrine of this Washington case, and in view of the close parallel between the provisions of

the Washington Constitution and that of this State, we regard the above decision as conclusive.

In your first question, you also ask our opinion as to whether or not this initiated measure was properly enacted. We assume that upon this point you have in mind the suggestion which has been made that the measure was not properly enacted, because of the failure of his Excellency, Governor Adams, to proclaim its adoption. Our initiative amendment provides, *inter alia*, that:

> "All elections on measures referred to the people of the state shall be held at the biennial regular general election, and all such measures shall become the law or a part of the constitution, when approved by a majority of the votes cast thereon, and not otherwise, and shall take effect from and after the date of the official declaration of the vote thereon by proclamation of the governor, but not later than thirty days after the vote has been canvassed. * * *"

It will be observed that the Constitution declares that initiated measures shall become the law "not later than thirty days after the vote has been canvassed." As already suggested, the Governor failed, in this instance, to issue the usual proclamation of the result of the canvass of the votes on this measure, but in view of the clause last quoted to the effect that initiated measures shall become laws not later than thirty days after the completion of the official canvass, we are firmly of the opinion that no proclamation of the Governor was essential. In fact, any inference that an initiated law voted by the people would fail, because of the default or failure of the Governor in this respect, is so revolting to reason and common sense that we do not deem it necessary to search for judicial decisions in support of our conclusion. In fact, the initiative provision itself further provides that "the veto power of the governor shall not extend to measures initiated by, or referred to the people." This provision proves beyond the slightest question that the Governor could not veto an initiated measure either by an affirmative act or by failure or refusal to proclaim its adoption.

In your second question, you ask whether or not the General Assembly can repeal or amend initiated measures. This question has been definitely answered by our Supreme Court in *In re Senate Resolution No. 4*, 54 Colo. 262, where it was held that the General Assembly can repeal initiated measures. The question of whether or not the General Assembly can amend initiated measures was not expressly submitted to or decided by the court. But the logic of the opinion leads inevitably to the conclusion that the General Assembly may amend, as well as repeal, initiated measures. But at this point it must be observed that the precise matter here under consideration was by no means determined by the decision last cited. That decision makes no reference to reapportionment laws. It sim-

ply decides the general question that initiated measures may be repealed by the General Assembly, and this observation brings us to your last question which is: "Can the Twenty-ninth General Assembly reapportion Colorado"?

Section 45 of Article V, above quoted, imposes a mandate upon the General Assembly to reapportion senators and representatives at the "session next following" each State or Federal census. But this does not limit the power of reapportionment to the one session next following a census. The mandate of this section is a continuing one until it has been constitutionally obeyed. Our Supreme Court has, in effect, so declared.

Thus in 1885 a state census was taken. The General Assembly of 1887 failed to enact a reapportionment law. The General Assembly of 1889 requested the opinion of the Supreme Court as to whether or not it had power to enact a reapportionment law in view of Section 45, above quoted, which, in effect, commanded the General Assembly, convening next after the census of 1885, to enact a reapportionment law. The court, in answering the question submitted, said:

> "The statutes containing no act adopted since the year 1885, relative to the matter submitted, we answer the question propounded affirmatively."
>
> (See *In re Legislative Apportionment*, 12 Colo. 186).

But we are now confronted with an entirely different situation, for we have already held that the initiated act of 1932 is constitutional and therefore effects a valid reapportionment. It will be noted that the Supreme Court in the case last above cited held that a reapportionment could be made at the second session after the taking of a census, but the court, in its very brief opinion, pointed out that no reapportionment had already been made after the census had been taken. Thus the opinion raises a clear implication that if the General Assembly had made a reapportionment at its 1887 session, it could not make a new reapportionment at its 1889 session.

Moreover, courts of other states in construing constitutional provisions very similar to our Section 45 above quoted have uniformly held that after a reapportionment has been effected following a census, no reapportionment can lawfully be made until another census has been taken.

We first quote from the article on "States," 59 Corpus Juris, Section 44, page 78:

> "The time of apportionment is usually provided so that it shall be made at the first or next session of the legislature after an enumeration of the inhabitants of the state, and such a provision prescribing the time of making an apportionment impliedly prohibits an apportionment at any other time; and when a valid apportionment has been

made, no new apportionment can be made until the expiration of the prescribed period; in other words, an apportionment law can be validly passed only once for each enumeration period. * * *"

Section 6 of Article IV of the Illinois Constitution of 1870 reads, in part, as follows:

"The General Assembly shall apportion the State every ten years, beginning with the year 1871, by dividing the population of the State, as ascertained by the Federal census, by the number 51, and the quotient shall be the ratio of representation in the Senate. * * *"

The Supreme Court of that State in *People v. Hutchinson*, 172 Ill. 486, 503, said:

"* * * That power (reapportionment) and discretion, when fully exercised, were exhausted, and the power will not again arise until the conditions provided for in the constitution shall again exist."

And further at page 504:

"* * * The power to make apportionments has not always been exercised at exact periods of ten years, but the power conferred by the constitution is a continuing one from the time it is constitutionally devolved upon the legislature until it is performed."

In *People v. Carlock*, 198 Ill. 150, 154, the court said:

"* * * When a valid apportionment has once been made it must stand until after the making of the next enumeration by the Federal authorities."

Section 6 of Article IV of the Constitution of California reads, in part, as follows:

"* * * The census taken under the direction of the Congress of the United States, in the year one thousand eight hundred and eighty, and every ten years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the legislature shall, at its first session after each census, adjust such districts and reapportion the representation so as to preserve them as nearly equal in population as may be."

In *Dowell v. McLees*, 199 Cal. 144, 146, the court said:

"Under that section, which is mandatory and prohibitory, the power to form legislative districts can be exercised but once during the period between one United States census and the succeeding one."

(See also to the same effect *Wheeler v. Herbert*, 152 Cal. 224, 235).

The above court decisions are so precisely in point that we are led thereby to the same conclusion that inasmuch as the initiated act of 1932 effected a valid and constitutional reapportionment, and inasmuch as no State or Federal census has intervened since such reapportionment was made, the Twenty-ninth General Assembly is wholly without power to effect a new reapportionment.

A related matter, not specifically included in your questions, remains to be considered.

Section 47 of Article V of the Constitution reads as follows:

> "Senatorial and representative districts may be altered from time to time, as public convenience may require. When a senatorial or representative district shall be composed of two or more counties, they shall be contiguous, and the district as compact as may be. No county shall be divided in the formation of a senatorial or representative district."

We note that under this section senatorial and representative districts may be *altered* from time to time, as public convenience may require, but the mere alteration of districts is a far different matter from effecting a reapportionment. Plainly enough, a reapportionment, as provided for by Sections 45 and 46, embraces several distinct factors: (a) determination of the number of senators and representatives, respectively; (b) the fixing of the ratios for the revision and adjustment of the apportionment of senators and representatives; and (c) the delineation of the boundaries of the respective senatorial and representative districts.

That there is a substantial and vital distinction between reapportionment as provided for by Sections 45 and 46, and alteration of senatorial and representative districts as permitted by Section 47, is made still more apparent by the fact that Section 45 provides that at fixed times the apportionment may be *revised and adjusted* according to determined ratios, while Section 47 merely provides that *districts* may be *altered*. And still further, it will be noted that the reapportionment commanded by Sections 45 and 46 is to be made at the session next following each State or Federal census, while the alterations allowed under Section 47 may be made not at fixed or stated periods, but from time to time as public convenience may require.

From all this, it is entirely obvious that the alterations permitted under Section 47 were intended to be but minor readjustments in district boundaries, as conditions change and public convenience may require by reason of such changing conditions. Any other construction of Section 47 would result in nullifying and rendering futile the plain mandatory provision of Sections 45 and 46. In short, Section 47 does not authorize reapportionments to be made

at any other time or in any other manner than is specifically provided for by Sections 45 and 46.

We find that upon one occasion the General Assembly altered certain senatorial and representative districts after a reapportionment had been duly made and before the taking of the succeeding census. This was effected by the amendatory act of 1909 above referred to. That that statute purports to be based upon Section 47 is apparent from its title which recites that the purpose of the act is to "alter" the senatorial and representative districts and to amend certain sections of the reapportionment act of 1901. (See Session Laws of 1909, page 474). The amendatory act of 1917, above referred to, merely clarifies one section of the reapportionment act of 1913.

We are not now, of course, called upon to express our opinion as to the validity of the act of 1909, but we do not hesitate to say that it effected such vital and far-reaching changes in the reapportionment of 1901 that it is possible, to say the least, that its constitutionality might have been successfully challenged.

It hardly need be observed that opinions of this department upon legal questions are not final and that your questions as to constitutionality of the initiated act of 1932 and as to the right of the Twenty-ninth General Assembly to enact a reapportionment measure can be finally determined only by our Supreme Court.

Section 3 of Article VI of the Constitution provides, in part, that:

> "* * * The supreme court shall give its opinion upon important questions upon solemn occasions when required by the governor, the senate, or the house of representatives; and all such opinions shall be pubished in connection with the reported decisions of said court."

However, the Court has held that it is the sole judge of what is an "important question" and a "solemn occasion." (See *In re Interrogatories of the House of Representatives*, 62 Colo. 188).

Before dismissing this subject a further observation should, perhaps, be made. The initiated act of 1932 follows the general plan and outline of the reapportionment acts of 1891, 1901 and 1913, respectively. And, like these former statutes, it provides that nothing therein contained "shall be construed to work the removal of any senator from his office for the term for which he may have been elected." It is obvious that where a reapportionment measure seeks to accomplish the dual object of preserving intact existing terms of state senators and also of effecting a new apportionment of senatorial and representative districts, somewhat incongruous and anomalous results will inevitably exist in particular instances pending the lapse of the current terms of so-called "holdover" senators.

But the courts hold that minor discrepancies, inconsistencies and imperfections in a reapportionment act do not invalidate it where constitutional requirements were substantially complied with. Thus we quote from *People v. Thompson*, 155 Ill. 477, where the court said:

> "* * * In other words, if it clearly appeared that in the formation of any district the requirement of compactness of territory and equality in population had been wholly ignored, had not been considered or applied at all, to any extent, then the statute would be clearly unconstitutional. But if it had been considered and applied, though to a limited extent only, subject to the other more definitely expressed limitations, then the General Assembly has not transcended its power, although it may have very imperfectly performed its duty, and the act is valid."

Respectfully submitted,

PAUL P. PROSSER,
Attorney General.

CHARLES ROACH,
PIERPONT FULLER, JR.,
Assistant Attorneys General.

29 CITY OFFICERS—Terms of

To G. S. Cosand, March 15, 1933.

H. B. No. 664, 1933.

Section 1 of H. B. 664 does not affect the term of any alderman heretofore elected under the laws of 1925 for a 4-year term. (S. L. 1931, Ch. 171.)

30 MUNICIPAL BONDS

To Land Board, March 15, 1933.

Aspen refunding bonds.

The bonds of the City of Aspen issued to pay defaulted coupons on refunding bonds of that city, are a valid and binding obligation.

Citing Secs. 9177-9178, C. L. 1921;
Hayden v. Aurora, 62 Colo., 563.

The issue of the Refunding Bonds of the City of Aspen in the amount of $71,000, dated July 1, 1931, constitute a valid and binding obligation on the City of Aspen. (Secs. 9185-9189 C. L. 21; 68 Colo. 244; 48 C. J. 624.)

31 INTOXICATING LIQUOR

To Frank Farley, March 16, 1933.

Sec. 3703, C. L. 1921 prohibiting advertising intoxicating liquors remains in force until June 30, 1933.

32 **LEGISLATION—(State Employes)**

To A. B. Hirschfeld, March 16, 1933.

Employment of married women and their husbands by the State.

The bill is against public policy and violative of state and federal constitutions.

Citing Art. XII, Sec. 13, Colo. Const.; (Civil Service)
Sec. 11, Art. II, Colo. Const.; (Contracts)
Hessick v. Moynihan, 33 Colo. 43, 63, 262 Pac. 907.
Federal Const. 14th Amendment (equal protection)
Watson v. Maryland, 218 U. S. 173, 178 (54 L. Ed.)
Keefe v. People, 37 Colo. 317, 321.
People v. Chrane, 214 N. Y. 154, 167-68.

March 16, 1933.

Representative A. B. Hirschfeld,
State Capitol,
Denver, Colorado.

Subject: *Question as to constitutionality of House Bill No. 215.*

Dear Mr. Hirschfeld:

You have orally requested my opinion as to the constitutionality of House Bill No. 215, a copy of which you have submitted to me together with a brief that has been prepared in support of its validity.

I have given careful consideration to this proposed measure, and to the brief intended to be in its support; and I am compelled to say, after an extended investigation of the authorities, that, in my opinion, the bill conflicts with our State and Federal Constitutions in the following respects:

(1) *The bill would violate Section 13 of Article XII of our State Constitution, relating to the classified civil service.*

This section of our State Constitution provides, among other things, as follows:

> "Appointments and employments in and promotions to offices and places of trust and employment in the classified civil service of the state shall be made according to merit and fitness, to be ascertained by competitive tests of competence, the person ascertained to be the most fit and of the highest excellence to be first appointed. All appointees shall be qualified electors of the State of Colorado, except as to those offices or positions held by the civil service commission to require special training and technical qualifications, in which cases competitive tests need not be limited to qualified electors and may be held without the state. * * *
>
> "Persons in the classified service shall hold their re-

spective positions during efficient service. * * * They shall be removed * * * only upon written charges.

"Laws shall be made to enforce the provisions of this section. * * *

"All persons holding positions in the classified service as herein defined when this section takes effect shall retain their positions until removed under the provisions of the laws enacted in pursuance hereof."

Notwithstanding these mandatory provisions of Section 13 of Article XII, as just quoted, and in plain conflict therewith, Section 1 of House Bill No. 215 provides as follows:

"No married woman, with or without the consent of her husband, shall have the right, power or authority to perform any work, labor or services for compensation or salary for the State of Colorado or any of its offices, departments, bureaus, boards, commissions, institutions or other agencies, or for any county, city and county, city, incorporated town or school district, unless such married woman is the head of a family, as is now provided by law for tax exemption purposes, and/or by reason of the disability of her husband, she provides the chief support of the family."

It is apparent that Section 1 of House Bill No. 215 is in conflict with Section 13 of Article XII of the State Constitution, relating to the State's classified civil service, in the following particulars, viz.:

(a) Section 13 of Article XII plainly contemplates that "*all qualified electors*" of the State of Colorado shall be eligible to appointment and employment in the classified civil service, ("except as to those offices or positions held by the Civil Service Commission to require special training and technical qualifications, in which cases competitive tests need not be limited to qualified electors and may be held without the State"); while Section 1 of House Bill No. 215 would prohibit any married woman, *although a qualified elector*, from such appointment and employment unless she be the "head of a family," as therein defined, and, by reason of the disability of her husband, "the chief support of the family."

(b) Section 13 of Article XII provides that appointments and employments in the classified civil service "shall be made according to *merit* and *fitness*, to be ascertained by competitive tests of competence, the person ascertained to be the *most fit* and of the *highest excellence* to be first appointed"; while Section 1 of House Bill No. 215, in so far as it would relate to married women, would qualify and restrict such Constitutional provision by requiring that any married woman so ascertained to be the "most fit and of the highest excellence" must also be the "head of a family," etc., as

therein provided. In other words, although a married woman might be found to be the most fit for a position under the classified civil service, after a competitive test of competence, she would be denied her Constitutional right to be the first appointed thereto by Section 1 of House Bill No. 215 unless she were the "head of a family," etc. In this connection it is to be noted that our Supreme Court has held that the appointment of a person *not* standing *highest* on the list of persons eligible for such appointment is void. *People ex rel. v. Capp* (1916), 61 Colo. 396, 403, 158 Pac. 143.

(c) Section 13 of Article XII provides that persons in the classified civil service shall hold their respective position "during efficient service," and shall be removed only upon written charges; while Section 1 of House Bill No. 215, in so far as it would affect married women in the classified civil service, would require their summary discharge, no matter how experienced, capable and efficient, unless they were also heads of families as therein required.

(d) Section 13 of Article XII specifically requires that laws shall be made to enforce its provisions, while House Bill No. 215 would, if enacted into law, tend to defeat the provisions of that section of our State Constitution and restrict the application thereof.

To the extent, therefore, that House Bill No. 215 would exclude married women, who are not the heads of families as therein provided, from appointment and employment in the State's classified civil service, it is plainly unconstitutional as being in obvious conflict with the provisions of Section 13 of Article XII of the State Constitution, *supra.*

(2) *House Bill No. 215 would violate the provisions of the State and Federal Constitutions relating to the impairment of contracts.*

In the bill of rights of our State Constitution it is provided in Section 11 of Artice II thereof:

> "That no * * * law impairing the obligation of contracts, or retrospective in its operation * * * shall be passed by the General Assembly";

and Section 10 of Article I of the Federal Constitution provides as follows:

> "No state shall * * * pass any * * * law impairing the obligation of contracts."

Without regard to these inhibitions of the State and Federal Constitutions against the enactment of any law impairing the obligation of contracts, the provisions of House Bill No. 215 would not only impair, but would by the express terms of Section 3 thereof also render "*null* and *void*," the obligation of all existing contracts of employment between the "State of Colorado or any of its offices, departments, bureaus, boards, commissions, institutions or other

agencies," and married women who are not the heads of families, as defined in said Bill, as well as the obligation of all existing contracts of employment between "any county, city and county, city, incorporated town or school district" and married women who are not likewise the heads of families as defined in said Bill.

In considering existing contracts of employment between the State and any married women who are not the heads of families, it is also to be noted that our Supreme Court has held:

> "* * * A provision contained in the statute adopted by one legislature may, when accepted and acted upon by a private citizen * * * result in a *contract* which succeeding legislatures are powerless to repudiate." (Italics mine).
>
> *Hessick v. Moynihan* (1927), 83 Colo. 43, 63, 262 Pac. 907.

Now, all of the existing contracts of employment aforementioned, which would be thus rendered "null and void" as expressly provided by said House Bill No. 215, plainly come within the protection of our State and Federal Constitutions against impairment by State legislation. In *Hessick v. Moynihan, supra,* our Supreme Court said (83 Colo., at page 60):

> "The Constitutional provision against the impairment of obligations of contracts protects from violations the contracts of States equally with those entered into between private individuals";

and, manifestly, the same provision, as found in both our State and Federal Constitutions, protects from violations the contracts of "any county, city and county, city, incorporated town or school district."

So, too, as said by our Supreme Court in *Hessick v. Moynihan,* supra, (86 Colo., at pages 63-64):

> "* * * It is as highly essential that a State, or those lawfully acting under its authority, shall be held to an honorable performance of their legal obligations as is required of private persons";

and the same language is, of course, equally applicable to "any county, city and county, city, incorporated town or school district," or to those lawfully acting under the respective authority thereof.

Yet Section 3 of said House Bill would make it a crime for those lawfully acting under the authority of the State and of the aforementioned political subdivisions thereof honorably to perform their respective legal obligations arising under existing contracts of employment with married women who are not heads of families within the definition of said Bill.

So, also, therefore, to the extent that said House Bill would impair the obligations of such contracts of employment with mar-

ried women who are not the heads of families, as therein defined, it would, manifestly, be violative of the provisions of both our State and Federal Constitutions, as above quoted.

(3) *House Bill No. 215 would also violate the Fourteenth Amendment to the Federal Constitution in that it would operate to deny to citizens of this State the equal protection of the laws.*

The clear mandate of the Fourteenth Amendment is that no state shall "deny to any person within its jurisdiction the equal protection of the laws."

Under the provisions of House Bill No. 215 a small class of persons, viz., married women who are *not* heads of families and who are *not* providing the chief support of their several families by reason of the disability of their respective husbands,—would be utterly excluded from employment by the State of Colorado or its political subdivisions aforementioned.

In my opinion, this singling out of this small class of persons and this debarring them from employment with the State and its political subdivisions would be arbitrary and discriminatory in the following respects:

(a) The exclusion of this small class of married women from service with the State and its political subdivisions would be based not upon any test of competency, but solely upon the question of the status of their domestic life.

(b) In the classification of married women attempted to be established by the Bill, there is no intrinsic distinction whatsoever between those women available for employment and those women debarred from employment, which relates in the slightest degree to the nature of the employment itself, or to the character of the work to be performed, or to the fitness therefor of the individual.

(c) The Bill, although leaving open the door for employment to married women whose husbands are disabled, nevertheless shuts the door to married women whose husbands are *out of employment;* between which groups there is obviously no difference from an economic standpoint in their respective pecuniary needs.

(d) The Bill debars from employment by the State and its political subdivisions married *women* whose husbands are employed, but does *not* debar therefrom married *men* whose wives may be employed.

(e) While there may be, and doubtless are, instances, which appear glaring in this time of widespread unemployment of married women in the service of the State and its political subdivisions whose husbands are also profitably employed, yet these instances, after all, comprise only a small class of persons against whom discrimination cannot be justified upon the mere ground of economic expediency.

It therefore appears that the classification contemplated by House Bill No. 215 is fanciful and arbitrary, and that no substantial or logical basis exists therefor.

The Bill plainly imposes an arbitrary test of competency for positions with the State and its political subdivisions, in derogation of the rights of persons otherwise qualified to fill such positions and thereby denies to them the equal protection of the laws.

The Supreme Court of the United States has laid down the test of a classification for legislative purposes, as follows:

> "* * * * The classification of the subjects of such legislation, so long as such classification has a reasonable basis and is not merely arbitrary selection without real difference between the subjects included and those omitted from the law, does not deny to the citizen the equal protection of the laws." Watson v. Maryland (1909), 218 U. S. 173, 178, 54 L. Ed. 987.

It is my opinion that the classification provided by House Bill No. 215 does not meet this test, in that no reasonable basis appears for it and that it amounts to merely arbitrary selection without real difference between the subjects thereof.

Of course, it is a familiar rule that the State, in its proprietary capacity, may properly prescribe for itself and its subordinate political organizations the terms and conditions on which work of a public nature may be done. *Keefe v. People,* (1906), 37 Colo. 317, 321, 87 Pac. 791, 8 L. R. A. (N. S.) 131.

But here, again, the rule is subject to the Constitutional limitation that the State may not make arbitrary distinctions between its citizens. *People v. Chrane,* 214 N. Y. 154, 167-168, 108 N. E. 427. As said by Judge Cordozo, (now Justice Cordozo of the United States Supreme Court), in the case just cited (214 N. Y., at page 168):

> "It is true that the individual, though a citizen, has no legal right in any particular instance to be selected as contractor by the government. It does not follow, however, that he may be *disqualified* from service, unless the proscription bears some relation to the advancement of the public welfare." (Italics are the court's).

The proscription set up in House Bill No. 215 against married women, simply because they do not happen to be heads of families as therein defined, does not appear to bear any relation whatsoever to the advancement of the public welfare. On the contrary, it would militate against the public welfare by subordinating *efficiency* to requirements of economic expediency that are assumed to exist.

At the same time the Bill is opposed to the public policy of the State of Colorado, as expressed in Constitutional and legislative provisions, and in judicial decisions, enlarging the status of married women; and, if enacted into law, it would operate as an implied repeal of Section 5578, C. L. 1921, (giving to every married woman

the right to perform any labor or services on her sole and separate account), to the extent that said Section 5578 applies to the labor and services performed for the State and its political subdivisions by married women who are not the heads of families within the terms of said Bill.

While I fully appreciate your sincerity of purpose in the introduction of House Bill No. 215, yet it is my opinion that the measure is violative of both our State and Federal Constitutions in the respects and to the extent hereinbefore pointed out.

Respectfully submitted,

PAUL P. PROSSER,
Attorney General.

33 SCHOOL WARRANTS

To W. S. Meek, March 21, 1933.

Registration.

County treasurers are authorized to register school district warrants against the general school fund and such warants should be paid in the order of presentation. (Sec. 3780 C. S. 21).

34 STATE PURCHASES

To Sen. Headlee, March 22, 1933.

Purchase of motor vehicle plates by Secretary of State.

Under Sec. 9, Ch. 122, S. L. 1931, Secretary of State is authorized to purchase motor vehicle registration number plates in the open market and under contract to the *lowest and best bidder.* (33 Colo. 94, 9057 C. L. '21; 25 Colo. App. 460; 23 Colo. 71.)

35 COUNTY JUDGE

To Geo. A. Miller, March 24, 1933.

Appointment of clerk.

Newly appointed county judge cannot be required to retain the clerk appointed by his predecessor. (Secs. 5802, 7924 C. L. 21; 46 C. J. 964.)

36 INTOXICATING LIQUOR

To Governor Johnson. March 25, 1933.

H. B. 661 and 662—Constitutionality.

House Bill 661 is unconstitutional and H. B. 662 is unconstitutional except as to prohibiting sales to minors, etc.

1. Are contrary to the Eighteenth Amendment of U. S. Constitution and therefore void;

A. Purport to permit and regulate that which the Constitution prohibits;

B. Legislatures can only enforce amendment by appropriate legislation;

2. Subsequent repeal of Eighteenth Amendment would not validate H. B. 661 and 662.

3. H. B. 661 and 662 are unconstitutional under State Constitution, Art. XXII, as amended in 1932:

A. Requires regulation of intoxicating liquors to be "subject" to Constitution of United States (including Eighteenth Amendment).

B. Requires regulation of intoxicating liquors to be "subject" to the laws of the United States, which laws limit alcoholic content to 3.2 per cent. No limit is found in H. B. 661 and 662.

C. Forbids establishment or maintenance of any saloon. "Places" where liquor may be sold under H. B. 661 and 662 are saloons, as are "taverns," "clubs," "restaurants" in H. B. 662.

4. People and business must be protected from precipitous and unconstitutional legislation.

37 CITY AND TOWNS

To A. L. Taylor, March 27, 1933.

Offices and salaries.

1. City council may fix salaries for coming year at their next to last meeting;

2. All municipal offices set out in H. B. 664 must be filled, but one individual may hold two or more of such offices. (Sec. 9034, 9035, C. L. 21.)

38 PENITENTIARY

To Robert Tallman, March 27, 1933.

Re: Transfers from penitentiary to reformatory and vice versa, and of insane convicts to state hospital.

Transfer of inmates from Reformatory to Penitentiary provided for by Session Laws of 1927, Ch. 78;

Transfer of insane convicts to State Hospital provided for by Session Laws of 1927, Ch. 78, and Compiled Laws of 1921, Sec. 572, 569.

A formal inquisition and commitment by court is necessary for permanent commitment as a regular inmate of State Hospital.

39 FEES AND SALARIES

To Gladys Cook, March 28, 1933.

Mileage for Cosmetology Board.

Senate Bill No. 21 (1933) provides maximum mileage of 8 cents per mile. The Cosmetology Act of 1931 provides mileage of 5 cents per mile, which does not conflict with the later act.

40 INSURANCE

To W. G. Christie, March 28, 1933.

Not subject to supervision by Insurance Department.

Membership Certificates, providing that upon the payment of a stated annual amount the Hospital Association will furnish the holder with hospital care for a stated number of days during year, do not constitute insurance contracts and their issuance would not subject the Association to supervision by State Insurance Department.

41 ELECTIONS

To Geo. A. Wilkes, March 28, 1933.

Stickers on ballots.

Where the name of a person not printed on the ballot is permitted to be written in (Sec. 7711, C. L. 1926) a printed sticker may not be used.

Citing McFarland v. Spengler, 199 Cal. 147; 248 Pac. 521; 20 C. J. page 159, Sec. 169, note 31; Jackson v. Winans, 287 Ill. 382; 122 N. E. 611.

42 TRUST FUNDS

To J. M. Wood, Examiner, March 28, 1933.

Custody and investment of Fred Forrester fund for Humane Society.

1. Both the Fund and the income therefrom should be in the custody of the State Treasurer and all expenditures should be made on vouchers approved by the representatives of the Colorado Humane Society and warrants drawn against such funds by the Auditor of State. (Sec. 335-6, C. L. 1921).

2. There is no provision in the will of Forrester nor in the Constitution of Colorado requiring or authorizing approval by the Attorney General of investment of this fund.

3. The Forrester will does not prescribe the kind of securities or property in which the fund shall be invested and there is no statute governing the matter; but it is a fundamental rule of law that a trustee is bound to exercise a high degree of diligence and prudence in the management of trust funds (26 R. C. L., Secs. 160-161), which has not been done in this case. (Sec. 686-691, C. L. 1921; 26 R. C. L. 1306).

43 CIVIL SERVICE

To B. F. Koperlik, March 31, 1933.

Re: Kuskulis claim.

A person who has been certified by the Civil Service Commission to a specified position, who fails to take the proper steps to

become established therein and by reason of such failure permits another to occupy the position and perform the duties thereof, is not entitled to compensation for the time between his certification and the time when he takes office, because it is a well settled rule that "the people cannot be compelled to pay twice for the same service." Thompson v. Denver, 61 Colo. 470, 472; 158 Pac. 309.

44 STATE BOARD OF ARCHITECTS

To Frank W. Frewen, April 7, 1933.

"Unanimous vote."

"Unanimous vote of all the members" of the council or board means unanimous vote of the members of the board and not of a quorum.

This being the law a proceeding against a member of the board for revocation of a license would be useless, since to revoke the license would require an affirmative vote of that member.

45 FRAUDULENT PRACTICES ACT

To Chas. M. Armstrong, April 11, 1933.

Sale of stock by incorporator or owner of company.

The owner of a company may not sell the stock of his own company unless he has been registered as a dealer or salesman under Sec. 3 of the Act (S. L. 1931, Ch. 95).

46 STATUTES

To Col. Danks, April 12, 1933.

Constitutionality of Aeronautic Commission Act.

A provision in an Act to the effect that "there shall be no appeal from the decision of the commission" would not invalidate the entire statute; even though such provision standing alone is invalid, an appeal could be taken to the courts. Greeley Transportation Co. vs. People, 79 Colo. 307-312. (S. L. 1927, Ch. 64.)

47 GENERAL ASSEMBLY

To Sen. Houston, April 12, 1933.

Member may not be appointed to Oil and Gas Conservancy Commission.

(Sec. 8, Art. V, State Constitution; Barney v. Hawkins, 257 Pac. 411; 43 A. L. R. 583).

48 TAXATION

Interest and penalties.

April 12, 1933.

Mr. C. S. Ickes,
County Treasurer,
Fort Collins, Colorado.

Dear Sir:

I duly received your letter of the 6th inst., inquiring as to the

effect of House Bill No. 64, recently passed by the Colorado General Assembly. This Act amends Sections 7191 and 7386, Compiled Laws of 1921, as amended in 1925 and 1927.

Section 7191 as it now stands provides for a penalty of six per cent per annum on the first installment of one-half of any tax not paid prior to March 1st, provided it is not paid before April 30th and is paid prior to December 1st; while said Section 7386 as it now stands provides for a penalty of eight per cent per annum on all unpaid taxes after August 1st.

My opinion is that the only safe course for you to pursue as Treasurer is to demand eight per cent interest after August 1st and and until the tax sale is held. In this way you will avoid any liability for failure to collect a sufficient penalty and if any taxpayer thinks himself aggrieved by this construction he will have his remedy in Court.

Very truly yours,

PAUL P. PROSSER,
Attorney General.

By OLIVER DEAN.
Assistant Attorney General.

49 INTOXICATING LIQUOR—(Beer Law of 1933)

To Homer F. Bedford. April 13, 1933.

Expenses of administration of the act.

Where a law devolves a duty upon a public officer yet makes no provision for necessary expenses, the presumption is that he has the right to use sufficient of the funds coming into his hands under the law to pay the reasonable expense of administering the law.

Manitou, et al. vs. First National Bank, 37 Colo. 344.

This presumption is broad enough to include expense of printing forms, and to employ such clerical assistance as is necessary.

(Opinion of April 27, 1933, attached)

50 SCHOOL LAW

To M. F. Hofstetter, April 19, 1933.

Executive Committee.

A Union High School District is not authorized to elect an executive committee to take over the powers and duties of a regularly elected school board. The school board must be elected in compliance with Sec. 8391, C. L. 1921, where the district is located in a fourth class county.

51 MOTOR VEHICLE LAW

To C. M. Armstrong, April 20, 1933.

Dealers' licenses.

It is not necessary for a dealer to take out a dealers' license for each place where he is demonstrating cars. Administrative construction of law justified.

52 UNIVERSITY OF COLORADO

To Homer F. Bedford, State Treasurer, April 27, 1933.

Custody of Funds.

University is not required to leave funds in custody of State Treasurer, but it would be wise and prudent to do so.

April 27, 1933.

Mr. Homer F. Bedford,
State Treasurer,
State Capitol,
Denver, Colorado.

Dear Mr. Bedford:

You have requested the opinion of this office as to whether or not the Regents of the University of Colorado are required to allow the funds of the University to remain in your custody in like manner with those of other departments and institutions of the State.

Section 5 of Article VIII of the State Constitution provides that the University at Boulder, the Agricultural College at Fort Collins, the School of Mines at Golden, and the Institute for the Education of Mutes at Colorado Springs are institutions of the State, "and the management thereof subject to the control of the state, under the provisions of the constitution, and such laws and regulations as the general assembly may provide."

Section 12 of Article IX of the Constitution provides for the election of Regents of the University, and that such Regents shall be a body corporate.

Section 14 of the same Article provides that "The board of regents shall have the general supervision of the university, and the exclusive control and direction of all funds of and appropriations to, the university."

While, as already noted, the Constitution adopts several educational institutions as State institutions, it makes no specific provision for the government of any such institutions except the University, the government of the others being left to the determination of the General Assembly.

The real question with which we are confronted concerns the meaning and effect of the words "exclusive control and direction," as used in Section 14 of Article IX above quoted. It might be con-

tended, for instance, that "exclusive control and direction" of the funds of the university does not necessarily include custody of such funds, and that, therefore, the State Treasurer, under statutes hereinafter referred to, is entitled to their custody notwithstanding this constitutional provision.

It is of interest to note how the General Assembly of 1877, which met within one year after the adoption of the Constitution, construed the meaning of said Article IX, Section 14. That General Assembly provided a system of fiscal government for the University in an act approved March 15, 1877, entitled "An Act to repeal Chapter 87 of the Revised Statutes and to provide for the government and support of the University of Colorado," being Chapter 101, General Laws of 1877.

Sections 14 and 15 of said Chapter provide, in substance, that disbursements of the funds of the University shall be made by the treasurer thereof upon warrants drawn by the president of the institution and countersigned by the secretary of the regents.

Sections 19 and 20 of said Chapter provide a fractional mill levy for the support of the University and direct the Auditor of State to issue warrants against the proceeds of such levy upon the order of the president of the Board of Regents countersigned by its secretary in favor of the treasurer of the University.

Thus it is apparent that the General Assembly of 1877 understood that the Constitution intended to vest in the Regents of the University not only the control and direction of its funds but the actual custody thereof, for the statutes above cited require that disbursements of the funds of the University be made directly by warrants upon the treasurer of the institution, rather than by warrants drawn upon the State Treasurer, and the proceeds of the mill levy provided for by this early statute are required, or at least permitted, to be withdrawn from the State Treasurer upon warrants drawn by the Auditor of State upon orders signed by the president of the Regents and the funds of the University thus placed in the custody of the University treasurer.

Said Sections 14 and 15, 19 and 20 have never been repealed or substantially amended and now appear as Sections 8009, 8010, 8013 and 8014, Compiled Laws of 1921.

It now becomes of interest to compare the fiscal system set up by the same General Assembly for the management of the Agricultural College at Fort Collins. The fiscal management of the Agricultural College is provided for by an Act approved March 9, 1877, entitled "An Act to provide a fund for the building and maintenance of the Agricultural College of Colorado," the same being Chapter 3, General Laws of 1877.

Sections 1 to 4 of that Chapter provide for a mill levy for the use of the institution, to be collected in the first instance by the county treasurers and remitted by them to the State Treasurer and

by him kept in a separate fund known as "An Agricultural College Fund." Section 5 of the same Chapter provides, in substance, that when moneys are available in sufficient amounts from said mill levy to commence the erection of college buildings, the Auditor of State shall draw warrants upon the State Treasurer in favor of the treasurer of the State Board of Agricuture in such sums as the Board shall deem necessary for the erection of buildings or the running of the College. Section 6 of said Chapter provides, in substance, that the Auditor of State shall draw warrants on the funds of the College on bills approved by the president of the Board of Agriculture and countersigned by the secretary of said Board to defray the lawful expenses of building and supporting the College. The above sections of said Chapter 3 have never been amended or repealed and now appear as Sections 8091-8096, inclusive, Compiled Laws of 1921.

It will thus be observed that the General Assembly in establishing a fiscal system for the University provided that its funds might be withdrawn from the State Treasurer as rapidly as they accumulated in the state treasury and transferred to the custody of the treasurer of the institution while the same General Assembly in setting up a fiscal system for the Agricultural College provided that its funds should be deposited in the state treasury and withdrawn only as the necessities of building and supporting the institution should require.

This legislation of 1877 affords a contemporaneous construction of the State Constitution and clearly discloses that the General Assembly considered that the University occupied a special and unique position by virtue of the specific provisions in the Constitution for its government. Ever since 1877, it has been considered, so far as we can ascertain, that the Regents of the University have had the right not only to the control and direction but to the actual custody of the funds of the institution. Our courts have many times held that a contemporaneous construction of a constitutional provision is of great weight in determining its actual meaning. *City and County of Denver v. Adams County*, 33 Colo. 1; *Gibson v. People*, 44 Colo. 600; *Wilson v. People*, 44 Colo. 608.

The courts also hold that the administrative construction accorded to a constitutional and statutory provision over a long period of years is likewise of great weight in determining the true meaning and effect of such constitutional or statutory provision. *Hessick v. Moynihan*, 83 Colo. 43; *People v. Mooney*, 87 Colo. 567.

The statute which gives rise to your inquiry is embraced in Sections 335 to 342, inclusive, Compiled Laws of 1921. This Act was adopted in 1913 and is commonly known as the "Daily Deposit Law." It provides, in substance, that all state departments and institutions located in Denver shall transmit daily to the State Treasurer all revenues collected by them and in the case of in

stitutions located elsewhere than in Denver all revenues collected by them shall be transmitted to the State Treasurer monthly. This Act expressly includes the State University, for Section 339 declares that it is not the intention of the Act to divest the Regents of the exclusive control and direction of the funds of the University, but that the intent of the Act is merely to provide for the safe-keeping of such funds. Evidently, the General Assembly had some doubt as to the constitutionality of this provision for the same section proceeds to declare that if a part of the Act is unconstitutional the remainder shall stand.

Soon after the passage of this Act, this department was called upon for an opinion as to whether or not it applied to the State University. In an opinion prepared by Mr. Francis E. Bouck, then Deputy Attorney General and now a member of the State Supreme court, and addressed to the President of the Board of Regents, to the Auditor of State and to the State Treasurer, this office said:

> "In so far as the State legislature has attempted to safeguard the funds belonging to the State University, its action seems legal and commendable. When the university funds are actually idle they are to be kept in the custody of the State Treasurer.
>
> "On the other hand, the Board of Regents, acting as a constitutional body, may withdraw these funds in such amounts and at such times from the custody of the State Treasurer as in its discretion may seem to it necessary, by warrants of the Auditor of State issued in favor of the Treasurer of the University upon the order of the President of the Board of Regents, countersigned by its Secretary. (R. S. 1908, Secs. 6947, 6948, 6950, 6953.)
>
> "I find nothing in the 1913 act which requires a change in the fiscal method prescribed in the Revised Statutes." (See Biennial Report of the Attorney General, 1913-1914, page 104.)

In short, this department recognized the propriety of legislation directing the Regents to allow the funds of the University to remain in the custody of the State Treasurer for safe-keeping, but at the same time also recognized the right of the Regents under the Constitution to withdraw such funds for use in their discretion.

Our conclusion therefore is that the Regents have the right to withdraw University funds from the custody of the State Treasurer, at such times and in such amounts as they may in their discretion determine.

However, especially in view of the disturbed economic conditions which prevail throughout the country, this office is very decidedly of the opinion that it would be wise and prudent upon

the part of the Regents to allow the idle funds of the University to remain in the custody of the State Treasurer and that while such funds are subject to withdrawal in gross sums in the discretion of the Regents, such withdrawals ought to be made only in such amounts as from time to time will meet the payrolls and other expenses of the institution, all to the end that the bulk of the funds of the institution will be in the custody of the State Treasurer and only a comparatively inconsiderable amount deposited in a bank or banks in the name of the institution or of the Regents.

We are transmitting a copy of this letter to the President of the University, to be by him laid before the Board of Regents.

Respectfully yours,

PAUL P. ROSSER,
Attorney General.
CHARLES ROACH,
Assistant Attorney General.
PIERPONT FULLER, JR.,
Assistant Attorney General.

53 **RAILROADS**

To Verne S. Hill, April 27, 1933.

Constitutionality of H. B. 707.

H. B. 707 (29th G. A.) which required abandoned railroad lines to be turned over to the P. U. C. is unconstitutional because:

1. It provides for the taking of property without due process of law and without compensation. (Sec. 4 of the Act.)

Radetsky v. Jorgenson, 70 Colo. 423;
Jones v. Southern Ry. Co., 285 Fed. 19, and other citations.

2. It seeks to nullify or restrain the power that Congress has granted to the Interstate Commerce Commission to permit the abandonment of railroads.

Ry. Commission v. Worthington, 255 U. S. 101;
Colo. v. U. S., 271 U. S. 153; 70 L. Ed. 878; and other cases.

54 **RAILROADS**

To Verne S. Hill, April 28, 1933.

Amendment to H. B. 707.

A law empowering the Public Utilities Commission to accept railroad lines and hold same in trust for the public would be constitutional, but could not cut off the rights of bondholders.

A law providing that abandonment of railroad line shall not extinguish rights of public in easements for rights of way is constitutional, but courts must decide what those rights are.

55 STATE FUNDS

To Wm. P. Kavanaugh, May 1, 1933.

Appropriations.

Sec. 16, Art. X, of the State Constitution provides that no appropriation can be made whereby the expenditure of the state during any fiscal year shall exceed the total tax then provided for by law.

In re: Appropriations, 13 Colo. 322.

56 CITIES AND TOWNS

W. R. Freeman, May 1, 1933.

Request for appointment of duly commissioned inspectors.

Under Sec. 3070, C. L. 1921, the State Dairy Commissioner may appoint commissioner's inspectors at the request of a municipality, but such appointments should be made with the understanding that the State assumes no obligation whatsoever for salaries or expenses, and that the work done should be entirely under the direction of the State Dairy Inspector.

57 STATE HIGHWAY DEPARTMENT

To Governor Johnson, May 2, 1933.

Transfer of auditing division.

In view of the provisions of the Administrative Code Bill (Ch. 73, S. L. '33) the General Assembly could not in the General Appropriation Bill, provide for the transfer of the Auditing Division of the State Highway Department to the supervision of the Auditor of State. (71 Colo. 69.)

58 INSURANCE—Mutual

To G. B. Irwin, May 2, 1933.

Insurance of state property.

The State or its political subdivisions may insure property in mutual insurance companies when the policy is expressly non-assessable, or when it provides for two premiums—one payable in cash and the other contingently payable if required by the company. Liability under such a policy ceases one year from its termination or cancellation.

Secs. 1 and 2, Art. XI, Colo. Const.;
Sec. 2564, C. L. 1921;
Reports Atty. General: 23-24, p. 84; 25-26, p. 145; 29-30, p. 79; 31-32, p. 186.

59 **APPROPRIATIONS**

To B. F. Stapleton, May 3, 1933.

Second class appropriations.

Advisory discussion of disposition of $40,000.00 balance in treasury after payment of first class appropriations.

S. B. No. 745 relating to disposition of Funds derived from Motor Vehicle License fees, has just been passed and is now in effect, and will provide sufficient funds to the General Revenue to take care of all second class appropriations for the current period.

60 **INTOXICATING LIQUOR—(Beer Law)**

To H. F. Bedford, May 3, 1933.

Transfers of licenses, refunds of license fees.

1. License may not be transferred from one person to another under any circumstances; nor is such license transferable from one locality to another.

2. A part of such license may be refunded where it is inoperative through no fault of the licensee and where justice impels such refund.

Citing cases and making suggestions in conformity with given cases.

61 **GENERAL ASSEMBLY**

To B. F. Stapleton, May 11, 1933.

Additional salaries of employes.

Payment for additional work of employes made necessary by continuance of General Assembly beyond date of adjournment is legal and proper.

Lowell v. Bonney, 14 Colo. App. 230, 235;
Atty. General's Report 1929-30, Opinion No. 51.

62 **HIGHWAY DEPARTMENT**

To O. T. Reedy, May 11, 1933.

Drainage district taxes F. A. P. 295-E.

The Highway Department should not be compelled to pay drainage district taxes assessed against its right of way.

Public property is not subject to liens since being held for public uses only, it cannot be encumbered in favor of private persons. (102 U. S. 472; 29 C. J. 738; Sec. 2167, C. L. '21.)

63 **GENERAL ASSEMBLY**

To Governor Johnson, May 15, 1933.

Right of Governor to correct errors in journals.

Where it is apparent from the Senate and House journals that a clerical error occurs in an enrolled bill, the Governor may correct such error before signing the bill. (Opinion pp. 122, 1911-12.)

64 BARBERS' EXAMINING BOARD

To Wm. Timbel, May 15, 1933.

Revocation of licenses.

Sec. 4750 sets up four different grounds upon which the Board of Examiners may revoke licenses, and Sec. 4755 providing that the State Board of Health shall make sanitary rules and regulations covering proper sanitary conditions in the operation of barber shops also provides that a violation of such rules and regulations shall be grounds for revocation of licenses.

65 TAXES—Payment of

S. A. Koenig, May 16, 1933.

Warrants in payment of.

School or City warrants may not be used to pay taxes. (Sec. 7369, 6901, C. L. '21; 6 Colo. 478; 8 Colo. 485; 15 Colo. App. 294.)

66 MILITARY DEPARTMENT

To W. C. Danks, May 17, 1933.

Reinstatements in departments.

An officer's failure to account for state property in his possession at the time of his discharge, does not invalidate the discharge or justify reinstatement. (Sec. 192, C. L. '21.)

67 STATE TREASURER

To H. F. Bedford, May 17, 1933.

Duty in re: Weights and measures.

State Treasurer has no authority to appoint a Superintendent of Weights and Measures. (S. L. 1921, Ch. 71.)

68 DENTAL EXAMINERS

To Zenas T. Roberts, Sec'y., May 17, 1933.

Practicing without license.

A man may operate a dental laboratory, employing a licensed dentist to do the work therein without being guilty of practicing dentistry without a license.

In the absence of fraudulent or misleading statements mere advertising is not gross unprofessional conduct.

Practice of dentistry by corporations—discussed and cases cited.

69 **GAME AND FISH**

To R. G. Parvin, May 17, 1933.

Re: H. B. 706—Trespass on private land.

Although Sec. 1 of the act forbids the making of any charge for the privilege of fishing in the natural streams of the state, it does not in any way affect the laws of the state forbidding trespassing upon private lands. (H. B. 706, 29th G. A.)

See also *letter* to H. C. Moyer, May 18, 1933.

70 **FEES AND SALARIES**

To J. J. O'Connell, May 17, 1933.

Deputy county officers.

Where the salary of a deputy or assistant to a county officer has been fixed, and approved by the county board, such salary cannot be changed during the term of such officer by action of the board alone. (72 Colo. 200; 80 Colo. 14.)

71 **INDUSTRIAL COMMISSION**

To Industrial Comm., May 23, 1933.

Expenses of.

Sec. 44 of the Workmen's Compensation Law as amended by Sec. 3, Ch. 197, S. L. 1929, constitutes a continuing appropriation for the expenses of administering the Compensation Insurance Fund, and such expenses need not be included in biennial general appropriation bills. (71 Colo. 69; 78 Colo. 521.)

72 **LOCAL GOVERNMENT BUDGETS**

To Governor Johnson, May 24, 1933.

Local Government Budgets Act may repeal Levy Limiting Act.

Local Government Budgets Act may repeal Levy Limiting Act. (Ch. 146, S. L. 1931.)

73 **FEES AND SALARIES**

To Jas. P. McInroy, Budget Commissioner, May 25, 1933.

Exemptions under the salary reduction act. (Ch. 181, S. L. 1933; Const. Sec. 9, 30, Art. V; 67 Colo. 599.)

74 **GENERAL ASSEMBLY**

To Governor Johnson, May 26, 1933.

Appointment of members to public office. Resignation.

Under Sec. 8 of Art. V, of the State Constitution, "no senator or representative shall, *during the time for which he shall have been elected be appointed* to any civil office under this state."

This prohibition continues after the legislative session and remains in force even though the senator or representative should resign or attempt to resign his office as senator or representative. (Sec. 8, Art. V, Colo. Const.; Bienniel Reports of Atty. General 1919-20, No. 21; 1921-22, No. 297; 1927-28, No. 160.)

75 APPROPRIATIONS—Relief

To Governor Johnson, May 26, 1933.

Salaries for past services.

Under Sec. 4455, C. L. 1927, medical examinations were made, but through oversight bills for same were not presented, although appropriations to cover the services had been made.

S. B. No. 10 does not provide for extra compensation, but only for the compensation agreed upon at the time, and the statute had already authorized the incurring of the claims represented by this Relief Bill, for which reasons the proposed act is probably constitutional.

76 EMBALMING EXAMINERS BOARD

To John Scavarda, May 26, 1933.

Issuance of licenses.

Where applicants pass the examination required and are found to be under the age of 21 years and have not had two years experience, the board, under its rules, may postpone issuance of licenses.

77 OLD AGE PENSION LAW

To Hon. H. F. Bedford, May 31, 1933.

Escheats.

In view of the provisions of Sec. 5, Art. 9, of the Colo. Const., that . . . the public school fund of the state shall consist of . . . *all estates that may escheat to the state*; . . .'' the provision of paragraph (2) Sec. 2 of H. B. 500 is in direct conflict with the plain language of the Constitution, and must be disregarded in the administration of the act.

78 BARBERING

To J. T. Brooks, June 1, 1933.

Gratuitous work.

A person who performs barber work gratuitously for a limited number of persons and not for the public generally, is not subject to the statutes of this state requiring barbers to be licensed. (Sec. 4752, C. L. '21; S. L. 1929, Ch. 64.)

79 **STATE LANDS**

To Land Commissioners, June 2, 1933.

S. B. 415—Constitutionality of.

S. B. 415, approved May 29, 1933, requiring the State Board of Land Commissioners in selling public lands of the State to honorably discharged soldiers, sailors or marines who have served the country in time of war, to allow a credit upon the purchase price, of such lands to the extent of one dollar per day for the time of such war service is unconstitutional as applied to sales of all public lands of the State, with the possible exception of saline lands. (PP. 31-33, C. L. '21; Const. Art. IX, Secs. 3, 5, 9, 10; U. S. Const., Art. VI, Sec. 2, 3; 19 Colo. 63, 68.)

80 **COUNTIES—Reclassification**

To Romilly Foote, June 2, 1933.

Advisory.

Constitutionaity of H. B. 135 (29 G. A.) purporting to reclassify a single county for the purpose of determining fees and salaries of county officers.

Advisory only. Courts might uphold the reclassification of a single county upon the theory that the Legislature had first determined as a fact that such reclassification was necessary. (Const. Art. XIV, Sec. 15; 51 Colo. 364.)

81 **INSURANCE LAW**

To Jackson Cochrane, June 3, 1933.

Insurance and breakage of plate glass.

In the practical application of the provisions of the first paragraph of Sec. 2500, C. L. 1921, the making of insurance upon plate glass against breakage is impliedly authorized; . . . and all companies operating pursuant to the provisions of said first paragraph may properly be permitted to make insurance upon plate glass, in a separate policy.

82 **GENERAL ASSEMBLY**

To Governor Johnson, June 5, 1933.

Appointment of member to State Highway Board.

A member of the State Senate is not eligible for appointment as a member of the State Highway Advisory Board.

Citing Sec. 8, Art. V, Colorado Constitution, and Previous opinions in Reports of Attorneys General.

83 GENERAL ASSEMBLY

To Governor Johnson, June 5, 1933.

Appointment of member as Warden of State Reformatory.

A member of the House of Representatives is not eligible for appointment as Warden of the State Reformatory.

Citing cases and Reports of Attorneys General.

84 ACCOUNTANCY BOARD

To Governor Johnson, June 6, 1933.

Reinstatements.

Under Sec. 4716, C. L. 1921, the Board may reinstate persons whose licenses have been revoked.

85 SCHOOL ELECTIONS

To Elsie Cribbes, June 7, 1933.

Reclassification of district.

Under the provisions of S. B. 317 (29th G. A.) a first class school district which is to be reclassified and become a third class district, holds its election under the election laws relating to first class districts.

86 DAIRY CODE

To W. S. Freeman, June 9, 1933.

Interpretation of House Bill No. 132.

1. The provisions in Sec. 1, sentence 3, means that chocolate ice cream, nut ice cream and fruit ice cream are only required to contain 10% butterfat.

2. "A tolerance of 1% allowed . . . " means that a variation of 1% from the standard, or from specified dimensions, weight, etc., is allowable.

3. Small milk producers are subject to inspection and sanitary regulation in accordance with the law.

4. Small milk producers must be licensed unless they are supplying milk *exclusively* to cities having municipal inspection.

5. Licensing and inspection of counter ice cream. These machines are not ice cream factories nor "other places of business where dairy products are manufactured . . . for distribution," etc., and are probably not subject to payment of license, but are subject to inspection and the enforcement of sanitary regulations. (Dairy Code of 1931; S. L. 1923, p. 263; 44 Colo. 600; 88 Colo. 89; 78 Colo. 407.)

87 **CORPORATION LAW**

To W. A. Alexander, June 12, 1933.

Re: Ten per cent additional corporation fee.

The provision in Sec. 1, Sub-div. A of H. B. 564, providing for "Ten per cent additional amount to fees which are due . . . to Secretary of State" upon incorporation of any corporation or association for profit "applies only to domestic corporations."

88 **SCHOOL OF MINES**

To Board of Trustees, School of Mines, June 12, 1933.

Tuition of residents.

Section 8040 as amended by S. B. 391 (29th G. A.) makes the charging of a reasonable tuition fee for resident students mandatory.

89 **OLD AGE PENSIONS**

To Omer T. Mallory, June 15, 1933.

Provision of funds for.

Subsection (b) of Sec. 1 of the Act to provide funds for the payment of old age pensions, etc., which provides for the collection of $1.00 to be paid annually, for the registration or re-registration of motor vehicles, is in effect from and after the passage of the act, and applies to registrations and re-registrations. (S. L. 1933, Ch. 144.)

90 **RETIREMENT FUND**

To C. C. Hezmalhalch, June 15, 1933.

Deductions for, under new salary schedule.

Deductions for State Employes' Retirement Fund should be based upon the reduced rather than upon the original salaries of the employes affected by the change.

91 **MOTOR VEHICLE LAW**

To H. F. Bedford, June 15, 1933.

Expenses of administration.

In administering the Motor Vehicle Act, the State Treasurer is necessarily confined to the appropriations made therefor in the General Appropriation Bill for the biennial period. (S. L. 1931, Ch. 122; H. B. 527; S. L. 1931, Ch. 53; S. L. 1933, Ch. 37.)

92 TAX SALE CERTIFICATES

To C. R. Monson, June 20, 1933.

Purchase of by owner at price set by commissioners.

At least so long as his right to redeem continues, an owner of land cannot extinguish the county's lien for valid taxes except by payment in full, as set out in Sec. 7430, C. L. 1921, providing for redemption.

June 20, 1933.

Hon. C. Ray Monson,
District Attorney,
Steamboat Springs, Colorado.

Dear Sir:

You have requested an opinion from this office as to whether, under Section 7422, C. L. 1921, as amended by S. L. 1927, page 612, the owner can purchase from the county the tax-sale certificate for his own land, at a price set by the county commissioners which is less than the price bid therefor by the county with penalties and interest.

The above section provides, among other things, that the county treasurer may sell a certificate held by the county to any person for the amount bid by the county with penalties and interest, together with the sum of One Dollar for making such assignment; also the taxes assessed thereon since the date of such sale *or for such sum as the board of county commissioners may decide and authorize.*

The other statute which bears upon this question is Section 7430, C. L. 1921, as amended by S. L. 1925, page 441, which provides, in effect, that land sold for taxes may be redeemed by the owner within three years, or thereafter at any time before the execution of the treasurer's deed *by payment to the county of the amount for which the same was sold with interest* together with subsequent taxes paid by the purchaser and endorsed on the certificate. It will be noted that no provision is made in this section for the county commissioners to authorize the treasurer to assign the certificate for a lesser sum than the amount bid at the sale plus interest and penalties.

We have been unable to find any Colorado case deciding the question you ask, but the language of the court in several cases is significant.

In *Buchanan v. Giswold*, 37 Colo. 18, certain land was bid in by the county for taxes and the tax-sale certificate was sold to the defendant at a reduced price under Section 7422, *supra.* The owner, subsequently, had the tax deed set aside as irregular and void, and the question arose as to how much he was required to pay the defendant. The court said at pages 20-21:

> "* * * he must discharge the *lien created by the tax sale and* subsequent taxes constituting the basis of such deed. * * * The purchase from a county of a tax-sale certificate issued to it vests the purchaser with the same rights as though he had been the original purchaser at the tax sale. *The owner of property who neglects to pay his taxes cannot take advantage of any reduction which the purchaser of his property at a tax sale may have made in disposing of the tax-sale certificate.* That is a matter of contract between the seller and purchaser, with which the owner is not concerned. The county cannot take a tax deed. It cannot realize upon certificates issued to it except by redemption from the sale, or disposition of such certificate. *The owner who fails to discharge his obligation to pay his taxes on his lands is not to be rewarded for his delinquency by being permitted to take advantage of a reduction which a county may have been compelled to make in order to dispose of a tax-sale certificate issued to it for taxes which he should have paid,* and taxes subsequent which he has not discharged." (Italics ours.)

The court held that plaintiff to recover his land must deposit with the clerk the amount for which said property was sold at the tax sale (to the county) plus subsequent taxes paid by defendant with interest and penalties.

In *Newmyer v. Tax Service Corporation, et al.*, 87 Colo. 474, one Newmyer bought certain lands on which the taxes for 1914, 1915, 1916 and 1919 were delinquent. The failure to sell for the 1919 tax was later discovered and his wife purchased the certificate. Then the other delinquencies were discovered and the land sold to the Tax Corporation for these taxes. Mrs. Newmyer sold her certificate to Newmyer and then took a deed from him in fee. The court held that the lien for the other taxes was not cut off, saying, at page 476:

> "If Mr. Newmyer had bought at the sale for the tax of 1919 he could acquire no rights based thereon, since it was his duty to pay his taxes. * * * Public policy will not permit a delinquent taxpayer to acquire any rights based upon his own wrong."

(See also *Ireland v. Gunnison Mountain Coal and Coke Company, et al.*, 87 Colo. 193, and *Bowman v. Eckstein*, 46 Iowa 583.)

In *Mathewson v. Hevel*, 82 Kan. 134, an owner of part of a tract attempted to obtain title to the whole by allowing his land to be bid in by the county for taxes and then purchasing a certificate to the whole. Although it seems the case could have been decided on another point, the court says:

> "It was Mathewson's duty to pay his taxes. He could not take a valid tax deed of his own land. The attempt to do so merely amounted to a redemption from the tax sale,"

holding the deed to the whole tract void.

So it appears that such a transaction as is involved here amounts merely to an incomplete redemption or partial payment of taxes.

On the general proposition that the owner or any one under a legal or moral duty to pay taxes, who lets the land be sold for delinquent taxes and buys it in, either directly or through a stranger who purchased at the sale, does not, in this way, improve his title, or defeat encumbrancers, see the exhaustive note on *Cone v. Wood*, 108 Iowa 260, 75 Am. St. Rep. 223, 248.

We can find no reason why this rule should not apply as well to the lien of the county for taxes in full plus interest as to other encumbrancers.

Therefore, we are of the opinion, particularly in view of the language of the Colorado Supreme Court in related cases, and in view of the cases in other jurisdictions, that at least so long as his right to redeem continues, an owner of land cannot extinguish the county's lien for valid taxes except by payment in full, as set out in Section 7430, *supra*, providing for redemption, or some other method by which the same result is accomplished.

Very truly yours,

PAUL P. PROSSER,
Attorney General.
By PIERPONT FULLER, JR.,
Assistant Attorney General.

(See opinion to C. S. Ickes, March 19, 1934, and C. H. Stewart, January 4, 1934.)

93 CIVIL SERVICE

To Dr. W. W. Williams, June 21, 1933.

Power of Board to remove Secretary-Treasurer.

A provisional appointee to a position in the classified service may be permanently relieved from duty by the appointing power. (Sec. 4531, C. L. '21; Const. Art. XII, Sec. 13; 83 Colo. 384.)

94 APPROPRIATIONS

To Jas. B. McInroy, July 22, 1933.

Meat and Slaughterhouse Inspector.

The Act of 1907 establishes a continuing appropriation for Meat and Slaughterhouse Inspector.

Under civil service rules the former incumbent of the office would be entitled to continue in the performance of the work, if the work goes on. (Sec. 1026-1036, C. L. '21; S. L. 1933, Ch. 37.)

95 PUBLIC FUNDS

To Erl H. Ellis, June 23, 1933.

Local Government budget bill.

Local Government Budget Bill (S. B. 407, 29th G. A.) does not repeal the Levy Limiting Act. (S. L. 1931, Ch. 146.)

96 INSURANCE LAW

To C. M. Armstrong, June 27, 1933.

Mutual benefit associations. (Opinion never released.)

"All mutual benefit associations incorporated since the effective date of Ch. 99, S. L. 1913, are incorporated and doing business without lawful authority; and that no articles of incorporation of mutual benefit associations should be accepted for filing by the Sec'y. of State in the future." In any event such articles should be referred to the Commissioner of Insurance.

97 INHERITANCE TAX LAW

To Geo. Hetherington, June 27, 1933.

Fees.

New law makes no provision for the "additional recording fee" provided for in Subsec. 4 of Sec. 6 of Inheritance Tax Act of 1927, so fee of $1.25 is no longer properly chargeable by clerks of county courts. (S. L. 1933, Ch. 106.)

98 BUILDING AND LOAN LAW

To E. M. Gross, June 27, 1933.

Withdrawal shares.

The statutory provisions in the new law concerning withdrawal shares should be applied by the Commissioner according to their literal effect, so as to be construed as affecting shares concerning which withdrawal notices were on file at the time the new act took effect.

99 COMPENSATION INSURANCE FUND

To Jackson Cochrane, June 29, 1933.

Not an insurance company.

The State Compensation Insurance Fund is not taxable as an insurance company.

Sec. 2486, C. L. 1921, provides that insurance companies shall pay a tax through the Insurance Commissioner.

Sec. 2472 defines "insurance company."

The case of Ban & Kariva Co. v. Industrial Comm., (Utah) 247 Pac. 490, decided that the state insurance fund has no distinct entity independent of the industrial commission.

100 MILEAGE FEES

June 29, 1933.

Mr. C. W. Taylor,
County Attorney,
Glenwood Springs, Colorado.

In re: MILEAGE FEES.

Dear Sir:

In response to your letter of June 8th, in which you ask our opinion as to the effect of the law adopted March 8, 1933, concerning mileage to be allowed State, County and precinct officers, we wish to advise you as follows:

It is clear to us that the intent of the law is to reduce expense allowance, primarily in the use of automobiles for each mile necessarily traveled on official business. The reason for this is clear. Automobiles are much cheaper, roads are much better, and cost of operation has been greatly reduced in the last few years.

For the above reasons we are definitely of the opinion that in all cases where a fixed amount had been paid to all public officials for the use of their cars that this amount is limited to 8 cents per mile. For example: Section 7928, C. L. 1921, provides that sheriffs shall be allowed actual traveling expenses not to exceed 15 cents per mile, is now reduced to not to exceed 8 cents per mile. When the 1917 Act was adopted, S. L. 1917, page 225, fixing the amount to 10 cents per mile, our office ruled that sheriffs should be paid under the new statute from the date it took effect, Opinion No. 156, 1917-18.

This conclusion is not in conflict with the Constitutional inhibition of reducing salaries of public officers during their term, because this allowance for traveling expenses is not salary within the meaning of our Constitution. This distinction has been recognized by our Supreme Court in Teller County vs. Trowbridge, 42 Colo. 449, and in several cases cited in 54 C. J. 1124-25.

There is, however, an exception that must be made to the above ruling, viz.: where a statute fixes a mileage fee as compensation for a service rendered in addition to the actual traveling expense and not in lieu thereof. Under this exception, the mileage allowed sheriffs under Section 7882, C. L. 1921, remains unchanged during terms of present incumbents as this kind of a mileage has been held to be salary within the meaning of the Constitutional

provision prohibiting reduction of salaries during present terms. In other words such mileage is an item of compensation to be allowed the sheriff as part of his salary. (See Higgins v. Glenn, 65 Utah 406, 237 Pac. 513.

Yours very truly,
PAUL P. PROSSER,
Attorney General.
By NORRIS C. BAKKE,
Deputy.

101 ABSTRACTORS

To Mark Clay, June 30, 1933.

When County Clerk may act as.

When there is no bonded abstractor in the county, the county clerk may be required to prepare a real estate abstract.

There is no law requiring a county clerk to furnish chattel mortgage abstracts and if he does furnish such abstracts he is entitled to make a reasonable charge for so doing.

Refer to Opinion 111, Report of 1929-30. (S. L. 1929, Ch. 57; Sec. 8742, C. L. '21.)

102 ELECTION LAW

To C. A. McFarland, June 30, 1933.

Right of resident at Federal hospital to vote.

Because a resident at a Federal reservation is called upon by local authorities to pay taxes on personal property, does not give him a right to vote at election. "No person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, for the purpose of voting, while in the military service of the U. S." . . . "that place shall be considered and held to be the residence of a person in which his habitation is fixed."

Sec. 7528, C. L. 1921;
Sec. 7726, C. L. 1921; 67 Colo. 441.

103 REFORMATORY

To E. C. Johnson, July 7, 1933.

Abolishment of.

Section 7123, C. L. 1921, provides that courts having criminal jurisdiction shall sentence certain persons convicted of felonies to the State Reformatory, for which reason it is doubtful if the State Reformatory can be abolished or suspended by executive action.

104 INDUSTRIAL COMMISSION

To Thos. Annear, July 8, 1933.

Wages of laborers and mechanics on State contracts.

H. B. 101 of the 29th Gen. Assembly, relating to the rate of wages for laborers and mechanics employed on public works of the State of Colorado, etc., purports by its title and by the body of the act itself, to comprehend only contracts for public work to which the State of Colorado is a party, and does not comprehend public works undertaken by political subdivisions of the State. (Const. Art. XI, Sec. 1; Art. XII, Secs. 1, 13; 67 Colo. 441; S. L. 1923, Ch. 155.)

105 DIRECTOR OF MARKETS

To J. J. Tobin, July 10, 1933.

Inspection fees.

The Director of Markets may require that inspection fees be paid in cash at the time of inspection; and under Sec. 18, Ch. 96, S. L. 1931, is authorized to take such reasonable measures as are necessary to enforce the collection of these fees at the time of the inspection. The statute does not require that the fees be paid in advance, or that the shipper give bond for the estimated amount of the fees for the coming season.

Under Sec. 5 of the Act the Director has the authority to stop trucks to determine weight and destination.

Apples and pears must be marked with grade, etc., as required by Secs. 25 and 27.

Sec. 24, as amended, must be construed so as to be consistent with the rest of the act, as repeals by implication are not favored by the courts.

106 UNIVERSITY OF COLORADO

To Dr. Lester, July 11, 1933.

Custody of funds.

1. There should be no objection to furnishing the State Treasurer with a statement of the funds of the University whether derived from the State or from other sources.

2. It would be entirely proper to leave the funds of the Institution with the State Treasurer until actually needed for necessary expenditures, and to withdraw money in gross sums once or twice a month, approximately in amounts required for actual expenditures.

107 FEES AND SALARIES

To B. F. Stapleton, July 12, 1933.

Salary Reduction Act.

1. Where an employe draws a regular monthly salary and is furnished with board and lodging:

The deductions provided by the Act are based on the "salaries" of the officers and employes. The word "salary" is commonly accepted as meaning money compensation, and therefore the deductions provided for in the Act should be based only upon the rates of compensation payable in money.

108 HIGHWAYS

To Gov. Johnson, July 13, 1933.

Right of County Commissioners to contract for building of highway or roads.

Under Sec. 8694, C. L. 1921, no contracts can be made by the county commissioners of any county, and no liability against the county, unless an appropriation shall have been previously made concerning such expense. (Road Fund, Sec. 8697, C. L. '21.)

109 MOTOR VEHICLES

To J. E. Furlong, July 14, 1933.

Re: Reflectors—S. B. 110.

The law requires each motor vehicle and trailer to carry both a rear lamp and an approved type of reflector, and that all reflectors in use after May 23, 1933, must be sealed against the influx of moisture or dust.

Manufacturers or buyers of reflectors originally approved by the Sec'y. of State under the old act will have no cause of action against the Highway Dep't. for failure to reapprove their devices if it finds they are inadequate under the new law.

110 CIVIL SERVICE

To Civil Service Comm., July 17, 1933.

Re: Mine Inspectors, veto of salary.

Sec. 3386, C. L. 1921, expressly requires that the Mine Inspector for each of the four mining districts must have been a resident of his district for at least six years; and as the four offices of mine inspector are separate and distinct from each other, the Governor acting under S. B. 321, Sec. 3388a, has the power to abolish any one of such offices without regard to the question of seniority of service.

111 FEES AND SALARIES

To B. F. Stapleton, July 20, 1933.

Construction and application of Salary Reduction Act.

Does not apply to officers whose term and salary are fixed by statute or Constitution. (Sec. 30, Art. V; Secs. 2415, 4329, 127, C. L. '21; S. L. 1923, Ch. 195; 66 Colo. 367; 67 Colo. 599.)

112 COUNTIES

Mr. L. E. Langdon, July 21, 1933.

Order of payment of county warrants.

Counties should probably be on an annual appropriation basis but should hesitate to overthrow long established contrary practice.

113 INTOXICATING LIQUOR

To G. E. Ellsworth, July 21, 1933.

Alcohol—Sale of.

Importations of alcohol into the State may be only by such licensees as have qualified and paid the state fee of $100. Discussion of law.

114 PUBLIC FUNDS

To H. F. Bedford, July 21, 1933.

Institutional emergency funds.

Ch. 147, S. L. 1913 (Daily Deposit Law), allows each state institution a cash fund of not to exceed $1,000 to be kept in the hands of the treasurer of the institution for emergencies.

The State Agricultural College and the Fort Lewis School, which under Sec. 8144, C. L. 1921, is made a part of the Agricultural College system, are entitled to this fund; but the Experiment Station and the Extension Department of the Agricultural College cannot be regarded as separate institutions within the meaning of the act allowing these emergency funds. (Secs. 8064, 8065 8107, 8145, C. L. '21.)

115 APPROPRIATIONS

To Executive Council, July 21, 1933.

Powers of.

The Executive Council, as the successor of the State Auditing Board, has control and supervision of all appropriations, and such control extends to appropriations for examining boards as well as other departments, regardless of whether the appropriation is from the general revenues of the State or from special funds. (Sec. 4578, 277, C. L. '21; S. L. 31, Ch. 53; S. L. 33, Ch. 37, Sec. 17.)

116 APPROPRIATIONS

Mr. Jas. B. McInroy, July 22, 1933.

Continuing appropriation for Meat and Slaughter Plant Inspector. (Secs. 1026-1036, C. L. '21.)

117 CHIROPRACTIC BOARD

To C. C. Harrod, July 24, 1933.

Construction of law and advice in re:

1. Student who enrolled in school prior to passage of new act is subject to new act.

2. Graduate student completing his course according to the requirements of the Medical Board prior to the passage of the act entitled to license without further examination.

3. Allowance for office of Secretary including salary is $750.

118 CIVIL SERVICE

To Civil Service Commission, July 27, 1933.

Promotional examinations.

Promotional examinations should be governed by rules to be adopted by the Commission. (Const. Art. XII, Sec. 13.)

119 SALARY REDUCTION BILL

To H. F. Bedford, July 27, 1933.

New positions and salaries.

S. B. 337 provides for salary reductions of state officers and employes based upon the respective rates of annual salary in effect June 1, 1932.

Where new positions were created and salaries therefor fixed at the very time or after this statute took effect (July 1, 1933), there being no pre-existing rate of salary upon which to base the reduction, the act cannot be applied.

120 FEES AND SALARIES

To B. F. Stapleton, July 27, 1933.

Of Lieutenant-Governor and President Pro-tem of Senate.

Under Sec. 13, Art. IV of the Colo. Const., the Lieut.-Governor is entitled to the emoluments of the Governor while acting as governor during his absence from the State.

Under Sec. 51, page 237, C. L. 1921, the president pro tempore of the senate is entitled to the salary of the lieutenant-governor while he is acting as governor.

121 PLUMBER'S LICENSE

To Irving A. Fuller, July 28, 1933.

Termination of.

Since the general theory of the law is that a license to pursue a given occupation is terminated by the holder's death, a son cannot continue to operate his father's plumbing business on his father's license.

122 PUBLIC FUNDS

To H. F. Bedford, July 28, 1933.

Appropriations for expenses of department.

Since the fund designated by the General Appropriation Bill out of which the expenses of administering the Liquor Permit and License Department are to be paid, has no existence in fact or in law, the items appropriated for carrying out the provisions of the laws in question, should be paid out of the general funds of the State.

123 SALARIES

To H. F. Bedford, July 28, 1933.

Power of Executive Council to adjust.

The Executive Council has no authority to make a transfer of any part of the salary appropriation from one employe to another.

124 PRINTING

To Executive Council, Aug. 2, 1933.

Governor may set aside printing contract which is unfair or exorbitant. (Sec. 5437, C. L. '21.)

125 CONTRACTS

To Executive Council, August 3, 1933.

Dormitory at State Home for Dependent Children.

Contract for, is not controlled by Sec. 29, Art. V of Constitution governing State contracts.

126 SCHOOL LAW

To Mrs. Inez Johnson Lewis, August 4, 1933.

The State Sup't of Public Instruction has been given no power to control the grading of Institutions of higher learning.

127 **FIRE LOSS FUND**

To H. F. Bedford, August 8, 1933.

The Fire Loss Fund cannot be used in effect as the capital of an insurance company; nor can it be used to pay premiums for insurance of State property.

See Ch. 164, S. L. 1925, and amendment thereto—Ch. 166, S. L. 1927.

128 **SECRETARY OF STATE**

To Chas. M. Armstrong, August 8, 1933.

Administration of Board and Bureaus under Code Bill.

The Secretary of State is charged with the general supervision of all boards and bureaus placed under his department by the Code Bill of 1933, and one of his most effective functions thereunder is to advise the Executive Council concerning the approval or rejection of expenditures made or contemplated by the respective boards.

129 **GENERAL ASSEMBLY**

To Royal I. Fisher, August 9, 1933.

Expenditures of members.

"Actual and necessary travelling expenses" of members of the General Assembly means travelling expenses from the member's home to the State capitol.

See Opinions of Atty. General 1911-12, Pages 57 and 80.

130 **TAXATION**

To Colo. Tax Comm., August 16, 1933.

Of water rights for manufacturing purposes.

An appropriation of water for manufacturing purposes is a property right and, together with dams and other improvements for the purpose of utilizing such appropriation, is subject to taxation. (Const. Art. XVI, Sec. 6; Art. X, Secs. 3, 6.)

131 **APPROPRIATIONS**

To Benj. F. Stapleton Aug. 16, 1933.

Continuing for Mineral Land Department.

Sec. 1161, C. L. 1921, contains a continuing appropriation for the salaries and expenses of the Mineral Land Dep't. of the State Land Board, and such expenses may be paid without a biennial appropriation therefor.

132 INDUSTRIAL COMMISSION

To Industrial Commission, August 17, 1933.

Companies desiring to effect immediate change with request to conditions of employment, wages and hours to comply with NRA Code not required to comply with Section 29 of Ind. Com. Law requiring 30-day notice.

133 TAXATION

To Tax Commission, Aug. 18, 1933.

Moffat Tunnel Tax on improvements on public land.

As a general proposition, improvements upon public or leased lands in the Moffat Tunnel Improvement District are subject to special assessment under the Moffat Tunnel Act.

Citing Sec. 7193; C. L. 1921: The Moffat Tunnel Act; 133 Or. 252.

134 INTOXICATING LIQUOR

To Earle Bryant, Aug. 18, 1933.

Use of Beer License Funds.

1. All Beer License money collected by the State of Colorado under paragraph B, Sec. 2 of the Old Age Pension Act, and by counties and municipalities in the State since April 1, 1923, shall be paid into the hands of the county treasurers.

2. Under Sec. 3, of the Old Age Pension Act, all of the $80 collected by municipalities for beer licenses must also be paid to the county treasurers, and the municipalities are allowed to keep one-half of any beer license collected by virtue of a city ordinance, passed in addition to any ordinance passed in compliance with the State Law, excepting only the $80.

135 SCHOOL LAW

To Most Rev. Urban Vehr, Aug. 23, 1933.

Lease of parochial school building for use as a public school.

A public school district may lease property belonging to a parochial school and may employ Sisters as teachers in such public school. (Sec. 8333, C. L. '21; Const. Art. IX, Secs. 7, 8.)

136 CONVICT-MADE GOODS

To J. M. McCarthy, Aug. 24, 1933.

Importation of.

There is no way to prevent the sale of convict-made goods imported into this state from other states, until the Federal law removing restrictions as to interference with interstate commerce, becomes effective Jan. 1 1934.

137 INTOXICATING LIQUOR

To Homer F. Bedford, August 25, 1933.

Ch. 40, S. L. 1933, Industrial Alcohol Act is not repealed by H. B. No. 9, Ex. Session, 1933.

138 FEES AND SALARIES

To B. F. Stapleton, August 26, 1933.

Under Administrative Code.

Under Sec. 7, page 208, S. L. 1933, no officer, assistant or employe of any department, institution or agency of the State, shall receive any compensation or fees, in addition to his specified salary, from more than one department, institution or agency, or in more than one capacity.

139 COMMISSIONER OF INSURANCE

To Jackson Cochrane, August 26, 1933.

Fee under Section 2492.

Where a poor person has obtained an order of Court under Sec. 6592, C. L. 1921, he should not be obliged to pay the $2.00 fee required by the Commissioner of Insurance for service of process.

140 INTOXICATING LIQUOR

To Jacob Schey, Aug. 26, 1933.

Local option.

The State of Colorado has by constitutional amendment repealed all of its bone-dry legislation, and since the legislature did not see fit to pass a local option law, the sale of beer throughout the State will be governed by the provisions of H. B. 8, 29th G. A., Extra Session, municipal ordinances to the contrary nothwithstanding. (60 Colo. 370.)

141 MOTOR FUEL DEPARTMENT

To B. F. Stapleton, August 28, 1933.

Employment and payment of additional employes.

If the State Treasurer finds it necessary to employ more persons to carry out the provisions of the Motor Fuel Excise Tax law in addition to those mentioned in the general appropriation bill, he may do so on the theory that the appropriation for the salaries and expenses in connection therewith is a continuing one.

As to those officers or employes whose employment is designated and salaries specified, the treasurer should be limited to the amount set forth in the general appropriation bill.

142 HIGHWAY BOND ACT

To Governor Johnson, Aug. 30, 1933.

Analysis of H. B. 26, 29th G. A., Ex. Session.

1. Subject of Act is included in call for extra session;
2. Title of Act correctly states purpose;
3. The Act provides for loans to defend the State, and such loans may be contracted under Sec. 3, Art. XI of the Colorado Constitution;
4. The allocation of excise taxes provided for by existing laws to the payment of the contemplated loans satisfies the requirements of Sec. 4 of said Art. XI;
5. The Act is constitutional.

August 30, 1933.

Honorable Edwin C. Johnson,
Governor of Colorado,
State Capitol,
Denver, Colorado.

Dear Governor:

You have requested from this Department an analysis of House Bill No. 26, passed at the recent Extraordinary Session of the Colorado General Assembly, approved by you and in effect August 17, 1933, and for the opinion of this Department as to the constitutionality and effect of said legislation.

The Act in question is entitled:

> "TO PROVIDE FOR EMERGENCY RELIEF AND TO PROVIDE FOR EMPLOYMENT BY AUTHORIZING THE GOVERNOR TO MAKE LOANS AND ACCEPT GRANTS FROM THE PRESIDENT OF THE UNITED STATES FOR THE EMERGENCY CONSTRUCTION OF PUBLIC HIGHWAYS AND OTHER PUBLIC WORKS PROJECTS, AND TO PROVIDE REVENUES TO CARRY OUT THE PURPOSES HEREOF."

Section 1 of the Act recites that:

> "A critical emergency arising out of the present economic depression which has caused widespread unemployment and consequent indigence and dependence of a large portion of the people of this State, made hopelessly inadequate federal, state and local relief funds and caused distress and hunger in such a degree, that the public peace, order, tranquillity and safety are seriously affected and endangered and the processes of orderly government itself imperiled, is hereby declared to exist."

Section 2 of the Act provides, in substance, that as a means of carrying out the purposes of Section 1 as above quoted and to

enable this State to avail itself of the provisions of the Act of Congress entitled "An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes," approved June 16, 1933, and especially Sections 202 and 203 in Title II of said Act of Congress, the Governor of this State is authorized until January 1, 1935, through the Colorado State Highway Department, to construct, finance, or aid in the construction or financing of public highways and related projects, and to enter into agreements with the President of the United States, under such terms and conditions as he may prescribe, to borrow money in the aggregate amount of not more than Twenty Million Dollars, and to accept grants in addition thereto for such projects, and to pledge the faith and credit of the State of Colorado for the repayment of any such loans, and to execute and deliver such instruments of writing evidencing such loans and grants as may be required and to repay such loans and agreed interest thereon according to the terms and conditions thereof. Said Section 2 further provides that in making applications for loans or grants, or both, the Governor shall submit requests for projects which shall insure the expenditure of the moneys received upon the same basis "as the allocation of funds derived from the present gasoline tax."

The "present gasoline tax" is provided for by Chapter 140, Session Laws of Colorado, 1933, and Sub-section (b) of Section 10 of that Act provides for the allocation of the net proceeds of the tax, as follows:

> "(b) Of the balance of such funds thus obtained and remaining with the State Treasurer on the twentieth (20th) day of each month he shall pay seventy per cent (70%) to the credit of the State Highway Fund and twenty-seven per cent (27%) 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 (27%) shall be expended by said counties only in the construction, improvement, repair or maintenance of public highways in said counties.
>
> "The Auditor of the State of Colorado shall issue warrants covering said payments and the State Treasurer is hereby authorized to pay the same. The three per cent (3%) remaining shall be transferred to a special fund of the State Highway Department which is hereby created for this purpose and shall be used and expended by the State Highway Department for the construction and maintenance of streets, roads, or highways which shall be hereafter designated by the State Highway Depart-

ment in the various towns, cities or counties in proportion to the number of motor vehicle licenses issued in each county.

"Under the provisions of this Act the State Highway Department shall be empowered to create and designate certain streets or parts of streets, or certain roads or parts of roads as portions of the State Highway System, and to construct and maintain thereon such improvements as said department may deem necessary in perfection of the system of State Highways; said streets and highways to be constructed and maintained from such moneys so transferred to said Special Fund of the State Highway Department and the State Highway Department shall not be limited in its expenditures for the construction or maintenance of streets, roads, or highways, to such counties as have State Highways within their borders or to cities of twenty-five hundred (2,500) inhabitants or less."

Section 3 of said House Bill No. 26 creates in the office of the Colorado State Treasurer a fund to be known as the "Emergency Highway Construction Fund" for the purpose of paying the principal and interest of any loans procured under the Act. The same section provides that from and after January 1, 1934, "such of the moneys as may be necessary but not to exceed twenty-five per centum thereof remaining in the custody and control of the State Treasurer from the proceeds of the motor fuel excise tax provided for by Chapter 140, Session Laws of Colorado, 1933, and all Acts amendatory thereof, after the payment of the expenses of administration of the Act and refunds as provided for therein shall be paid over to the credit and account of said Emergency Highway Construction Fund and that such transfers shall continue to be made as long as it shall be necessary for the repayment of loans and interest made under the authority of said House Bill No. 26; and further if such funds so transferred shall not be sufficient to repay such loans and interest then and in that event from and after July 1, 1935, out of the moneys received by the State Treasurer from motor vehicle registration and drivers' and chauffeurs' license fees collected under authority of Chapter 122, Session Laws of Colorado, 1931, and all Acts amendatory thereof, and after the deduction of expenses of administration of said chapter as therein provided, the State Treasurer shall credit the amount "normally credited to the State Highway Fund to the credit and account of the said Emergency Highway Construction Fund" and that such transfers shall continue to be made as long as it may be necessary to satisfy said loans and interest thereon. At this point, it must be noted that the "amount normally credited to the State Highway Fund" under the provisions of said

Chapter 122, Session Laws of Colorado, 1931, is 50 per centum of the net proceeds derived under said chapter from motor registration and drivers' and chauffeurs' license fees (See Section 25, Chapter 122, Session Laws of Colorado, 1931).

Said Section 3 of House Bill No. 26 further provides that:

> "Until all such loans and interest thereon shall be satisfied no law shall be enacted repealing said Chapter 100, Session Laws of Colorado, 1933, and said Chapter 122, Session Laws of Colorado, 1931, nor shall said Chapter 140 and said Chapter 122 be amended in such manner as to render impossible the making of transfers of funds as above provided in amounts sufficient to meet the requirements of such loans and interest."

Section 4 of the Act provides in substance that whenever in the opinion of the Governor the emergency declared by the Act to exist shall have ended the Governor shall cease to enter into any further agreements for the construction of highways or related projects thereunder.

Section 5 of the Act provides, in substance, that with the view to increasing employment quickly and to spread as broadly as possible the relief to be obtained through the construction of highways under the Act, the Governor shall divide the State into such districts as he shall deem advisable to the end that employment shall be equitably distributed throughout the State without respect to any exising districting.

Section 6 provides, in substance, that it shall be the duty of the Governor in the expenditure of any moneys received under the Act, to provide "that the maximum of human labor shall be used in lieu of machinery wherever practicable and consistent with sound economy and public advantage" and that in any event he shall require on any project undertaken, after the payment of the costs of rock excavation or rock work, transportation costs and materials, that not less than 70 per centum of the remainder of the cost of the project be expended upon hand or team labor; and that minimum wages and maximum hours of labor shall be in conformity with federal regulations. And further that whenever mechanical craftsmen are employed such craftsmen shall be paid such prevailing rates of pay as shall be predetermined by the State Industrial Commission of Colorado, giving due consideration to the number of hours of employment.

Section 7 of the Act provides, in substance, that in any project undertaken, cities or "cities and counties" having a population exceeding 100,000 shall be considered as political subdivisions at large in order that "unemployment" may be distributed with equity, and that any portion of the funds allotted to the credit of the "Highway fund herein created" may be spent and

used on projects within said subdivisions and within the boundaries of any municipality or political subdivision.

In brief, this Act declares the existence of a critical emergency requiring the State to take measures for defense of the public order and tranquillity, authorizes the Governor of the State to contract loans from the Federal Government in an aggregate amount not to exceed twenty million dollars, for the purpose of affording prompt unemployment relief through the construction of public highways, authorizes the Governor to pledge the faith and credit of the State to the repayment of such loans, and sets aside for the repayment of such loans and interest the above described excise and license taxes authorized by existing State laws.

VALIDITY OF THE ACT:

In a Proclamation issued under the Colorado Constitution, calling the General Assembly of the State into extraordinary session you, as Governor, declared that "it is imperative that legislation be enacted immediately to allay the present widespread public discontent and social unrest; to defend the State; to relieve the needy and destitute citizens of this State from want and deprivation by the provision of direct relief or work relief, or both; to cooperate with the Federal Government in its program of national recovery; to prevent disaster in this critical emergency; and by reason thereof an extraordinary occasion has arisen and now exists, as contemplated in the Constitution of this State for the calling of a special session of the General Assembly," etc. And, as above stated, the General Assembly in the Act in question likewise declared the existence of an emergency calling for the enactment of measures to defend the State, etc.

Section 3 of Article XI of the Constitution of Colorado distinctly recognizes the right of the State Government to contract debts by loan "to suppress insurrection, defend the state, or, in time of war, assist in defending the United States," etc.

In view of the above quoted declaration of the Chief Executive of the State and of the finding and declaration of the General Assembly that an extreme emergency exists requiring measures to defend the State, we are clearly of the opinion that the loans contemplated by the Act in question would be valid and constitutional and would be so held by the courts—State or Federal.

Section 4 of said Article XI of the Colorado Constitution provides, in part, that "In no case shall any debt above mentioned in this article be created except by a law which shall be irrepealable, until the indebtedness therein provided for shall have been fully paid or discharged; * * *."

This requirement of the Constitution is met by the above recited provisions of the Act in question, allocating motor fuel excise taxes and motor vehicle license fees provided for by existing laws to the payment of the proposed loans and interest

thereon, since the Act in question expressly declares that the existing Acts under which such motor fuel excise taxes and motor vehicle license fees are collected shall be irrepealable until the proposed loans and interest thereon shall have been paid.

Respectfully yours,

PAUL P. PROSSER,
Attorney General.
By NORRIS C. BAKKE,
Deputy Attorney General.
CHARLES ROACH,
Assistant Attorney General.

(But see In re Senate Resolution No. 2, 94 Colo. 101.)

143 INSURANCE COMMISSIONER

To Jackson Cochrane, Sept. 1, 1933.

Compensation for examinations under Sec. 2482.

Where examinations of insurance companies are made under Sec. 2482, C. L. 1921, and the costs of such examinations are paid by the companies examined, payment being made direct to the persons making the examinations, consent or approval of the Civil Service Commission to employment of examiners is not necessary.

144 TAXATION

To F. E. Dunlavey, Sept. 7, 1933.

Deductions of levy to pay interest on Judgment bonds.

A county treasurer has no right to accept less than the full amount of the general taxes shown to be due under the levy and assessment made. (7190, 7368, 8804, C. L. '21.)

145 NEWSPAPERS

To E. C. Risley, Sept. 10, 1933.

Legal advertising.

The object of the paper under consideration is primarily advertising; the news therein is incidental; the paper has no regular subscribers and is therefore not a newspaper of general circulation such as is contemplated by the act of 1923.

146 LIQUOR LAW

To Abe Willey, Sept. 11, 1933.

Payment of stamp tax.

Manufacturer, or the first wholesaler or retailer, is primarily liable for tax.

147 HIGHWAY DEPARTMENT

To O. T. Reedy, about Sept. 11, 1933.

Live stock driven over newly oiled roads.

1. The constructing engineer is within his rights in attempting to prevent or delay the passage of stock over newly oiled roads.

2. If stock is driven over newly oiled roads contrary to the instructions of the engineer or contractor, the owner of the stock would be liable to the contractor for the damage caused.

3. Where a highway is under construction and it is impossible to detour traffic, the road official in charge may call upon the police officers to assist him in protecting the road from damage.

148 CITIES AND TOWNS

To S. E. Walrod, Sept. 13, 1933.

Contraction of debt.

Cities and towns may not contract a loan except upon a vote of the people at a regular election for officers of the town. (Const. Art. XI, Sec. 8.)

149 INTOXICATING LIQUOR—(Beer License)

To W. L. Boatright, Sept. 25, 1933.

Change of location.

The new law gives a licensee the specific right to have his location changed by the proper officials.

150 SCHOOL LAW

To Theo. H. Rush, Sept. 25, 1933.

It would be illegal for a county high school board to deposit funds to the credit of a third-class school district for the purpose of paying teachers employed by the third-class district. (School Laws 1927, Sec. 248.)

151 INSURANCE

To Jackson Cochrane, Sept. 27, 1933.

License tax.

Where an insurance company renews its license upon application and prior to Jan. 1st ceases to do business in this State, but continues in force its policies previously issued, collecting premiums thereon, such company is not liable for the annual license tax. (Sec. 2485, C. L. '21.)

Provident Savings Life etc. Co. v. Commonwealth (Ky.), 239 U. S. 103.

152 TRUST FUNDS

To Judge Sanford, Sept. 27, 1933.

Investment of, in Home Owners Loan Corporation bonds.

The Home Owners Loan Corporation is an instrumentality of the United States and its stock is owned by the U. S. Government.

The inhibition in Sec. 36, Art. V of the State Const., does not apply to Federal or State agencies.

153 CHILD WELFARE BOARD

To Marie Wickert, Sept. 27, 1933.

1. It is mandatory that the county commissioners levy taxes to pay the mothers' compensation as provided in Sec. 611, C. L. 1921.

2. Benefits provided in Sec. 7A, Ch. 77, S. L. 1923, are to be derived from the special levy provided for by Sec. 611, C. L. 1921.

3. County commissioners are not compelled to publish the names of recipients of benefits under the Mothers' Compensation Act.

154 COSMETOLOGY BOARD

To State Board of Cosmetology, September 28, 1933.

Renewal fees for shop licenses.

Under Ch. 74, Sec. 24, S. L. 1931, whenever a shop renewal certificate is granted the statutory fee should be charged.

155 FEES AND SALARIES

To R. G. Parvin, Sept. 29, 1933.

Fines under game and fish law.

No warden, deputy, assistant, or any other employe of any department, institution or agency of the state whose compensation is specified can legally receive any part of the moneys collected as fines under the Game and Fish Law. (S. L. 1933, Ch. 37, Sec. 7.)

156 LIQUOR LAW—Alcohol

To G. E. Ellsworth, Sept. 29, 1933.

Importation of Alcohol H. B. 9, Ex. S. G. A. '33.

A permittee under the Medicinal Liquor Law may import alcohol to be sold at retail without an additional license.

157 STATE HIGHWAYS

To Mr. Charles Ross, Oct. 2, 1933.

Discussion of Rights of Way; Construction Contracts and Preference Laws; Commercial Vehicles in Interstate Commerce, Reciprocity; Control of Obstructions on Highways.

158 INSURANCE

To Jackson Cochrane, October 2, 1933.

Deposit of bond.

An insurance company incorporated in a foreign country is not required to deposit a bond covering its liability under policies of workmen's compensation insurance issued by it in this state.

Bank of Augusta v. Earle, 13 Pet. 519;
Sec. 2550, C. L. 1921, as amended by Ch. 111, S. L. '33.

159 LIQUOR LAW

To C. W. Postlethwaite, Oct. 3, 1933.

Medicinal Liquor.

Intoxicating liquors for medicinal purposes may be sold by a wholesale druggist only to duly licensed retail druggists, and not to doctors.

Ch. 11, Sec. 2, Ex. S. L. '33.

160 MOTOR VEHICLE LAW

To J. E. Furlong, Oct. 3, 1933.

Clearance lights.

The question as to whether or not the standards for clearance lights should be the same as for the reflector type of tail lights, is one of reasonable regulation and for determination by the State Highway Department.

161 BARBERS' BOARD

To Barber Examiners, Oct. 4, 1933.

Rules governing schools and colleges.

Under Ch. 64, S. L. 1929, amending Act of 1909, the State Board of Barber Examiners has authority to regulate barber schools and colleges. The rules attached are lawful and proper.

162 BEER LAW

To L. E. Langdon, Oct. 4, 1933.

1. Brewer maintaining warehouse in another town must have additional wholesale license.

2. Agent merely soliciting orders not required to have a wholesale license.

163 **INSURANCE LAW**

To Jackson Cochrane, October 4, 1933.

Sec. 2604, C. L. 1921, limiting classes of beneficiaries in fraternal benefit societies does not apply to foreign societies domiciled in this state.

Ross v. Brotherhood, 80 Colo. 344, 348;
Mund v. Rebaume, 51 Colo. 129;
3 Cooks Corporations (last ed.) 2803, citing
People v. Fidelity Co., 153 Ill. 25.

164 **GOVERNOR—Powers of**

To Governor Johnson, October 6, 1933.

Termination of indeterminate sentences.

Under the terms of Sec. 9, Administrative Code 1933, the Governor "shall exercise all the rights and powers and perform all the duties vested and imposed by law in and upon the Colorado Board of Corrections * * *" and has the authority to act on his own initiative upon the recommendation of the Board of Visitors (Adm. Code) to terminate a sentence and release a prisoner, pursuant to the provisions of Secs. 7124 and 779, C. L. 1921.

165 **COLORADO STATE HOSPITAL**

To Geo. M. Bull, Oct. 9, 1933.

Re: App. for Federal Aid for construction.

1. Application of the Governor for a grant is made pursuant to the provisions of Ch. 2, S. L. '33 Ex. Session.

2. Ch. 2, S. L. '33 (Ex.), is valid and constitutional and is within the scope of the call for the extra session of the legislature.

3. Said act provides for an appropriation of $300,000.00 for acquisition of land and construction of buildings necessary at the State Hospital, and is declared to be of the first class.

4. There are adequate funds available for the payment of said appropriation.

5. The Colorado State Hospital at Pueblo is a state institution within the provision of Sec. 1, Art. 8 of the Constitution, and is created by the provisions of Secs. 573-582, C. L. 1921, and in accordance therewith the Gen. Assembly has the power to make such appropriation.

6. Under the provisions of Sec. 5 of said act the Governor is authorized to make application to the Federal Emergency Administration of Public Works for grants to aid in the payment for labor and materials in the construction of buildings authorized, and said moneys when received, are lawfully appropriated for said purpose.

166 EMERGENCY RELIEF

To J. M. Meikle, Oct. 11, 1933.

Must be administered by County Commissioners.

The Emergency Relief Fund provided for by Ch. 14, page 94, Ex. S. L. '33, must be administered by the county commissioners and cannot be delegated to any outside organization, but there is no legal prohibition against the county commissioners cooperating with and making use of any information obtained from any proper relief organization and receiving its recommendations as an aid to the commissioners in properly expending the relief fund.

167 PUBLICATION OF DELINQUENT TAX LIST

To Florence A. Wilkins, Oct. 11, 1933.

If there is no newspaper in the county that is available and will publish the delinquent tax list the publication could be made in the manner authorized by Ch. 161, S. L. 1923—that is, by posting in conspicuous places.

Inasmuch as the situation outlined might affect the legality of the tax sale, as well as the bond of the county treasurer, the safer course is to secure an official opinion from the district attorney, who, under the provisions of Sec. 5978, C. L. 1921, is made the legal adviser of all county officers.

168 FEES AND SALARIES

To C. A. Lory, Oct. 12, 1933.

Re: Sec. 7, Adm. Code and State Agricultural College.

1. Where members of faculty teach part time in the college proper and part time for the Experiment Station, receiving salaries paid in part out of funds appropriated to the college and in part out of funds appropriated for the experiment station, there is no violation of Sec. 7 of the Administrative Code because Sec. 8108 recognizes the experiment station as an integral part of the college itself. (S. L. 33, Ch. 37, Sec. 7.)

2. The same applies to the payment of the salary of the president who is paid partly out of college appropriation and partly out of funds appropriated for the Fort Lewis School, because the Fort Lewis School is part of the Agricultural College system. (Sec. 8145, C. L. '21.)

3. In re: Director of Experiment Station who is also professor of horticulture at the college and State Horticulturist. (Sec. 3088, 3089, C. L. '21; S. L. 1927, Ch. 113.)

169 APPROPRIATIONS

To H. F. Bedford, Oct. 12, 1933.

Administration of Motor Vehicle Theft Law.

Sec. 1380, C. L. 1921, constitutes a continuing appropriation of not to exceed $10,000 for carrying on the activities of the Sec'y. of State in administering the Motor Vehicle Auto Theft Law; however, if the receipts accruing to said appropriation do not amount to $10,000 a year, the expenditures are limited to the actual receipts available.

Ch. 136, S. L. 1925, established an "Auto Theft Fund" which was expressly abolished by Ch. 103, S. L. 1927, and the Secretary of State is confined in administering this law to the items specifically appropriated in the General Appropriation Bill.

170 CHIROPRACTIC BOARD

To State Board of Chiropractic Examiners, Oct. 13, 1933.

Salary of secretary.

The salary of the Secretary-Treasurer of the State Board of Chiropractic Examiners must be included within the $750.00 allowed by Sec. 15, Ch. 49, S. L. 1933, for the expenses of his office.

171 ADAMS STATE NORMAL

To Ira Richardson, Oct. 13, 1933.

Loan from Federal Government.

The Adams State Normal School is a governmental agency of this State within the meaning of Sec. 2 of Ch. 16, Ex. Session Laws '33, which authorizes government agencies of the State to contract loans from the Federal Government under the N. I. R. A. Act of '33.

Under the doctrine laid down in Shields v. Loveland, 74 Colo. 27, a loan contracted by a State institution payable solely out of net revenues derived from the investment of the proceeds of such loan, is not a debt within the constitutional or statutory limitations imposed upon the State or its institutions.

172 INSURANCE

To Jackson Cochrane, Oct. 14, 1933.

Retaliatory Law.

Sec. 2550, C. L. 1921, commonly known as our retaliatory law did not require the filing of an indemnifying bond by foreign insurance companies writing workmen's compensation insurance in this State. This section was amended by Ch. 111, S. L. 1933. The amendatory act expressly provides that where the laws of a for-

eign state exact the filing of an indemnifying bond by Colorado companies doing business in that State, this State may exact a similar requirement.

It appears that the statutes of New York require a Colorado company writing workmen's compensation insurance in that state to file an indemnifying bond. The question that arises under the above statutes is whether or not a New York insurance company which wrote and now has outstanding a policy of workmen's compensation insurance issued prior to the amendatory act of '33, and which is not now writing or intending to write workmen's compensation insurance in this state, should be required to file an indemnifying bond.

The original act in force at the time this outstanding policy was written did not require the filing of an indemnifying bond and, inasmuch as the laws of New York require the filing of such a bond only in case of the actual issuance of policies of workmen's compensation insurance, it is held that a foreign company need not, under the amendatory act of 1933, file a bond on account of the single policy of compensation insurance already outstanding. This ruling also applies to deposits of securities.

173 LOCAL GOVERNMENT BUDGETS

To E. L. Reginetter, Oct. 14, 1933.

County levy for schools.

The board of county commissioners must levy taxes for school districts as certified to them according to law.

The local Government Budget does not vest the board of county commissioners with any additional authority concerning the fiscal affairs of school districts.

Commissioner vs. School District, 82 Colo. 438.

174 TAXATION

To I. L. Quiat, State Counsel, H. O. L. C., Oct. 14, 1933.

Home Owner's Loan Corporation. Bonds in payment of.

Since there is no specific or constitutional provision authorizing the acceptance of municipal bonds issued by the Home Owner's Loan Corporation in payment of general or special taxes, such bonds cannot be received under the law for such purposes. (Sec. 7369, 1991, C. L. 1921; Ex. S. L. 1933, p. 92.)

175 UNIVERSITY OF COLORADO

To H. F. Bedford, Oct. 16, 1933.

Repayment of loan to complete Mackey Auditorium.

The State Treasurer is not called upon to attempt to force the repayment of the funds appropriated under Ch. 72, S. L. 1911, for the completion of the Mackey Auditorium.

176 AGRICULTURAL COLLEGE

To Charles A. Lory, Oct. 16, 1933.

Revolving Fund.

The Agricultural College may not set up a revolving fund consisting of federal moneys in addition to the $1,000 revolving fund allowed the institution by statute.

177 SCHOOLS

To R. H. McNeal, Oct. 21, 1933.

Re: State Aid.

Where the tax levy for county general fund has reached 5 mills, no additional apportionment under Ch. 165, S. L. '29 (Sec. 2, par. 4) can be allowed by the county superintendent; nor can an additional levy be made by the county commissioners; therefore the county cannot legally draw state aid for additional teachers.

178 TAXATION

To James A. Savage, Oct. 21, 1933.

Manufacturing sites.

1. Sites upon which manufacturing plants are located upon agricultural lands, suburban lots and town lots as real property, are entitled to the 10% reduction provided for in the resolution of the Equalization Board at its October, 1933, meeting.

It is immaterial how the so-called personal property is classified, if it constitutes fixtures it is entitled to the reduction (Gibson v. McNichols, 51 Colo. 54).

2. As to what constitutes fixtures in a particular instance, the county assessors have the right to consult legal counsel, in case there is doubt, and each case must be decided upon its own facts.

3. Sites and improvements of beet dumps constructed upon agricultural lands are to be classified as improvements and are entitled to the reduction.

179 GAME AND FISH LAW

To Sen. Costigan, Oct. 24, 1933.

Re: Grand Mesa License.

1. The State Game and Fish Commissioner had authority under Sec. 1469, C. L. 1921, as it read in 1909 and 1929, to issue a Class A license for keeping and propagating fish in private lakes, where such lakes were on land under private ownership.

Sec. 1469 was amended by Ch. 99, S. L. 1931, which thereafter

confined issuance of license to lakes on land under private ownership.

2. After a Class A license has been properly issued the State Game and Fish Commissioner has no authority to modify its terms, but does have authority to revoke it for the reasons and on the terms set forth in Sec. 1451, C. L. 1921.

180 CHIROPRACTIC EXAMINERS

To Jas. W. Creamer, Oct. 25, 1933.

Salary of Secretary of Board.

The Board of Chiropractic Examiners Fund may be used to defray all expenses reasonably incident to the carrying out of the provisions of the Act. (S. L. 1933, Ch. 49).

181 SCHOOLS

To Strickler & Wendelkin, Oct. 27, 1933.

Application of Local Government Budget Act.

Since the Local Government Budget Act (Ch. 125, S. L. 1933) did not become effective until Sept. 6, 1933, school districts whose fiscal year begins July 1 and ends June 30, would not be affected by the terms of the act until 1934.

182 SCHOOLS

To Olive E. McComish, Oct. 28, 1933.

County Superintendent's supplies.

The County commissioners are required by law to furnish necessary office supplies to county superintendents of schools, the expense to be paid from the county fund.

183 SCHOOLS

To Olive McComish, Oct. 28, 1933.

Transportation of pupils to parochial schools.

The Board of directors of a school district has no authority to draw warrants upon public funds in payment for transportation of school children to parochial schools.

184 STATE REFORMATORY

To Walter H. Johnson, Oct. 31, 1933.

Release of inmates.

Court of record has authority to modify or vacate a judgment entered during the term at which the original was entered (60 Colo. 351). There is some diversity of opinion as to the authority of the

court in a criminal proceeding to vacate the judgment after execution has commenced, even during the same term.

"As a general principle, however, the judgments, orders and decrees of courts are under their control during the term for which they are rendered and may be set aside or modified as law or justice may require."

Ex parte Lange, 18 Wall, 163, 1 Bish. Crim. Pr. 129.

185 INSURANCE

To Jackson Cochrane, Nov. 2, 1933.

Foreign Companies.

An insurance company which has been licensed to do business in this state and afterwards ceases to do business in the state, still remains authorized to transact business, and unless it has become defunct in the state in which it was incorporated, it still exists as a foreign corporation in Colorado and may re-engage in business upon the filing of proper documents and payment of fees.

186 INSURANCE

To Jackson Cochrane, Nov. 2, 1933.

Home Owners' Loan Corp. Bonds deposited as capital.

Insurance Commissioner is required by Sec. 1 of Ch. 13, Ex. S. L. 1933, to accept bonds of the Home Owners' Loan Corporation, as capital deposit by insurance company.

187 REAL ESTATE BROKERS BOARD

To A. J. Morley, Nov. 3, 1933.

In case of charges for violation of the provisions of the Real Estate Brokers Act a hearing should be had in the county in which the alleged offense was committed. (S. L. 1925, Ch. 147).

188 FEES AND SALARIES

To H. F. Bedford, Nov. 7, 1933.

15c fee to County Clerks under Motor Vehicle Act.

The fee of 15 cents authorized by Sec. 14 to be paid by county clerks for clerk hire, outside of Denver, has not been repealed. (Motor Vehicle Act, Sec. 14, 26).

189 FEES AND SALARIES

To B. F. Stapleton, Nov. 7, 1933.

Per diem of Secretary-Treasurer of Chiropractic Board.

Sec. 7 of the Administrative Code, 1933, forbidding the pay-

ment of salaries in more than one capacity, does not prohibit the payment to the Secretary-Treasurer of the State Board of Chiropractic Examiners of the $10 per diem payable as a member of the board, in addition to his salary as Secretary-Treasurer, as S. L. 1933, p. 372 is specific and was passed after Code Bill.

190 PUBLIC FUNDS

To H. F. Bedford, Nov. 10, 1933.

Refund of U. R. tax.

The treasurer will suffer no liability on his official bond in making this refund to persons who paid tax under unconstitutional act.

191 BUILDING AND LOAN LAW

To J. R. McClelland, Nov. 13, 1934.

Voting rights of members.

The voting rights of members of class entitled to vote are governed by Art. II, Sec. 14 of the Building & Loan Code and not by Art. III, Sec. 5.

192 APPROPRIATIONS

To Executive Council, Nov. 14, 1933.

Classification of,

Appropriation for unemployment relief is a first class appropriation (Ex. S. L. 1933, Ch. 9; Sec. 288, C. L. 1921).

193 CITIES AND TOWNS

To Adolph Unfug, Nov. 14, 1933.

Registration of warrants.

It is the duty of a city treasurer to register all warrants presented to him for payment, *in the order of their presentation*, when there is no money on hand with which to meet them.

Secs. 3780, 9142, 9143, 9145, C. L. 1921.

194 SCHOOL OF MINES

To Homer F. Bedford, Nov. 17, 1933.

Withdrawal of Funds.

The Daily Deposit Law (Ch. 147, S. L. 1913; Secs. 335-342, pp. 289-290, S. L. 1921) supersedes Sec. 8046, C. L. 1921, concerning withdrawals from the state treasury of funds belonging to the Colorado School of Mines. The funds of that institution should remain in the State treasury subject only to the right of the institution to maintain a revolving fund of not to exceed $1000.00.

195 **BUILDING AND LOAN LAW**

To J. R. McClelland, Nov. 17, 1933.

Republic Building & Loan Association. Change of objects by amendment.

The amendments changing the name and object clauses of the original certificate of incorporation of the association in question, were unlawful and in direct violation of Sec. 10, Ch. 70, S. L. 1931. The said amendments should be ignored and the Commissioner should proceed upon the assumption that Association is in existence and has failed to comply with the provisions of the B. & L. Code. (S. L. 1931, Ch. 70). (Procedure outlined).

196 **BUILDING AND LOAN LAW**

To C. M. Armstrong, Nov. 18, 1933.

Payment of fees. Amendment of articles.

Sec. 4, Art. 9, Ch. 47, S. L. 1933, should be given a literal construction and the amendments should be filed without demand for payment of the usual fees, upon satisfactory proof that the association has paid the fees provided for under said section.

197 **DAIRY COMMISSIONER**

To W. R. Freeman, Nov. 20, 1933.

Regulation in Home Rule cities.

The control and regulation of dairy products is intended to promote public health and welfare and general public interest and may properly be the subject of legislation by the State; and City ordinances in conflict therewith are thereby superseded. (Ch. 65, S. L. 1933; Const. Amdt. XX; 83 Colo. 329).

198 **STATE REFORMATORY**

To Gov. Johnson, Nov. 23, 1933.

Transfer of inmate.

Governor, by Executive Order, may transfer, temporarily, an inmate of the State Reformatory to the State Penitentiary upon its satisfactorily appearing that the facts and circumstances exist as set forth in Secs. 1 and 2, page 259, S. L. 1927.

199 **FEDERAL PROCESSING TAX**

To C. G. Dowling, Nov. 23, 1933.

Refund of, to State Hospital.

In view of the fact that less than 3% of the inmates of the State Hospital for the Insane are paying patients the hospital steward would be justified in making affidavit that the supplies

purchased for the "poor and indigent" within the meaning of the language of Art. 32, Reg. 81 of the Agricultural Adjustment Act, and asking refund of processing tax.

200 TAXATION

To E. H. Ellithorp, Nov. 23, 1933.

Additional levies.

1. Application must be made to the Tax Commission each year that an increase over the statutory mill levy is needed. (Sec. 7204, 7208, 7214, 7216, 7217, C. L. 1921.)

2. County commissioners have the power to make a levy of not to exceed 5 mills, to take up unpaid county warrants drawn upon *any fund*. (Sec. 8853, C. L. 1921.)

201 COUNTY COMMISSIONERS

To Frank Fehling, Nov. 27, 1933.

Local budgets.

1. It is the mandatory duty of the county board to levy annually a sufficient tax to fully discharge and ultimately redeem county bonds. (Sec. 8843, C. L. 1921.)

2. If the county budget is filed with the Tax Commission before it has been adopted by the county board, it can be withdrawn, or an amended and revised budget can be adopted and filed at any time before the beginning of the fiscal year. (Sec. 6, Ch. 125, S. L. 1933.)

4. Counties are specifically given the power to provide a contingent fund by Sec. 7204, C. L. 1921.

5 and 6. Whether or not the county treasurer or commissioners or their bondsmen would be liable if they permit expenditures in excess of appropriation, would depend on the particular facts.

7. The status of the official bonds filed by county treasurers and board members is not affected by Sec. 10, Ch. 125, S. L. 1933, the form of said bonds being fixed by law. (Secs. 8791 and 8720, C. L. 1921.)

Supplementary letter Dec. 7. Advisory as to use of form of Budget (No. 1510) prepared by Out West Ptg. & Stat'y Co. of Colorado Springs.

202 INSURANCE LAW

To Jackson Cochrane, Nov. 27, 1933.

Hypothecation of securities.

As a general proposition domestic insurance companies have the power, as an incident to the transaction of their business, to hypothecate investments owned by them; and under many statutes cited and quoted from, mutual insurance companies have the same power. (Citing many cases.)

203 GENERAL ASSEMBLY

To J. R. McClelland, Nov. 28, 1933.

Members of, holding other positions.

The position of special deputy in the Building and Loan Department is an employment and not a civil office, and not within the prohibition contained in Sec. 8, Art. V, or Art III of the Constitution.

204 SCHOOL OF MINES

To Dr. Coolbaugh, Nov. 28, 1933.

Bond on Trust Funds.

The money on deposit in the Colorado National Bank collected from students for breakage of equipment may be considered a trust fund and it is proper to pay out of said fund an amount sufficient to pay the premium on a depositary bond to protect the fund, and to deduct the amount of this premium before the money is turned over to the state.

205 SCHOOL LAW

To Jerre F. Moreland, Nov. 29, 1933.

Employment of teacher to teach in another district.

The Board of Directors of a school district is not authorized to employ a teacher to teach in another district and to certify the amount of his salary to the county superintendent for payment from the general county school fund. (School Laws, 1927, Sec. 294; 68 Colo. 422).

206 LIQUOR LAW—Medicinal Purposes

To Arthur D. Baker, Dec. 5, 1933.

H. B. 9, Ex. Session, '33.

Medicinal liquors should not be sold except upon prescription of a regularly licensed physician.

207 APPROPRIATIONS—Continuing

To H. F. Bedford, Dec. 6, 1933.

Additional help; increase of salaries.

Sec. 10, Ch. 140, S. L. 1933, constitutes a continuing appropriation for the expense of collecting the motor fuel tax levied in said chapter, and the State Treasurer in administering the Act is not confined to the items appropriated in the General Appropriation Bill but with the approval of the Executive Council he may exceed such items if necessary. (S. L. 1933, Ch. 37; S. L. 1931, Ch. 53).

208 BUILDING AND LOAN LAW

To J. R. McClelland, Dec. 6, 1933.

Collection of penalties.

The purpose of Par. 2, Sec. 11, Art. IX, Ch. 47, S. L. 1933, is to aid in the proper, orderly and prompt conduct of the Commissioner's office, and the enforcement of the penalty for failure to file annual reports punctually is discretionary so far as the commissioner is concerned.

209 MOTOR VEHICLE LAW

To Chas. D. Vail, Dec. 6, 1933.

Question: Whether trucks should be licensed on carrying capacity or on manufacturer's rated capacity.

1. The law contemplates licensing on carrying capacity.

2. The law is well settled that a public officer or employe may not be held answerable in damages for injury which may occur to anyone violating the law.

3. The State may not be held liable for any damage which might occur to a trucker who is required to unload his truck down to the maximum load limit for which the truck has been licensed.

Speyer v. School Dist., 82 Colo. 534, 538.
Eastenes v. Adams, et al., 25 Pac. (2nd) 741.

See also letter of Nov. 24, 1933, in Highway Miscellaneous File, copy attached hereto.

210 WATER DEFENSE FUNDS

To M. C. Hinderlider, Dec. 9, 1933.

Ch. 8, S. L. 1933, makes no specific appropriation for investigation and study in connection, with the South Platte River Basin, but by its title and text it clearly indicates that its general purpose is to provide for the protection and to promote the conservation of the water resources of the State. It would be entirely proper to pay the expense of investigations made for the purpose of determining the feasibility of diverting water from the Colorado River to the South Platte River Basin for beneficial use in said basin, from the appropriation made for the Colorado River.

211 STOCK INSPECTION BOARD

To R. F. Lobdell, Dec. 11, 1933.

Payment of inspectors.

Inspectors may be paid from either the Stock Inspection Fund or the Brand Inspection Fund, as designated by voucher. (Sec. 3177, C. L. 1921.)

212 NATIONAL VOCATIONAL EDUCATION

To H. A. Tiemann, Dec. 16, 1933.

Apportionment of Appropriation.

Neither Sec. 32, Ch. 8, S. L. 1933, nor the National Vocational Education Act requires that the State appropriation be apportioned on a population basis to the school districts maintaining vocational classes, and said moneys may be allotted in such a way that each class of vocational education will be reimbursed 50%, the additional 50% having been raised locally by the school district receiving state and federal money.

213 GAMBLING DEVICES

To James M. Noland, Jan. 3, 1934.

Re: Amusement or gambling devices.

Under Sec. 6864, C. L. 1921, the use of any device or apparatus to win or obtain anything of value, is gambling. (12 R. C. L. 713; 27 C. J. 1003).

214 ARCHITECT EXAMINERS' BOARD

To F. W. Frewen, Jan. 3, 1934.

In re: Fees.

1. Renewal fees for license must be paid during the month of July of each year; failure to pay revokes license; licensee is considered unlicensed until renewal fee is paid; payment automatically reinstates license.
2. Under Secs. 4688-89, C. L. 1921, the fee for taking examination is $10.00; for issuing certificate, $15.00. There is no provision compelling application for certificate.
3. Every member of a corporate group must have a license to practice architecture.

215 TAX SALE CERTIFICATES

To C. H. Stewart, Jan. 4, 1934.

Assignment of by County.

January 4, 1934.

Mr. C. H. Stewart,
Deputy District Attorney,
Delta, Colorado.

Dear Sir:

In reply to your inquiries of December 12, 1933, concerning sales for delinquent taxes, we will discuss the questions which you ask in order.

1. How and by whom shall the tax purchaser be designated?

When land has been bid in by the county for delinquent taxes, the tax sale certificate for such land may be assigned by the county treasurer for delinquent taxes plus interest and penalties, or for such sum as the Board of County Commissioners may designate. Section 7422, C. L. 1921. But the Board has no power to designate the individual to whom the certificate may be assigned.

Empire Ranch & C. Co. v. Neikirk, 23 Colo. Ap. 392;
Thompson v. Bd., 91 Colo. 214.

2. May the tax purchaser be the owner of the property described on the tax certificate, the owner's agent, the mortgagee or other person having equity?

The owner of property may not purchase his own property at a tax sale directly or through an agent. This would merely amount to payment of taxes due.

A mortgagee may generally purchase at a tax sale, but a person who is under obligation to pay taxes on land may not acquire title or improve his title by allowing the taxes to remain unpaid and purchasing at the resulting tax sale.

Hunt v. Schneider, 61 Colo. 104, 106.
Cone v. Wood, 108 La. 260, 75 Ann. St. Rep. 223, 248. (exhaustive note)

Also one who stands in the relation of trust and confidence to the owner of property cannot acquire adverse title thereto by the purchase of a tax certificate and payment of taxes.

Charles E. Gibson v. Elze, 88 Colo. 181.

This office has held that, when the owner of land allows his land to be sold for nonpayment of taxes and it is bid in by the county, if the Board of County Commissioners thereafter fixes a price, less than the taxes due, for which the tax sale certificate may be assigned, the owner cannot by purchasing the certificate at such a price extinguish the counties' lien for taxes due. We enclose a copy of an opinion to Mr. C. Ray Monson, written June 20, 1933, upon this subject.

3. Has the tax purchaser who has bought a tax sale certificate at a discount the right to collect full redemption value from the owner of property?

If the sales upon which the certificates are based are valid the lien of the county has been extinguished, then the owner who redeems must pay over the full redemption value, that is,, all delinquent taxes plus interest and penalties as required by Section 7430, C. L. 1921.

If, however, the sales were void for some irregularity or otherwise the purchaser took nothing but a lien to the extent of payments made plus 8% interest. If the owner redeems he must pay this amount and gets credit for the money paid. Only so much of the tax is discharged as is covered by the money actually received by

the county. See the case of *Ireland v. Coal Co.*, 87 Colo. 193, at page 198 to this effect.

4. If the tax purchaser sells a certificate which he has purchased from the county to the property owner granting said owner the benefit of the discount, is the latter then entitled to redeem by surrender of certificate and payment of the usual cash fee?

Our answer to this question is, No. Under the reasoning of the cases cited in the Monson opinion, the owner of land can only extinguish the lien of the county for taxes due upon his land by payment in full. Redemption can only be made in the statutory manner. Section 7430, C. L. 1921, requires payment "*of the amount for which the same* (property in question) *was sold* with interest together with subsequent taxes paid by the purchaser and endorsed upon the certificate." The sale refered to, here. is the original sale for delinquent taxes—in this case, the sale to the county.

5. What is the authority and responsibility of the County Treasurer in assigning tax sale certificates under orders from County Commissioners?

The Board of County Commissioners can set the price for which the certificate may be sold but cannot restrict the sale to a designated person or groups of persons. See discussion under the first question, supra.

Respectfully submitted,
PAUL P. PROSSER,
Attorney General.
By PIERPONT FULLER, JR.,
Assistant Attorney General.

(See opinion to C. Ray Monson, June 20, 1933, and to C. S. Ickes, March 19, 1934.)

216 SCHOOL LAW

To C. S. Ickes, Jan. 4, 1934.

Bond Redemption Fund.

Moneys in the bond redemption fund of a school district cannot be used for the purchase of bonds issued by another school district. (Sec. 8371, C. L. 1921).

217 SALARIES

To B. F. Stapleton, Jan. 4, 1934.

Governor's employes; past due salaries. H. B. 273, 274, Ch. 156 S. L. '31.

E. Schradsky and Jackson. It was the intent of the legislature to include the above named employes within the provisions of Ch. 156, S. L. 1931, and warrants may be drawn upon vouchers

covering salary increases past due, for which appropriation was made by the 29th General Assembly.

See also letter in Re: Mrs. Schwartz and Harry Polk, attached to above opinion.

218 TAXATION

To F. E. Spencer, Jan. 5, 1934.

Interest on taxes.

Under Secs. 7191 and 7386, C. L. 1921 as amended by Ch. 183, S. L. 1933 the first half of the tax draws interest at 6% from Mar. 1 to Aug. 1, and thereafter the whole tax draws interest at 8% until sale.

219 GENERAL ASSEMBLY

To Royal I. Fisher, Jan. 9, 1934.

Traveling expenses.

Where the General Assembly, pursuant to joint resolution, takes a recess for a considerable period of time, the members thereof are entitled to their actual necessary traveling expenses in returning to their homes and thence to the State capitol upon reconvening. (Art. V, Sec. 6.)

220 GENERAL ASSEMBLY

To N. D. Bishop, Jan. 11, 1934.

Employes' per diem during recess.

Employes of General Assembly are not entitled to per diem compensation during the period of the recess. (Sec. 8, C. L. '21.)

221 STATE FUNDS

Homer F. Bedford, Jan. 11, 1934.

State funds deposited in member banks of the Federal Deposit Guarantee Assn. are sufficiently protected, up to $2,500.00 in each bank.

222 GOVERNOR'S PROCLAMATION

To Teller Ammons, Jan. 15, 1934.

Liquor legislation not within.

Although purporting by its title and preamble to be in the nature of a revenue measure, the bill proceeds to provide in detail for the establishment of an elaborate system for regulating the manufacture, sale and use of intoxicating liquors and the creation of a new state agency therefor, and is not within the call.

Under Colorado Constitution no laws may permit establishment of saloons.

223 COSMETOLOGY BOARD

To Gladys E. Cook, Jan. 16, 1934.

Issuance of certificates.

Persons in the actual and continuous practice of cosmetology on the date of the passage of the Act, May 16, 1931, may have three years from the date of the passage of the act, or until May 16, 1934, to make application for a certificate to practice. (S. L. 1931, Ch. 74.)

224 GOVERNOR'S PROCLAMATION

To Bert Keating, Jan. 17, 1934.

Proposed legislation not within.

Primary object of bill being regulation of insurance companies, and not as purported by its title, a revenue measure, act does not fall within Governor's Proclamation.

225 SALARIES

To B. F. Stapleton, Jan. 18, 1934.

Printing Commissioner; Purchasing Agent.

1. Sec. 5411, C. L. 1921, providing for payment of Printing Commissioner, constitutes a continuing Appropriation from the General Fund, and warrant covering the salary of Alfred T. May as Commissioner of Public Printing may be drawn and paid therefrom;

2. Appropriation having been made by Ch. 9, S. L. 1933, for an Assistant Purchasing Agent, the salary of Walter W. Lear, as Assistant Purchasing Agent, should be paid according to that appropriation.

226 DAIRY COMMISSIONER

To W. R. Freeman, Jan. 19, 1934.

Regulation of dairies outside corporate limits.

Under Sec. 8987, C. L. 1921, incorporated towns are authorized to inspect and prohibit unwholesome dairies within one mile from the city limits, but may not license such dairies. (Sec. 9003, C. L. 1921; Denver Mun. Code, p. 692.)

227 TAXATION

To V. D. Stone, Jan. 22, 1934.

Airports.

Under Sec. 4, Art. X of Colo. Constitution, airports owned or leased by cities and towns in this State and used for the benefit of the municipality are not subject to general taxation.

228 SCHOOLS

To C. J. McCandless, Jan. 22, 1934.

Pensions.

Pensions granted to school district retired employes other than teachers must be discontinued in districts other than those having a school population less than 30,000.

229 CHIROPRACTORS

To S. R. McKelvey, Jan. 22, 1934.

May not sign death certificates.

Sec. 978, C. L. 1921, provides that the death certificate shall be presented to the attending physician, to the health officer or coroner, as directed by the registrar, for the medical certificate of the cause of death.

Under no construction of the word "physician" could a chiropractor be included under the rules of this State.

Chiropractor has no authority to sign death certificate in Colorado. Sec. 978, C. L. 1921.

230 BEER LICENSES

H. F. Bedford, Jan. 23, 1934.

Under specific provisions of the statutes, an Intoxicating Liquor License does not include the right to sell 3.2 beer. (Ex. S. L. 1933, Ch. 5, Ch. 12.)

231 MARRIAGES

To James Patterson, Jan. 24, 1934.

By Justices of Peace.

Justice of the peace may perform the marriage ceremony outside of the county or precinct in which he was elected. (Sec. 5555 C. L. '21. 38 C. J. 1311.)

232 TAX SALES

Wm. Curtis, Jan. 25, 1934.

Segregation of interests in tax sale certificates.

County commissioners have no power to segregate the various interests in the land represented by a tax sale certificate for the purpose of assigning that part of the certificate which represents the tax on subsurface coal interests. (Sec. 7248, 7416, C. L. '21; 5 C. J. 894.)

233 SALARIES

J. P. McInroy, Jan. 26, 1934.
Budget and Efficiency Commissioner.

Salary Reduction Act (Ch. 181, S. L. '33) does not apply to the office of Budget and Efficiency Commissioner. (Sec. 308 C. L. '21.)

234 TAXES

Gov. Johnson, Jan. 30, 1934.

Re: House Bill 46 Constitutionality providing for remission of 50% of unpaid taxes.

The Bill is unconstitutional in that:

1. Does not afford to all delinquent taxpayers the equal protection of the laws;

2. Contravenes Sec. 3 of Art. X of State Constitution.

January 30, 1934.

Governor Edwin C. Johnson,
State Capitol,
Denver, Colorado.

Subject: *Question as to constitutionality of House Bill No. 46.*

Dear Governor:

You have requested the Attorney General's office to examine House Bill No. 46, which was recently passed at the Second Extraordinary Session of the 29th General Asembly and is now under consideration by you, and to give an opinion to you concerning the constitutionality of this measure without reference to any question that might be raised as to whether or not the subject-matter thereof was specially named by you in your proclamation convening said Second Extraordinary Session.

(1) *Analysis of House Bill No. 46.*

Referring to House Bill No. 46 in compliance with your request, we note that its title is as follows:

> "A Bill for an Act concerning the levy and collection of taxes, and to facilitate the payment thereof and to grant emergency relief with respect thereto."

Analyzing said Bill, we find that Section 1 thereof declares that the severe financial and economic depression has made it imposible for many property owners to pay their delinquent taxes because of excessive interest and penalties due thereon; that public revenues have diminished to the extent of imperiling the maintenance of local governments and schools; and that an emergency exists which "justifies, validates and requires the legislation for the relief of delinquent taxpayers and the maintenance of adequate public revenues," as in the Act provided.

Section 2 of the Bill provides:

> "Any taxpayer who on or before October 25, 1934, shall pay his, her or its 1933 tax in the manner now provided by law shall be entitled to pay or redeem any and all taxes or tax sale certificates held by the County in which said tax was assessed for the year 1931 or prior thereto by payment to the County Treasurer of such County of fifty per cent (50%) of the original unpaid tax or taxes and for delinquent taxes or tax sale certificates for the years subsequent to the year 1931 and prior to the year 1933, such taxpayers shall be allowed to pay the original tax without the addition of penalties or interest for the payment or redemption of said taxes;"

with the *proviso,* however, that—

> "if any property has been sold at any tax sale to any individual, firm, association or corporation, the taxpayer shall be required to redeem or pay the same in the manner now provided by law."

By Section 3 of the Bill it is provided that all County Treasurers receiving the payment of delinquent taxes under the conditions specified in said Bill shall give receipts therefor "in full settlement of such taxes, interest and penalties," and that "each County Treasurer and his sureties are hereby released from any and all liability for accepting less than the full amounts due for interest and penalties so paid."

By Section 4 of the Bill it is provided that a complete report of all payments made under the provisions of the Bill shall be made by the County Treasurer, and copies thereof sent to the Board of County Commissioners of the County, the Colorado Tax Commission and the Auditor of State; and it is thereby further provided that the State, the County and each school district and municipality shall accept their respective shares of the portions of taxes thus collected "in lieu of their respective shares of said taxes the same as if said interest and penalties had been paid in full."

Section 5 of the Bill contains the very indefinite provision that all Acts and parts of Acts in conflict therewith "are temporarily declared inoperative to the extent necessary to carry out the provisions of the above emergency measures."

Section 6 declares that the Act "is necessary for the immediate preservation of the public peace, health and safety"; and Section 7 contains the usual emergency clause, and provides that the Act "shall take effect and be in force from and after its passage."

(2) *Purpose of House Bill No. 46 and persons upon whom it would operate.*

Before going into the constitutional questions which your in-

quiries raise, it may be well to consider the purpose of House Bill No. 46, and how and upon what persons it would operate if it became a law. Its declared purpose is to be accepted as true, and should be effectuated as the legislative will if that can be done without offending against the organic law. That purpose, as so declared in Section 1 of the Bill, is "the relief of delinquent taxpayers and the maintenance of adequate public revenues."

Such relief, as provided in Section 3 of the Bill, is afforded to the following classes of persons and is to be obtained in the following manner:

(a) All delinquent taxpayers, who, on or before October 25, 1934, pay their 1933 taxes in the manner now provided by law, "shall be entitled to pay or redeem any and all taxes or tax certificates held by the County in which said tax was assessed *for the year 1931 or prior thereto* by payment to the County Treasurer of such County of *fifty per cent (50%) of the original unpaid tax or taxes";*

(b) All delinquent taxpayers, who, on or before October 25, 1934, pay their 1933 taxes in the manner now provided by law, shall be allowed to pay the original amount of any delinquent taxes or tax sale certificates *subsequent to 1931* and *prior to 1933, "without the addition of penalties or interest for the payment or redemption of said taxes";*

WITH THE PROVISO, however, that in cases where the property of delinquent taxpayers has been sold at tax sales to any *individuals, firms, associations* or *corporations,* such taxpayers "shall be required to redeem or pay the same in the manner provided by law."

When reduced to its simplest terms it is apparent that the Bill has the effect of favoring *certain persons only,* viz.: Those delinquent taxpayers whose property has been struck off *to the county* at tax sales and who pay their 1933 taxes.

(3) *House Bill No. 46 does not afford to all delinquent taxpayers the equal protection of the laws, and is therefore contrary to the provisions of the Fourteenth Amendment to the Constitution of the United States.*

It is our opinion that, in attempting to provide relief to delinquent taxpayers, House Bill No. 46 does not afford to all of such delinquent taxpayers the equal protection of the laws.

Under the terms of the proviso contained in Section 1, as hereinbefore just noted, those delinquent taxpayers whose property has been sold at tax sales to *individuals, firms, associations* or *corporations* would be required "to redeem or pay the same in the manner now provided by law."

The Bill discriminates, therefore, upon its very face, in favor of a taxpayer, who, although unable to prevent delinquency by pay-

ment, was fortunate enough, (under the provisions of Section 7409, C. L. 1921), to have his property struck off at tax sale to the County in which the tax was assessed, as against another taxpayer whose property at the same time was struck off to "an individual, firm, association or corporation."

The taxpayer, whose property happened to be struck off to the County, would receive the benefit intended to be afforded by the Act while his less fortunate neighbor, whose property happened to be struck off to "an individual, firm, association or corporation," would be denied any benefit under the Act and could only redeem his property by the payment of the full amount of the original unpaid tax or taxes together with accrued interest and penalties.

Merely to state this example of the practical working of the Act demonstrates that, in operating upon delinquent taxpayers of the same class, *remitting* taxes, interest and penalties as to *some* and *requiring full payment* thereof from *others*, it would not afford to all of such delinquent taxpayers the equal protection of the laws.

The Bill is, therefore, contrary to Section 1 of the Fourteenth Amndment to the Federal Constitution, providing that no State shall "deny to any person within its jurisdiction the equal protection of the laws."

Sanderson v. Bateman, 78 Mont. 235, 253 Pac. 1100;
State v. Fischl, 94 Mont. 92, 20 Pac. (2nd) 1067.

In the cases just cited, the Supreme Court of Montana had occasion twice to pass upon the validity of measures designed in much the same way as by the Bill now under consideration to relieve delinquent taxpayers whose property had been sold at tax sales to counties and where there had been no assignments of the certificates of such sales by the counties; and in each instance the court held that the measures discriminated in favor of such delinquent taxpayers as against those whose property had been sold at tax sales to *citizens*, and, therefore, did not afford to all of such delinquent taxpayers the equal protection of the laws.

In other words, if the lawmaking department desires to declare a "bargain-day" for the payment of taxes, the "bargains" must be available to all; it cannot offer them to some delinquent taxpayers and at the same time withhold them from others.

(4) *Bill contravenes Section 3 of Article X of State Constitution.*

In Section 3 of Article X, sometimes referred to as the "uniformity provision," of our State Constitution, it is provided, among other things, as follows:

> "All taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the tax, and shall be levied and collected under general laws," etc.

Our State Constitution contains within itself many evidences of the earnest purpose of its framers to render impossible every form of governmental favoritism. The granting of special privileges, the bestowal of favors, the lightening of the public burdens as to one citizen at the expense of others,—all of these things are contrary both to its spirit and its letter. So it is declared that *"all taxes shall be uniform upon the same class of subjects."* (See *Ollivier v. City of Houston,* 93 Tex. 201, 208, 54 S. W. 940, 942).

Our Supreme Court has said:

> "Uniformity in taxing implies equality in the burden of taxation." *Leonard v. Reed,* 46 Colo. 307, 315.

But House Bill No. 46 advances a plan which, if it becomes a law, would operate to make *unequal* the burden of taxation by rewarding a taxpayer who has not paid his tax at the expense of one who has.

Under the plan now advanced by the Bill here in question, the taxpaying citizens who have heretofore paid their taxes and who no doubt constitute a large maority of the taxpayers of Colorado must suffer for having paid their taxes to the extent that they have since been without the use of the money so paid; while the minority, who did not pay, would save by their failure or refusal so to pay.

Such discrimination as between taxpayers in respect to taxes that have been levied and assessed upon the same class of subjects necessarily implies inequality and injustice, because it would operate to impose upon the majority of such taxpayers burdens from which a minority thereof are attempted to be relieved.

To use the language of our Supreme Court in *Leonard v. Reed, supra,* 46 Colo. 307, 316:

> "This discrimination robs the laws of the indispensable requisite that taxes shall be uniform upon property within the jurisdiction of the body imposing them."

As aptly said by the Supreme Court of Missouri in the case of *State v. Hannibal & St. Joseph R. Co.,* 75 Mo. 208, 211:

> "* * * The idea of taxation imports the equality of apportionment and assessment upon all property. * * * And it cannot be doubted that the exemption of the property of an individual or of a private corporation from taxation, either in whole or in part, casts an unusual and inequitable burden on the property of those who have not been thus graciously favored."

It follows, therefore, in our opinion, that House Bill No. 46 clearly violates the spirit, if not the letter, of that provision of Sec-

tion 3 of Article X of the Colorado Constitution which requires that "all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same."

Leonard v. Reed, *supra*, 46 Colo. 307;
Ollivier v. City of Houston, *supra*, 93 Tex. 201, 208, 54 S. W. 940, 942;
Sanderson v. Bateman, *supra*, 78 Mont. 235, 253 Pac. 1100;
State v. Fischl, *supra*, 94 Mont. 92, 20 Pac. (2nd) 1067;
3 Cooley, Taxation (4th Ed.), Sec. 280, pp. 591-593.

In this connection we note that a law enacted by the Legislature of Missouri in 1933, designed to induce and accelerate the payment of delinquent taxes by authorizing the remission of the penalties, interest and costs accrued upon the same, has been twice upheld by the Supreme Court of that State. See *State ex rel. Crutcher v. Koeln*, 61 S. W. (2nd) 751, and *State ex rel. McKittrick v. Bair*, 63 S. W. (2nd) 64. But the act there in question was confined solely to the remission in whole or in part of "*penalties*, *interest* and *costs*" within a definite period ending December 31, 1933, and did not operate, as does House Bill No. 46, to reduce the amounts of back taxes. Neither did the act there under consideration present any question of *discrimination* such as is presented by said House Bill No. 46.

In *Livesay v. DeArmond*, 131 Ore. 563, 284 Pac. 166, 68 A. L. R. 422, (cited by the Supreme Court of Missouri in *State ex rel. Crutcher v. Koeln*, *supra*), the Supreme Court of Oregon held that a statute, which provided that a county court, or a board of county commissioners, of any county, might waive or reduce the penalty or interest imposed for failure to pay taxes within a specified time, (if such waiver or reduction would facilitate the collection of taxes), was *not* unconstitutional as violating the provision as to uniform taxation. But no question of *discrimination* was involved in this Oregon case, and the court was careful to say in its opinion (131 Ore. 579):

> "It is evident, from what we have said above, that in our opinion this act does *not* authorize county boards to *remit* these charges from *one property owner* and *withhold* such action from *another*." (Italics ours)

It is plain that the statutes considered in the Missouri and Oregon cases, to which we have just referred, involved no question of *discrimination* among the taxpayers upon whom they were made to operate, and that the decisions sustaining their constitutionality are not opposed to the propositions hereinbefore discussed that go to show the unconstitutionality of House Bill No. 46.

So, in the respects hereinbefore mentioned, it is our opinion that House Bill No. 46 is clearly violative of the Federal and State Constitutions; and, this being so, it would only extend unduly this

opinion to discuss other questions that arise to challenge in other respects its constitutionality.

(5) *House Bill No. 46 is indefinite and uncertain in its provisions.*

We feel, however, before concluding this opinion to invite your attention to certain major provisions of this Bill which are indefinite and uncertain, and would lead to inevitable confusion if the measure should become a law:

1st.—The Bill wholly fails to provide any time at or during which delinquent taxpayers, paying their 1933 taxes on or before October 25, 1934, must pay the taxes *accruing prior to the year 1933* in order to receive the benefit of the relief intended to be afforded by the measure. Obviously, the payment of all such delinquent taxes accruing prior to the year 1933 should be made *contemporaneously* with the payment of the 1933 taxes, or at least within the period specified for the payment of the 1933 taxes and before October 25, 1934; but the Bill contains no provision whatsoever requiring the payment of such delinquent taxes at or during this time. Under the provisions of the Bill, as presented to you, any taxpayer who pays his 1933 taxes on or before October 25, 1934, would be entitled to obtain a full settlement of his delinquent taxes for the year 1931 and prior thereto, together with interest and penalties, by paying *at any time thereafter* fifty per cent (50%) of the original amount of such delinquent taxes, and he would also be entitled to obtain a full settlement of his delinquent taxes subsequent to the year 1931 and prior to the year 1933 by paying *at any time thereafter* the original amount thereof without interest and penalties. Under such circumstances it would appear to us that, while the Bill might operate to induce and accelerate the payment of 1933 taxes, yet the payment of delinquent taxes accruing prior thereto might still be indefinitely withheld, without the further exaction of interest or penalties thereon, by those so paying their 1933 taxes.

2nd.—The Bill, in undertaking to provide by Section 5 thereof that all Acts and parts of Acts in conflict therewith are "*temporarily declared inoperative to the extent necessary to carry out the provisions of the above emergency measures,*" is so completely indefinite and uncertain as, in our opinion, to defeat itself and to leave unchanged the existing law.

In conclusion, let us say that in the very first volume of the reports of the Supreme Court of Colorado there is stated this doctrine:

> "It may, therefore, be laid down as a principle of universal constitutional law, that the power to levy taxes is an incident to sovereignty without which no government

could exercise the powers delegated to it." (Belford, J., in *Yunker v. Nichols*, 1 Colo. 551, 567).

So, too, the Supreme Court of the United States has said:

"The taxing power is vital to the functions of government." *(Tucker v. Ferguson*, 89 U. S. 527, 575).

Much as we appreciate the fact that the Bill here under consideration was intended by the General Assembly to alleviate the condition of worthy citizens who, because of the existing emergency, have been unable to pay their taxes, yet, in our opinion, its provisions have been so framed that its inevitable effect would be seriously to cripple the taxing power of the State and to thwart its exercise in the performance of the functions of government.

As we see it, the plan advanced in the Bill of favoring some taxpayers of the same class over others, as has been hereinbefore set forth, is not only contrary to the Federal and State Constitutions, but would, if carried out, put a premium upon the failure to pay taxes. and would thereby impair the taxing power of the State which, if the State is to exist, it must exercise during foul weather as well as during fair weather.

Respectfully submitted,

PAUL P. PROSSER,
Attorney General.
CHARLES ROACH,
First Assistant Attorney General.

235 BARBERS' BOARD

To H. F. Bedford, Feb. 1, 1934.

Compensation of members.

The Attorney General has no right to question determinations of fact by an administrative officer, unless there is a flagrant abuse of discretion; and having found none in this instance, it is his opinion that the vouchers drawn in payment for the services of the members of this board should be paid.

236 AGRICULTURAL COLLEGE

To Doctor Lory, Feb. 2, 1934.

Powers of State Board of Agriculture.

State Board of Agriculture may lease land to City of Fort Collins for municipal airport, with option to City to purchase. (See. 3003, C. L. 1921.)

237 LIQUOR LAW

To H. F. Bedford, Feb. 6, 1934.

Rectifying plant.

A rectifying plant, making whiskey from alcohol, water and whiskey, must pay a distillery license. (Ex. S. L. 1933, Ch. 12, See. 6(d) 38 C. J. 981; 18 Colo. 346; 20 L. R. A. 241.)

238 CORPORATION LAWS

To John D. Goodloe, Feb. 8, 1934.

Exemption of Commodity Credit Corp.

Sections 2305 and 7273 of the Compiled Laws, 1921, are not applicable to the Commodity Credit Corporation which is practically a governmental agency for carrying into effect the purposes of the government for national industrial recovery, and is therefore exempt from filing the reports required under said sections to be filed by foreign corporations operating in this State.

239 MOTOR VEHICLE LAW

To C. S. Furrow, Feb. 8, 1934.

Certificates of title.

Nonresident owners of motor vehicles must secure certificates of title before motor vehicles can be registered in this State. (S. L. 1925, Ch. 136; S. L. 1933. Ch. 130.)

240 COUNTY TREASURER

To H. J. Gilbreath, Feb. 8, 1934.

Deputy's power to carry on duties of office.

Under Sec. 8792, C. L. 1921, Deputy County Treasurer can perform duties of office upon death of Treasurer.

241 IRRIGATION—(Interstate Compacts)

To E. C. Johnson, Feb. 9, 1934.

Benkleman-Haigler-Arickaree Project.

The only way in which this project could be constructed free from legal objection, would be through a tri-State Compact between Colorado, Nebraska and Kansas.

242 HIGHWAY DEPARTMENT

To C. D. Vail, Feb. 9, 1934.

Licenses for highway trucks.

All publicly owned motor vehicles must be licensed, including highway trucks. (S. L. 1931, Ch. 122, Secs. 27 and 28; S. L. 1931, p. 485; Atty. Gen. Rep. 1923-24, No. 46.)

243 BUILDING AND LOAN COMMISSIONER

To J. R. McClelland, Feb. 13, 1934.

Proposed examination of Railway Building and Loan.

In view of the decree entered in the receivership proceedings by the District Court of Pueblo County, and the subsequent dis-

charge of the Receiver, The Railway Savings and Building Association is subject to the general supervision and control of the State Commissioner, just as is any other building and loan association.

244 WESTERN STATE COLLEGE

To Dr. C. C. Casey, Feb. 14, 1934.

Re: Right of the Board of Trustees to borrow funds from the Federal Government for the purpose of financing the construction and equipment of a residence for the President of the College.

February 14, 1934.

Doctor C. C. Casey,
President, Western State College,
Gunnison, Colorado.

Dear Sir:

You have requested an opinion from this Department concerning the right of the Board of Trustees of your Institution to borrow funds from the Federal Government for the purpose of financing the construction and equipment of a residence for the President of your institution, the loan obtained to be repaid, principal and interest, out of the rentals for the use of said residence by the President of The Western State College.

Your institution is one of the several schools in the State of Colorado under the jurisdiction of the Trustees of the State Normal School. It is technically known as "The Western State College of Colorado." It was established under the provisions of an act of the Colorado Legislature passed in 1901, entitled "An Act to Establish a State Normal School," Session Laws of Colorado, 1901, paragraph 1, the same being Section 8178 of the Compiled Laws of Colorado, 1921.

The Board of Trustees is constituted by Section 8164, C. L. 1921, which reads as follows:

> "Said schools shall be under the control of a board of six trustees; the said board shall be and is hereby declared a body corporate by the name and style of 'the trustees of the state normal school,' and as such and by its said name may hold property for the use of said school, be party to all suits and contracts, and do all things thereto lawfully appertaining, in like manner as municipal corporations of this state. The said trustees and their successors in office shall have perpetual succession, shall have a common seal, and may make by-laws and regulations for the well ordering and government of the said corporation and its business not repugnant to the constitution and laws of the state."

Section 2 of House Bill No. 32, passed at the recent Extra-

ordinary Session of the General Assembly entitled, "TO PROVIDE EMERGENCY RELIEF FOR UNEMPLOYMENT BY AUTHORIZING COUNTIES, CITIES, TOWNS AND ANY OTHER POLITICAL SUBDIVISION, OR ANY GOVERNMENTAL AGENCIES OF THE STATE TO MAKE LOANS AND ACCEPT GRANTS FROM THE PRESIDENT OF THE UNITED STATES AND FOR THE STATE OF COLORADO, FOR THE CONSTRUCTION OF PUBLIC WORKS," approved and in effect August 18, 1933, reads as follows:

> "To effectuate the purposes of this Act, counties, cities, towns, school, irrigation, drainage or sewerage districts, Federal Reclamation projects and water users Board of Control thereof, the Colorado State Fair Commission, other political subdivisions, or governmental agencies of this State, are hereby authorized, until January 1, 1935, to undertake a program of public works, which may include among other things the following: (a) the construction, repair, and improvement of public highways and parkways, public buildings, and any publicly owned instrumentalities and facilities; (b) the control, utilization and purification of water and extension and improvement of existing municipal water works; (c) the construction of irrigation, drainage, or sewerage disposal projects; (d) the construction, reconstruction, alteration or repair, under public regulation or control of low-cost housing and slum clearance projects; (e) the construction of any other projects of any character eligible for loans under the provisions of the Acts of Congress known as the Emergency Relief and Construction Act of 1932, and the National Industry Recovery Act."

It will be observed that this Section authorizes Governmental Agencies of this State to avail themselves of the Acts of Congress therein mentioned and to contract for loans for construction of public buildings, and we have no hesitancy in saying that in our opinion The Western State College is such a Governmental Agency and is entitled under the provisions of the above quoted act to negotiate for such a loan.

Assuming that the Board of Trustees has the right under the law, which we feel it has, to construct a proper residence for the President of the School, we are clearly of the opinion that your Board of Trustees would be authorized to contract for a loan from the Federal Government for the financing and the equipment of the proposed residenec, such loan to be repaid solely out of the rent to be paid by the occupant of the building.

While your Institution would not be permitted to incur indebtedness or to pledge the credit of the State under our Constitutional limitations, our State Supreme Court has held that reve-

nue bonds payable solely from the net income of a public utility do not constitute an indebtedness within the meaning and intent of our Constitutional and statutory provisions, limiting the powers of municipal corporations to contract indebtedness. *(Shields, et al. v. The City of Loveland*, 74 Colo. page 27).

The doctrine in the Loveland case was somewhat curbed in the recent case of our State Supreme Court in *Reimer, et al. v. Town of Holyoke*, same being Docket No. 13004, Supreme Court of Colorado, (27 Pac. 2nd, 1032) which holds that a municipality may not use funds which have been placed in a general fund even though such funds come from the operation of a Public Utility, if such funds have to be replaced with money raised by taxation, but we do not feel that this case would hamper the contemplated arrangement on the part of your Board in contracting for this loan.

It is, of course, distinctly understood that your Board of Trustees would not be authorized to pledge the general income of your Institution or the faith or credit of the State itself to the repayment of such loan or interest. This opinion is predicated upon the assumption that the proposed building would be a self-liquidation project.

Respectfully yours,

PAUL P. PROSSER,
Attorney General.
By NORRIS C. BAKKE,
Deputy.

245 COOPERATIVE MARKETING ACT

To Director of Markets, Feb. 14, 1934.

Interpretation of cooperative marketing Act as applied to Dairymen's Cooperative, Inc.

246 CORPORATION LAW

To Chas. M. Armstrong, Feb. 15, 1934.

Denver Nudist Society.

The Secretary of State is not obligated to accept for filing the certificate of incorporation of a company the propriety of the objects of which might be questioned by the courts. (Nudist Cult).

247 APPROPRIATIONS

Clay B. Apple, Feb. 15, 1934.

Order of payment.

In case of a deficiency of revenues to pay all first and second class appropriations, the rule is that second class appropriations would have to be paid in order of priority of passage of the stat-

utes making same; and second class appropriations made at a special session of the legislature would have to follow all first class and all second class appropriations made at the regular session.

248 ELECTION LAW

To F. D. Willoughby, Feb. 15, 1934.

City election—Aspen.

1. Notice of publication—The publisher may charge any amount not to exceed that set out in Sec. 8, Ch. 139, S. L. 1923.

2. The city council cannot, by resolution or otherwise, change the method of election.

3. The statutes settling up the machinery for elections are mandatory, but under the present economic conditions, by mutual consent in a number of towns and cities in this State municipal elections are not being held.

249 SCHOOL FUND WARRANTS

To Clem W. Collins, Feb. 18, 1934.

Registration of.

The county treasurer may register school fund warrants when there are no funds available to pay the same, when the warrant is presented for payment.

250 PENITENTIARY

To Governor Ed C. Johnson, Feb. 20, 1934.

Report and opinion concerning deductions and good time allowances to prisoners in Penitentiary and present method of computing same. (25 pages).

251 BUILDING AND LOAN LAW

To H. F. Bedford, Feb. 21, 1934.

Deposits of foreign Building and Loan companies.

Where a foreign Building and Loan Association has withdrawn from the State, securities deposited with the Secretary of State should be retained by him until the association obtains a court order to release same, after proof that no further liability exists in Colorado.

252 PUBLIC FUNDS

To E. A. Chubb, Feb. 28, 1934.

Interest on County deposits.

An advisory letter discussing the question and citing cases

253 BARBERS' EXAMINING BOARD

To Gov. Johnson, Feb. 28, 1934.

Suspension or removal.

Members of the State Board of Barbers' Examiners are not subject to suspension or removal without charge being filed for malfeasance, misfeasance or nonfeasance in office. Members must be given opportunity for defense; otherwise Governor may not suspend or remove (S. L. 1909, p. 294; S. L. 1929, p. 202; S. L. 1933, ch. 177, Const. Art. XII, Sec. 3; 66 Colo. 367; 10 Colo. App. 175).

254 COMMISSION FOR THE BLIND

To K. C. Barkhausen, March 1, 1934.

Expense of surgical operation.

Funds may be spent for operation to prevent total blindness or to save the sight of a beneficiary, by Commission for the Blind.

255 STATE RELIEF FUNDS

To Gov. Johnson, March 2, 1934.

Administrative expenses.

Reasonable administrative expenses incidental to the distribution of the funds for relief purposes may be properly incurred. (House Bill No. 56, 2d. Ex. Sess.)

256 BUILDING AND LOAN LAW

To J. R. McClelland, March 2, 1934.

Preference.

When an association is on a restricted withdrawal basis, it is showing preference to allow members to turn in shares in full or part payment for any real estate or assets owned by the association.

Citing Carlson vs. Bogle, 14 Wash. 242.

257 TAXATION

To Colorado Tax Commission, March 3, 1934.

Property owned municipally owned Public Utility is tax exempt. (Rep. Atty. Gen., 1931-32, No. 284; Const. Art. X, Sec. 4; 79 Colo. 216; 80 Colo. 18; 87 Colo. 556).

258 PUBLIC FUNDS

To Gov. Johnson, March 5, 1934.

Public funds may not be used to supplement the Coal Mine Inspection Fund.

259 **STATE RELIEF**

To Dr. Norlin, March 5, 1934.

For students.

Relief funds may not be used for the purchase of materials to be used by students at the State University in the performance of work in connection with Federal relief activities.

260 **TAX LIST—Errors in**

To H. C. Ohlman, March 5, 1934.

Correction of.

Under Secs. 7317-7318, C. L. 1921, an obviously clerical error in the tax list and warrant may be corrected even though the same has been certified and delivered to the county treasurer.

261 **BUILDING AND LOAN LAW**

Thos. C. Turner, March 8, 1934.

Payment of annual flat tax.

1. Annual franchise tax, or flat tax, is levied for the privilege of continuing to be a corporation (61 Colo. 630; Report of Attorney General, 1919-20, Opinions 239 and 333) and should be paid until corporation is dissolved.

2. Appointment of a receiver does not thereby dissolve a corporation (10 Colo. 464, 475; 11 Colo. App. 494, 502; 40 Colo. 212, 226) hence a receivership does not preclude the imposition of a franchise tax.

3. Provisions of Building & Loan Code 1933, governing payment of fees, applies only to those associations granted a certificate of authority and subject to supervision and examination by the State Building & Loan Department.

4. An association in receivership should pay fees to the Secretary of State until dissolution is effected.

262 **FIREMEN'S PENSION FUND**

To Perry E. Williams, March 9, 1934.

Investment in city warrants.

The investment of the Firemen's Pension Fund rests in the discretion of the Board of Trustees. (Sec. 9374, C. L. 1921.)

Any shortage resulting from such investment might form the basis of liability on the bond of the Treasurer, who is the custodian of all such funds. (Sec. 9349, C. L. 1921; 56 C. J. 1279).

263 TAX SALE CERTIFICATES

To A. H. Horton, March 12, 1934.

1. A tax certificate purchased by the county may be assigned only upon the payment of the taxes assessed on the land subsequent to the date of sale or the payment of the sum the county commissioners agree to take in lieu of such taxes.

2. The owner may redeem a tax certificate held by the *county* without paying subsequent taxes, but may not pay subsequent taxes without first redeeming, and under Sec. 7430, C. L. 1921, if the certificate is held by an *individual*, the owner, before redeeming, must pay all subsequent taxes which have been paid by the certificate holder and endorsed on the certificate.

264 COAL MINE INSPECTOR

To Executive Council, March 14, 1934.

Annual Report.

Under Sec. 3475, C. L. 1921, the presentation to the Governor of an annual report by the Coal Mine Inspector is mandatory; the publication thereof is authorized, but is not compulsory. If such report is published, it must be paid for out of the Coal Mine Inspection Fund.

265 OLD AGE PENSION

To Orville Swain, March 14, 1934.

Publication of list.

Old Age Pension warrants should not be included in publication of county commissioners' proceedings. (Sec. 8698, C. L. 1921).

266 OLD AGE PENSION

To J. A. Thompson, March 14, 1934.

Residence in State.

Under the Old Age Pension Act continuous residence in the State for 15 years and in the city or county for 5 years, shall not be deemed to have been interrupted by occasional periods of absence if the total of such periods does not exceed 3 years. This may also be applied to those who are now receiving the pension. The law does not require that he live in Colorado continuously, so long as he does not change his legal residence.

267 BUILDING AND LOAN COMMISSIONER

To James R. McClelland, March 16, 1934.

Withdrawals.

Under Ch. 47, S. L. 1933, no building and loan association can hereafter issue contracts that in any way curtail the right of withdrawal provided in said statute. (81 Fed. 776).

268 **CONVICTS**

To Joseph Sanford, March 17, 1934.

Rights after pardon.

1. A prisoner released from the penitentiary is entitled to vote.
2. He has the right to hold office.
3. He has the right to enter into contracts and to own property.
4. He is eligible for employment on state and city public works.

(Art. VII, Secs. 6 and 10, Colorado Const., Sec. 7557, C. L. Colo. 1921.)

269 **TAX SALE CERTIFICATES**

Mr. C. B. Ickes, March 19, 1934.
County Treasurer of Larimer County,
Fort Collins, Colorado.

Dear Sir:

In your letter of recent date, you refer to opinions rendered by this office June 20, 1933, and January 4, 1934, and question, in some particulars, the position taken by this office.

For the reasons stated in said opinions, and because of the practical issues involved, we believe the courts would rule as follows:

1. The county, after bidding in property at a tax sale, may assign the tax sale certificate at a discount, under Section 7422, C. L. 1921, to a stranger.
2. The county may not sell this certificate at a discount to the owner of the property. This would amount merely to an incomplete redemption, and would in effect be granting partial tax exemption to a select group of taxpayers. 61 C. J. 1199.
3. It follows that the county may not sell the certificate at a discount to an agent of the owner, for a person may not do indirectly what he may not do directly. The same rule would apply to any collusive arrangement through which the owner by indirection buys the certificate at a discount. *Barlow v. Hitzler,* 40 Colo. 109, 118; 61 C. J. 1205.
4. Under the rule of the case of *Ireland v. Coal Co.*, 87 Colo. 193, if the original sale was void for any irregularity or otherwise, the lien of the county for the balance of the taxes remains undisturbed, so the result would be the same as above.
5. If, on the other hand, there is a valid tax sale to the county, and the county assigns the certificate to a stranger who holds it until a tax deed is issued to him, he probably has a new title which he can dispose of as he wishes, even to the original owner, who would probably take as clear a title as his grantor had.

6. If the county assigns, at a discount, a tax certificate to a stranger and thereafter the owner of the land without any prior collusion with the purchaser of the certificate buys the certificate from such purchaser, taking advantage of the discount, the law is not clear.

The cases of *Newmyer v. Tax Service Corp.*, 87 Colo. 474; *Buchanan v. Griswold*, 37 Colo. 18, and *Mathewson v. Havel*, 82 Kans. 134, are not directly in point, but the language of the courts therein suggests that the county's lien for taxes may not be extinguished in this way, as against the owner (as of the time the taxes become a lien) who remains under a continuing obligation to pay his taxes. But there is language in *Ireland v. Coal Co.*, 87 Colo. 193, which seems to point the other way. The question, in both its legal and practical aspects, is very complicated, and it can only be settled by a decision of the Supreme Court. Until that time we must take the position that the obligation to pay taxes is a continuing one between the citizen and the state and may be extinguished only as specifically provided by law.

7. As a general proposition the county may sell a tax certificate at a discount to the mortgagee of the property in question. The rule concerning direct purchase at a tax sale is stated in 61 C. J. at page 1204 as follows:

> "* * * it has been held that the mere relation of mortgagee will not prevent the person so related from acquiring title to the mortgaged premises by purchasing at a tax sale, and that a mortgagee could become a purchaser where he was *under no duty or obligation to pay the taxes*, if he does not use his position as mortgagee to become purchaser, did not purchase in his character as mortgagee, and took no part in connection with the sale except to bid and pay the purchase money, and paid it not qua taxes, but qua purchase money; or if he was not in possession of the property at the time the taxes accrued, or when it was sold under the tax proceedings; but where the mortgagee is allowed to purchase the mortgaged premises at a tax sale, he cannot thereafter set up the title thus obtained against the mortgagor's right to redeem."

We believe the above rules would apply with added force to an assignment of a tax sale certificate by the county.

Very truly yours,

PAUL P. PROSSER,
Attorney General.

By PIERPONT FULLER, JR.,
Assistant Attorney General.

270 SALARIES

To Nick Fuson, March 20, 1934.

Deputy County officers.

1. Deputies and assistants may be employed by county officers and their compensation for services fixed by the official hiring them, with the approval of the board of county commissioners. (Sec. 7940, C. L. 1921.)

2. The salary of a deputy, when once fixed and approved, may not be changed during his term by action of the board of county commissioners alone. (72 Colo. 200; 80 Colo. 14.)

3. It is generally provided that salaries of deputies in fourth class counties are to be paid from the general county fund. (See Sec. 7942 as to deputy sheriffs.)

Referring to Sec. 5978, C. L. '21 which makes the district attorney the adviser of county officers.

271 CONVICTS

To Governor Johnson, Mar. 24, 1934.

Re: Legality of experiments upon.

The official consent of the Governor to the volunteering of prisoners to subject themselves to tests for treatment of tuberculosis, is a matter of policy and cannot subject the State or its officers to liability for damages in case of failure of or injury incurred by reason of such tests. (Sec. 792, C. L. '21; 6643, C. L. '21.)

272 STATE FUNDS

To H. F. Bedford, Mar. 28, 1934.

Ch. 16, 2nd Ex. S. L. '34. Appropriations to Relief Committee in lump sums.

The appropriation made by H. B. No. 56, passed at the 2nd Ex. Session of the 29th Gen. Assembly, for the use of the Official Colorado State Relief Committee, in furnishing unemployment relief, may be withdrawn by the Committee for allocation and distribution in gross or lump sums and without submission to the Auditor or Treasurer of itemized vouchers. (Secs. 68, 335, C. L. '21; 2d Ex. S. L. '33, 16; 2d Ex. S. L., Ch. 15; S. L. '33, Ch. 51; 69 Colo. 79; 8 Colo. 533.)

273 TAXATION

To Judge Dillon, Mar. 29, 1934.

Taxes not paid by check unless check clears. Compromise of taxes.

Negligence of County Treasurer in failing to present check given him for taxes within proper time is not chargeable to County. May compromise unliquidated claim for taxes. (Const. Art. V, Sec. 38; Secs. 7335, 7387, 7447, 7460, C. L. '21; 61 C. J. 965, 973.)

274 SHERIFFS

To Neil W. Brown, Mar. 29, 1934.

Duty to serve papers in pauper's suit.

Sheriff of foreign county must serve papers free of charge in suit by poor person. (Sec. 6592, C. L. '21; 16 Colo. App. 200.)

275 LEGISLATION

To B. F. Stapleton, Mareh 29, 1934.

Re: Purchase of beef for relief.

1. The provisions of the bill are not mandatory;
2. The neeessity for the purehase of sueh beef must first be determined by the Official State Relief Committee before the money appropriated therefor eould be made available;
3. Until that necessity is determined there is no oecasion for the State Auditor to set up a fund under said H. B. 26. (6 C. J. 865; 12 N. Y. S. 890; 28 Colo. 194.)

276 EXPENSE ACCOUNTS

To Exeeutive Counеil, Mar. 1934.

District Judges.

Distriet judges in Colorado while serving outside of their home eounties must be limited to reimbursement for expenses aetually and neeessarily incurred, in no event to exeeed $5.00 per day.

Mareh 29, 1934.

Exeeutive Counеil,
Room 15, State Capitol,
Denver, Colorado.

Re: District Judges' Expense Accounts.

Gentlemen:

You have asked our offiee for an opinion as to the meaning of Chapter 101, Session Laws 1921, page 263, particularly as to "personal maintenanee expenses to the amount of $5.00 per day" in Seetion 1 thereof.

In response we wish to say that part of the language in Section 2 of said aet would seem to indicate that no itemized account need be given of the actual amount spent for maintenanee the language being "with warrant for maintenance expenses as hereby specified," i.e., the specification being the $5.00 per day in section one.

Such an interpretation would however in our opinion be unconstitutional, if as a matter of fact the judge's maintenanee was

less than $5.00 a day and he sought to collect the full $5.00. Section 30 of Article V of our Constitution provides, inter alia, that "The judges of the District Courts shall each receive an annual salary of four thousand dollars."

Section 30, Article V, of our Constitution, was amended by the people in 1928, to read as follows:

> "The salaries of the governor, the governor's secretary and the judges of the supreme and district courts of the state shall be fixed by legislative enactment; providing that the salaries of said officers heretofore fixed by the constitution shall continue in force until otherwise provided by the legislative enactment.
>
> "No law shall extend the term of any public officer, or increase or decrease his salary, after his election or appointment, as fixed by legislative enactment."

Section 18, of Article VI, of the Constitution, reads as follows:

> "The judges of the supreme and district court shall each receive such salary as may be provided by law; and no such judge shall receive any other compensation, perquisite or emolument for, or on account of, his office, in any form whatever, nor act as attorney or counsellor at law."

Under the section just quoted it is evident that the judge is entitled to *reimbursement only* and not to the flat $5.00 for daily maintenance. Any excess over the actual expense would undoubtedly be "per diem compensation" which has been held to be salary (Buxton v. Rutherford County Commissioners, 82 N. C. 91-95), and hence unconstitutional.

We, therefore, conclude that even as to maintenance the District Judges in Colorado while serving outside of their home counties must be limited to reimbursement for expenses actually and necessarily incurred, and in no event to exceed $5.00 per day.

In line with the above opinion, we feel that the State Executive Council (formerly the State Auditing Board) was entirely within its rights in issuing its letter of March 18, 1933, a copy of which was sent to all District Judges, and which we feel should be followed in the submission of their accounts.

Yours very truly,

PAUL P. PROSSER,
Attorney General.

By NORRIS C. BAKKE,
Deputy.

277 CORPORATION LAW

To Chas. M. Armstrong, March 30, 1934.

Renewal by a foreign corporation of its right to do business in State.

A foreign corporation whose term of existence in Colorado has expired under the 20 year limitation prescribed by Sec. 2328, C. L. 1921, must file a certificate of renewal and pay the same fees as a domestic company, notwithstanding S. L. '31, Ch. 70, which authorizes the incorporation of Colorado corporations with a perpetual existence.

March 30, 1934.

Honorable Charles M. Armstrong,
Secretary of State,
State Capitol,
Denver, Colorado.

Attention Mr. Merrill Slater, Chief Filing Clerk:

Dear Sir:

You have submitted to me some correspondence between your office and Messers. Albert H. and Henry Veeder, of Chicago, general counsel for Swift and Company, an Illinois corporation, which qualified to do business in Colorado on April 19, 1913.

You have notified Swift and Company that if it desires to continue its corporate existence in this State, it will be required to file in your office a certificate of renewal on or before April 19th of this year.

At the time Swift and Company was admitted to do business in Colorado the life of domestic corporations was limited to twenty years. (C. L. Colo. 1921, Sec. 2243.) The period for which foreign corporations could qualify to do business here was likewise limited to twenty years and they were required to file renewal certificates at the end of that period. (C. L. Colo. 1921, Sec. 2328.) At the same time, C. L. Secs. 2291 and 2292 provided the method of extending and continuing the term of incorporation of any domestic corporation "the same as if originally incorporated," i.e., for a term not exceeding twenty years. This method called for a special stockholders' meeting.

In 1931 said Sec. 2243 was amended so as to permit the organization of Colorado corporations with limited or perpetual existence (S. L. 1931, Chap. 70, Sec. 4). The 1931 Act, Sec. 17, also amended said Sec. 2292 by providing that any domestic corporation might renew its corporate life by vote of stockholders at a special meeting, *in perpetuity* or for such term as the stockholders determined upon.

Counsel for Swift and Company insist that the Act of 1931, above referred to, automatically extended the Company's right to do business in Colorado for the term of its corporate existence.

to-wit, until the year 1984, by permitting the organization of domestic corporations with perpetual existence; and in support of this contention they refer to American Smelting & Ref. Co. v. Lindsley, 204 U. S. 103, and Iron Silver M. Co. v. Cowie, 31 Colo. 450, 72 Pac. 1067. The Smelting Company case held that after the admission of a foreign corporation, the State could not increase its liabilities without, at the same time and to the same extent, increasing those of domestic corporations (page 113). After the admission of the Smelting Company the State attempted to impose upon it a tax in double the amount of the tax on domestic corporations. This was held to be discriminatory and an impairing of the State's contract with the Smelting Company, made at the time of the Company's admission.

I can not see that the 1931 Act discriminates against foreign corporations. They may renew their right to do business in the State, perpetually or for the term for which they are organized, simply by filing a renewal certificate and paying the same fees as a domestic corporation. (C. L. Sec. 2328.) No stockholders' meeting is necessary in order to authorize this renewal certificate. Domestic corporations desiring to renew their corporate life must hold a special stockholders' meeting, file a renewal certificate and pay "the same fees as are provided by law for filing a new certificate of incorporation." (Act of 1931, Sec. 17, amending C. L. Sec. 2292.) To adopt the theory of counsel would, it seems to me, give to foreign corporations "greater powers" than are accorded to domestic corporations, and would not make foreign corportions subject "to all the liabilities, restrictions and duties" imposed upon domestic corporations,—which is contrary to the principle laid down in the Iron Silver case. The Iron Silver case arose before the enactment of C. L. Sec. 2328, and was based on C. L. Sec. 2322.

In their letter of February 5th last, counsel for Swift and Company question the constitutionality of Sec. 2328, requiring the filing of renewal certificates by foreign corporations, on the ground that Swift and Company is engaged in interstate commerce. The reply to this argument is that Swift and Company is *also* engaged in business *in Colorado,* and the fees exacted by said Sec. 2328 in no way constitute a burden upon or an interference with interstate commerce, within the oft-adjudicated meaning of U. S. Constitution, Art. I, Sec. 8, clause 3, but are simply a charge for the renewal of the privilege of doing business in Colorado. In Western Union Tel. Co. v. Kansas, 216 U. S. 1, cited by counsel, the State undertook to tax the entire capital stock of the Telegraph Company. Other cases cited by counsel on this point are of the same general character as the Western Union case.

I am therefore of the opinion that in order that Swift and Company may legally continue to do business in this State after

April 19, next, it must file in your office the renewal certificate and pay the fees prescribed for domestic corporations under like circumstances.

Yours very truly,

PAUL P. PROSSER,
Attorney General.
By OLIVER DEAN,
Assistant Attorney General.

278 BANK COMMISSIONER

To Grant McFerson, March 29, 1934.

Pledge of securities for public deposits.

State banks have authority to pledge their assets for the security of county deposits only as prescribed in Ch. 9, of the Laws of the 2nd Ex. Session of the 29th Gen. Assembly, which act enumerates the items of assets that may be so pledged. Such banks may pledge as security for such deposits only Farm Loan bonds, as provided in Ch. 92, S. L. 1925.

March 29, 1934.

Honorable Grant McFerson,
State Bank Commissioner,
State Office Building,
Denver, Colorado.

Dear Mr. McFerson:

In your letter of the 16th inst., you request the opinion of this department concerning the right of banks organized under the laws of this State to pledge their assets as security for public deposits.

The Banking Act of 1913, as you are aware, contains no provision concerning this matter. However, in the case of *McFerson v. National Surety Co., et al.*, 72 Colo. 482, the Court held that a State bank had the right to pledge its assets to secure a deposit of county funds and the language and reasoning of the opinion is broad enough to cover public deposits in general. This decision was handed down in December, 1923. Section 7 of Chapter 65, Session Laws of 1927, to which your letter refers, provides:

> "No bank shall pledge or hypothecate any of its securities except as collateral for direct bills payable and (or) for the protection of public funds, or moneys in said bank, in accordance with statutes now or hereafter enacted."

Section 6 of the same Act expressly recognizes the right of State banks to pledge their assets as security for direct bills payable, but inasmuch as the section above quoted provides, in effect,

that State banks shall not pledge their assets as security for public funds or moneys except in accordance with statutes then or thereafter enacted, it becomes necesesary to consider what legislation had been theretofore or has been thereafter enacted covering the subject of pledges of assets of State banks to secure deposits of public funds or moneys.

Section 1 of Chapter 9, Second Extraordinary Session Laws of 1933-1934, amends Section 8796, Compiled Laws of 1921, so as to provide that county treasurers may accept from banks (obviously including State banks) as security for deposits of public funds in his custody as county treasurer,

> "bonds or other interest bearing securities of the United States, of the State of Colorado, of Counties, Cities, Towns or School Districts situated within said State, farm loan bonds issued by any Federal Land Bank or Joint Stock Land Bank organized under an Act of Congress approved July 17, 1916, * * * known as 'Federal Farm Loan Act' and Acts amendatory thereto."

While this Act deals with the subject of pledges of assets of banks from the standpoint of the power and duty of the county treasurer, rather than from the standpoint of the power of the bank to make such pledges, yet we think that the clear result and effect of the Act is to empower State banks to pledge as security for deposits of county funds, assets of the character specifically enumerated in the Act as above set forth. In other words, this Act does not authorize State banks to pledge their assets generally even for the security of county deposits, but only authorizes the pledging of the specific assets described in the Act.

Section 1 of Chapter 92, Session Laws of 1925, provides that "Farm Loan Bonds issued by any Federal Land Bank or Joint Stock Land Bank organized pursuant to an Act of Congress approved July 17, 1916, * * * shall be accepted as security for all public deposits."

In a letter addressed to you by this office under date of October 18, 1932, the opinion was expressed that this Act of 1925 authorized State banks to pledge farm loan bonds issued for all public deposits. While this Act of 1925 is not entirely clear, it is susceptible of the construction so heretofore placed upon it by this office, and we do not feel that we should disturb the above ruling.

Chapter 13, First Extraordinary Session Laws of the 29th General Assembly, entitled "An Act Concerning Legal Investments," provides, in Section 1 thereof, that it shall be lawful for banks to invest their funds in "bonds of the Home Owners' Loan Corporation and in the bonds of any other corporation which is

or may be created by the United States as a governmental agency or instrumentality." Section 2 of the Act provides that:

> "The bonds herein made eligible for investment may be used as security for any depository bond or obligation, wherein any kind of bonds or other securities *are required or may by law be deposited* as security." (Italics ours.)

While this Act is somewhat similar in its terms to the Act of 1925, concerning Farm Loan Bonds, as above quoted, it does not, in our opinion, authorize State banks to pledge Home Owners' Loan Bonds as security for deposits of public funds.

We also direct attention to Chapter 15, of the laws of the First Extraordinary Session of the 29th General Assembly, which Act is entitled:

> "TO PROVIDE FOR THE CUSTODY AND SAFE-KEEPING OF PUBLIC FUNDS AND FOR THE PAYMENT OF INTEREST THEREON WHEN ON DEPOSIT IN BANKS OR OTHER FINANCIAL INSTITUTIONS."

And Section 1 of which provides that interest at the rate of not less than one per cent. per annum shall be paid upon all public deposits, and further that:

> "Where a depository bond or bonds or the deposits in escrow of approved securities to secure any such deposits shall be required of any such bank, trust company or other financial institution so accepting such deposits, the said public officials who by virtue of their office have the aforementioned public funds in their custody or possession or under their control, are hereby authorized to pay all necessary premiums upon such depository bonds and all necessary escrow fees or charges in connection with the deposit of such approved securities out of any interest so received or credited."

We do not consider, however, that this Act is intended to, in any manner, enlarge the authority of State banks to pledge their assets as security for public deposits or to affect or enlarge, in any manner, pre-existing authority of any public officer, to accept assets of said bank as security for public deposits. In other words, this statute is merely intended to require the payment of interest upon public deposits and to authorize public officers to pay premiums upon depository bonds and escrow charges out of the interest so collected.

Our conclusion therefore is, that State banks may lawfully pledge for the protection of county deposits the securities expressly enumerated in Chapter 9, Second Extraordinary Session

of the 29th General Assembly, as above quoted, but that State banks have no authority to pledge their assets, with the exception of farm loan bonds, for the security of any other public funds than deposits made by county treasurers.

Although the question of the authority of National banks located in this State to pledge their assets to secure deposits of public funds is a matter with which you have no direct official concern, yet we direct attention to the fact that the National Banking Act, as amended June 25, 1930, provides as follows:

> "Any association may, upon the deposit with it of public money of a State or any political subdivision thereof, give security for the safekeeping and prompt payment of the money so deposited, of the same kind as is authorized by the law of the State in which such association is located in the case of other banking institutions in the State."

And in construing that Act, the Supreme Court of the United States in the case of *City of Marion v. Sneeden*, decided February 5, 1934, held that National banks are authorized to pledge their assets for the security of public deposits only to the extent, if any, permitted to State banks under the laws of the State wherein the National bank is located.

Very truly yours,

PAUL P. PROSSER,
Attorney General.

By CHARLES ROACH,
First Assistant Attorney General.

(See Supplementary opinion attached in re funds of First-class School District.)

November 22, 1934.

Hon. Grant McFerson,
State Bank Commissioner,
State Office Building,
Denver, Colorado.

Dear Mr. McFerson:

Under date of March 29, 1934, this department addressed to you a letter covering the general subject of the right of state banks to pledge their assets as security for public deposits. In writing that letter, we overlooked the provisions of Chapter 159, Session Laws of 1933, which refers to first class school districts having a population of more than 30,000. That statute provides, in substance and in effect, that state banks may pledge bonds of the United States, of the State of Colorado, general obligation bonds of cities within this State having a population of more than 25,000,

or bonds of the school district itself as security for funds deposited by the treasurer of the school district; and accordingly our opinion of March 29, 1934, is modified as hereinabove indicated

Very truly yours,

PAUL P. PROSSER,
Attorney General.

By CHARLES ROACH,
First Assistant Attorney General.

279 **COUNTY COURTS**

To John T. Walsh, March 31, 1934.

Fees and charges, 4th class counties.

March 31, 1934.

Honorable John T. Walsh,
County Judge,
Alamosa, Colorado.

Dear Sir:

In your letter to this office of March 5, 1934, you ask several questions pertaining to fees chargeable by County Courts in counties of the fourth class.

We make answer to your questions in order set forth in the said letter.

> (1) "In probate cases in counties of the fourth class do we charge for certified copies of papers in the file or does the docket fee paid upon filing the case take care of this while the estate is still active?"

Charges can properly be made by virtue of and in accordance with Chapter 80, Sec. 2, pages 299-300, S. L. 1929.

> (2) "In the case of claims presented against the estate on regular form Number 14 revised, is it the duty of the clerk of the court to take the acknowledgment on these claims without remuneration * * *?"

We answer this query in the affirmative. Chapter 79, Section 1, page 291, S. L. 1931, which reads "For services rendered by judges and clerks of county courts in probate proceedings, the following fees and *no other shall be charged* * * *." Certain fees are thereafter provided for but no provision is made for remuneration to the clerk for taking acknowledgments in the course of the probate proceedings, hence he is given no right to charge for same.

(3) In our opinion, a County Judge is entitled to a fee of $1.00 for approving the bond of an officer of an irrigation district. Section 7886, C. L. 1921, authorizes this charge.

(4) All jurors who are summoned and appear are entitled to jury fees in accordance with Chapter 119, page 425, S. L. 1929. An earlier opinion of this office (Biennial Report 1929-1930, Opinion 81), we believe correctly states the rule to be that the above statute means *actual court attendance* and it is immaterial whether the juror be sworn to try a case or not. However, if the juror be excused for a definite period, he is not entitled to compensation during this said period.

We trust that the above satisfactorily answers the questions submitted.

Very truly yours,
PAUL P. PROSSER,
Attorney General.
By J. GLENN DONALDSON,
Assistant Attorney General.

280 HIGHWAY DEPARTMENT

To Charles D. Vail, April 6, 1934.

Liability for damages by reason of construction in Loveland.

The State Highway Department is not liable for damages to property owners occasioned by the construction of a wall built in connection with an approach to a viaduct. The viaduct and approach were constructed with Federal funds under the supervision of the Highway Department. The Federal Government does not pay for rights of way or damages to abutting property in cases of this kind.

281 BUILDING AND LOAN LAW

To James R. McClelland, April 6, 1934.

a. An active B. & L. Association cannot sell or assign notes or mortgages executed by its borrowing members without the consent of the affected members.

b. The Building and Loan Commissioner is granted the right, under Ch. 47, Art. 8, Sec. 15 of the B. & L. Code, 1933, to sell and assign notes and mortgages while liquidating an association. (Citing Allen v. Lamar, 128 So. 254.)

282 BANKS AND BANKING

To S. A. Koenig, April 7, 1934.

Payment of taxes.

When a bank becomes insolvent the assets of the bank are held by the Receiver for creditors of the bank and cannot be paid out for taxes on the capital stock whether the tax accrued before or after insolvency. (91 Fed. 93; 167 U. S. 461.)

Citing Opinion No. 136, A. G. Rept. 1927-1928.

283 TAX RECEIPTS

To Judge Dillon, April 9, 1934.

A receipt from the proper officer is prima facie evidence of payment of taxes, but it is not conclusive, and does not estop the county from showing that the tax was not in fact paid or "paid in full." (61 C. J. 969.)

284 STATE EMPLOYES

To C. D. Sawyer, April 10, 1934.

Premiums on Compensation Insurance.

The cost of compensation insurance on employes, under the new relief plan, is an administrative expense and may properly be paid out of funds provided for by Ch. 16, 2nd Ex. S. L. 1934.

See also opinion to Governor Johnson of March 2, 1934—*ante.*

285 AERONAUTIC COMMISSION

To Col. W. C. Danks, April 12, 1934.

Appeal from Administrative Boards.

Though Ch. 64, S. L. 1927, provides for no appeal for decisions of Commission an appeal is possible and act is valid. (79 Colo. 307.)

286 ACCOUNTANCY BOARD

To A. L. Baldwin, April 12, 1934.

Revocation of certificate.

Power to revoke certificate of certified public accountant granted by Sec. 4728, C. L. 1921, carries with it the power to suspend. (St. Bd. Dental Examiners v. Savelle, 90 Colo. 177; Klatt v. Guaranteed Bond Co., 250 N. W. 825.)

287 INSURANCE COMMISSIONER

To Jackson Cochrane, April 13, 1934.

Assets of Life Insurance Co.

A life insurance company deposited with the Insurance Commissioner a mortgage upon real estate as a part of its capital assets required by law to be so deposited, and thereafter took from the mortgagor a deed to the property. The mortgage was not extinguished but remained an asset of the insurance company for the benefit of the policyholders thereof.

288 **OFFICERS**

To B. F. Stapleton, April 13, 1934.

Civil Service rights.

Since the statutes provide for the offices of chief boiler inspector and two deputy inspectors, all of whose duties are substantially the same and since Ch. 37, Reg. Sess. Laws '33, abolished the office of chief boiler inspector, it follows that the chief inspector and the deputy inspector, who were eldest in point of permanent certification were entitled to hold the two remaining positions. It appearing that Mr. Kelly was the youngest in point of service and of permanent certification, he was properly released from duty on July 1, 1933, when the Administrative Code Bill took effect.

289 **SALARIES**

To H. F. Bedford, April 16, 1934.

Under Salary Reduction Act.

Ch. 181, Reg. Sess. Laws '33, known as the Salary Reduction Act, applied to the salary of the Deputy State Treasurer for the reason that such office was in existence in June, 1932, the salary is fixed by statute and the term of office is only during the pleasure of the appointing power. (Sec. 308, C. L. '21.)

290 **BUILDING AND LOAN**

To James R. McClelland, April 16, 1934.

Appropriation of stock by association.

A member of an active association cannot appropriate stock not specifically assigned with the loan he desires to repay, if the association has unpaid withdrawals that have preference to such stock.

Sundheim, 3rd Ed., p. 133;
Conservative Homestead Assn. v. Dreyfuss, 143 So. 356.

291 **CORPORATION LAW**

To Lewis & Grant, April 17, 1934.

Renewal of corporate existence.

Renewal of corporate existence cannot be made by amendment without paying renewal fee of $25.00.

292 **DISTRICT JUDGES**

To B. F. Stapleton, April 17, 1934.

Payment of expenses.

Expenses of district judges must be paid by county calling them, when serving outside their own district.

Construing Sec. 5712, C. L. 1921.

293 **LAND BOARD**

To State Board of Land Commissioners, Apr. 17, 1934.

Bonds of Federal Farm Mortgage Corporation.

State of Colorado or any of its departments may invest funds, in their custody available for investment, in bonds of the Home Owners Loan Corporation, and in the bonds of any other corporation which is or may be created by the United States as a governmental agency,—even where the rate of interest is less than 4 per cent, as provided in Ch. 169, S. L. 1929. (S. L. 1933, Ch. 13.)

294 **PUBLIC FUNDS**

To B. F. Stapleton, April 20, 1934.

Auditing of claims.

The Act of 1921 creating the Colorado Board of Corrections, supersedes Secs. 297-304, C. L. '21, relating to auditing. Until a bill properly approved under the Board of Corrections Act (Sec. 543, C. L. '21) comes before the State Auditor it does not become his function to audit it. (Parry & Jones claim.)

295 **BUILDING AND LOAN**

To James R. McClelland, April 21, 1934.

Dividends.

Dividends are not the property of a stockholder until they have been earned and declared by the Board of directors. He is not entitled to share in dividends declared subsequent to his withdrawal from the association.

296 **GAME AND FISH**

To H. C. Johns, April 24, 1934.

Compensation of game wardens.

Under Sec. 7, Art. 1, Administrative Code Bill, an officer shall receive no compensation or fees in addition to his salary. Game wardens cannot share in fines.

297 **SCHOOL LAW**

To Albert E. Corfman, April 30, 1934.

Surplus funds; budget.

A school board may not lawfully expend surplus in special fund for payment of bonus to teachers.

The Board may not alter or revise budget in first class districts after budget has been voted upon.

298 **SCHOOL ELECTIONS**

To Antonio Vigil, May 1, 1934.

Paroled convict.

A paroled convict may vote at school election.

299 **TAXES**

To Hon. Robt. G. Strong, May 1, 1934.

Re: Old Age Pensioner.

Taxes on property owned by an applicant for an Old Age Pension and conveyed to the county for the use of the Old Age Pension Fund become uncollectible. (Citing cases.)

300 **TAX SALES**

To George Fischer, May 1, 1934.

"Every tax sale regular in all respects is the beginning of a new title, which is paramount to titles originating in former sales."

Morris v. Brauberger, 59 Colo. 164;
Henrylyn Dist. v. Patterson, 65 Colo. 385;
Bennett v. Denver, 70 Colo. 77;
Denver v. Bullock, 80 Colo. 9.

301 **STATE FUNDS**

To H. F. Bedford, May 1, 1934.

Investment of.

Ch. 13, 1 Ex. S. L. '33, does not authorize the State Treasurer to invest surplus funds of the State in securities enumerated in said act or otherwise.

302 **COUNTY FUNDS**

To W. Lucas Woodall, May 3, 1934.

Re: Ch. 9, 2 Ex. S. L. '34.

1. The above chapter and act which provide *inter alia* that county treasurers who act in conformity therewith in the matter of custody of county funds shall be exempt from personal liability, is probably constitutional.

2. In the event banks designated by boards of county commissioners for the deposit of county funds refuse to pledge assets for the security of such deposits, the county treasurer should report the facts to the county board so that the board may authorize the treasurer to invest such funds in securities designated by the above act, or, in the alternative, designate other banks within or without the county for the deposit of such funds.

May 3, 1934.

Mr. W. Lucas Woodall,
County Treasurer of Otero County,
La Junta, Colorado.

Dear Sir:

In your letter of the 19th ult., you refer to Chapter 9 of the laws enacted at the Second Extraordinary Session of the 29th General Assembly, approved and in effect January 11, 1934, and request our opinion upon certain questions relating thereto, which we shall discuss in the order propounded.

You first ask whether or not, in our opinion, this statute is constitutional. We beg to advise you that we find no reason to question the constitutionality of this Act. The last paragraph of Section 1 of this Act reads as follows:

> "No County Treasurer, or member of the Board of County Commissioners who acted in good faith in approving and designating such depository, shall be liable for loss of public funds deposited by such County Treasurer or his deputies by reason of the default or insolvency of such depository; nor shall any County Treasurer who shall invest any such funds as hereinbefore provided, or any member of the Board of County Commissioners who shall in good faith authorize such investment, be liable for any loss on account of such investment."

We assume that your question as to constitutionality is based upon the above provision of the Act. In the case of *Gartley v. People,* 24 Colo. 155, the Court held, in substance, that the liability of a County Treasurer for the safekeeping of public funds of the county in his official custody is practically absolute, and that the County Treasurer would not be absolved from liability on his bond in the event he deposited county funds in a reputable bank which thereafter failed, with resultant loss to the county. But in that case the court reached the above conclusion, not upon the grounds that the Constitution of the State makes the liability of the County Treasurer substantially absolute, but upon the ground that the common law, as a matter of public policy, had established this strict rule of liability of public officers for the safekeeping of public funds in their custody. In the later case of *Gartley v. People*, reported in 28 Colo. 227, the Court clearly recognized the fact that the General Assembly by appropriate legislation could modify or abrogate the common law rule of strict accountability and substitute therefor a more limited rule of liability.

In *Babcock v. Rocky Ford*, 23 Colo. App. 312, it was again recognized that a city might by ordinance enacted under a State

statute relieve a City Treasurer from the common law rule of strict accountability for the safe custody of municipal funds.

The State Constitution itself in Section 12 of Article X thereof appears to render the State Treasurer absolutely responsible for the safekeeping of State funds and while it is probable that no State statute could relieve him from strict liability imposed by the Constitution, our Supreme Court, as above shown, appears clearly to enunciate the doctrine that the absolute liability of county treasurers is not founded upon any provision in the Constitution but exists only as a matter of general law which is subject to repeal or modification by statute.

The paragraph above quoted of the Act of 1934 appears to have been plainly intended to modify the pre-existing rule of strict accountability applicable to county treasurers and, as above stated, we see no reason why it was not within the province of the Legislature to determine the degree of liability to which county treasurers should be subjected with reference to the custody of public funds of the county.

It follows that the County Treasurer and his bondsman would, under a literal interpretation of the language of the recent Act above quoted, be released from liability for loss of funds on account of the failure of a bank if the Act had been scrupulously complied with. Permit us to add, however, that, notwithstanding the terms of this statute, we believe that both the Board of County Commissioners and County Treasurers should act with great caution and circumspection in performing their duties relative to the safekeeping of the public funds of the county for it is entirely possible that the courts would hold that if either the County Board or the County Treasurer were guilty of recklessness or negligence in designating banks for depositing funds therein they would be held accountable, regardless of a literal compliance with the statute. In other words, the statute was never intended as an alibi for official carelessness or negligence, but only as a relaxation of the very strict rule theretofore established by the common law and to be available to the county officials where they have acted with that degree of prudence, good faith and diligence which the importance of their duties demands and upon which the public is entitled to depend.

In your last question you inquire whether or not the County Treasurer would incur liability in case he, with the approval of the County Board, deposited funds in a bank without having taken security therefor. The Act provides, in substance, that before making a county deposit the Treasurer *may* exact a depository bond but that he shall accept certain designated securities in lieu thereof if tendered by the bank. The vital question is

whether or not the word "may" in this part of the Act should be construed as mandatory or as merely optional upon the part of the County Treasurer. A preceding provision of the same Act provides that the Treasurer *shall* deposit county funds in banks as required by resolution of the County Board. If the word "may" really means "shall," it is apparent that a dilemma might arise. For example, the County Board might command the Treasurer to deposit the county funds in a certain bank; that bank might refuse to put up either a depository bond or such securities as are enumerated in the statute. In such event, the County Treasurer could not follow both the mandate of the County Commissioners to deposit in the designated bank and the mandate of the statute to take a depository bond or securities. In such contingency, we think the County Treasurer should follow the statute as nearly as possible, and if the County Board has commanded him to deposit funds in a designated bank he should do so even though the bank refuses to put up the depository bond or securities.

However, upon this point we must add that, in our opinion, it would be the duty of the County Board in designating banks to select those, if at all possible, that would put up either depository bonds or the statutory securities, and here it will be noted that the bank or banks which the commissioners may designate need not be located within the county, but need only be located within the State. If in a particular instance, the County Board has designated a bank as a county depository, and that bank refuses to put up a depository bond or securities, our suggestion is that the Treasurer report the fact to the County Board so that the Board may exercise its right under the statute to direct the Treasurer to invest the county funds in Government bonds or other securities named in the statute, or designate another bank within or without the county which will put up a depository bond or securities.

We repeat that both the County Board and County Treasurer should in all contingencies, emergencies and situations that may arise, exercise the greatest diligence in safeguarding the integrity of the public funds regardless of the above quoted provision of the new statute relieving county treasurers from the strict common law liability to which they have heretofore been subjected.

In closing this opinion, we direct your attention to the fact that the District Attorney is the statutory legal adviser of county treasurers, and we suggest that this matter be also submitted to him for consideration so that in any eventuality you will be in a position to say that you have consulted not only the office of the Attorney-General, but your statutory legal adviser.

Trusting the above will be of service to you, we beg to remain,

Very truly yours,
PAUL P. PROSSER,
Attorney General.
By CHARLES ROACH,
First Assistant Attorney General.

303 COUNTY FUNDS

To Robt. L. Sheverbush, May 3, 1934.

Interest on County deposits.

Ch. 9, 2 Ex., S. L. '34, provides that county funds shall be deposited in banks designated by the Board of County Commissioners and that such funds shall bear interest at a rate agreed upon between the County Board and the Clearing House, which rate shall be not less than one per cent per annum.

This statute places the duty of determining the interest rate upon the County Board rather than upon the County Treasurer, and in the event the interest is not paid at the minimum rate or otherwise, the County Treasurer would not be liable therefor.

Whether the bank accepting county deposits but not having agreed to pay the minimum rate of interest would, nevertheless, be liable therefor, is a matter that must be determined by the courts.

304 STATE FUNDS

To Charles D. Vail, May 7, 1934.

State Treasurer is custodian.

The State Treasurer is custodian of all public funds whether derived from the Federal Government as advances on National Highway projects or otherwise and would be subject to the same liability therefor as in the case of other public funds in his custody.

305 STATE EMPLOYES' RETIREMENT ASSOCIATION

To Association, May 7, 1934.

Status of employes in departments listed.

1. Under Subsections 1 and 2, Ch. 157, S. L. 1931, any State employe who was in the employ of the State on August 1, 1931, and who did not become a member of the Retirement Association by August 1, 1933, is permanently excluded from membership therein. There is no basis for the exemption of any such employes, if they are State employes as defined in the law.

2. If any employe in any of the agencies listed, entered the

service of the State since August 1, 1931, unless on a temporary basis, then such employe should have automatically become a member of the association at the time of entering the service, and if any of the agencies listed have added any employes on a permanent basis since August 1, 1931, without making the necessary deductions, the Retirement Board should make some reasonable rule with respect to deductions from the date of their entering the service, in order that their rights may be safeguarded and the Retirement Fund properly protected.

306 INSANE PERSONS

To Edward O. Russell, May 8, 1934.

Powers of County Judge with respect to insane.

Under Ch. 126, S. L. 1933, a county judge may issue an order that a person alleged to be insane be taken into custody pending an examination into his mental condition and until such determination he shall be confined in a hospital or convenient and suitable place, to be designated by the court or judge for examination, diagnosis, observation and treatment. This does not contemplate that such alleged insane person should be confined in the Colorado State Hospital at Pueblo, but that such person should be committed to the Colorado Psychopathic Hospital at Denver, under Session Laws 1933, page 524, or some local hospital or other convenient place.

307 SCHOOL LAW

To Mrs. Inez Johnson Lewis, May 9, 1934.

Compensation of special teachers.

Teachers employed by the State Teachers College to teach in said college and also to supervise student teachers in rural districts during a small portion of each week, cannot legally draw minimum salaries from the General School Fund upon certification by local district officials.

308 AGRICULTURAL COLLEGE

To Chas. A. Lory, May 11, 1934.

Participation in Federal Retirement Plan.

Sec. 8145, C. L. '21, and Sec. 8064 et seq., both clearly make the Ft. Lewis School and the Extension Division of the State Agricultural College parts of the agricultural college system, and there is no sufficient distinction between the employes of these divisions and the employes of the agricultural college proper to justify a discrimination against them with respect to participation in said retirement plan.

309 TAX SALES— Redemptions

To H. A. Lennarts, May 15, 1934.

A land owner may not redeem a fractional part of his property which has been sold as a whole to the county for delinquent taxes.

If lands have been or should have been assessed separately, for any lawful reason, such lands may be redeemed separately, even where they have been sold for taxes in one certificate. (Sec. 7248, C. L. '21.)

310 UNIVERSITY OF COLORADO

To Clifford Mills, May 16, 1934.

Use of Permanent Land Fund.

The Board of Regents may use the Permanent Land Fund of the University for current expenses, if necessary, although such procedure would be imprudent. (14-page opinion.) (Enabling Act, Secs. 7, 10, 14; Const., Art. IX, Secs. 2, 3, 5, 10, 12; G. L. 1877, p. 925; S. L. 1895, Ch. 105, Sec. 8028, C. L. 1921; 18 Colo. 398.)

311 TAX SALES—Redemptions

To Fred Clark, May 18, 1934.

Oil and gas lessee.

Under Sec. 5, Ch. 151, S. L. '29, the holder of an oil and gas lease would be a lessee within the meaning of the Act, and after the expiration of six months from the date of sale would be entitled to take his place with other incumbrancers who may redeem in the priority order of their claims.

312 BEER

To S. J. Neeley, May 19, 1934.

Disposition of city license fees.

All beer license fees collected by the municipalities, under S. L. 1933, Ch. 45, Sec. 17, must be turned over to the county and credited to the Old Age Pension Fund.

313 TAXATION

To Hon. Cordell Hull, May 21, 1934.

Exemption of Consular Agents.

Consular agents or employes are not taxed in Colorado except as to gasoline taxes.

314 NURSE EXAMINING BOARD

To Irene Murchison, May 22, 1934.

Revocation of license.

Under Sec. 4648, C. L. 1921, the State Board of Nurse Examiners may revoke, withhold or refuse to renew a license upon a three-fifths vote of its members. Must give notice and hearing.

315 BANKS AND BANKING

To L. E. Birdsall, May 25, 1934.

In re Federal Deposit Insurance Corp.

1. The laws of the State of Colorado do not permit State banks, trust companies or mutual savings banks to purchase Class "A" stock of the Federal Deposit Insurance Corporation, or assume the obligations incident to the ownership of such stock.

2. The laws of this State do not authorize or permit the Federal Deposit Insurance Corporation to be appointed receiver of a State bank, trust company or mutual savings bank organized or doing business under the laws of this State if the bank should be closed on account of inability to meet demands of its depositors. (Secs. 2705-2743, C. L. '21, as amended by Ch. 65, S. L. '27.)

3. In the event any added legislation is required in this State to secure more effective operation of the insurance provisions of the Banking Act of 1933, it could be secured only by the passage of legislation at the next regular session of our General Assembly.

316 TAXATION

To E. B. Morgan, May 26, 1934.

Bank Stock Shares.

Shares of preferred stock issued by State banks and owned by the Reconstruction Finance Corporation, are exempt from State taxation.

The same rule applies to shares of preferred stock issued by National banks and owned by the Reconstruction Finance Corporation. (See supplementary opinion of July 27, 1934.)

May 26, 1934.

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

Dear Sir:

In your letter of May 22nd, you ask my opinion as to the

rights and duties of county assessors in the matter of the assessment of shares of bank stock when such shares are preferred stock issued and sold to the Reconstruction Finance Corporation, a federal agency.

The method of assessment of shares of bank stock is prescribed in Secs. 7450-7453, Compiled Laws of Colorado 1921, the procedure being as outlined in your letter.

By the provisions of Sec. 51d, Title 12, Banks and Banking, U. S. C. A., the Reconstruction Finance Corporation is authorized to purchase preferred stock issued by State banks, and by the provisions of Chapter 44, Session Laws of Colorado 1933, State banks are authorized to issue preferred stock upon the approval of the State Bank Commissioner and by a majority vote of the shareholders of such banks, and to sell the same to the Reconstruction Finance Corporation.

The Reconstruction Finance Corporation was created by an Act of Congress, approved January 22, 1932. Sec. 610, Title 15, Commerce and Trade, U. S. C. A., reads as follows:

> "Any and all notes, debentures, bonds, or other such obligations issued by the corporation shall be exempt both as to principal and interest from all taxation (except surtaxes, estate, inheritance, and gift taxes), now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any state, county, municipality, or local taxing authority. The corporation, including its franchise, its capital, reserves, and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, or by any Territory, dependency, or possession thereof, or by any state, county, municipality, or local taxing authority; except that any real property of the corporation shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed."

The Reconstruction Finance Corporation, including its franchise, capital, reserves, surplus and income, is thereby exempt from all taxation imposed by any state, county, municipality or local taxing authority, except as to the real property of such corporation.

In view of this statutory provision and in the absence of any court decision to the contrary, I am, therefore, of the opinion that the preferred stock of a State bank issued pursuant to law and sold to the Reconstruction Finance Corporation is not taxable in Colorado, so long as such preferred stock is owned by that cor-

poration, and, therefore, it should not be shown as taxable upon the schedules returned by a State bank to the county assessor.

Respectfully submitted,

PAUL P. PROSSER,
Attorney General.
By CHARLES ROACH,
First Assistant Attorney General.

July 27, 1934.

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

Dear Mr. Morgan:

You have directed attention to the fact that while in our letter addressed to you under date of May 26, 1934. we held that shares of preferred stock issued by State banks and owned by the Reconstruction Finance Corporation are exempt from taxation because of their being the property of the Federal Government, or an agency thereof, we failed to state whether or not the same rule would apply to shares of preferred stock issued by National banks in this State and held by such Reconstruction Finance Corporation.

This is to advise that, in our opinion, such shares are likewise exempt from taxation while held and owned by such corporation, and this letter is intended as a supplement to our former letter to the end that the whole subject may be covered.

Very truly yours,

PAUL P. PROSSER,
Attorney General.
By CHARLES ROACH,
First Assistant Attorney General.

317 INSANE CRIMINAL

To Governor Johnson, May 26, 1934.

Insanity after conviction. Appeal as poor person.

1. Where a person becomes insane subsequent to his trial and conviction of a criminal offense, under Sec. 6639, C. L. 1921, the court may impanel a jury and hold an inquest to determine the question of the convicted person's sanity. (61 Colo. 187.)

2. Where the person stands convicted, awaiting sentence of death in the state penitentiary and is without funds to perfect an appeal, the Supreme Court may, in its discretion, upon proper motion, allow an appeal to be perfected as a poor person. (Reppin v. People, ... Colo. .....)

318 MARKET DIRECTOR

To Charles O. Moser, June 1, 1934.

Wholesale selling—eggs.

Retail stores belonging to one organization may turn surplus eggs over to the organization egg-headquarters and the same does not constitute "selling" within the meaning of the Act; however, when a retailer disposes of eggs to truckers or dealers outside the organization, the transaction constitutes selling within the meaning of the Act, and the dealer must have a wholesale license as required by the Act. (S. L. 1933, Ch. 148.)

319 DENTAL EXAMINERS' BOARD

To Dental Board, June 1, 1934.

Practice by licensed dentists.

1. Statutes do not prohibit duly licensed dentists practicing their profession by means of a partnership.
2. Do not prohibit use of name "Dental Group" by a group of licensed dentists, or the practice of dentistry under such a group name.
3. Licensed practitioners may be employed by licensed practitioners and practice dentistry in the name of the individual, partnership or group. (Sec. 4575, C. L. '21.)

320 CIVIL SERVICE

To Governor Johnson, June 1, 1934.

In re:—Contract made by the Industrial Commission to cooperate with the U. S. Employment Service and examinations conducted pursuant thereto under the Wagner-Peyser Act and Ch. 9, 1 Ex. S. L. '33:

1. Civil Service Commission should not conduct civil service examinations in connection with any other agency, but should make all final decisions independently. (Colorado Constitution Art. XII, Sec. 13; 19 Colo. 63.)
2. Courts would probably hold that positions in the Colorado State Relief agencies are within the classified civil service of the State of Colorado.

321 PUBLIC FUNDS

To Doctor C. A. Lory, June 4, 1934.

"Obligations held or owned by the state."

Under the provision of Sec. 38, Art. V, of the State Constitution, the State Agricultural College is prohibited from accepting refunding bonds in any sum which involves the payment of less than the full amount of the obligation of the bonds now outstanding and owned by the college.

Doctor Charles A. Lory, March 4, 1934.
President, State Agricultural College,
Fort Collins, Colorado.

Dear Doctor Lory:

You request the opinion of this office with respect to a communication received by your Board from John R. Coen, Attorney for the Town of Peetz, Colorado, proposing the exchange of Refunding Bonds upon the basis of thirty cents on the dollar of the face value of bonds of the Town of Peetz, now owned by the Agricultural College. The basis of the offer is the outgrowth of a mandamus suit recently heard in the Logan County District Court, due to the failure of Peetz to promptly meet the interest due on its outstanding bond indebtedness.

The answer to your inquiry is found in Section 38, Article V, of the State Constitution, which reads:

> "No obligation or liability of any person, association or corporation, held or owned by the State, or any municipal corporation therein, shall ever be exchanged, transferred, remitted, released or postponed, or in any way diminished by the General Assembly, nor shall such liability or obligation be extinguished except by payment thereof into the proper treasury."

While the bonds in question are for the use and benefit of the State Agricultural College, yet in legal effect they are "held and owned by the State," and therefore clearly fall within the language of the above quoted Constitutional provision. It will be further noted, that the prohibition contained in this section is directed in terms to the General Assembly, but the manifest purpose of the language is that it apply with equal force to any executive officer or administrative board.

In view of the above quoted language of the State Constitution, we are of the opinion that your Board is prohibited from accepting the offer submitted, or any offer which involves the payment of any sum less than the full amount of the obligations owned by the college.

Yours very truly,
PAUL P. PROSSER,
Attorney General.
By SHRADER P. HOWELL,
Assistant Attorney General.

322 CITY BUDGET

To Arthur A. Clements, June 4, 1934.

Expenditures in excess of items stated in Budget.

An expenditure in excess of the amount named in the budget, is prohibited by the express terms of the Act.

June 4, 1934.

Mr. Arthur A. Clements,
City Attorney,
Paonia, Colorado.

Dear Sir:

You submit for our opinion the following inquiry:

> "Has the Town of Paonia authority at this period of the fiscal year to make an expenditure of cash from its general fund for the purchase of a building to be used for municipal purposes, no appropriation having been made therefor pursuant to the terms of the Local Government Budget Act, Session Laws of 1933, page 666?"

It is our understanding that the town budget was prepared and adopted and appropriation by ordinance covering the purposes therein named was duly enacted within the time and in the manner provided by the Budget Act. However, there was no specific item of proposed expenditure for the purchase of a building for municipal purposes, nor appropriation therefor included in the budget. In this connection attention is called to the language found in Section 4 of the Budget Act, wherein it is provided, that "the budget * * * shall present complete financial plan for the ensuing budget year," and among other purposes shall include "expenditures for capital projects to be undertaken or executed during the budget year."

It is further provided in Section 10 of the Act, that "no officer * * * shall during the fiscal year expend * * * or enter into any contract which by its terms involves the expenditure of money *for any of the purposes* for which provision is made in the appropriation ordinance *in excess of the amounts* appropriated in said ordinance * * * for such fiscal year." The section contains a further provision making void any contract made in violation thereof and prohibiting the payment of any moneys thereon.

We are assuming that your budget as finally adopted contained an item for the purpose of providing office space for the municipal officers and the payment of a stated rental therefor. It might therefore be argued that an item for payment of rent differs from a proposed item for the purchase of a building to provide office space for the transaction of the public business of the town, and therefore would not fall within the prohibition contained in Section 10 of the Act in question.

However, in view of the wide scope of the language found in Section 4, above quoted, and the general purpose of the budgeting law, we are of the opinion that a proposed expenditure for the purchase of a building to provide municipal offices is of the same general purpose as an item contained in the budget providing for the rental of space for such purpose, and therefore a proposed

expenditure in excess of that named in the budget for the fiscal year is prohibited by the express terms of the Act. For a discussion of the general scope and purpose of the Budgeting Law, see Chadwick v. Sergel, City Treasurer (Ill. Sup. Ct.), 110 N. E. 124.

In this connection it will be noted that Sections 9126 and 9127, Compiled Laws of Colorado 1921, provide for the making of appropriations after the regular annual appropriation has been completed under certain exceptional circumstances. It is not entirely clear to what extent the above provisions have been repealed or modified by the 1933 Act, but it is apparent that the Legislature by the 1933 enactment attempted to set up a complete scheme for the limitation and control of not only ordinary municipal expenditures, but for capital expenditures as well, through the adoption of an annual budget.

In view of this obvious legislative purpose we are of the opinion that the restrictive provisions of the 1933 Act are controlling in the particulars here involved and that an expenditure under the circumstances stated in your letter being beyond the amount provided in the regularly adopted annual budget is not authorized.

Yours very truly,

PAUL P. PROSSER,
Attorney General.

By SHRADER P. HOWELL,
Assistant Attorney General.

323 BUILDING AND LOAN

To James R. McClelland, June 4, 1934.

Re: Railway Savings and Loan Association.

Creditors of the same class in an association in liquidation, must be paid ratably. Payment of small amounts in full at time of first liquidating dividend might result in a preference.

Ex parte Moore, 6 Fed. (2d) 905;
Cook County Natl. Bank, 107 U. S. 445;
S. L. 1933, Ch. 47; 114 S. W. 564; 5 N. E. 911, 245 Pac. 947.

324 COUNTY JUDGES

To J. M. Childress, June 4, 1934.

Practice of law in other county courts.

Under Sec. 6014, S. L. '21, the practice of county judges in counties of the third, fourth and fifth classes is limited strictly to "practice in courts higher than their own."

325 **BEER LICENSES**

To H. F. Bedford, June 5, 1934.

In National Park.

May not impose State license in National Park. (S L. 1921, Ch. 155.)

326 **ABSTRACTERS' BOARD**

To Roger M. Chandler, June 8, 1934.

Denial or revocation of Abstracters' Licenses.

License is a valuable personal right which cannot be taken away except after a full, fair and impartial hearing. (Ch. 57, S. L. 1929.)

327 **DRAINAGE DISTRICTS**

To Fred Clark, June 11, 1934.

Acceptance of bonds in payment of interest and principal assessments.

When an assessment is made to retire certain specified bonds during a particular year, only those specified bonds may be accepted in payment of that particular assessment; and the same rule would apply to an assessment to pay interest coupons.

June 11, 1934.

Mr. Fred Clark,
County Treasurer of Prowers County,
Lamar, Colorado.

Dear Sir:

In your recent letter, you call attention to Chapter 88, Session Laws of 1931, relating to Drainage Districts which provides, inter alia, that:

> "Provided, such bonds and coupons shall be receivable in the payment of the assessments levied in payment of the interest and the redemption of the bonds."

You inquire what the rule should be, under Sections 2107 to 2199, Compiled Laws of 1921, as amended by Chapter 88, Session Laws of 1931, as to the acceptance of past due and future due bonds and coupons in payment of interest and principal assessments.

The above amendment must be considered together with the various sections of the Drainage District law and the construction must be adopted which will avoid inconsistencies and absurd results and give effect to every part of the act, if possible.

With this in mind, we call attention to Section 2182, Com-

piled Laws of 1921, which provides that the bonds shall be "issued payable in series," and Section 2167 which requires an annual assessment to be levied sufficient to cover "current expenses of the coming year, including cost of construction, maintenance, operating and ordinary expenses, deficiency in the payment of expenses already incurred, and bond interest unpaid, also the amount of bonded indebtedness, and the principal or interest which will fall due during said coming year, such amount to be apportioned among the several tracts."

The amendment permitting bonds and coupons to be accepted in payment of assessments was passed in 1931 and cannot be interpreted so as to interfere with the obligations of the contracts represented by bonds and coupons issued in accordance with the above provisions of the drainage district law before amendment.

We have been unable to find any reported cases upon the point, but based upon the above considerations we believe that the courts would hold the interpretation of the amendment to be that bonds or coupons may be used to pay such assessments as are levied for the purpose of retiring those particular bonds or coupons only, or to put it another way, when an assessment is made to retire certain specified bonds during a particular year, only those specified bonds may be accepted in payment of that particular assessment, and the same rule would apply to an assessment to pay off interest coupons.

If future due bonds or past due bonds of previous years were accepted in payment of a current assessment, the result would be that these bonds would be in effect retired out of order, and the statutory requirement that the bonds be retired serially would not be fulfilled. Another result would be that for every such bond accepted in payment of assessments, and in effect retired out of order, another bond, payable during the current year would be defaulted. Such a practice would be an interference with the obligations of the contract represented by such presently due bond, and would be illegal.

If an annual assessment is made payable, for convenience, in two installments, both installments could be paid at once by presenting a presently due bond or coupon depending upon what the assessment was levied for.

We understand and assume that the uniform practice has been to levy separate assessments for principal, interest, and running expenses. If a different practice prevails in some districts, we still believe that the same rule must apply, that the only bonds and coupons which may be used to pay an assessment are those

bonds and coupons which that particular assessment was levied to retire.

Very truly yours,
PAUL P. PROSSER,
Attorney General.
By PIERPONT FULLER, JR.,
Assistant Attorney General.

328 **TAXATION**

To Colo. Tax Commission, June 21, 1934.

Exemption of Kent School.

The action of the local authorities in the matter of exemptions or abatement of taxes is not final until approved by the Colorado Tax Commission. In cases where there is doubt as to whether or not the property of an institution should be regarded as exempt from taxation, the question should be referred to the courts for final determination.

329 **GENERAL ASSEMBLY**

To B. F. Stapleton, June 21, 1934.

Expenses of delegates to conventions.

Delegates to Interstate Conferences, who are appointed by the Governor for the purpose, of securing information as a basis for future legislation, are entitled to their actual and necessary expenses, out of the appropriation made for expenses of the members of the General Assembly and for other purposes, if there are sufficient funds remaining in such appropriation.

330 **INSURANCE**

To Jackson Cochrane, June 22, 1934.

Divisible surplus.

A policy of life insurance cannot be sold as a participating contract where dividends are in fact not apportioned annually although represented to be credited through a reduction in premiums for the initial ten years of the policy life.

Sec. 2522, C. L. 1921.

331 **FEES AND SALARIES**

To D. N. McDonald, June 26, 1934.

County Judge 4th class County.

A county judge in a fourth class county may not retain fees collected and bill the county for the balance of his salary. (Sec. 7923, C. L. '21; S. L. 1927, p. 337; 21 Colo. 144; 53 Colo. 527.)

332 HAIL INSURANCE

To T. P. Detamore, June 27, 1934.

On land leased to a tenant.

The Hail Insurance Act does not specifically cover the point, but there seems to be nothing in the act to prevent or prohibit the owner of two tracts of land, one of which he occupies and the other he rents to a tenant, from authorizing an assessment of a hail tax on the land which he occupies to protect the crop on the land of his tenant.

333 BUILDING AND LOAN

To J. R. McClelland, June 28, 1934.

Losses through sale of real estate.

Losses suffered through sale of real estate need not be directly absorbed from current earnings. All losses should be charged to Reserve for Contingent Losses. Said Reserve must, however, be restored from current earnings to meet the minimum requirements of the statute.

Secs. 12 and 26, Art. IX, Building and Loan Code.

334 BUILDING AND LOAN

To J. R. McClelland, June 29, 1934.

Borrowing by members.

A borrowing member of a building and loan association may not liquidate his indebtedness to the association by purchasing stock of non-borrowing members and turning same in for credit when there is a waiting withdrawal list.

See

Conservative Homestead Assn. v. Dreyfuss, 143 So. 356;
Dyer v. Dodge, 131 So. 740;
Publicker v. Potash Bros. B. & L., 159 Atl. 58;
Guardian B. & L. v. McAllister, 270 Pac. 478.

335 OLD AGE PENSION

To Adair Hotchkiss, June 30, 1934.

Local budget.

The Local Budget Law does not limit the counties in the expenditure of money accruing to the county Old Age Pension Fund under the State Act.

June 30, 1934.

Mr. Adair J. Hotchkiss,
County Judge,
Grand Junction, Colorado.

Dear Judge Hotchkiss:

We have at hand your recent inquiry in which you state that the Board of County Commissioners of Mesa County made an appropriation of $15,000 for the Old Age Pension Fund to be paid out of the receipts from liquor taxes and from other sources provided for in the Old Age Pension Act; that the budget was made up accordingly; that there is now more than $15,000 in the Old Age Pension Fund, and that you, as county judge would like to use the rest of the money in the fund to take persons off of the County Poor Farm rolls, and place them upon the Old Age Pension roll. You ask whether this can be done or whether on the contrary you are bound by the budget not to exceed the $15,000 appropriated for old age pensions.

After a study of the local Government Budgets law, Chapter 125, S. L. 1933, and the Old Age Pension Act, Chapters 144 and 145, S. L. 1933, we are of the opinion that you may disburse the moneys in the County Old Age Pension Fund as you see fit regardless of the budget.

The Old Age Pension Act begins as follows:

> "There is hereby established and created, in and for each of the Counties of this State, an Old Age Pension Fund, to consist of such funds, moneys and property as hereinafter provided, and which fund is to be managed, handled and expended in the manner hereinafter provided.
>
> "The following property funds, moneys and sums shall be appropriated to, and shall be a part of the Old Age Pension Funds."

Other sections of the act provide that income from certain local taxes shall be paid directly into the County Pension Fund (Ch. 144, Sec. 3), and that the income from certain other taxes shall be turned over to the State Treasurer and by him allocated to the various County Pension Funds according to the population of the Counties. (Ch. 144, Sec. 2, and Ch. 145, Secs. 1 and 2). Section 12 of Chapter 144 gives the County Court authority to issue certificates to pensioners stating the amount to be paid monthly or quarterly, and section 26 provides that the "County Treasurer shall pay out (of) the amounts ordered to be paid as pensions pursuant to this Act. The word "of" in this sentence is obviously a typographical error and should be omitted.

Thus a state law sets up a state-wide system of Pensions, provides the necessary funds and appropriates such funds for the purposes of the act, appointing the County Courts to choose the

recipients. The local governments have no power over this money which is collected and appropriated by statute.

Another Section (26) provides that the Board of County Commissioners may appropriate further money to the Pension Fund if needed. This money would be appropriated out of the General County funds, would have to be included in the budget and could not be overdrawn. However, that is not your situation. In your case certain money in excess of $15,000 was provided by the State law for the use of your Pension Fund and was appropriated by the same law. The County Board purported to appropriate $15,000 of this money for the purposes for which it was already appropriated by the State law. This action and the inclusion of this appropriation in the budget was not effective to restrict the power of the County Court to use all of the money appropriated by the State Statute to the County Pension Fund.

Yours very truly,
PAUL P. PROSSER,
Attorney General.
By PIERPONT FULLER, JR.,
Assistant Attorney General.

336 SCHOOL LAW

To Una S. Williams, July 9, 1934.

School budgets.

In third class school districts, in order to change any item in the budget, it is necessary to call a special meeting of the electors; and the county superintendent has no authority to strike any item from the budget.

337 SCHOOL LAW

To Mrs. Lewis, July 10, 1934.

Minimum salary law—"special teachers."

Only a full-time teacher of regular subjects may receive benefits of Minimum Salary Law.

A full-time teacher is one who teaches at least four hours a school day. (Sec. 8451, C. L. '21.)

338 STATE TEACHERS COLLEGE

To H. F. Bedford, July 12, 1934.

Warrants issued in payment for heating plant.

Warrants issued for the purpose of constructing a heating plant at the State Teachers College are valid obligations of the

State and, in view of the fact that it appears from the records of the Auditor of State that the revenues of the year 1932, against which said warrants were drawn were adequate to pay the same after all prior demands against said revenues had been satisfied, said warrants may now be called for payment.

339 GAME AND FISH

To R. G. Parvin, July 12, 1934.

Charge for fishing.

Ch. 89, page 502, S. L. Colo. 1933, prohibits the making of any charge to any person for the privilege of fishing in any stream stocked at public expense. Must assume Ch. 89 is constitutional. (Sec. 6974, C. L. '21.)

340 ABSTRACTERS

To Mabel Waldron, July 14, 1934.

When County Clerk may abstract.

If there is no bonded abstracter in the county, the county clerk may be required to prepare real estate abstracts. (S. L. 1929, Ch. 57, p. 183; Secs. 8742, 2652, C. L. '21.)

341 OFFICERS

To J. H. Ellis, July 16, 1934.

Incompatible offices.

Deputy water commissioner is an officer "under the State" and cannot be a member of either house of the Legislature during his continuance in office. (Colo. Const., Art. V, Sec. 8, Sec. 1919, C. L. '21; S. L. 1923, p. 392; S. L. 1929, p. 419. People v. Higgins, 67 Colo. 441.)

342 FIREMEN'S PENSION FUND

To Paul Littler, July 16, 1934.

Trustees of the Firemen's Pension Funds have no authority to expend the moneys in such fund in the purchase of insurance upon the lives of firemen. (Sec. 9362, 9344, C. L. '21; S. L. 1929, p. 354.)

343 INDUSTRIAL BANKS

To Grant McFerson, July 19, 1934.

Examination of

Under Ch. 66, S. L. 1933, the Bank Commissioner is required to examine all industrial banks at least twice a year and if such

institution appears to be insolvent he should proceed to liquidate the same in like manner as other banks are liquidated under the Banking Act of 1913. If the Bank Commissioner finds from such examination that an Industrial Bank is habitually exacting greater rates of interest on loans of less than $500 than provided by Ch. 68, he should report the fact to the proper district attorney in order that he may bring quo warranto proceedings against the offending corporation, if he finds that the facts warrant such action. (S. L. 1913, Ch. 44; S. L. 1919, Ch. 159; S. L. 1923, Ch. 66.)

344 TAXATION

To H. A. Lennarts, July 24, 1934.

Mining property, redemption.

When mining property with improvements thereon is sold for taxes, the owner cannot redeem the land separately leaving the improvements unredeemed. (Secs. 7430, 7193, 7262, 7402, C. L. '21; S. L. 1925, p. 441.)

345 COUNTY COURT

To Clarence S. Bullock, July 26, 1934.

Probate fees. Attachment fees.

1. In a county of the fourth class, under the provisions of S. L. 1905, page 243, which amended Sec. 7869, C. L. 1921, the proper docket fee to be charged in an estate inventoried at $1,600 is $15.00, to be paid at the time of filing of inventory, and there is no further sum due.

2. Under the provisions of Sec. 7873, C. L. 1921, as amended by S. L. 1923, page 249, the fee payable by plaintiff in attachment proceedings is fixed at $12.50; and in case of intervention, the intervener should pay the same amount as the original plaintiff.

346 ELECTIONS

To John Abell, July 26, 1934.

Revocation of appointment of election judge.

Board of County Commissioners cannot revoke its appointment of election judge. (S. L. 1931, Ch. 92; 46 C. L. 954.)

347 INDUSTRIAL COMMISSION

To Thomas Annear, July 26, 1934.

Jurisdiction to conduct hearings.

The Industrial Commission of Colorado has jurisdiction under Sec. 37 of the Industrial Commission Act of 1915, to conduct hearings for the purpose of conciliating labor disputes, and the Na-

tional Recovery Act of 1933 does not divest the Industrial Commission of such jurisdiction, even though the industries affected are engaged in interstate commerce. (22-page opinion.) (C. C. H. F. T. R. Service, Vol. II-A, p. 10068, par. 10083; Executive Order, Dec. 16, 1933; Secs. 4331, 4353, 4355, C. L. '21; 86 Colo. 377, 5 R. C. L. 702.)

348 ELECTIONS

To Mrs. May C. Ditch, Aug. 2, 1934.

Dwelling on precinct line.

Where a precinct line runs through a dwelling house, the owner is entitled to vote in the precinct in which the larger part of his dwelling is situate.

349 BUILDING AND LOAN LAW

To Jas. R. McClelland, Aug. 3, 1934.

Conversion of State Association into Federal Association.

Conversion of a State B. & L. Assn. into a Federal Savings & Loan Assn, is not completed by mere vote of approval by shareholders. Conversion is not effectuated until the Home Loan Bank Board approves application made on Form "G."

350 ELECTIONS

To Henry W. Marschner, Aug. 3, 1934.

Change of party affiliation.

Under Ch. 91, S. L. 1931, change of affiliation in cities of over 100,000 in population can be made only by making a signed statement in person to an officer in charge of registration at the first time and place provided for registration in such voter's precinct in any year in which a primary election is to be held; or

By written request of the voter addressed to a member of the registration committee of his precinct at least 10 days before the first registration day in the precinct.

See also supplementary opinion attached.

351 WATER RESOURCES

To M. C. Hinderlider, State Engineer, Aug. 7, 1934.

Re: Monument Reservoir. Title to land and reservoir.

With respect to inquiry as to authority of the Legislature to make an appropriation for the construction of a reservoir on land belonging to the State, it is our opinion that the Legislature had

full authority to make the appropriation as provided by the Session Laws of 1891, page 352, for the purpose of constructing the Monument Reservoir in El Paso County to store flood waters to be used for irrigation and other beneficial uses upon State land.

In re: Appropriation of moneys, etc., 12 Colo. 287.

The fact that thereafter the Legislature (S. L. '99, page 350) by enactment, provided that the county commissioners in any county wherein a State reservoir is situated, shall have charge and control of and shall, without expense to the State, maintain such reservoir in good condition and provide for storage of water, as contemplated in said Act, does not, in any way, affect the title to the reservoir or the land on which it is located, and such title remains in the State of Colorado.

352 SCHOOL LAW—Transportation

To Ernest Tiemann, Aug. 7, 1934.

To Parochial School.

A school board cannot be required to furnish transportation to children attending a private school, but may contract for this service.

353 RECALL

To V. I. Noxon, Aug. 8, 1934.

Of County Commissioner.

There is no provision for the recall of a county commissioner. (Hall v. Commissioners, 73 Colo. 74; Colo. Const., Art. 21.)

354 TAXATION

To Romilly Foote, August 9, 1934.

Redemption.

Board of county commissioners may not abate a portion of the taxes due and allow owner to redeem for less than the taxes plus interest and penalty. Const. Art. V, Sec. 38; Sees. 7430, 7460, 7422, C. L. 1921.

355 MARRIAGE

To James Patterson, Aug. 20, 1934.

By Justice of Peace.

A justice of the peace may solemnize marriage outside his county.

356 **ELECTION**

To F. P. January, Aug. 20, 1934.

Vacancy in office of County Judge.

A vacancy in the office of county judge, occurring after the party convention but before the primary election may be filled by members of the party writing in the name of any candidate at the primary election, or it may be filled by the vacancy committee after the primary election.

357 **SCHOOL LAW**

To Elliot E. Freemen, Aug. 21, 1934.

School Directors.

District of the second class automatically becomes a district of the first class when census exceeds 1,000.

358 **SCHOOL LAW**

To J. E. Ragan, Aug. 21, 1934.

County Protective Association.

A school district should not become a member of a county Protective Association, as by doing so the district becomes a shareholder in a corporation contrary to the provisions of Secs. 1 and 2, Art. XI, Colorado Constitution.

359 **PUBLIC FUNDS**

To Thos. Annear, Aug. 22, 1934.

Unexpended balance of appropriation.

The unexpended balance of appropriation made to allow the state to cooperate with the U. S. Employment Service "during the current fiscal year," is not subject to expenditure during the following fiscal year.

360 **STATE FUNDS**

To Ben F. Stapleton, Aug. 22, 1934.

Administrative expenses of Liquor Department.

Administration expenses of the Liquor Permit and License Department are payable out of the General Revenue Fund and not out of the special fund established by Ch. 12, S. L. 1933. (Ch. 144, S. L. 1933.)

362 INSURANCE LAW

To Jackson Cochrane, Aug. 24, 1934.

Admission of foreign mutual companies.

Foreign insurance company incorporated under Mutual Assessment Companies Act of Texas is eligible for admission under Sec. 2548, C. L. 1921, but not under Mutual Act, Secs. 2557-2575 inc., C. L. 1921.

363 EMPLOYES' RETIREMENT FUND

To Thomas Annear, Aug. 24, 1934.

Employes of Colorado State Employment Service.

Employes of the Colorado State Employment Service affiliated with the U. S. Employment Service, under an Act of Congress and Ch. 9, First Extra S. L. 1933, are subject to the requirements of Ch. 157, S. L. 1931, providing for a retirement fund for State employes.

364 ELECTION

To E. B. Hatcher, Aug. 24, 1934.

Illiterate voters.

Illiterate voters may be given aid in both the primary and general elections.

Aug. 24, 1934.

Mr. E. B. Hatcher,
Election Commissioner,
Pagosa Springs, Colorado.

Dear Sir:

Mr. Prosser has referred to me your inquiry as to whether an illiterate voter may be aided.

To answer your inquiry it is necessary to carefully examine the various statutes upon this subject.

The election law of 1891 provided that physically disabled and illiterate voters and also voters who could not read English could be aided if they took an oath, etc. (S. L. 1891, p. 160; R. S. 1908, Sec. 2261.) Later when the primary law was passed this provision became applicable to both General and Primary Elections.

In 1913, the "Headless Ballot Act" forbade any voter to be aided "except in case of absolute and total physical disability." That law applied only to general elections so the result was that in primary elections the 1891 law applied and illiterate and physically disabled voters and voters who could not read English could be aided if they took an oath as provided in the law, but in general elections no voter could be aided unless under total physical disability. (Opinions of Attorney General, 1925-1926, No. 223.)

In 1927, an act was passed entitled "An Act relating to elec-

tions and providing for assistance for *disabled* voters." This law *permits* voters who are *disabled* to receive assistance in both primary and general elections. It covers the same ground as the 1913 act, removes the prohibitory words, and makes the law permissive as to disabled voters. The question is whether, now, an illiterate voter may be aided at general elections, as well as at primary elections.

Under the rule announced in the case of *Heinssen v. State,* 14 Colo. 228, 236, we are of the opinion that the exception to the 1891 law imposed by the 1913 act, which, in effect, forbade assistance to illiterate voters in general elections, has now been removed by the law of 1927 which replaced the 1913 act, and the old general law of 1891 is again in force and that, now, illiterate and disabled voters and voters who cannot read English can be assisted at both primary and general elections, if they take an oath before the election judges as provided. (Election Laws, pages 119, 124.)

In relation to the rule that the repeal of a repealing act should not revive the act repealed, the Heinssen case, *supra,* states:

> "* * * The rule against this relates to cases of absolute repeal, and not to cases where a statute is left in force, and all that is done in the way of repeal is to except certain cases from its operation. In such cases the statute does not need to be revived, for it remains in force, and, the exception being taken away, the statute is afterwards to be applied without the exception."

See also:

Terminal Co. v. Jones, 84 Colo. 279, 285.

This is in accord with the opinion of this office rendered under date of September 24, 1932, to Mr. L. C. Kinikin, County Judge, Montrose, Colorado, being No. 282, Opinions of Attorney General, 1931-1932.

Very truly yours,

PAUL P. PROSSER,
Attorney General.

By PIERPONT FULLER, JR.,
Assistant Attorney General.

365 COUNTY FUNDS

Incurring obligations and issuing warrants in excess of appropriation.

Sept. 1, 1934.

Honorable James M. Noland,
District Attorney,
Durango, Colorado.

Dear Sir:

Your letter of the 20th ult., and also of July 17th, came duly

to hand. We regret very much that your letters have not received more prompt attention, but the delay has been caused by unusual emergencies in this office. You state that it appears from a report of your county accounts to June 30, 1934, that the sheriff has used up all of the expense account as provided for in the 1934 budget, and that your board of county commissioners has notified the sheriff that they will refuse payment of any further bills for administration of his office other than for salaries. You point out that this action of the board necessarily affects the service of criminal warrants, penitentiary mittimuses, etc.

Upon this state of facts you ask to be advised whether in our opinion the sheriff could recover from the county his necessary expenses for the balance of the current year in the administration of his office and particularly, as we understand expenses incurred in the service of process in criminal cases.

It is of course fundamental that one of the primary obligations of a county is to see that the essential functions of government therein are carried on and there is no more essential function than that of enforcing the penal laws enacted for the protection of life and property. The matter is one that should by all means be amicably adjusted between the county board and the sheriff in the interest of orderly government and the peace and safety of the community. Under the statutes of this state the district attorney is the official adviser of county boards, although the statutes also provide that boards of county commissioners may employ counsel to advise them. We could perhaps answer your question with more assurance if we had a more complete knowledge of the state of your county finances. For example: If the county has an incidental or contingency fund for emergencies, then such expenses as you mention could beyond a doubt be paid out of such a fund, and the sheriff, we believe, could compel such payment. See *La Plata County v. Hampson*, 24 Colo. 127. Aside from this, however, our Supreme Court recognizes the right of a county in cases of emergency to incur obligations and to issue warrants in excess of the annual appropriation which the law requires county boards to make. See *Bent County v. Santa Fe Ry. Co.*, 52 Colo. 609 and *Commissioners v. Union Pacific R. R. Co.*, 63 Colo. 143. Under the authority of these decisions we believe that in the emergency which confronts the sheriff, he would be justified in continuing to perform his statutory duties in the service of criminal process and that the courts would recognize the validity of bills rendered in the performance of such services.

We say again, however, that the utmost effort should be made

to bring about an amicable understanding in this vital matter of government.

Yours very truly,

PAUL P. PROSSER,
Attorney General.
By CHARLES ROACH,
Assistant Attorney General.

366 WORKMEN'S COMPENSATION

To Thos. Annear, Sept. 7, 1934.

Interstate carriers.

The provisions of the Workmen's Compensation Act of Colorado do not apply to interstate carriers or to their employes.

367 INDUSTRIAL COMMISSION

To H. F. Bedford, Sept. 12, 1934.

Waiver of interest on bond held by Industrial Commission.

The State Treasurer may, in collecting a bond held by the Industrial Commission and overdue, waive the interest and accept payment of the principal of the bond, at the direction of the Industrial Commission.

Sec. 4497, C. L. 1921, 71 Colo. 133.

368 POLITICAL PARTIES

To R. L. White, Sept. 13, 1934.

Election of County Chairman.

For the purpose of choosing a County Chairman only those who are candidates for county offices are allowed to participate. A justice of the peace is a precinct officer rather than a county officer, and is not supposed to take part in such choice, unless he is a precinct committeeman.

369 COLORADO GENERAL HOSPITAL

To Dr. Maurice H. Rees, Sept. 13, 1934.

Hospitalization fees. Power of County to issue emergency warrants.

S. L. 1923, page 675, gives the hospital power to refuse to receive further patients from counties that make no acknowledgment of their indebtedness to the hospital for the care of patients theretofore received from such counties.

The Supreme Court of this State has many times recognized the right of a county to issue excess or emergency warrants where it is necessary, in order to carry on the prime functions of county

government, including the care of its own sick and distressed poor (See La Plata County v. Hampson, 24 Colo. 127; Bent County v. Santa Fe Ry. Co., 52 Colo. 609; Commissioners v. U. P. R. R., 63 Colo. 143).

The county board may refuse to make further payments to the hospital for the care of such patients, even though, in the opinion of the hospital staff, he should still be cared for in the hospital, for the reason that the determination of the necessity and extent of poor relief is committed by law to the respective boards of county commissioners.

370 ELECTION LAW

To E. W. Jordan, Sept. 17, 1934.

Filling of vacancies.

Where a political assembly fails to make a designation for nomination to a public office and where the electors of the party at the primaries likewise fail to make the nomination, then the vacancy committee appointed by the assembly may, after the primary election, fill the vacancy in such nomination. If no vacancy committee was appointed, then the county central committee of the party may fill such vacancy. (See Opinion to H. L. Meyer, Sept. 27, 1934, citing cases.)

371 NATIONAL INDUSTRIAL RECOVERY ACT

To Alden W. Pool, Sept. 18, 1934.

Purchase of coal from code violators.

Contrary to public policy and in violation of the spirit of H. B. 67, Second Extra Session of the 29th G. A. for the State Relief Committee to purchase coal from operators who have violated the Code for the Bituminous Coal Industry.

372 ELECTION LAW

To Paul Littler, Sept. 19, 1934.

Sale of intoxicants on election day.

Beer and wine can be sold on election day in restaurants, if consumed on the premises. But no intoxicating liquors whatever—neither beer, nor wine, nor hard liquor—may be sold in liquor stores.

373 STOCK INSPECTION

To R. S. Lobdell, Secretary, Sept. 19, 1934.

Inspection fees.

The State Board of Stock Inspection Commissioners has no power to adopt a rule requiring inspection of cattle before they can be sold at public auction;

Nor to inspect and collect an inspection fee for cattle killed upon the premises where purchased, although it would be unlawful for anyone to buy the carcasses (except the U. S. Government) until an inspection has been made (Sec. 7, Ch. 162, S. L. 1931);

The charging of the 5-cent fee is mandatory when an inspection is made. (Ch. 162, S. L. 1931.)

374 STATE BONDS

To H. F. Bedford, Sept. 20, 1934.

Redemption of.

The provisions of Sec. 355, C. L. 1921, for the payment of the Insurrection Bonds of 1914, have the effect of limiting the calling of these bonds for redemption to ten per cent thereof per year.

375 COUNTY WARRANTS

To George Fischer, Sept. 20, 1934.

Emergency warrants.

Where an actual emergency exists which could not well have been foreseen by the county commissioners at the time of the making of the preceding annual appropriation, the courts would uphold the right of the board to issue emergency warrants and subsequently levy taxes to pay the same.

376 STATE BONDS

To Wm. E. Higby, Sept. 20, 1934.

Refunding of.

A legislative act would be necessary to refund State bonds which are now optional.

377 OLD AGE PENSION

To Rev. M. W. Lindsey, Sept. 20, 1934.

Power of County Commissioners to supplement.

Under Sec. 26, Ch. 144, S. L. 1933 (the Old Age Pension Act), the county commissioners may appropriate additional sums to supplement Old Age Pension Fund.

378 COUNTY FUNDS

To F. W. Medlen, Sept. 20, 1934.

Appropriation necessary for expenditure.

The county board has no authority to expend county funds to meet State road funds for construction of roads in county where no appropriation has been made.

379 **TAXATION**

To Samuel Chutkow, Sept. 20, 1934.

Refunds.

Sec. 7444, C. L. 1921, covers questions of refunds of taxes in the following circumstances:

1. Where taxes were paid and the land thereafter sold erroneously for unpaid taxes to a third person;
2. Where taxes were paid and the lands thereafter erroneously sold to the county;
3. Where a tax sale certificate was owned by the county and thereafter a sale made to a third person.

380 **INSURANCE LAW**

To Jackson Cochrane, Sept. 21, 1934.

Reinsurance contracts.

The Pacific States Life Ins. Co., having mutualized under the Cochrane Lien Act of 1933 (Ch. 112, S. L. '33), is subject to provisions of Sec. 2537, C. L. 1921, in entering into reinsurance contracts. Two-thirds affirmative vote of policyholders is necessary to effectuate reinsurance.

381 **INSURANCE LAW**

To Jackson Cochrane, Sept. 22, 1934.

Reinsurance.

Ch. 117, Sec. 10, S. L. 1925, prohbiting reinsurance of *all* outstanding business in a company not licensed to do business in Colorado does not apply to the reinsurance of only a minor part of a company's business. Pacific States Life Ins. Co. may reinsure Texas business in Texas company, not licensed in Colorado.

Citing numerous cases.

382 **ELECTION LAW**

To Orville Swain, Sept. 26, 1934.

Written designations.

Under Sec. 7542, C. L. '21, as amended at p. 331, S. L. '31, a voter at a primary election shall be entitled to vote for any other eligible person who is a member of his political party * * * by writing the name of such person in the blank space following the printed names of candidates for such office.

In order for any person to become the nominee of any political party, he must receive at least the number of votes at any primary election as is now required by law to become designated by petition for any of the offices at a primary election.

Under Sec. 7536 the petition of a candidate for a county office must be signed by 100 duly qualified electors resident within the county or 10 per cent of gubernatorial votes cast at last election.

383 **DRAINAGE DISTRICTS**

To Alfred Todd, Sept. 26, 1934.

Payment of assessments with Drainage District bonds and coupons.

Drainage district bonds and coupons may be used to pay drainage district assessments only when those assessments are levied to pay those particular bonds and coupons.

Citing statutes and cases.

384 **LEGAL ADVERTISEMENTS**

To Blanche Farmer, Sept. 26, 1934.

Newspaper which is not in whole or in part printed in the county wherein a legal notice or advertisement is required to be published, does not meet the requirements constituting a legal publication. (S. L. '31, p. 441.)

385 **STATE RELIEF**

To C. D. Shawver, Sept. 27, 1934.

Garnishment of Federal Relief Funds.

Federal relief funds are not subject to garnishment.

While the State statutes provide that state, city and city employes may be garnished, we believe that state, city and federal relief funds are exempt on the theory that funds appropriated for the relief of the poor cannot be diverted to any other purpose.

386 **TAXATION**

To J. A. Creel, Sept. 27, 1934.

Abatements—Reductions.

County board may not reduce or abate taxes except for mistake or illegality in original assessment. (Sec. 7460, C. L. '21.)

County treasurer cannot issue tax receipt unless taxes are fully paid.

387 **SCHOOLS**

To F. L. Macartney, Sept. 27, 1934.

Residents of district living in relief camps may attend school. (Ch. 163, S. L. 1933.)

388 TAX SALES

To Wm. Hall Thompson, Sept. 27, 1934.

Subsequent taxes.

Purchaser of tax sale certificate may, after three years, obtain deed, although taxes subsequent to sale have not been paid. (26 Colo. 279.) Supplementary letter attached—intervening tax sale would probably not change holding. (59 Colo. 164, 65 Colo. 385; 70 Colo. 77; 71 Colo. 327; 75 Colo. 86; 87 Colo. 474, Sec. 7430, C. L. '21.)

389 ELECTION

Vacancies in nominations.

September 27, 1934.

Mr. Harry L. Moyer,
County Clerk and Recorder,
Fairplay, Colorado.

Dear Sir:

This will acknowledge receipt of your letter of September 18th, in regard to a vacancy on the ballot for the office of County Superintendent of Schools, in which you state that there was no designation by the County Assembly for this particular office, and also that the names of two candidates were written in on the ballot, neither of whom received enough votes to be nominated at the primary.

The failure of sufficient persons to write in the names of candidates enough times to secure a nomination at the primary would not constitute being "defeated as a candidate in a primary election" within the inhibition of Section 5, page 52, Election Laws of Colorado 1934.

As to whether or not there is such a vacancy as the Vacancy Committee may be entitled to fill is a very close question which should be decided by yourself upon advice from your County or District Attorney, or the leaders of the political party affected by the vacancy. Our office has held that in such a case a vacancy committee is empowered to act under the decision of the Nebraska Supreme Court in the case of *State of Nebraska ex rel. v. Harry E. Wells*, cited in 92 Neb. 337, 138 N. W. 165, 41 L. R. A. (N. S.) 1088. Other cases touching on the point are: 130 Southern 721; 292 Pacific 396; 250 Pacific 268; 233 Northwestern 648; 91 Northwestern 1101; 97 Southeastern 284, 302.

The general principles are stated in 20 Corpus Juris, 109, 127; 9 R. C. L. 1089.

In the event that the Vacancy Committee tenders you a cer-

tificate of nomination to fill a vacancy, our recommendation is that you accept it for filing.

Very truly yours,

PAUL P. PROSSER,
Attorney General.
By NORRIS C. BAKKE,
Deputy Attorney General.

390 TAXES—Stamps

To A. H. King, Sept. 28, 1934.

Revenue stamps.

Sec. 725 of the Federal Revenue Act of 1932, imposing stamp tax on deeds and conveyances, does not apply to land patents issued by the State of Colorado.

391 ELECTION LAW

To C. R. Furrow, Oct. 3, 1934.

Nominations, absent voters.

1. Sec. 7557, C. L. 1921, governs the nomination of candidates of political organizations such as Socialist, Farmer-Labor, etc. (Secs. 7532, 7583, C. L. '21.)

2. Offices of Justice of the Peace and Constable are governed by Sec. 7542 as amended by Ch. 91, S. L. '31. Committeemen and committeewomen are governed by party rules. (Sec. 7536, C. L. '21, Ch. 98, S. L. 1927.)

3. The signers on a nominating petition need not be of the same political faith as the nominee.

4. Absent voters should not mail ballot prior to election day, ballot may be postmarked on the day subsequent to election day if the ballot was marked on election day.

392 INDUSTRIAL COMMISSION

To Benjamin F. Stapleton, Oct. 5, 1933.

Old outstanding State Compensation Insurance warrants may be posted for cancellation.

393 BANK COMMISSIONER

To Grant McFerson, Oct. 13, 1934.

A foreign bank as testamentary trustee.

There is no statute in this State authorizing a foreign bank or trust company to act as executor or testamentary trustee. (Secs. 2744, 2765, C. L. '21.)

394 **PUBLIC FUNDS**

Creation of special County funds. Replacement of moneys embezzled from State, County and School District funds.

October 19, 1934.

Mr. George Fischer,
Adams County Attorney,
108 Bridge Street,
Brighton, Colorado.

Dear Sir:

Replying to your letters of October 10th, we find nothing in the law forbidding the creation by the county board of a Hospitalization Fund or an Insurance Fund, but the more usual and proper procedure would be to increase the Poor Fund Levy and appropriation instead of creating new special funds of this kind.

You ask also whether a special levy should be made to cover the $30,000 embezzled by a former county treasurer over a period of six years. The proper procedure is to prorate this loss to the various funds as you state has been done.

Then, as to the State revenue collected by the county, the portion of the loss allocated to this fund must be made up by the county in the next three years by additional assessments and levies as required by Section 7398, C. L. 1921.

As to the portions of the loss allocated to the other funds, there will be no necessity for a special levy to cover them unless the deduction of the prorated amounts causes outstanding warrants to remain unpaid at the end of the period. In that case the board should make a special levy to take up outstanding unpaid County Warrants, under the authority of Sections 8665 and 8853, C. L. 1921. If a school district because of the proration of this loss or for any other reason finds that it has outstanding unpaid warrants at the end of the period it may increase its levy 5 per cent, which increase may be used to take up such warrants as well as for meeting other emergent expenses. The county board will then make the levy as certified.

Likewise a city will certify its levy which will cover its necessary expenses.

The county board, however, would have no authority to make a special levy to bring in $30,000 merely because that amount had been stolen from various funds during the preceding six years. That money must be recovered from the treasurer or his sureties and then distributed to the various funds.

The special levies referred to above would be made not for the purpose of replacing the money taken, but would be impelled by

the necessity of carrying on the business of government until this money can be recovered from the treasurer or his bondsmen.

Yours very truly,
PAUL P. PROSSER,
Attorney General.
By PIERPONT FULLER, JR.,
Assistant Attorney General.

395 SCHOOL LAW

To Mrs. Inez Johnson Lewis, Oct. 19, 1934.

Expense of printing laws.

Sec. 8269, C. L. '21, provides that the Superintendent of Public Instruction *shall* have the laws relating to public schools printed; and during a period of thirty years the expense of printing the school laws has been a charge against the Public School Income Fund.

396 COUNTY TREASURERS

To A. M. Gooding, Oct. 23, 1934.

Liability for county funds deposited in failed banks.

1934 law relieves county treasurer of liability. Gartley case, 24 Colo. 155, and 28 Colo. 328, and Sec. 8796, C. L. '21—discussed. (S. L. 2nd Ex. Sess., 1933-1934, Ch. 9, 10; 25 Colo. App. 312; 92 Colo. 585.)

397 BLIND BENEFIT

To Kathryn Barkhausen, Oct. 23, 1934.

Property of beneficiary.

No statute in this State authorizes the Blind Benefit Commission to require the recipient of a blind benefit to donate or transfer his property to the county in consideration of the receipt of such benefit.

398 ELECTION LAW

To Arch Curtis, Oct. 31, 1934.

Absentee vote; residence of voter.

The Board of Canvassers has the power to reject an absentee voter's ballot when it finds that it is illegal or void. (Opinion No. 310, Report of Attorney General, 1931-1932.)

A woman by marrying takes the residence of her husband in case he happens to be out of his own county or district at the time of his marriage; and the woman does not need to actually live in the district thereafter in order to become a resident thereof.

Upon question whether or not a married man may have a residence in one place and his wife in another—each case must be decided upon its own facts.

399 PROBATE FEES

To Lafayette F. Crawford, Nov. 3, 1934.

The law of 1929 is retroactive and controls probate fees accruing prior to April 25, 1931. The 1931 law is not retroactive, and controls the probate fees subsequent to that date. (Opinion No. 77, Report of Attorney General, 1929-1930; 11 Colo. 555.)

400 INSURANCE LAW

To Jackson Cochrane, Nov. 8, 1934.

Gifts of health and accident policies.

Plan outlined in letter of Insurance Commissioner, whereby merchants give health and accident policies to customers, is free from objection under our Insurance Laws.

See Biennial Report of Attorney General, 1921-1922, Opinion 10;

Biennial Report of Attorney General, 1925-1926, Opinion 263.

401 INSURANCE LAW

To Jackson Cochrane, Nov. 9, 1934.

Mutual companies.

Insurance laws governing mutual companies make no provision for Commissioner of Insurance to accept and hold deposit required by laws of foreign states to enter therein.

402 TAXATION

To E. B. Morgan, Nov. 10, 1934.

Re: Protest of Great Western Sugar Co.

1. The Colorado Tax Commission probably has jurisdiction to entertain the application of a taxpayer for review of his assessment as made by the county assessor, where such application is made before the annual meeting of the State Board of Equalization.

2. In a case where the county assessor increased the valuation of personal property as returned in the schedule filed by the taxpayer, but failed to give notice of such increase within the time fixed by statute, such increases are probably valid where the taxpayer actually received notice thereof and was granted a hearing by the assessor before the first meeting of the County Board of Equalization.

403 BUILDING AND LOAN COMMISSIONER

To J. R. McClelland, Nov. 11, 1934.

Permanent Stock Associations.

1. Losses may be charged against the permanent stock under laws of Colorado.

2. The above does not result in an impairment of the capital stock of the association, so as to endanger the solvency of the association.

404 COLORADO GENERAL HOSPITAL

To Maurice H. Rees, Nov. 14, 1934.

Paying patients.

Only patients who are unable to pay for medical and hospital care should be sent by county boards to the Colorado General Hospital for care and treatment.

405 TAXATION

To Charles W. Bloom, Nov. 17, 1934.

Tax sales.

1. Where property is struck off to the county at a delinquent tax sale and thereafter the county sells the tax certificate at a discount, the purchaser thereof, upon redemption from tax sale, is entitled to receive the full amount for which the property was sold plus penalties and interest.

2. Where one purchases real estate which has theretofore been sold to an individual for taxes thereon plus personal property taxes of the former owner, the purchaser, upon redeeming from the tax sale, must pay to the county treasurer the amount of the real estate tax for which the property was sold and also the amount of the personal property taxes which were included in the tax sale; but after having made such payment, he is entitled to apply to the Board of County Commissioners for a refund of the personal property tax.

406 TAXATION

To James H. Risley, Nov. 22, 1934.

Re: Proposed amendment to Article X of Colorado Constitution.

Questions as to whether Section 7 of Article X of the Constitution applies to excise taxes and whether income taxes are property taxes and subject to Section 3 of Article X, and whether public

schools are State agencies or mere local institutions—discussed and the following cases cited:

Altitude Oil Co. v. The People, 70 Colo. 452;
Walker v. Bedford, 93 Colo. 400;
School Dist. v. Pomponi, 79 Colo. 660;
Colo. Constitution, Sec. 32, Art. V;
Bachrach et al. v. Nelson, 349 Ill. 579; 182 N. E. 909 (Oct., '32).

407 MOTOR VEHICLE LAW

To Homer F. Bedford, State Treasurer, Nov. 23, 1934.

Additional fee for Old Age Pension Fund.

The provision of Sec. 1, Ch. 145, Reg. Session Laws 1933, requiring the payment of an additional one dollar fee for motor vehicle registration to be applied to the Old Age Pension Fund is repealed by the amendment to Art. X of the Constitution, adopted at the general election of 1934, which article becomes effective July 1, 1935.

408 COUNTIES

To Silmon Smith, Nov. 23, 1934.

County funds.

Under the Local Government Budget Act of 1933 (Ch. 125, Reg. S. L. '33), counties are entitled to maintain contingent funds, and unexpended balances in such contingent funds may be transferred to other funds of the county to meet emergencies.

409 WORKMEN'S COMPENSATION

To Mr. Thomas Annear, Nov. 23, 1934.

Nuns of Sisters of Good Shepherd Convent not "employes" under Workmen's Compensation Act.

410 COUNTIES

To Mr. F. T. Henry, Nov. 30, 1934.

Local Government Budget Act would probably not be held to forbid counties from issuing excess warrants against ordinary county revenue to meet absolutely necessary current expenses of county government. (Ch. 125, S. L. 1933; 63 Colo. 143.)

411 TAXATION—(Chain Store)

To Homer F. Bedford, Dec. 4, 1934.

Chain Store Tax does not apply to out of state stores selling in Colorado through traveling salesmen or sample room. (46 Colo. 382; 41 Colo. 299.)

412 **WATER COMMISSIONER**

To Mr. M. C. Hinderlider, Dec. 6, 1934.

Duty of water commissioner is controlled by Sec. 1832, C. L. 1921 (Ch. 152, S. L. 1921), which repealed Sec. 3430, R. S. 1908.

413 **CITIES AND TOWNS**

To Mr. Allen C. Phelps, Dec. 10, 1934.

May impose licenses and reasonable regulations upon barbers and cosmetologists not inconsistent with State law.

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