BIENNIAL REPORT

OF THE

Attorney General

OF THE

STATE OF IDAHO

1901-1902

LEWISTON, IDAHO
THE MORNING TRIBUNE
1902.

FOREWORD

This is an exact photo reproduction of an original copy of the

BIENNIAL REPORT

of the

ATTORNEY GENERAL

of the

STATE OF IDAHO

1901-1902

in the Library of the University of Washington.

Special acknowledgment is made to the University of Washington Law Library, and Dr. Arthur S. Beardsley, Law Librarian, for the kind permission to use the original pamphlet in this reproduction.

As a copy of the original is practically unobtainable, this reprint is offered to enable law libraries to round out their Attorney General Reports.

The reprint has a very limited printing.

DENNIS & CO., INC.

Buffalo, N. Y.
December, 1942

ATTORNEYS GENERAL.

The office of territorial attorney general was created by an act of the territorial legislature approved January 22, 1885 and during territorial days the office was filled by appointment by the governor. When the state constitution was adopted the attorney general was made an elective officer.

TERRITORIAL ATTORNEYS GENERAL.

* D. B. P. Pride..... 1885-1886
Richard Z. Johnson.....1887-1890

STATE ATTORNEYS GENERAL.

George H. Roberts..... 1891-1892
George M. Parsons..... 1893-1896
Robert E. McFarland.....1897-1898
Samuel H. Hays..... 1899-1900
Frank Martin..... 1901-1902

* Deceased.

State of Idaho, Attorney General's Office.

Boise, Idaho, December 15, 1902.

To His Excellency, Frank W. Hunt, Governor of Idaho:

In compliance with the law I have the honor herewith to present the biennial report of the business of this department for the years 1901 and 1902.

Many legal matters of a public character have been submitted to this department, carefully considered and opinions rendered. A few of these would have been of general interest to the public but a rush of business in the closing days of the administration, when this report is made, prevents their proper arrangement and publication in this report.

The various matters herein contained are systematically arranged under the title, Schedule A to J, inclusive, and are classified as follows:

Schedule A—Statement of cases in the supreme court of the state.

Schedule B—Statement of cases in the district courts of the state.

Schedule C—Statement of cases in the courts of the United States.

Schedule D—Shoshone Falls power cases.

Schedule E—Penitentiary cases.

Schedule F—Cases before the department of the interior and the United States land offices.

Schedule G—Matters under the Carey act.

Schedule H—Work upon state boards.

Schedule I—Opinions and consultations.

Schedule J—County attorneys' association.

Respectfully submitted

FRANK MARTIN,

Attorney General.

STATEMENT OF CASES ARGUED IN THE SUPREME COURT OF THE STATE.

Frank Martin vs. Edgar C. Steele (63 Pac. 1040).

Application for Writ of Review.

This application was made for the purpose of having the court pass upon an instruction given by the Honorable District Judge. Said instruction was held erroneous.

State of Idaho vs. Levi Dixon (63 Pac. 801).

The defendant was convicted in the District court of the Second Judicial District, Nez Perce county, of the crime of assault with a deadly weapon likely to produce great bodily injury; sentenced to a term of 18 months in the state penitentiary. Affirmed February 20, 1901.

State of Idaho vs. Irwin A. Lyons (64 Pac. 236).

Defendant was convicted of murder in the second degree in the District Court of the Third Judicial District, Canyon county, sentenced to a term of life in the state penitentiary. Affirmed February 25, 1901.

State of Idaho vs. Emery H. Seymour (63 Pac. 1036).

Defendant was convicted of the crime of grand larceny in the District Court of the Fifth Judicial district, Fremont county, and sentenced to a term of three years in the state penitentiary. Reversed March 5, 1901, upon the ground that the evidence was insufficient to sustain the verdict.

State of Idaho vs. R. J. Alcorn (64 Pac. 1014).

Defendant was convicted of the crime of manslaughter in the District Court of the First Judicial District, Kootenai county, and sentenced to a term of seven years in the state penitentiary. Affirmed April 29,, 1901.

State of Idaho vs. Louis Dupuis (65 Pac., 65).

The defendant was convicted of the crime of assault with a deadly weapon with intent to murder, in the District Court of the Second Judicial District, Latah county, and sentenced to a term of eighteen months in the state penitentiary. Affirmed May 16, 1901.

Daniel McGinniss vs. W. A. Davis (65 Pac., 364).

The plaintiff brought this action in the District court of the Fourth Judicial District, Elmore county, against the defendant as tax collector to restrain the collection of a certain tax upon the ground that the as-

sessment had not been properly made. Judgment for defendant. Affirmed May 28, 1901.

George H. and Mary A. Pease vs. Kootenai county (65 Pac. 432).

The plaintiffs brought this action in the District Court of the First Judicial District, Kootenai county, for a balance claimed to be due George H. Pease for salary as sheriff and obtained judgment against the county by default. From an order setting aside such default judgment and permitting defendant to answer, plaintiffs appealed. Affirmed June 8, 1901.

A. E. Holmberg vs. E. W. Jones (65 Pac. 563).

This was a friendly action brought for the purpose of testing the validity of the act of the legislature creating Clearwater county. The plaintiff, as treasurer of Clearwater county, applied for a writ of mandate to compel the defendant, as state auditor, to furnish the plaintiff all necessary blank licenses which the law required the state auditor to furnish to the county treasurer. The act was held invalid and the writ denied June 14, 1901.

State of Idaho vs. Edward Rice (66 Pac. 87).

The defendant was convicted of the crime of murder in the first degree in the District Court of the First Judicial Distirct, Shoshone county, and sentenced to suffer death. Affirmed June 15, 1901.

State of Idaho vs. Jack Davis (65 Pac. 429).

The defendant who had been convicted of murder of the first degree in the District Court of the Fourth Judicial District, Cassia county, and sentenced to death and had had his case in various forms before the supreme court of the State and United States courts, including the supreme court of the United States, on April 25, 1901, applied to the said District court a second time for a new trial which was denied and application was then made to the Supreme Court for a certificate of probable cause for an appeal from an order denying him a new trial. The application was made for the purpose of obtaining a stay of execution. Denied June 17, 1901.

Bannock County vs. O. J. Bell (65 Pac. 710).

This action was brought in the District Court of the Fifth Judicial District, Bannock county, for the purpose of recovering fees retained by the defendant, as clerk of the District Court and auditor and recorder of said county. Judgment for plaintiff. Reversed June 25, 1901.

In re George Levy (66 Pac. 806).

The defendant was arrested charged with the murder of Davis Levy and had a preliminary examination before the Probate Judge of Ada county who, committing magistrate, made an order holding him to answer to the District Court in and for said county upon said charge.

He applied for a writ of habeas corpus upon the ground provided in subdivision 7, section 5754, Political code, that he had been so committed without reasonable or probable cause. Writ denied November 21, 1901.

State of Idaho vs. Jack Davis (66 Pac. 932).

This was another chapter in this case which has been before the courts of the state and the United States several times in one form or another. Defendant appealed from the order of the District Court of the Fourth Judicial District, Cassia county, made on April 25, 1901, denying his application for a new trial. This was the second application made, four years after judgment of conviction against the defendant. The state made a motion to dismiss the appeal for the reason that the same had not been taken within the time required by statute. Appeal dismissed December 4, 1901.

State of Idaho vs. D. L. McGann (66 Pac., 823).

Defendant was convicted of manslaughter in the District Court of the Second Judicial District, Idaho county, and sentenced to a term of ten years in the state penitentiary. Affirmed December 10, 1901.

H. A. Castle vs. Bannock County (67 Pac., 35).

The plaintiff brought suit in the District Court of the Fifth Judicial District, Bannock county, to recover for professional services rendered the county. Judgment for plaintiff. Reversed December 10, 1901.

State of Idaho vs. Ernest Rathbone (67 Pac., 186).

Defendant was convicted of the crime of grand larceny in the District Court of the Fourth Judicial District, Lincoln county, and sentenced to a term of seven years in the state penitentiary. Affirmed December 16, 1901.

In re E. W. Pierce (67 Pac., 316).

Defendant was convicted of the crime of embezzlement in the District Court of the Third Judicial District, Canyon county, and sentenced to a term of seven years in the state penitentiary. He applied to this court for a writ of habeas corpus upon the ground that he was unlawfully restrained of his liberty by the warden of said penitentiary for the reason that the county attorney had filed a second information against him, after a demurrer to the first had been sustained, without being ordered to do so by the court. Writ denied January 14, 1902.

State of Idaho vs. Arthur J. Sanford (67 Pac., 492).

The defendant was convicted of the crime of grand larceny in the District Court of the Second Judicial District, Nez Perce county, and sentenced to a term of five years in the state penitentiary. Affirmed January 14, 1902.

State of Idaho vs. Charles Quong (67 Pac., 491).

Defendant was convicted of the crime of battery in the District Court of the Third Judicial District, Ada county, upon an appeal from the police magistrate's court of Boise City. The appeal to the supreme court was for the purpose of testing the validity of a city ordinance which imposed a penalty for an act which was made a crime under the state statutes and created the offense in the language of the state statute. The ordinance was held to be valid. Affirmed January 15, 1902.

State of Idaho vs. Union Central Life Insurance Company (67 Pac., 647).

This action was commenced by the state in the District Court of the Fifth Judicial District, Bingham county, to collect license provided for by Section 1494, Political Code, known as the Banker's License. The defendant refused to pay the license upon the ground that the law was invalid, being in conflict with Section 6, Article 7, of the state constitution. The state recovered judgment. The law was held valid and the judgment affirmed January 20, 1902.

State of Idaho vs. Andrew Gilbert (69 Pac., 62).

The defendant was convicted of the crime of murder in the second degree in the District Court of the Second Judicial District, Idaho county, and sentenced to a term of life in the state penitentiary. Affirmed May 16, 1902.

In re L. F. Inman (69 Pac., 120).

Application for a writ of habeas corpus.

Defendant was arested on a warrant issued out of the Probate Court of Nez Perce county, Idaho, charged with practicing medicine without first having obtained a license as required by law. This proceeding was brought for the purpose of testing the validity of the state medical law. The law was held valid by the court and the writ denied May 28, 1902.

A. W. Kroutinger vs. The State Board of Examiners (69 Pac., 279).

The plaintiff was appointed by the governor of the state as agent to receive and bring back from the state of Tennessee to Nez Perce county, Idaho, for trial a fugitive from justice under a requisition duly issued by the governor. The plaintiff filed with the state board of examiners a bill for his expenses in returning said fugitive and said board rejected said claim for the following reasons:

a. That said claim was not a proper charge against the state of Idaho.

b. That said claim was a proper charge against Nez Perce county.

c. That the legislature of the state had provided no found and made no appropriation from which said charge could be paid by the state.

The plaintiff then brought this proceeding for a writ of mandate compelling the state board of examiners to audit the claim of plaintiff. The

court refused said writ but held that said claim was a proper charge against the state and recommended that an appropriation be made by the legislature to pay the same. June 3, 1902.

Canyon County vs. J. J. Toole and J. L. Johnson (69 Pac., 320).

The plaintiff brought suit in the District Court of the Third Judicial District, Canyon county, to condemn a right of way for a public road over the lands of the defendants. Judgment was rendered for defendants, from which the county appealed. Reversed. June 9, 1902.

State of Idaho vs. C. H. H. Wilmbusse. (Opinion not yet printed.)

The defendant was convicted of the crime of murder in the second degree in the District Court of the First Judicial District, Kootenai county, and sentenced to a term of life in the state penitentiary. Affirmed November 24, 1902.

State of Idaho vs. Will Rowland. (Opinion not yet printed.)

Application for a writ of habeas corpus.

The defendant was tried in a justice's court in Moscow, Latah county, and convicted of gambling and sentenced to fine and imprisonment. This application for a writ of habeas corpus was made for the purpose of testing the validity of the act of the legislature known as the "Anti-Gambling Act." The court held said act valid and denied the writ. November 14, 1902.

State of Idaho vs. William Riggs. (Opinion not yet printed.)

Defendant was convicted for the crime of grand larceny in the District Court of the Third Judicial District, Washington county, and sentenced to a term of five years in the state penitentiary. Reversed December 3, 1902, for the following reasons:

a. That the evidence was insufficient to justify the verdict.

b. That the court erred in giving an instruction defining grand larceny.

State of Idaho vs. J. T. Keller. (Opinion not yet printed.)

On March 9, 1901, the governor of the state issued a quarantine proclamation in which he scheduled certain counties in Utah, Nevada and Wyoming as being infected with the disease of scab and prohibiting sheep from being driven from said localities into the state of Idaho for a period of forty days. The defendant drove his sheep from Box Elder county, Utah, one of the prohibited districts, into Oneida county, Idaho, in violation of said proclamation. He was arrested, charged with violating said proclamation, and brought to trial in the District Court of the Fifth Judicial District of the State of Idaho; convicted and fined $200.00 Defendant appealed and the appeal was argued and submitted to the court on December 2, 1902. Affirmed December 13, 1902.

State of Idaho vs. Lewis Sampson. (Opinion not yet reported.)

The defendant was tried and convicted in the District Court of the Fifth Judicial District, Oneida county, for violating the proclamation of the governor referred to in the case of J. T. Keller, and was sentenced to pay a fine of $500.00. Defendant appealed and said appeal was argued and submitted on December 2, 1902. Affirmed December 13, 1902.

State of Idaho vs. Charles R. Reed. (Opinion not yet reported.)

The defendant was tried and convicted in the District Court of the Fifth Judicial District, Oneida county, for violating the proclamation of the governor referred to in the case of J. T. Keller and was sentenced to pay a fine of $500.00. Defendant appealed and said appeal was argued and submitted on December 2, 1902. Affirmed December 13, 1902.

State of Idaho vs. Ed Hill. (Opinion not yet reported.)

The defendant was tried and convicted in the District Court of the Fifth Judicial District, Oneida county, for violating the proclamation of the governor referred to in the case of J. T. Keller, and was sentenced to pay a fine of $200.00. Defendant appealed and said appeal was argued and submitted on December 2, 1902. Affirmed December 13, 1902.

State of Idaho vs. Chalmer E. Shuff.

Defendant was convicted of murder in the first degree in the District Court of the First Judicial District, Shoshone county, and sentenced to suffer death. Defendant appealed. Not yet submitted.

H. L. Hollister vs. The State of Idaho.

Plaintiff commenced action in the District Court of the Fourth Judicial District, Lincoln county, to condemn a portion of Section 36, Township 17 south, range 9 east, school land, for a power site. Said land sought to be condemned being on the north side of Snake river and a portion of Shoshone Falls. Judgment for plaintiff. The state appealed. Not yet submitted.

H. L. Hollister vs. The State of Idaho and W. A. Clark et al

Plaintiff commenced action in the District Court of the Fourth Judicial District, Lincoln county, to condemn a portion of section 36, township 17 south, range 9 east, school land, for a power site. Said land sought to be so condemned being on the north side of Snake river and a portion of Shoshone Falls. Judgment for plaintiff. The state appealed. Not yet submitted.

State of Idaho vs. William Irwin.

The defendant was convicted of the crime of rape in the District Court of the Third Judicial District, Washington county, and sentenced to ten years in the state penitentiary. Appealed not yet submitted.

SUMMARY.

Total number of cases argued and decided	32
Number of cases in which this office was successful	29
Cases in which this office was unsuccessful	3
Cases pending	4
Total	36

SCHEDULE B.

STATEMENT OF CASES IN THE DISTRICT COURTS OF THE STATE.

Ah Fong vs. The State Board of Medical Examiners.

The plaintiff, a Chinese physician, was refused a license by the State Board of Medical Examiners; he claiming that he was entitled to a license by reason of his having practiced his profession in the state for a number of years previous to the enactment of the statute which gave him a right to a license without examination. This action was an application in the District Court of the Third Judicial District, Ada county, for a writ of certiorari to review the action of said board in refusing him a license. Writ granted.

State of Idaho vs. Bert Hillman.

This case was tried in the District Court of the Third Judicial District, Ada county, and the defendant was convicted of the crime of escaping from the state penitentiary and sentenced to a term in that institution of five years.

State of Idaho vs. Henry R. Meeks.

This case was tried in the District Court of the Third Judicial District, Ada county, and defendant was convicted of the crime of having escaped from the state penitentiary and sentenced to a term in that institution of twelve years.

In each of the above cases the defendants, who were convicts, had escaped from said prison and the state board of prison commissioners desired that they should be prosecuted and punished as a means of maintaining discipline at said institution and at the request of said board I assisted the prosecuting attorney of Ada county in these cases.

State of Idaho, vs. J. T. Keller.

State of Idaho vs. Lewis Sampson.

State of Idaho vs. Charles R. Reed.

State of Idaho vs. Ed Hill.

State of Idaho vs. Samuel Gillett.

The preceeding five cases were tried in the District Court of the Fifth Judicial District, Oneida county, in December, 1901.

They grew out of the persistent efforts of the Utah sheep owners to bring their flocks into this state without complying with the laws of the state in regard to diseased sheep. For many years the state of Idaho had by the enactment of stringent laws required its sheep owners to treat and cure their diseased sheep, subjecting those who failed, to heavy penalties. But as each spring large flocks were driven from the desert in Utah, bringing the disease known as scab or scabbies with them, spreading out over the ranges in southern Idaho, and infecting the Idaho flocks, it soon became apparent that Idaho flocks could not be kept clean unless some means could be found to prevent these sheep being brought into the state until they were first cured of disease. In 1899 our legislature passed an act authorizing the governor of the state to quarantine against sheep from infected localities, for such a length of time as might be necessary to eradicate the disease. The Utah State Sheep Association fought this law vigorously and the result was considerable litigation during the years 1899 and 1900. One case, that of State vs. Rasmussen, being carried to the supreme court of the state and from there by writ of review to the supreme court of the United States, the state being successful in both instances.

On March 9, 1901, the governor of the state issued a quarantine proclamation scheduling certain localities, Box Elder county, Utah, being one, as infected with this disease and forbidding the importation of sheep from such district for a period of forty days. The Utah sheepmen then made a final effort against this law. After obtaining a restraining order from the circuit court of the United States against the state sheep inspector and his deputies, which for a time in a measure tied the hands of these officials, the Utah sheep owners rushed their sheep into the state in large numbers in violation of the law and the proclamation of the governor. As soon as they came into the state they were arrested but they waived examination and gave bond for their appearance for trial in the district court.

These cases came on for trial as above stated in December, 1901; they were considered of grave importance to the state, as the violation of the law had been flagrant and in utter contempt of the rights and dignity of the state. At the request of the governor of the state and the prosecuting attorney of Oneida county, I proceeded to that county and assisted that official in the trial of the above cases. The first four were convicted, the last one, Samuel Gillett, being acquitted. The defendants Keller and

Hill were fined $200.00 each and defendants Sampson and Reed $500.00 each.

There were about thirty-five of these cases still left on the calendar, the term of the court having expired. The Utah sheep owners seemed willing at this point to stop their aggressions against the state and to comply with the terms of its laws. During the year 1902 there has been no trouble from that source, the sheep owners still continuing to comply with the requirements of the law, and the remaining cases have not been brought to trial.

State of Idaho vs. John E. Bane, Mortgage foreclosure.

In the District Court of the Third Judicial District, Canyon county. Settled.

State of Idaho vs. Asaph D. Clark. Mortgage foreclosure.

In the District Court of the Third Judicial District, Ada county Settled.

State of Idaho vs. Frank Gardner.

In the District Court of the Fourth Judicial District. Elmore county.

The defendant was tried for murder. There was considerable division of feeling in the county in regard to this case and two attorneys of large experience in criminal matters had been secured to defend the accused. At the request of the prosecuting attorney of Elmore county and the county commissioners I proceeded to that county and assisted in the prosecution in May, 1902. The defendant was convicted of manslaughter and sentenced to a term of ten years in the state penitentiary.

State of Idaho vs. L. F. Inman.

State of Idaho vs. E. Vadney.

On March 3, 1899, the governor of the state approved an act of the legislature creating a state board of medical examiners and regulating the practice of medicine and surgery within the state and providing penalties for the violation of the act.

The provisions of this act were extremely just and considerate of the claims of the old practicioners who had been practicing their profession in the state prior to the enactment of the law and who had complied with the requirements of the previous existing laws of the state regulating the practice of their profession.

The state at that time contained a large number of persons designated by the profession as "quacks". If the law were enforced the vocation of these people were at an end and they naturally resisted the enforcement of the law with all their might. While the state board of medi-

cal examiners had used every effort to see that the law was enforced, in many instances those whose duty it was to enforce the law were either lax in performing that duty or looked upon the enforcement of the law with disfavor. At a meeting of the state board of medical examiners in 1901, after consultation with this department, we decided upon vigorous measures for the suppression of this illegal practice of medicine and the enforcement of the law. This office shared with the said board the feeling that the lives and health of the citizens of the state were of great importance and that no person should be permitted to treat or tamper with a matter of such value who did not possess the qualifications required by the state law.

A great number of persons were illegally practicing medicine in various parts of the state at this time and the state board of medical examiners caused complaints to be filed against such persons and warrants issued and at the same time this office advised and instructed the prosecuting attorneys of the county where the arrest was to be made that the case should be vigorously prosecuted. With one or two exceptions these requests were actively and earnestly complied with and practically every case resulted in a conviction. The leaders in the fight against the law from the beginning were the defendants in the two cases cited above. They lived in Lewiston and had from the passage of the law been practicing not only in open violation of its provisions but in boastful contempt of the law. Their cases ha dbeen in court during all of this time but from lack of attention or some other reason had not been successful. This open and hearlded violation of the law by these two individuals had attracted an unusually large number of these illegal practitioners into Nez Perce county and early in our campaign against the violators of this law we caused the arrest of these persons. We found a most earnest supporter and successful prosecutor in the prosecuting attorney of Nez Perce county, Miles S. Johnson, Esq.

The defendants, L. F. Inman and E. Vadney, applied to the District Court of the Second Judicial District, Nez Perce county, and obtained an injunction against their prosecution, and in April, 1902, I went to that county upon the request of the prosecuting attorney to assist him in arguing motions to dissolve these injunctions. I found that Mr. Johnson had these cases well in hand and made an able presentation of them to the court and the motions to dissolve the injunctions were granted. Defendant Inman, in order to secure a decision from the Supreme Court of the state upon the validity of the law, applied to that court, which was then in session at Lewiston, for a writ of habeas corpus. I was assisted

in the argument of the matter in the Supreme Court by Mr. Johnson. The state was again successful, the court fully upholding the validity of the law and denying the writ.

The defendants being uable to make further resistance to the enforcement of the law plead guilty to the criminal charges, paid their fines and stopped their illegal practicing Since that time these illegal practitioners have avoided our state and have made their habitat in more inviting fields.

State of Idaho vs. Kenneth McIver. Mortgage foreclosure.

In the District Court of the Second Judicial District, Nez Perce county. Settled.

People of the State of Idaho on relation of Frank Martin, Attorney General, and E. J. Frawley, County Attorney of Ada county, vs. Boise Artesian Hot and Cold Water Co., Limited, corporation.

This is an action brought in the District Court of the Third Judicial District, Ada county, in the name of the state upon the request of the mayor, common council and attorney of Boise City to test the right of the defendant corporation to do business in Boise City. Said case is still pending.

State of Idaho vs. First National Bank of Idaho, a corporation.

State of Idaho vs. Boise City National Bank, a corporation.

After the decision of the Supreme Court of the State upholding the validity of section 1494 political code, known as the "Bankers' License Act," this office, ably assisted by the State Auditor's office, vigorously pushed the collection of the tax therein provided for. The national banks of the state denied that the law did or could apply to them and that if it was intended that it should apply to National Banks it was in that much in violation of the act of congress creating said banks. These cases were brought for the purpose of testing whether or not it applied to National Banks. They are still pending.

SUMMARY.

Total number of cases tried and decided..	14
Number of cases in which this office was successful.....	12
Number of cases in which this office was unsuccessful.....	2
Number of cases pending.....	3
Total number of cases.....	17

SCHEDULE C.

STATEMENT OF CASES IN THE UNITED STATES COURTS.

State of Idaho vs. Rasmussen (181 U. S., 198).

Supreme Court of the United States, in error to the Supreme Court of the state of Idaho.

This proceeding was brought to review the decision of the Supreme Court of the State of Idaho in the case of State vs. Rasmussen, 59 Pac. 933, confirming the validity of the act of the legislature authorizing the governor of the state to declare quarantine against the bringing of diseased sheep from localities which had been scheduled as being infected with a disease of scab or scabbies.

The law was held to be a proper quarantine act and the decision of the Supreme Court was affirmed. April 22, 1901.

Jesse M. Smith et al vs. Thomas G. Lowe et al. (U. S. Circuit Court, District of Idaho.)

This action was brought in the United States Circuit Court in the District of Idaho by Jesse M. Smith and 30 associates, sheep owners of the state of Utah, against the state sheep inspector and his deputies on the 18th day of March, 1901, praying that a writ of injunction be issued to restrain the defendants from enforcing the quarantine proclamation of the governor of the state issued on March 9, 1901. The state filed a demurrer to complainant's bill questioning the jurisdiction of the court. The court before hearing the argument on the demarrer proceeded to take testimony and granted a temporary restraining order against defendants. At the session of the court in Pocatello in October, 1901, the question of the jurisdiction of the court was raised on the demurrer of the state was argued and on the 24th day of that month the court sustained the demurrer of the state holding that it was without jurisdiction over said cause, dissolving the temporary injunction and dismissing complainant's bill.

The plaintiffs have appealed from that order of the Circuit Court of the United States, District of Idaho, to the United States Circuit Court of Appeals for the Ninth Circuit. This case was argued and submitted in the last named court on the 10th day of October, 1902.

SHOSHONE FALLS POWER SITE CASES.

The two cases heretofore referred to in this report, towit; H. L. Hollister vs. The State of Idaho, and H. L. Hollister vs. The State of Idaho and W. A. Clark and others, and commonly known as the "Sho-

shone Falls Power Site Cases" have attracted a great deal of public attention, and for that reason I have decided to give them special mention.

In the month of November, 1901, H. L. Hollister, of Chicago, and I. E. Perrine, of Blue Lakes, Idaho, appeared at Boise and requested that a special meeting of the state board of land commissioners be called for that same day, as they had very urgent business to transact which could not be delayed until the regular meeting. The board assembled in special session, and they made an application to buy or lease a part of section 36, tp 17, south range 9 east. The ownership of this piece of land which they sought to purchase, and which belongs to the common schools of the state, gave absolute control of the Great Shoshone Falls on the north side of the Snake river.

They claimed to represent eastern capitalists and desired this site for the purpose of erecting an immense electric power plant, which would furnish power for the development of the mines of Idaho and Nevada, to be used for lighting; and operating waterworks, for towns, which systems they proposed to put in, also for operating electric roads which they propesed to build; their plans were so large and so far in advance of the demands, either real or imaginary, of the country in which they were operating; and their recitals at different times of what they intended to do varied so much that it convinced me that there was nothing real in their undertaking, except their desire to get this valuable property belonging to the state school fund, for a mere song, and use it for a basis of a stock jobbing proposition in the east, and that they were not, and did not represent real investors, and I will say that the subsequent transactions of these people for a year has only strengthened this belief. Their application was rejected by the board, but in about a week they returned and asked for another special meeting of the board, which was given them, and this time they succeeded in getting a majority of the board to pass a resolution giving them a lease on the ground for a nominal amount for five years, provided they would bind themselves to begin at once, and with reasonable diligence construct and put in operation an electric power plant of four thousand horse power, one-fifth the size they claimed to intend to build; fifty thousand dollars to be expended by November 1st, 1902, when the land would be offered for sale according to law at a nominal price. This was substantially their own arrangement but after thinking it over, it would seem that the fifty thousand dollars they were to bind themselves to spend before the land would be offered for sale looked too large to them and they decided they could secure this valuable property cheaper by working upon the prejudices and credulity of the people of Lincoln county. So

they refused to enter into the lease, and these two suits were filed to take the property under the right of eminent domain. Immediately after the action in regard to the proposed lease they put a force of men at work on the property driving a tunnel, this was without right and directly contray to law, they being mere trespassers, but claiming some right under the resolution passed by a majority of the board.

They at once, after fiiing these suits, began to enlist the public sympathy and feeling of the community by the most glowing representations of what they intended to do, the large sums of money they were going to expend, and the immense benefits that would accrue to the town of Shoshone, and Lincoln county in general. These matters, as well as the pending suits, were discussed in every issue of the papers published at Shoshone, and it was urged in the strongest terms that the state board GIVE this property to Mr. Hollister. The Shoshone Independent was particularly active in this work, and every official who was unwilling to give his assent to this bold attempt to rob the common schools of the state of this valuable property was maligned by that paper, denounced as an enemy of the town of Shoshone, and Lincoln county, and threatened with political destruction. I was the particular target for the shafts of the moulder of public opinion. I refused to be bluffed by this tea-pot tempest, and did what I considered to be my duty to the people—tried to prevent the sacrifice of this property. I filed answers in these suits claiming damages to the value of fifty thousand dollars, went down into Lincoln county and tried these cases, being ably assisted by Edward A. Walters, Esq., of Shoshone, who was employed by the state. At the time of the trial, which could not be delayed by the state, public feeling was at its highest pitch, and under this pressure. the jury returned a verdict of five hundred dollars in each case, making a total of one thousand dollars for the property.

The state appealed both these cases to the Supreme court, and I feel sure that on account of the many errors occurring at the trial, a reversal can be had.

No one will question the fact that this property, had it been offered for sale as other school lands are sold, on the day these suits were filed, would have sold for at least one hundred thousand dollars. Competent engineers at the trial testified that it was worth that amount (it would bring more now) and yet, by the means I have described, the plaintiff was enabled to get, from the District Court, a judgment giving it to him for one thousand dollars. Our laws should be so ameded that such an occurrence will be impossible in the future. The state should not permit the property so bountifully bestowed upon our schools by

the congress of the United States, to be filched from it by private avarice and greed.

This property will increase in value from year to year, and as the state develops and increases in population and business, it will in the future reach millions of dollars. If the laws were so amended that property of this kind could be leased for power purposes for a long term of years, with right of renewal, making the lessee's possession practically perpetual, the state receiving for its use, a fixed percentage of the gross proceeds each year, and could be taken in no other way, it would save the property to the schools, and give them a permanent income, which would grow larger each year and never end.

I respectfully suggest that you recommend such legislation to the incoming legislature, also that our laws be amended so as to make it clear that school lands cannot be taken by suits under the laws of eminent domain.

SCHEDULE E.

PENITENTIARY CASES.

About September 1, 1902, the whole state was shocked to learn that a criminal abortion had been committed upon the only female inmate of the state penitentiary, Jossie Kensler, and that the head of the institution, Warden C. E. Arney, was charged with having been a party to the commission of the crime. The matter was made public by the arrest of Warden Arney and Prison Physician Dubois upon warrants issued out of the Probate Court of Ada county. The first intimation that the crime had been committed was given by the woman to her attorney who had represented her in an application for a pardon, by giving the facts in a written affidavit. On account of the crime having occurred in a state institution, and the defendants being officials appointed by the board of prison commissioners, of which I was a member, I felt it my duty to assist the prosecuting attorney of Ada county in the examination before the Probate Court. I felt it to be the duty of the prison board to make it plain that it was not seeking to shield or protect its appointees from proper prosecution.

I thoroughly investigated the matter and became absolutely convinced that the crime had been committed, and that Warden Arney was the leader in its commission. Some important facts could be proven only by convicts who would not testify because they feared Warden Arney. Between the time of the arrest and the hearing in the Probate Court, by some means, those seeking to protect Warden Arney, induced Mrs Kensler to deny the truth of her former statement under oath; but as

often occurs in such cases, her statements were so at variance with all the other testimony, as to make it clear that she had been induced to perjure herself. Their plan succeeded in part, as after this it was difficult to clearly establish Warden Arney's connection with the crime. The prison physician was held for trial, which will occur in the next term of the district court. Under the present conditions, if this matter can be submitted to a grand jury, I am satisfied there will be no trouble in getting at all the facts, and that the evidence will place the responsibility for the crime upon the proper parties, and will be so clear and convincing as to leave no doubt.

SCHEDULE F.

MATTERS BEFORE THE DEPARTMENT OF THE INTERIOR AND THE SEVERAL UNITED STATES LAND OFFICES.

Under section 31 of the act of the legislature defining the duties of the state board of land commissioners, section 443, Political Code, it is made the duty of the attorney general to cause the state to be properly represented in all suits, actions, controversies or claims relating to state lands, or timber, before the various United States land offices in this state, and before the general land office in Washington, D. C., and before the courts of the state and the United States.

The duties placed upon this department by said staute have grown to large proportions. The business of the state land department has increased from year to year since statehood and suits before the courts and the various land offices affecting rights to lands have correspondingly increased in number, and this is especially true of the special grant lands, which the state is forced to select and locate from the public lands in the state, and is thus brought in conflict with other intending entrymen.

ADJUSTMENT OF GRANTS.

I found upon a careful examination of our land affairs that while several hundred thousand acres of our special grant lands had been selected by the state there had never been an adjustment of the land grants of the state with the general land office at Washington, D. C., nor had any steps been taken to ascertain the amount of lieu lands due the state on account of lands lost in sections 16 and 36 on account of settlement prior to survey when the state's rights attach under the decisions of the department. Besides there were several questions pending with the department in regard to applications for surveys, some old contest appeals undisposed of, and over two hundred thousand acres of land which had been selected and filed upon by the state, and which selections

had not yet been approved by the department and upon which clear lists had not yet been granted to the state. As long as these lands remained in this condition they were subject to encroachment by parties seeking to settle upon them and the state was continually suffering loss through contests, etc.

Upon my recommendation the state board of land commissioners appointed E. J. Dockery, Esq., of Boise City, special land agent for the state and sent him to Washington, D. C., to adjust these matters. The results accomplished by him were greater than we had reason to anticipate. He secured an adjustment of all our grants with the department and under his supervision lists were prepared for the state showing all of the lands which the state had lost through various causes as well as the actual number of acres to which the state was still entitled. He looked after and secured action upon the old appeals which had been hung up, filed an important brief in the appeal pending between the state and the Northern Pacific railway company involving about 10,000 acres of valuable timber lands and which has since been decided in favor of the state. He also secured a consideration of our previous filings and favorable action upon them, so that they received the secretary's approval, and clear lists were granted for all but a few thousand acres of the state's holdings, these being delayed on account of a certain mineral notice which the state was required to give.

After this work was completed the commissioner of the general land office at Washington stated that our grants were in the best condition, and our records the most complete, of any state in the union. The successful termination of this work was very valuable and has saved the state many thousands of dollars.

CONTESTS BEFORE THE UNITED STATES LAND OFFICE AT BOISE.

State of Idaho vs. William M. Freeman.

State of Idaho vs. Sallie B. Freeman.

State of Idaho vs. May V. Freeman.

These three contests are the only ones which have been filed by the state during the past two years.

These parties made claim that they had settled upon the lands involved in the contests prior to their survey which was made upon application of the state, and therefore had a preference right. Upon these false representations they were permitted to file upon the lands in question by the local land officers while our examining agents were in the field, and we first discovered their filing when we offered to file upon and

select several thousand acres, including the lands in these filings. The report of our examining agents showed that they had not only not settled upon the lands prior to the time that they were withdrawn upon application of the state; but that they never had at any time made a bona fide settlement, with the exception of William M. Freeman, who had settled upon the land a few months prior to the time when our examining agent reached the land. After advising with the land board I filed contests against these entries. The local office decided in favor of the state and the latter two cases have been passed on by the commissioner of the general land office in favor of the state and the state has filed upon the lands. The appeal in the first named case is still pending before the commissioner.

CONTESTS BEFORE THE UNITED STATES LAND OFFICE AT LEWISTON.

Casper C. Lieuallen vs. State of Idaho.
Daniel W. Eaves vs. the State of Idaho.
Harry Lydon vs. the State of Idaho.
Lenna Williams vs. the State of Idaho.
Henry C. Williams vs. the State of Idaho.
James R. Lydon vs the State of Idaho.
Charles E. Whitcomb, vs. the State of Idaho.
Bert Anderson vs. the State of Idaho.
John Morris vs. the State of Idaho.
Jessie S. Warren vs. the State of Idaho.
Thomas Lindsay vs. the State of Idaho.
T. S. Billings vs. the State of Idaho.
A. W. Kroutinger vs. the State of Idaho.
Samuel T. Hutchings vs. the State of Idaho.
John A. Guyer vs. the State of Idaho.
Charles H. Baker vs. the State of Idaho.
Robert E. McFarland vs. the State of Idaho.
George W. Pliter vs. the State of Idaho.
Seth W. Dawet vs. the State of Idaho.
Steve Hepton vs. the State of Idaho.
Robert E. McFarland vs. the State of Idaho.
Nels Lindstrom vs. the State of Idaho.
Anton Lindstrom vs. the State of Idaho.
Charles W. Williams vs. the State of Idaho.
Walter E. Brand vs. the State of Idaho.
William H. Dressel vs. the State of Idaho.

Walter W. Livingood vs. the State of Idaho.
William N. Barnes vs. the State of Idaho.
Robert E. McFarland, assignee of M. J. O'Neill vs. the State of Idaho.
Bert Anderson vs. the State of Idaho.
William H. Dressel vs. the State of Idaho.
W. A. White vs. the State of Idaho.
Chris J. Leiss vs. the State of Idaho.
N. P. Ry. Co list No. 40 vs. the State of Idaho.
N. P. Ry. Co. list No. 41 vs. the State of Idaho.
N. P. Ry. Co. list No. 42 vs. the State of Idaho.
Alma McArthur vs. the State of Idaho.
F. W. Kehl vs. the State of Idaho.
N. P. Ry. Co. list No. 72 vs. the State of Idaho.
Benjamin M. Jacobs vs. the State of Idaho.
Van W. Hasbrouck vs. the State of Idaho.
John K. Bruce vs. the State of Idaho.
Lelia Ware vs. the State of Idaho.
Levina Hobart vs. the State of Idaho.
Joseph G. Dollarhide vs. the State of Idaho.
Edward Hobart vs. the State of Idaho.
William Eastman vs. the State of Idaho.
Elliott W. Eaves vs. the State of Idaho.
Edwin D. Spotvin vs. the State of Idaho.
Charles Hobart vs. the State of Idaho.
Steven Bruce vs. the State of Idaho.
Anne L. Dollarhide vs. the State of Idaho.

The first of the foregoing cases, Lieuallen vs. The State of Idaho, was an old matter coming over from previous administrations. It was finally won by the state and the state received a clear list for the land and has sold the same.

All of the other cases arose out of filings made by the state on June 6, 1902. The contestants claim that on account of the lack of proof that the state had given the required notice of 30 days at the time of withdrawal of said lands upon the application of the state made in the fall of 1900, the state had lost its preference right. In the local land office this matter was decided in favor of the state and the filings of the state accepted. All of the above contestants appealed to the Honorable Commissioner of the General Land Office who decided in favor of the state and sustained the decision of the local officers. Three or four of said contestants have appealed from the decision of the Honorable Commissioner

to the Secretary of the Interior but all the others seem to have accepted the decision of the Commissioner as settling the matter and have taken no further steps and their time for appeal has expired so that all but three or four of the above cases are closed.

CONTEST IN THE UNITED STATES LAND OFFICE AT COEUR D'ALENE.

Thomas Dunn vs. the State of Idaho.
George Dunn vs. the State of Idaho.
Gilbert E. Preston vs. the State of Idaho.
Lorenzo Kingman vs. the State of Idaho.
Henry Snyder vs. the State of Idaho.
Harry O. Bingham vs. the State of Idaho.
George C. Townsend vs. the State of Idaho.
George F. Townsend vs. the State of Idaho.
Charles Worden vs. the State of Idaho.
Jessie Calahan vs. the State of Idaho.
Charlebois vs. the State of Idaho.
Donaldson vs. the State of Idaho.

In the first five cases the state made a motion to dismiss in the local office, which was overruled, the hearing was had and the local office decided against the state. The state appealed to the commissioner, who reversed the decision of the local office and ordered the cases dismissed without prejudice. Nothing further has been done by the contestants. The Bingham case was decided adverse to the state in the local office upon the hearing; the state appealed to the Honorable Commissioner of the General Land Office, and the appeal is still pending.

The last six cases were dismissed upon motion of the state in the local office and nothing further has been done by any of the contestants except Callanan who has recently refiled his contest and the state has been served with notice to appear at the hearing which is set on March 4, 1903, in the local office.

These cases were contests brought by pretended settlers upon lands which the state filed upon in June, 1901. Our agent in selecting land, before filing was made, had been very careful to leave out everything upon which there was a bona fide settler and the evidence in these cases showed that in most cases they had settled upon the land only a few months before the state's filing, the right of the state having attached more than two years before. In these cases I was assisted by John B. Goode, Esq., of Coeur d'Alene, Idaho.

LISTS REJECTED.

In the matter of the rejection of the selection of land the state of Idaho to fill special grant for scientific school purposes, being lists number 3 and 4, involving lands in townships 45 north, range 3, 4, 5 east. The lands embraced in these lists were withdrawn and surveyed upon the application of the state for the purpose of filing its special grants, and after its survey and the filing of the plats the state on July 14, 1902, and again on the 19th and 21st of the same month, offered said lists for filing, each being within the time allowed by law for making such entry after the plats were filed. The state's application to enter was rejected by the local office because it was not accompanied with proof that at the time the state's application for the withdrawal of this land was approved by the Secretary of the Interior, which was in the fall of 1900, the state had given 30 days notice of such withdrawal as provided by law. The state took the position that it was not required to file proof that this notice had been given, and appealed to the Honorable Commissioner of the General Land Office from the action of the local office in rejecting its application to file. The matter is still pending before the Commissioner.

SCHEDULE G.

MATTERS UNDER THE CAREY ACT.

While the provision of our state statute accepting the terms of the Carey Act and providing for the reclamation of the arid lands of the state thereunder, placed the control and disposal of these lands in the hands of the state board of land commissioners, practically the entire work is placed upon this office, the attorney general being ex-officio secretary of said board, and upon the state engineer. When I came into office I found pending four applications for withdrawal of lands under the terms of this act, to-wit: The application of

The American Falls Canal & Power Company.
The Mullen's Canal & Reservoir Company.
The Twin Falls Land & Water Company.
The Canyon County Canal Company.

Two new applications have been made during my term of office, to-wit: The application of

The Washington Irrigation and Colonization Co., and
Canyon Canal Co.,

both of which have been withdrawn.

While the first four applications were pending and application had been made to the proper land offices to have the land withdrawn

no contracts had been entered into and I found upon further examination that no forms had been provided, except a draft of the contracts to be used had been prepared by State Engineer Ross; no rules had been prepared or adopted by the state board regulating the matter of the construction of reclamation works, or for the control and disposal of these lands, no blanks provided for entry or for final proof. Under the law the preparation of these devolved upon my department and I immediately after the adjournment of the last session of the legislature took this matter up. A complete set of rules governing these matters were prepared and adopted by the board, a form of contract and all necessary blanks to be used by entrymen, and for final proof, have been prepared and adopted.

In this work I not only acknowledge my deep and abiding appreciation of the earnest support and untiring efforts of the state engineer, D. W. Ross, but desire to publicly give this efficient and untiring officer the greater portion of the credit for what has been accomplished in these particular matters. In fact he has practically done the actual work of the entire state board in these matters and to him is due the greater share of credit for getting this law into operation and making a fair start toward reclaiming at least a portion of our vast arid areas under its provisions.

SCHEDULE H.

WORK UPON STATE BOARDS.

By the constitution and statutes the attorney general is made a member of every state board, with the exception of the Board of Capitol Building Commissioners. Besides the vast amount of work I have done before the courts, and the land offices, and in preparing opinions and giving oral consultation, I have attended the innumerable meetings of all these boards and assisted in the great amount of business which has been transacted by these various boards, in whose hands practically the entire management and work of the executive portion of the state government is placed.

SCHEDULE I.

OPINIONS AND CONSULTATIONS.

During my term of office I have written at least two hundred and fifty opinions, in response to requests therefor, from the various officers, boards and commissioners of the state and counties, and from the several prosecuting attorneys. I have not included in the above estimate many responses to officials from other states and the federal officers, re-

specting some law or rule of procedure of this state, numerous oral consultations, and many responses to letters of inquiry in regard to statutes, and inquiries answered by mailing copies of opinions already written.

Much of this doubtless arose from the great amount of new legislation of the legislature which convened simultaneous with the beginning of my administration, and especially from the enactment by that body of a new law entirely covering the subjects of the assessment, equalization and collection of the public revenues. The officers of the various counties, most of whom were serving their first term, having no established precedents, or interpretation of these new laws to guide them, sought the advise of this office, either directly or through the county attorneys.

I know that my predecessors, as well as myself, have devoted much time to the preparation of opinions, covering nearly every phase of our state and county governments, and if these opinions were made available it would not only be of great public good, but would materially lessen the work of this department.

I would urgently recommend the propriety of having the opinions heretofore rendered by this office compiled, printed and indexed, in book form, and thus made available for distribution to the various county and state officers. Much of the value (to the people) of the work of this department is lost through the lack of publicity given to it, and the inaccessibility of the results of its labors to those whom such results directly concern.

SCHEDULE J.

COUNTY ATTORNEYS' ASSOCIATION.

After correspondence with a number of the Prosecuting Attorneys of the state, I decided it would be a great public benefit to organize a County Attorneys' Association. With this object in view, I notified the County Attorneys of the various counties of the state to meet me in Boise in January, 1902, at the time fixed by law for the meeting of the County Assessors with the State Board of Equalization. This met a hearty response from the County Attorneys and there was present at the meeting,

E. J. Frawley.....Ada
S. C. Winters.....Bannock
Alfred Budge.....Bear Lake
James M. Stevens.....Bingham
Richard Angel.....Blaine

Karl Paine.....Boise
B. P. Howells.....Cassia
H. A. Griffiths.....Canyon
A. M. Sinnott.....Elmore
J. D. Millsaps.....Fremont
C. W. Coutts.....Latah
Guy Barnum.....Lincoln
Miles S. Johnson.....Nez Perce
Arthur W. Hart.....Oneida
John F. Nugent.....Owyhee
W. D. Lovejoy.....Washington

Making an attendance from 16 out of the 21 counties of the state. The Association, after discussion, was organized and a constitution and by-laws were adopted. The constitution made the Attorney General ex-officio chairman, and the following officers were provided for and elected:

President, John F. Nugent, of Owyhee.

Secretary and Treasurer, E. J. Frawley of Ada.

EXECUTIVE COMMITTEE.

Miles F. Johnson, of Nez Perce.
J. D. Millsaps, of Fremont.
Karl Paine, of Boise.

LEGISLATIVE COMMITTEE.

H. A. Griffiths, of Canyon.
J. M. Stevens, of Bingham.
B. P. Howells, of Cassia.

At this meeting the statutes relating to the duties of the various county officers, the assessment and collection of taxes, and general questions of criminal law and procedure were discussed with splendid results. The prosecuting attorneys of the state were brought in closer touch with each other and with this department, and a system of exchange of the opinions given was provided for.

I most heartily recommend that this Association be made permanent and that such legislation be had as will provide for its legal existence and believe that as time goes on it will become more and more useful in maintaining a more uniform and just administration of the laws of the state.