

Biennial Report  
OF THE  
Attorney General

To the Governor

OF THE  
STATE OF MONTANA

---

December 1st, 1900, to November 1, 1902

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"INDEPENDENT PUBLISHING COMPANY, HELENA, MONTANA."



### SCHEDULE E.

Synopsis of Opinions rendered from December 1, 1901, to January 7, 1901.

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Miss P. C. Hayes, Eden, Mont., December 7, 1900.

**Epidemics.**

Right of school teacher to salary during time school closed on account of epidemic.

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S. E. Leard, Livingston, Mont., December 13, 1900.

**Inquest.**

Unless surrounding circumstances would tend to suspicion that death was occasioned by criminal means no inquest is necessary.

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O. F. Wadsworth, Jr., Great Falls, Mont., December 13, 1900.

**Office.**

No law prohibiting County Treasurer holding office of Alderman.

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E. E. Wright, Harlow, Mont., December 17, 1900.

**Fish and Game Law.**

A man has a right to protect his property from depredations of animals protected by law.

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J. Shull, County Attorney, Philipsburg, Mont., December 17, 1900.

**Taxation.**

No limitation imposed by law on County Commissioners levying taxes for county purposes.

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H. Wesson, Emery, Mont., December 17, 1900.

**Mining.**

Work on claims so situated that the work on one can be used to advantage in the operation of the other claim. Representation work can be availed of in behalf of both claims.

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Mrs. Emily Pennock, Clancy, Mont., December 19, 1900.

**School Boards.**

School Boards are not at liberty to enter a contract warranted by law and then disregard the contract, without involving the District.

**Gibb A. Lane, Billings, Mont., December 22, 1900.**

**Justice of the Peace.**

Justice of the Peace may require prepayment of fee for approval of bail bond.

**W. A. McHardie, Belt, Mont., December 26, 1900.**

**School Building.**

School building should only be built on land belonging to District, if built on land of other party School Board can be ordered to remove or relinquish title to the land.

**F. McRae, Helena, Mont., December 26, 1900.**

**County Employee.**

County employee hired and paid by the month cannot be discharged in middle of month.

**D. A. Meagher, Co. Treasurer, Lewistown, Mont., December 26, 1900.**

**Jurors.**

Jurors subpoenaed to attend entitle to compensation (in District Court.)

**J. W. Klamer, Laurel, Mont., December 31, 1900.**

**Right of Way.**

Condemnation proceedings for right of way will lie against railroad company.

**C. D. Harlow, Harlow, Mont., December 31, 1900.**

**Railroad Land.**

Purchaser of railroad land is absolute owner of same and entitled to all rights of owner of land.

**J. E. Smith, Sula, Mont., December 31, 1900.**

**Sheep**

The driving of sheep on unfenced land owned by another constitutes a trespass.

**C. T. Hofeldt, Lloyd, Mont., January 4, 1901.**

**Imprisonment in Penitentiary.**

Imprisonment in penitentiary destroys right to vote, until pardon by Governor, does not affect right to take up State lands.

### SCHEDULE F.

**George M. Hays, Sec. State., Helena, Montana, January 9, 1901.**

#### **Legislative Contest—Secretary of State.**

Papers in legislative contest received by Secretary of State after second day of Session, should, notwithstanding Sec. 238 Pol. Code, be delivered by him to proper branch of legislature.

**M. M. Duncan, Co. Atty., Virginia City, January 12th, 1901.**  
**County Treasurer, Salary of, Classification of Counties, Change of, Justice of the Peace, Term of.**

The change in salary of County Treasurer under a new classification of the county does not take effect until the first day of March, following the change in classification. In the case of all other county officers, such change takes effect on the first Monday in January.

**Frank E. Smith, Co. Atty., Lewistown, January 12th, 1901.**

#### **County Commissioners, Compensation of.**

There is nothing in the law of Montana authorizing a Board of County Commissioners to employ the Chairman, or any member of the Board acting in the capacity of Commissioner to make visits to points in the county where any bridges are in course of construction, and to allow him \$8 a day as compensation for such services.

**William D. Clark, Co. Commr., Butte, January 12th, 1901.**

#### **Bonds—County Jail—Election—Majority.**

The requirements of the Constitution that the Board of County Commissioners must not borrow money without the approval of a majority of the electors of the county, is construed to mean a majority of the electors voting upon such proposition.

A proposition for a loan of \$100,000 for a County Jail is carried when at a general election 961 votes were cast in favor of the loan, and 858 votes against it, the total number of votes cast in the county at such election being 17,243.

**M. M. Duncan, Co. Atty., Virginia City, Montana, Jan. 12, 1901.**

#### **County Officers—Salary—Classification of County.**

Change of salary by reason of change of classification of county does not affect officers then in office, but applies only to those whose terms began after classification is made.

**John J. Kerr, Co. Atty., Glasgow, January 22, 1901.**

**County Officers, Deputies of.**

The question of the number of deputies allowed county officers, and their compensation, is determined by the Board of County Commissioners, within the maximum limit provided by law, and this proposition is decided in the cases of *Jobb vs. Meagher County*, 20 Mont., 424, and *Penwell vs. County Commissioners*, 23 Mont., 351.

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**J. E. Martin, Member of Legislature, January 23rd, 1901.**

**Agricultural College Funds—State Treasurer.**

It is not contemplated by the Act of '62 granting lands for college purposes that the funds arising from same should be placed in any other hands than those of the State Government. Therefore Section 6, of proposed House Bill 166 is objectionable because it places said funds in the hands of the Treasurer of the Agricultural College.

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**M. M. Duncan, Co. Atty., Virginia City, Montana, Feby. 4, 1901.**

**Taxes—Distribution—Penalty—Redemption.**

Penalty 10 per cent, not 20 per cent. Distribution of redemption money discussed when county is purchaser at tax sale.

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**Joseph K. Toole, Governor, February 13th, 1901.**

**Citizenship—Pardon—Governor.**

Section 2646 Penal Code is without practical benefit because political rights can only be restored to a convict felon by pardon, and civil rights reattach upon expiration of the sentence, regardless of pardon.

Section 2644 Penal Code, dispensing with publication of notice of pardon in certain cases is in conflict with Section 9, Article VII. of the Constitution.

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**M. M. Duncan, Co. Atty., Virginia City, March 7th, 1901.**

**Gambling—Misdemeanor—Felony.**

Under Section 1, of Senate Bill No. 28, Session of 1897, a person who goes into a gambling house and plays or bets against any of said games is guilty of a misdemeanor, but if a person who is an employee deals, plays, or has anything to do with gambling, either as owner or employee, he is guilty of felony.

**R. L. Davis, Red Lodge, March 7th, 1901.**

**County Officers—Salary—Classification of Counties—County Treasurer.**

See opinion to M. M. Duncan, County Attorney, Virginia City, Montana, January 12th, 1901.

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**William D. Clark, Co. Commr., Butte, March 13th, 1901.**

**Road Tax—City Treasurer—County Assessor.**

There is a conflict in the law as to whether the County Assessor, or the City Treasurer should collect the Road Tax in cities of the first and second class. the safer way to do is for the County Assessor to collect this tax and if the city has any claim for any portion of the money collected, it can make an amicable adjustment with the county.

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**C. M. Kelly, County Clerk, Lewistown, March 18th, 1901.**

**Road Law—County Commissioners—Appointment of Road Trustees.**

Under Section 1 of Article I, Senate Bill 71, Session of 1901, County Commissioners at their June meeting can only appoint Trustees in newly created districts. Districts now existing are continued in existence and election must be held in such districts this year.

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**C. M. Kelly, County Clerk, Lewistown, March 20, 1901.**

**Road Law—County Commissioners—Election of Road Trustees—Vacancy.**

County Commissioners should appoint trustees under Paragraph 3 of Section 9, Article II of Senate Bill 71, Session of 1901, to fill vacancies now existing in old road districts. These trustees should call and take charge of election of road trustees under Article II of said Bill.

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**A. Davidson, Justice of the Peace, Malta, March 21, 1901.**

**Justice Court—Jurors—Taxation of Costs.**

Under Section 4647 Political Code, if the defendant in a civil case pending in a Justice Court demand a jury, the justice may require him to pay in advance the fees of such jury, but if the justice does not demand such fees in advance and the defendant does not pay the same, the justice cannot require the plaintiff to pay them, in

the event that the defendant is the unsuccessful party, but such fees must be taxed against the defendant.

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**T. F. Barrett, Co. Comr., Grant, March 21st, 1901.**

**County Free High Schools—County Sup't. of Schools.**

See opinion to W. W. Welch, State Sup't., April 17, 1901.

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**H. J. Miller, Co. Atty., Livingston, March 22nd, 1901.**

**Small Pox—County Commissioners—Board of Health.**

Prior to the passage of House Bill No. 104, Session of 1901, in the case of an epidemic of small pox in a city, neither the city Board of Health nor the County Board of Health had exclusive jurisdiction. If either or both Boards acted, each was responsible for the expenses created by it, and it becomes a question of fact as to whether the city or the county should pay such expenses so incurred, depending upon the determination of the question of which Board incurred the same.

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**Edwin Norris, Dillon, March 23rd, 1901.**

**Normal School Bond Fund, Investment of.**

Normal School Bond Funds cannot be invested, if at all, by the Board of Land Commissioners in the new issue of bonds authorized by the last Legislature.

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**Nash Denbo, Bearmouth, March 23rd, 1901.**

**Poll Tax—Road Tax—Assessor.**

Employers are liable for the Road and Poll Taxes of their employees, and the Assessor may seize the property of the Employer and sell it for the purpose of collecting such taxes.

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**James M. Simpson, Co. Atty., Deer Lodge, March 25th, 1901.**

**County Bonds, Election for.**

It is not necessary to hold an election for the purpose of authorizing County Commissioners to issue bonds for refunding outstanding indebtedness of county.

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**Garrett L. Hogan, Bozeman, March 25th, 1901.**

**Electors—Residence—Office.**

Under Section 4752 Political Code, a person who, at any time dur-

ing the period of two years immediately preceding election changes his place of residence to a place outside the corporate limits of a city, although it may be within the same general election precinct, is disqualified from holding office in such city.

The intention of a person is one of the principal features in determining the matter of a change of residence. A person voting at an election held in a certain school district must be presumed to be a resident of such school district at the time such election was held.

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**Nesbit Rochester, Ass't. State Treasr., March 26th, 1901.**

**Inheritance Tax—County Treasurer.**

Inheritance tax collected by County Treasurer under House Bill 128 should be paid over to the State Treasurer at the time of the next settlement after the collection of such tax.

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**Dr. M. E. Knowles, State Veterinarian, March 28th, 1901.**

**Veterinarian—Live Stock Sanitary Law—Police Regulations—Indian Reservations—Quarantine Regulations.**

Under Sections 3000 to 3018 inclusive, Political Code, the State Veterinarian has power to go upon an Indian Reservation and slaughter animals infected with glanders belonging to Indians upon said Reservation.

Quarantine regulations are within the Police powers of the State, and are not prohibited to the States unless they conflict with the regulations of Congress.

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**W. W. Welch, State Sup't. Public Instruction, March 29th, 1901.**

**School Trustees—School House, Use of for Dancing.**

There is no prohibition in the law against the use of the school houses of this state for dances, if the people so desire to use them. The Trustees have control of the school house and school property of the district, and if they desire to permit dancing or any other innocent amusements in the school house, they can do so.

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**Patrick Meany, Helena, April 8th, 1901.**

**Mining Inspector—Confirmation of Appointment by Senate—Quo Warranto Proceedings.**

It is not necessary for the Governor to appoint a person as his own successor to the position of Mining Inspector to enable such person to hold the office, for he would continue to hold it in any event until his successor is appointed and qualified.

The fact that the Governor reappointed such person to such office after the adjournment of the Senate, and after the Senate had once refused to confirm such appointment, does not destroy the right of the appointee to the office, and the emoluments thereof.

In such a case, it is not the duty of the Attorney General to institute quo warranto proceedings.

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**Geo. M. Hays, Sec'y. of State, April 9th, 1901.**

**Notary Public, Commission of—Secretary of State—Name of County**

A Commission issued to a Notary Public for a county which did not exist by reason of the law changing the name of the county being unconstitutional, is void, and the Secretary of State should issue a proper Commission to such person upon his filing proper official bond.

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**A. H. Barret, State Treasurer, April 10th, 1901.**

**State Normal School Bonds—State Treasurer.**

Under House Bill 156, Session 1901, providing for the issuance of bonds to the amount of \$20,000, Section 5, providing that said Bonds be sold on the 6th day of April, 1901, by the State Treasurer, is directory and not mandatory, and if no bids are received on that date, it is the duty of the State Treasurer to accept a sufficient bid coming in later than that date, and thus subserve the purpose of the Act.

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**John J. Kerr, Co. Atty., Glasgow, April 15th, 1901.**

**Malicious Mischief—Nuisance—Illegal Fence—Public Lands.**

An illegal fence enclosing public lands in Montana, which obstructs the public from free access to such public lands, is a public nuisance, and the cutting or breaking of such fence by one who has a right to go upon such lands, without committing a breach of the peace, nor doing unnecessary injury, is not a public offense.

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**W. W. Welch, State Sup't. Public Instruction, April 17th, 1901.**

**County Free High Schools, Board of Trustees of—County Superintendent of Schools.**

The effect of amendment to County Free High School law passed by the Legislature of 1901, is to repeal the old law so far as the manner of appointment and term of office of the Trustees is con-

cerned, and to authorize the County Superintendent to immediately appoint a new Board of Trustees.

The law of 1899, providing that the term of office of such trustees shall be three years is in contravention of Section 6 of Article XVI of the Constitution, and is, to that extent, unconstitutional.

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**J. H. Calderhead, State Auditor, April 16th, 1901.**

**Insurance Companies—Taxation—Assessment.**

Insurance Companies are taxable upon all premiums collected on original policies as well as on reinsurance.

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**Donald Fowler, Co. Assessor, Lewistown, April 20, 1901.**

**Assessor—Poll Tax—Company Store Bill—Taxes.**

Senate Bill No. 85, Session of 1901, (Company Store Bill) does not affect the liability of employers for the payment of the poll taxes of their employees. Sections 3970, 3971, 3972 Political Code.

The Poll tax has the effect of a judgment against the employer in such cases, as well as the employees, and creates a lien which has the force and effect of an execution.

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**Elizabeth S. Peebles, Co. Sup't., Lewistown, April 21st, 1901.**

**County Free High Schools—County Sup't. of Schools.**

See opinion to W. W. Welch, State Sup't., April 17th, 1901.

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**W. H. Davis, Co. reas'r., Bozeman, April 23rd, 1901.**

**Delinquent Taxes—Tax Deed—Advertisement—Interest—Redemption—County Treasurer.**

When real estate is sold to the county for delinquent taxes and the county holds tax certificate therefor, the property being reassessed for subsequent year or years and returned delinquent, such subsequent delinquent taxes need not be advertised according to Section 3873, Political Code.

After it is sold to the county, and subsequent taxes become due or delinquent, county treasurer should not accept from owner or party in interest, any such tax before or after they become delinquent for any year or years without requiring such person to first redeem the property from tax sale.

When property has been sold to county for delinquent tax and time for redemption has expired, county treasurer must execute

deed to the county, where the county is the purchaser, and in such case separate deed should be given for each tax certificate.

Interest at 15 per cent on the amount of the taxes should be charged against property sold for delinquent taxes up to the time of the redemption, whether it be three or ten years.

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**Joseph K. Toole, Governor, April 30th, 1901.**

**Board of Health—Appropriation—General Fund.**

Under House Bill 104, Session of 1901, the salary of the Secretary of the Board of Health and the expenses of the Board, are paid out of the general fund of the State, and the language used in Sections 6 and 7 of said bill makes an appropriation.

The general fund is defined to be money in the State Treasury, not specially appropriated for any particular purpose.

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**J. H. Calderhead, State Auditor, April 30, 1901.**

**Bureau of Agriculture, etc, Printing and Publishing Report of State Auditor.**

By general appropriation Bill of Session of 1901 (House Bill No. 175) appropriation is made for publishing and distributing fifty thousand copies of report of Bureau of Agriculture, Labor and Industry. While it provides that the State Auditor shall distribute said copies, said bill does not give authority to the State Auditor to publish said reports but the publication must be made under contract by the State Furnishing Board.

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**G. S. Fernald, Tax Commr. N. P. Ry., St. Paul, Minn., May 1st, 1901**  
**Northern Pacific Indemnity Lands—Forest Reserve Acts of July 1st, 1898—Script Lands—Taxation—Unsurveyed Lands.**

Title to Northern Pacific Indemnity Lands, known as "script lands" as provided for by the Forest Reserve Act of July 1st, 1898, vests in the Company immediately upon selection of lieu lands being made by the Company, and before patent issues, thereby rendering such lands subject to taxation, the same as if they were included within the original grant.

Under that Act the Secretary of the Interior ascertains, prepares and delivers to the Railroad Company a list of the lands settled upon, occupied or claimed by actual settlers, and upon relinquishment of such lands by the Company, it may then select lands in lieu of the lands so relinquished by designating an equal quantity of

public land within the same state or territory, and filing an affidavit that the land is non-mineral, that it is not reserved for other purposes, that it is not valuable for stone, iron or coal, that no adverse claim exists, that the land is unoccupied at the time of such selection, and that the selection is within the state or territory in which the railroad grant extends; "and patent shall issue for the land so selected as though it had been originally granted."

Under the Northern Pacific Land Grant Act it was necessary for the indemnity selection to be first passed upon by the local land office, then by the general land office, and eventually by the Secretary of the Interior, whose approval was necessary to vest the title in the Railroad Company.

The distinction between such indemnity lands and the script lands under the Act of July 1st, 1898, is that in the case of the latter, upon the selection of the lands and filing of the affidavit by the Railroad Company, the local land office issues its final receipt, and the title becomes vested in the Railroad Company, no further act being required on the part of the Government except the issuance of patent.

Whenever the Railroad Company has selected any lands under the Act of July 1st, 1898, and has had a receiver's receipt issue for same from the local land office where the land is situated, and there is no protest or contest initiated against such selections, the title is complete in the Railroad Company, and the land is subject to taxation.

This is true of surveyed lands, but unsurveyed lands would not be subject to taxation because of the possible uncertainty of the selection and identification.

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**J. H. Calderhead, Auditor, May 3rd, 1901.**

**Mining Inspector—Salary and Expenses—Appointments—Auditor.**

Warrants may be legally issued by State Auditor to Mining Inspector, notwithstanding first appointment by Governor of such Mining Inspector was rejected by the Senate where such Mining Inspector has been appointed the second time as his own successor after adjournment of Senate.

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**James Maher, Treasr., Butte, May 3rd, 1901.**

**Licenses—County Treasurer.**

House Bill No. 80, effective May 4, 1901, destroys the distinction

heretofore existing between wholesale and retail liquor dealers, making but one class of liquor dealers, all of whom must pay the same semi-annual license.

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**Joseph C. Smith, Atty. at Law, Deer Lodge, May 7th, 1901.**

(Copy to James M. Simpson, Co. Atty., Deer Lodge.)

**Murder—Trial—Jeopardy—Penitentiary—Prosecution.**

Where the defendant killed two persons by the same act, his conviction of murder in the second degree and sentence to imprisonment for life for the killing of one of such persons is no bar to a second trial for murder in the first degree for the killing of the other. Such killing constitutes two offenses for which a separate prosecution will lie.

A person may be tried for the crime of murder, notwithstanding he is at the time serving a sentence of life imprisonment for another offense.

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**W. F. Scott, State Game Warden, May 8th, 1901.**

**Game Warden—Permit.**

The State Game Warden cannot issue permit to kill game in this State out of season for collection of specimens unless such collection is made under the direction and in the interest of State Educational Institution.

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**Frank B. Lewis, Bozeman, Montana, May 8th, 1901.**

**School Electors—County Free High School Bonds.**

At a school election held for the purpose of authorizing insurance of bonds for erection of County Free High Schools, women having the necessary qualifications may vote.

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**Mrs. Nora Colvin, Supt, Schools, Livingston, May 11th, 1901.**

**School Districts—Indebtedness.**

New districts created by dividing old, not liable for part of pre-existing indebtedness. (Sec. 1754 Pol. Code.)

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**George M. Hays, Secretary of State, May 11th, 1901.**

**Building and Loan Association—State Treasurer—Secretary of State.**

Under Section 27 of Senate Bill 64, Session of '97, the Secretary

of State cannot designate the depository of the Securities of Building and Loan Associations, but the designation must be made by the Association, subject to the approval of the Secretary of State.

In case the depository so selected subsequently desires to be relieved and the Association fails to designate another depository, the securities must not be turned over to the Association, but should be transmitted to the State Treasurer.

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**W. W. Welch, Sup't. Public Instruction, May 18, 1901.**

**School Elections—School Trustees.**

School election held at regular time and place for election of trustees is valid notwithstanding failure of clerk to post notice.

Certificates of election prima facie evidence of right to office which can only be divested by regular contest.

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**James M. Simpson, Co. Atty., Deer Lodge, May 18, 1901.**

**County Attorney—Deputy.**

The County Attorney of a seventh class county may, with the approval of the county commissioners, appoint a deputy without pay, if necessary, for the faithful and prompt discharge of the duties of his office.

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**Fred H. Hathorn, Co. Atty., Billings, May 18, 1901.**

**Liquor License—Druggist—Brewers.**

Druggists must pay liquor license, subject to exception mentioned in Section 4065, Political Code, as amended in 1897.

There is no distinction between wholesale and retail liquor dealers in House Bill No. 80, Session of 1901, and one license entitles dealer to sell at wholesale or retail, or both except as provided in Section 4068 as amended Session of 1897.

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**Conley & McTague, Deer Lodge, May 20, 1901.**

**Imprisonment—Convict.**

Term of sentence computed from arrival at Penitentiary.

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**J. H. Murphy, Co. Atty., Boulder, May 22, 1901.**

**Revenue—License—Banking.**

Trading Company selling exchange and receiving deposits subject to check, must pay Banker's license.

**Marion R. Randall, Great Falls, May 22nd, 1901.**

**Liquor License—Druggist.**

See opinion to Fred H. Hathhorn, Co. Atty., Billings, May 18, 1901.

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**W. G. Preuitt, Sec'y. Board Stock Commrs., May 24, 1900.**

**Indian Reservation—Inspection—Police Powers.**

The state authorities have the right to inspect Indian Stock upon an Indian reservation under Horse Inspection laws.

Stock inspections are within police powers of the state unless in conflict with regulations of congress.

(See opinion to M. E. Knowles, March 28th, 1901, and Brief attached thereto.)

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**George D. Pease, Co. Atty., Boeman, May 25, 1901.**

**Gambling Law.**

Under Section 2 of gambling law, it is unlawful to permit gambling for drinks or cigars in any saloon, beer hall, bar room, cigar store or other place of business.

(Same opinion to Fred H. Hathhorn, Co. Atty., Billings, May 25, 1901).

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**Fred H. Hathhorn, Co. Atty., Billings, May 25, 1901.**

**Gambling Law.**

(See opinion to George D. Pease, Co. Atty., Bozeman, May 25, 1901.)

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**W. J. Hannah, Co. Commr., Big Timber, May 25, 1901.**

**County Printing—County Commissioners—County Superintendent of Schools—Publication of Notice—Folio.**

Under Section 4233 Political Code, a folio of 100 words is the standard by which county printing shall be estimated and paid for.

Rule and figure work should be paid for according to the space occupied by 100 words in the same size type.

There is no law requiring publication of notice of teachers' examinations by the county superintendent.

County Commissioners should disallow bills presented by county printer for any portion which is incorrect or unjust.

**F. H. Ray, Ass't. State Examiner, May 27, 1901.**

**Clerk of District Court—Judgment—Fee.**

Under Section 4636 Political Code, the Clerk of the Court should charge a fee of \$2.50 for filing and docketing abstract of judgment from Justice Court, the case as for transcript of judgment from another county.

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**George M. Hays, Secretary of State, June 1, 1901.**

**Corporations—Insurance Company—Annual Statement.**

Under the law regarding foreign corporations it is unnecessary for insurance company to file in each county in the state its charter, appointment of agent, etc. The law is complied with by filing in county where principal place of business is.

Foreign corporations must file their annual statements within two months of April 1st of each year. This means the statement as to its financial condition.

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**Horace J. Stevens, Houghton, Michigan, June 11th, 1901.**

**Taxation—Assessment.**

Stock of foreign corporations owned by residents is subject to taxation.

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**Sidney Miller, Co. Clerk, Helena, June 12th, 1901.,**

**Assessment of Excess of Premiums—Insurance Companies—Taxation.**

Under Sec. 681( Political Code, Insurance Companies are taxable upon the excess of all premiums received in the state over losses and ordinary expenses incurred in the whole state.

Such excess should be listed with the Assessor in the county where the agent conducts the business of the company and should be apportioned by the agent according to the ratio the premiums received in each county bear to the total receipts in the state.

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**Hon. J. K. Toole, June 15th, 1901.**

**Insurance—Trust.**

A combination or pool by insurance companies to maintain excessive rates of insurance is not within the purview of Sec. 321, Penal Code.

**J. H. Murphy, Co. Atty., Boulder, June 19, 1901.**

**Assessment—Taxation—Banks—Mortgages.**

State Banks are assessable upon real estate mortgages given to them to secure the loan of the deposits of their depositors.

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**Hon. J. H. Calderhead, State Auditor, June 20th, 1901.**

**Appropriation—Public Money.**

Appropriation does not lapse at the end of fiscal year as to claims incurred thereunder prior to that date.

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**W. F. Scott, State Game and Fish Warden, June 22, 1901.**

**Deputies—Game and Fish Warden—Bond.**

Under House Bill 147, the State Game and Fish Warden may appoint in addition to the Special Deputy Wardens under pay as many deputy wardens without pay as may be necessary for the faithful and prompt discharge of the duties of his office.

No bond need be given by such deputy wardens except such bond as may be required by the State Game Warden personally.

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**Hon. A. H. Barret, State Treas'r., June 25th, 1901.**

**Bonds—School Districts.**

The State Board of Land Commissioners cannot purchase bonds issued in excess of 3 per cent of assessed valuation of property in district.

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**Thomas D. Long, Register State Lands, June 25, 1901.**

**Leases Issued by State—State Board of Land Commissioners.**

It is not incumbent upon the State Board of Land Commissioners to place a lessee in possession of lands leased by him from the state.

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**W. F. Scott, State Game and Fish Warden, June 26, 1901.**

**Tax Payer—Residence—Game Warden.**

For the purpose of House Bill 147, permitting non-resident tax payers to kill game without a license, Section 72 of the Political Code defines what is meant by residence and prescribes rules for determining same, and section 1188 of the Political Code defines who are tax payers.

The Game Warden has no outhority to swear a party as to his residence, nor to compel him to sign an affidavit as to the same.

**J. H. Calderhead, State Auditor, June 28, 1901.**

**Insurance.**

Physicians Guarantee Company not an Insurance Company.

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**Geo. D. Pease, Co. Atty., Bozeman, Montana, June 28, 1901.**

**Taxation—Board of County Commissioners.**

The Board of County Commissioners has no power to compromise or remit delinquent taxes.

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**Hon. A. H. Barret, State Treasurer, June 29th, 1901.**

**Rosebud County.**

The Board of County Commissioners cannot transfer its bonds directly to Custer Co. for its share of indebtedness without first offering the same for sale, giving State Treasurer preference right.

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**George Metcalf, Sheriff Granite Co., July 6th, 1901.**

**Sheriff—Foreclosure Sale.**

Sheriff is entitled to a charge commission on real estate sold at Sheriff's sale and purchased by mortgagee.

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**F. H. Ray, Ass't. State Examiner, Helena, July 11, 1901.**

**Licenses—Telegraph and Telephones.**

Telegraph Company not liable upon instruments used in interstate business but only upon those used in intrastate business. Same rule applies to telephones, except that all leased instruments must pay a license.

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**W. G. Preuitt, Sec'y. Board Stock Commrs., July 12th, 1901.**

**Assessor—Personal Property—Taxation.**

It is the duty of the assessor under Sec. 3707, Political Code, to assess personal property to unknown owners if he cannot with reasonable diligence ascertain the name of the true owner, and in such case, he must make immediate seizure and sale of such property for taxes, under Sections 3940, 3941 and 3942, Political Code.

The manner of conducting sale in such cases is prescribed in Sections 3902 to 3907, inclusive, Political Code.

**F. H. Ray, Ass't State Examier, July 13, 1901.**

**Licenses—Common Carriers.**

Section 4074 Political Code held to be unconstitutional, therefore Section 2751, which was a part of the Political Code as originally passed is the law of the State, it not being superceded by Section 4074 amending same.

Licenses should be collected under Section 2751, Supra.

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**F. H. Ray, Ass't. State Examiner, July 17, 1901.**

**Licenses.**

County can recover back license taxes, unless claim therefor is barred by the statute of limitations.

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**Sidney Miller, County Clerk, July 17, 1901.**

**Roads—Board of County Commissioners.**

Until the Board of County Commissioners can find qualified persons to serve as trustees of road districts, it is their duty under their general powers to administer the affairs of the district.

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**W. H. Griffin, Board County Commrs., Kalispell, June 20, 1901.**

**Bonds—Election—Majority.**

The requirement of the constitution that the Board of County Commissioners must not borrow money without the approval of a majority of the electors of the county is construed to mean a majority of the electors voting upon such proposition.

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**A. A. Frederickson, Clerk, Tokna, Montana, July 29, 1901.**

**School Districts—School Houses—Special Taxes.**

The question of building a school house must be submitted to a vote of the district, after which special tax levy may be made therefor.

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**Sidney Miller, Clerk and Recorder, Helena, Aug. 14, 1901.**

**Taxation—Road Law.**

Under Section 35 of Senate Bill 71, County Commissioners are authorized to levy a tax for road purposes only upon property outside of incorporated cities and towns.

**The State Furnishing Board, Aug. 26th, 1901.**

**State Furnishing Board—Appropriation—Public Printing.**

Under Sec. 704 Political Code, it is within the duty and powers of the State Furnishing Board to contract for the printing of the reports and catalogues of the several State Educational Institutions; such printing may be paid for either out of the moneys appropriated for the maintenance of such institutions, or the appropriation for the public printing, according to the character of the printing.

**J. H. Johnston, Co. Atty., Miles City, Aug. 29th, 1901.**

**County Commrs.—Special Election—Rosebud Co.—Bonds—Warrants.**

If a county has the cash on hand, or will have sufficient cash when this year's taxes are collected to build a wagon bridge to cost \$35,000.00 to \$40,000.00 the question of incurring an indebtedness to that amount must be submitted to the electors of the county under Article 13, Sec. 5 of the Constitution. Such questions could be submitted at a special election called by the commissioners under Senate Bill 100, but the proposition would have to be to raise that amount of money for a bridge and not to expend the money now on hand.

Under Senate Bill No. 21, Session of 1901 and Sec. 4243 Political Code, Rosebud Co. would have the right to issue coupon bonds in exchange for warrants delivered to Custer Co. under Sec. 3 or said bill and Custer Co. would have the right and power to surrender such warrants and receive said bonds in exchange therefor.

**W. Hudnall, State Examiner, Helena, Sept. 4th, 1901.**

**County Treasurer—Delinquent Taxes.**

Upon a sale of property which the county has bought at delinquent tax sale and held until after the redemption period has expired, the state is entitled to receive only its proportion of the original tax and is not entitled to participate in the profit where the property is sold for more than the amount of the taxes and penalties.

**Chas. H. Hall, Co. Atty., Missoula, Sept. 5, 1901.**

**Smallpox—School Trustees—State Board of Health.**

The State Board of Health has no power to enforce a rule requiring children to be vaccinated before attending public schools.

Local Boards and School Trustees may do so in case of an epidemic making it necessary.

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**Frederick I. Hanson, Lakeview, Sept. 9, 1901.**

**Game Law.**

There is nothing in the game laws of 1901 prohibiting the catching and shipping of live wild swans for the purpose of scientific domestication.

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**Thomas F. Dow, Atty., 132 LaSalle St., Chicago, Sept. 11th, 1901.**

**Arid Land Grant Bonds**

Under Arid Land Commission law, the lien created by the bonds cannot be enforced in case of non-payment of interest and foreclosure can only be had upon maturity of the bonds. The lien of said bonds can only be enforced against the unsold land with appurtenant water rights and cannot be enforced against canal and weir.

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**W. F. Scott, State Game and Fish Warden, Sept. 14, 1901.**

**Game and Fish Law.**

Section 21 of House Bill 123, Session of '97 is repealed by implication so far as it provides for the payment to the informer or one-half of the fines collected under prosecution for violation of the Fish and Game Laws and the whole of such fines must be paid to the State Treasurer under Section 14 of House Bill 147, Session of 1901.

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**Walter Forbes, Sec'y. Butte Stationary Engineers' Union, Butte, Sept. 16, 1901.**

**License.**

Engineers in personal charge of steam pumps are not required to take out license unless they also have charge of the boiler supplying same.

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**Joseph K. Toole, Governor, Sept. 16, 1901.**

**Game and Fish Laws.**

Under the present laws there is no authority for the collection on behalf of the State of specimens of the animals, birds, fish and reptiles of the State. Unless such collection is made under the direction of, and in the interest of some State Educational Institution of

the State of Montana, the person making it would be subject to the game laws of the State.

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**W. F. Scott, State Game and Fish Warden, Sept. 17, 1901.**

**Game Law—Soldier—Resident.**

Under Section 6, Article 9, of the Constitution, a soldier cannot gain a residence in this state by reason of being stationed within the state, and under the provisions of House Bill 147 such soldier must procure a hunter's license before being allowed to hunt unless he is a tax payer within the state.

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**Hon. J. H. Calderhead, State Auditor, Sept. 17, 1901.**

**Insurance Companies—Foreign Corporations.**

A foreign insurance company which ceased to do business in the State in 1894 and desiring to re-enter the state must proceed in like manner as though it had never done business in the state.

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**Charles G. Ferrell and Edward Mathews, Co. Commrs., Butte, Sept. 17, 1901.**

**County Commissioners.**

Amendment to constitution passed in 1897 relative to terms of county commissioners held unconstitutional.

**Hon. W. W. Welch, State Supt. Pub. Instruction, Sept. 23, 1901.**

**Schools—County Institutes.**

School Trustees cannot be compelled to close schools in order that teachers may attend county institutes, the matter being left to their discretion.

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**Hon. W. W. Welch, State Supt. Pub. Instruction, Oct. 15, 1901.**

**School Teachers.**

School teachers are not compelled to perform janitor work under their general contract of employment unless it has been customary for teachers in such districts to do so, of which custom the teacher had knowledge at the time of entering into the contract.

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**Henry C. Adams, Statistician to Interstate Commerce Commission, Ann Arbor, Mich., Oct. 19, 1901.**

**Taxation—Railroads.**

The Revenue Act of 1891 was expressly repealed by the passage

of the Codes in '95, which contained a practical re-enactment of that act, with some modifications.

In fixing the assessment of railway properties the value of the franchise is taken into consideration by the State Board of Equalization and included in their assessment of property of the railroad, but not as a separate item. The assessment of railroads is fixed at so much per mile for the different main lines and branches in the state, and in fixing this valuation, the franchise, net earnings, side tracks and yard improvements, bridges and culverts, and all rolling stock owned, leased or used by the company are all considered.

The right of way of a railroad chartered by act of Congress through the public lands is an easement therein, and personal property attached to the soil within the boundaries of such right of way, becomes a part of it and is included in the exemption from taxation granted thereby, and any tax levy upon any part of the property so exempt is void.—N. P. R. R. vs. Garland, 5 Mont., 146.

The law providing that all property in this state belonging to railway corporations, except lots or parcels of real estate owned by the railroad in each county and improvements thereon, should be assessed by the territorial board of equalization, was intended to apply to railroad lands acquired by the N. P. R. R. Co. under act of Congress, and not to any buildings or improvements upon its right of way, or used in connection with the operation or management of the road, such lands are assessed by the assessor of each county, independent of the state board of equalization. The phrase "other franchises" as used in Sec. 3696 Pol. Code, has reference not necessarily to other franchises granted to railroads, but to franchises granted to other persons or corporations, for other purposes.

Sec. 3738 Pol. Code, provides that "all rolling stock must be assessed in the name of the person, corporation, or association owning, leasing or using the same." Under this provision sleeping and dining cars leased or used by a railroad company are assessable to such company.

Sec. 3737 Pol. Code, provides as a penalty for failure to make returns that "if such statement is not furnished as above provided, the assessment made by the State Board of Equalization upon the property of the corporation, person or association, failing to furnish the statement, is conclusive and final."

**W. Hudnall, State Examiner, Oct. 24, 1901.**

**County Treasurer—Bonds.**

Section 4367 Political Code applies only to state funds in the hands of the county treasurer and not to county funds.

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**W. Hudnall, State Examiner, Oct. 28, 1901.**

**Liquor License—Rectifier License.**

Payment of liquor dealer's license does not entitle licensee to conduct business of rectifier without payment of additional license for rectifier under Sec. 4069, Political Code.

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**Fred L. Gibson, Co. Atty., Forsyth, Oct. 28, 1901.**

**Warrants—County Commissioners—Publication of Notice—Interest**

Before redeeming or paying outstanding county warrants that have been registered and not paid for want of funds, county commissioners should publish notice in accordance with Sec. 4264 Political Code.

Unless such notice is published, interest on such warrants will not be stopped until payment, no matter at how late a date they may be presented for payment.

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**H. J. Miller, Co. Atty., Livingston, Nov. 9th, 1901.**

**School Districts.**

Upon the division of school district, money standing to the credit of the old district must be divided according to Sec. 1754, Political Code.

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**Sidney Miller, Co. Clerk, Helena, Nov. 13, 1901.**

**Meat and Milk Inspector—Contagious Diseases—Boards of Health.**

A Meat and Milk Inspector is required to be appointed in cities of over 5000, under Sec. 18 of H. B. No. 45, the duty in such case being mandatory, the city to bear all expenses connected with the same.

It is the duty of the city to protect its inhabitants against infectious or contagious diseases and to provide hospitals and places for the reception of the sick.

Under Sections 25 and 26, the county board of health should act in co-operation with the city, the county taking care of infectious diseases outside the city, and the city those within its limits. The

county board of health is to bear the expenses incurred by persons infected with contagious diseases residing in the county, under Sections 9, 10, 11, 12 and 13 of the Act.

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**O. W. Belden, Co. Atty., Lewistown, Nov. 14, 1901.**

**County Commissioners—Bonds—Advertisement—State Treasurer.**

Under Sections 4240, 4241, and 4242, Political Code, the Board of County Commissioners in issuing coupon bonds must determine the times at which the bonds are redeemable and payable, must fix the interest which the bonds bear and the denomination thereof and prescribe the form.

Until the bonds are regularly and properly issued by the Board, there can be no sale of them, and the rate of interest must be fixed at the time that the bonds are issued.

Under House Bill No. 77, Session of 1901, p. 15, notice of issue of bonds must be given to State Treasurer before advertisement is made under Section 4242.

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**W. Hudnall, State Examiner, Nov. 23, 1901.**

**State Examiner—Corporations—Bank.**

A foreign corporation doing business as a bank and trust company in this state, which has complied with the law as to foreign corporations is subject to examination by the State Examiner under Subdivision 5 of Sec. 491, as amended Session laws of '97, p. 106.

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**O. F. Featherman, Co. Treasr., Philipsburg, Nov. 23, 1901.**

**County Warrants.**

County Warrants registered prior to February 20, '99, bear interest at the rate of 7 per cent; after that date at the rate of 6 per cent.

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**Hon. J. H. Calderhead, State Auditor, Nov. 23, 1901.**

**Appropriations.**

The unexpended balance of appropriations for 1901 will be added to the appropriations for 1902, and used in that year for maintenance and expenses.

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**Hon. W. W. Welch, State Sup't. Public Instruction, Dec. 3, 1901.**

**Schools—Reservations.**

A school house may be located upon Indian Reservation with the consent of the Government authorities.

**Hon. Joseph K. Toole, Governor, Dec. 11, 1901.**

**Osteopathy—Construction of Words and Phrases.**

Words and phrases in statute must be construed according to the context and approved usage of the language.

House Bill No. 38 regulating the practice of Osteopathy is not unconstitutional on account of containing no definition of the science of Osteopathy.

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**H. J. Miller, Co. Atty., Livingston, Dec. 12, 1901.**

**Delinquent Tax List—Personal Property—County Treasurer.**

Under Senate Bill No. 27, Session of 1901, delinquent tax list must contain all personal property upon which taxes are delinquent, whether the owner of such personal property is assessed upon real estate or not, but personal property assessed to owners having no real estate must be segregated in such list from other personal property.

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**R. L. Oliver, Co. Atty., Kalispell, Dec. 14, 1901.**

**Script Land—Taxation.**

As soon as the equitable title passes to locator, land becomes subject to taxation, whether surveyed or unsurveyed.

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**Hon. W. W. Welch, Supt. Pub. Instruction, Dec. 14, 1901.**

**School Libraries.**

Sections 2000 to 2005, inclusive, political code, create a library fund, and the minimum amount prescribed under said sections should be set apart by county treasurers, unless a different amount is prescribed by the trustees by resolution or otherwise.

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**Hon. W. W. Welch, Supt, Pub. Instruction, Dec. 14, 1901.**

**School Trustees.**

Under Subdivision 15, Sec. 1798, Political Code, as amended, page 131, Laws of '97, in case a pupil residing in one district attends school in an adjoining district, it is the duty of the Board of Trustees in the district in which the pupil resides to transfer the school moneys due by apportionment to such pupils to the district in which they may attend school. In case such pupil attends part of the year in each district the money should be divided between the two districts in proportion to the number of months of the school year the pupil attends in each district.

Hon. A. H. Barret, State Treasurer, Dec. 30th, 1901.

**State Board of Land Commissioners—State Moneys.**

Money belonging to the permanent school fund and permanent university fund must be invested under the direction of the State of Land Commissioners.

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Hon. Joseph K. Toole, Governor, January 2nd, 1902.

**Agricultural College—State Funds.**

Moneys derived from the sale of lands granted to the Agricultural College under Sec. 16 of the Enabling Act must be placed in a permanent fund, interest of which alone can be used for support of college.

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Hon. A. H. Barret, State Treasurer, Jan. 2nd, 1902.

**Register of State Lands.**

Is not a depository of state funds and must remit such funds to the State reasurer on receipt of same.

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F. E. Potter, Portsmouth, N. H., Jan. 2, 1902.

**District Judges—Jury.**

Under the statutes of Montana district judges are empowered to charge the jury and in criminal cases the charge must be in writing. District judges also have power to change, set aside or modify the findings or verdict of a jury upon sufficient cause being shown. District judges are elected for four years, justices of the supreme court six years.

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Geo. M. Hays, Secretary of State, Jan. 2nd, 1902.

**Copartnership.**

A foreign copartnership cannot do a Building and Loan business within the State of Montana.

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Donald Bradford, Arid Land Commr., Jan. 3, 1902.

**Arid Land Commission.**

Sec. 3532 of Senate Bill No. 95 fixes the only limitation of the compensation of the Field Commissioner at \$6 per day, subject to the sole determination of the Commission as to the number of days for which the Field Commissioner shall receive such compensation.

**Edwin S. Bryant, Columbia Falls, Jan. 4, 1902.**

**Game Law.**

Sec. 19 of House Bill 123 prohibits the selling of the hides and heads of deer and other game animals. Jays and magpies are not protected under the present law.

**Hon. W. W. Welch, State Sup't. Pub Instruction, Jan. 4th, 1902.**

**School Trustees.**

Under Subdivision 15 of Sec. 1777, Pol. Code, as amended, (p. 122 laws of 1901) in case a pupil residing in one district attends school in an adjoining district, it is the duty of the board of trustees in the district in which the pupil resides upon the request of the trustees of the district in which the pupil attends school to transfer the school moneys due by apportionment to such pupil to the district in which he may attend school. In case such pupil attends part of the year in each district the money should be equitably divided between the two districts in proportion to the number of months of the school year the pupil attends in each district.

**J. H. Johnston, Co. Atty., Miles City, Jan. 6, 1902.**

**Stock.**

Railroad Companies are not compelled to skin stock killed upon their lines of road.

**J. H. Dailey, State Boiler Inspector, Jan. 6, 1902.**

**Engineers—Engines, Steam.**

Steam Engines are rated under Sec. 510 Pol. Code, according to the rating given by manufacturers and engineers and not by the power actually developed in active operation.

**Charles E. Wright, Co. Treasr., Red Lodge, Jan. 7, 1902.**

**Taxation.**

Town lots sold in a bunch may be redeemed separately if assessed separately.

**A. F. Longeway, M. D., Sec'y. St. Bd. of Health, Gt. Falls, Jan. 7, '92.**

**County Health Officer.**

Under Sec. 17, House Bill 104, Session Laws of 1901, (p. 80) the imperative duty is imposed upon the County Health Officer upon

the happening of the contingency therein mentioned to "immediately investigate the matter and take all proper steps for the restriction and suppression of such disease or diseases" independent of the other members of the Board, and the County Commissioners are given the power which carries with it the duty of paying the necessary and legitimate expenses thereby incurred.

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**W. B. Hudnall, State Examiner, Jan. 7, 1902.**

**Fees.**

There is no authority for making a charge of 50 cents account of endorsement upon an instrument to be recorded.

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**A. F. Longeway, M. D., Sec'y. State Board of Health, Gt. Falls, Jan. 7, 1902.**

**State Board of Health.**

Under Sec. 3 House Bill 104, Session Laws of 1901, (p. 80), the State Board of Health has no power to make rules having the force of law for the regulation of the general public, but is only given authority to make such rules and regulations as may be necessary for their own government as a deliberative body.

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**John F. Buck, Chairman, Excie, Mont., Custer Co., Jan. 8, 1902.**

**Road Districts—Boards of County Commrs.**

Boards of Road Trustees may appoint one of their number to collect poll tax, and should oversee the working out of road taxes and Boards of County Commissioners should provide reasonable per diem compensation for such overseeing.

Boards of County Commissioners should apportion the funds to the several road districts under Sec. 39 of Senate Bill 71, Seventh Legislative Assembly, at the next meeting of the Board after the first day of December.

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**J. M. Holliday, Sixteen, Mont., Jan. 9, 1902.**

**Road Trustees.**

The majority of the Board or Road Trustees may organize the Board and act as such upon the failure of one member to qualify.

**John Carr, Co. Auditor, Great Falls, Jan. 10, 1902.**

**County Comms.—Auditor—Printing.**

County Commissioners cannot let contract for printing beyond the fiscal year in which their term of office ends. They are not required to let contract to lowest responsible bidder.

County Auditor has charge of county poor, subject to general rules prescribed by county commissioners.

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**C. H. Martien, Co. Assessor, Jan. 11, 1902.**

**Assessment, Appraisers, Board of.**

Improvements upon land exempt from taxation must be assessed by the Board of Appraisers as other real estate, and taxes must be collected thereupon in the manner provided under sections 3901 to 3907, inclusive, Political Code.

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**W. Hudnall, State Examiner, Jan. 18th, 1902.**

**Taxation—Assessment.**

County Assessor is empowered to enforce collection of taxes upon personal property by seizure at any time after first Monday of December in each year, section 3901, Political Code being directory and not mandatory. Before that date is it the duty of the county assessor to collect the same.

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**Hon. Joseph K. Toole, Governor, Jan. 21, 1902.**

**Board of Land Commissioners—Land Grants.**

Proceeds from the sale of timber cut from university lands must be placed in the permanent University Fund and not in the University Bond Fund.

Proceeds from timber cut upon lands granted by Section 16 of the Enabling Act for the Agricultural College shall be placed in the Agricultural College permanent fund.

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**George D. Pease, Co. Atty., Bozeman, Jan. 24, 1902.**

**Inheritance Tax.**

Under House Bill No. 128, Laws of '97, page 83, nephews and nieces are required to pay \$5 on every hundred dollars of the market value of the personal and real property inherited if the estate is valued at \$500 or over.

**Dr. M. E. Knowles, State Veterinarian, Jan. 24, 1902.**

**Sheep Inspection—State Veterinarian.**

Under Sections 3032 and 3033 Political Code, it is the duty of the Deputy Inspector in case sheep have been exposed to diseased or infected sheep to quarantine the sheep so exposed, provided that upon examination the alleged diseased or infected sheep to which they were exposed are found to be actually diseased.

It is the duty of the owner of diseased sheep under quarantine to dip the same under the direction and supervision of the deputy inspector and upon the refusal or failure of the owner to dip the sheep it is the duty of the inspector so to do at the expense of the owner.

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**David A. Cory, Secy. State Arid Land Grant Comm., Feb. 4, 1902.**

**Arid Land Grant Warrants.**

Sec. 3546 a. Session Laws of '99, page 53, does not authorize the State Treasurer to pay warrants issued by the State Arid Land Grant Commission to meet the preliminary expenses necessarily incurred on account of any water system, out of the moneys arising from the sales of lands.

Such warrants must be paid out of Fund A, or in case there is no money in Fund A, then out of Fund C, and they cannot under any circumstances be paid out of Fund B.

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**C. D. Howell, Esq., Havre, Mont., Feb. 8, 1902.**

**Elections—Registration.**

The required period of residence should be computed up to the date of election, and not to date of registration.

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**W. F. Scott, Esq., State Game and Fish Warden, Feb. 10, 1902.**

**Game Law.**

Under Sec. 11 of House Bill 123, (Laws of '97, page 252) it is not lawful to seine or trap trout from any streams, lakes or ponds of the State for the purpose of removing the spawn or eggs from the same, to be placed in private ponds or hatcheries, the exception mentioned in said section having reference only to public streams, lakes or ponds of the State.

**Hon. A. H. Barret, State Treasurer, Feb. 11, 1902.**

**Counties—State Examiner's Fee.**

The State Examiner's fee is based upon the amount of the assessment of each county in each and every year, and not upon the classification made by the Board of County Commissioners, being determined ipso facto by the return of the assessor.

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**Hon. J. K. Toole, Governor, Helena, Mont., Feb. 11, 1902.**

**Justice of the Peace.**

Justices of the Peace must provide blanks, dockets and statutes used by them at their own expense.

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**Peter Thiel, Clerk District No. 8, Red Lodge, Feb. 12, 1902.**

**School District—Roads.**

A district may fence up its school house site if right of way has not been granted for road across it.

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**Thomas S. Kirk, Acting Chairman, Bozeman, Feb. 12, 1902.**

**Road Trustees—Road Tax—County Commissioners.**

In road districts where there are no trustees, the Board of County Commissioners has power to appoint some person to collect road tax.

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**W. Hudnall, State Examiner, Feb. 17, 1902.**

**Licenses—Roads, Road Districts—Taxation.**

Liquor dealers selling cigars must take out a separate license therefor under Sec. 4064. A commission merchant having a fixed place of business must pay a license as provided for in said section.

The road district year and the fiscal year for such district begin May 1st, and the trustees collect the tax for such year, beginning May 1st, and ending the last day of April.

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**Miss Lottie A. Harris, Supt. Schools, White Sulphur Springs, Feb. 18, 1902.**

**Schools.**

A delay upon the part of the clerk of a school district to make his report to the County Superintendent, if it is not filed in time to be transmitted to the State Superintendent, results in loss to the district of its share of the state apportionment, but does not necessar-

ily cause the loss of the county apportionment, the statute fixing the time for such report to be made being directory and not mandatory.

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**Hon. W. W. Welch, Supt. Public Instruction, Feb. 18, 1902.**

**School District.**

A petition is presented by a majority of the heads of families residing in District No. 2 to have District No. 3 annexed to it under Sec. 1752, Political Code. No petition is presented on behalf of District No. 3, for the reason that there is not a single person living in that District and has not been for over three years, and no school has been held in said district for over six years. Under these circumstances, the county superintendent should hear the one petition presented the same as if there had been a petition presented on behalf of District No. 3, for the reason that the law does not require impossibilities. At such hearing the county superintendent should receive proof by affidavit of the facts showing the obtaining of such petition to be impossible.

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**John Byrne, Esq., State Mine Inspector, Feb. 15, 1902.**

**Mines.**

In all shafts of a greater depth than 300 feet, wherein men are lowered or hoisted, a safety cage must be used as required by House Bill No. 77, Session Laws of '97.

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**E. B. Vater, Clerk Road Trustees, Muir, Montana, Feb. 28, 1902.**

**Road Districts.**

Two members of a Board of Trustees can post notices for a regular election. The law only provides for one voting place in a district, and voters residing within a city or incorporated town cannot participate in such election.

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**J. H. Murphy, Esq., Co. Atty., Boulder, March 6, 1902.**

**Roads.**

The public may acquire an easement by prescription over lands owned by private parties, but not over lands the title to which is in the general government.

**H. J. Miller, Esq., County Atty., Livingston, March 7, 1902.**

**School District.**

Lands upon which no one resides, not included within the boundaries of a school district may be added to such district by the county superintendent upon a petition signed by a majority of the heads of families of the district, and an affidavit setting forth the fact that no one resides upon the lands proposed to be so added.

**Hon. Joseph K. Toole, March 17, 1902.**

**State Board of Land Commrs.—State Treasurer—Bonds—School Fund—Constitutionality.**

House Bill No. 77, Session 1901, page 15, does not appear to repeal by implication section 3498 of House Bill No. 45, Session of '99, page 92, so as to prevent the State Board of Land Commissioners from investing the permanent school and permanent university funds in bonds of the State of Montana, or of the United States, or in interest bearing warrants upon the general fund of the state, but said Board of Land Commissioners still have the power to make investments in such securities, notwithstanding the passage of House Bill No. 77.

Interest bearing warrants upon the general fund of the State are public securities within the meaning of that term, as used in Sec. 3 of Art XI of the Constitution, and Sec. 1 of House Bill No. 77.

The question of the constitutionality of said House Bill No. 77 reserved for future consideration.

**Nelson Story, Jr., Esq., Chairman Rep. City Central Com. March 18, 1902.**

**Elections—Cities.**

When any vacancy occurs in any elective office, the council, by a majority vote of the members may fill the same for the unexpired term, and officers so appointed hold during the whole of unexpired term, and not merely until after the next city election.

**Max Waterman, Co. Atty., White Sulphur Springs, March 21, 1902.**

**Licenses.**

Merchants having a fixed place of business who send out wagons to peddle goods throughout the county must take out a peddler's

license for each wagon, regardless of the fact that they possess a merchant's license as provided by section 4064.

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**Hon. W. W. Welch, Supt. Pub. Instruction, March 22, 1902.**

**School Elections—School Trustees.**

School elections must be held annually, it being the intention of the legislature that terms of trustees should be so arranged that one or more should be elected each year. The trustees appointed to fill vacancies hold until next general school election.

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**H. J. Smith, Esq., County Commissioner, March 22, 1902.**

**Roads—Right of Way.**

Roads cannot be altered or discontinued or new ones laid out except upon petition as provided by law.

The public does not acquire title to right-of-way unless roads are regularly laid out and made county roads in the manner prescribed by law.

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**Hon. W. W. Welch, State Supt. Pub. Instruction, March 25, 1902.**

**School Trustees, Term of Office of.**

The term of office of school trustees, except in districts having over twenty thousand population, is three years.

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**Peter Gowrie, Registry Agent, Havre, March 31st, 1902.**

**Election—Registration.**

Under sections 5000 to 5013, Pol. Code, inclusive it is only necessary that the plat of the proposed addition to the city or town be approved by the city or town council and filed with the county clerk there being no requirement that the plat be approved by the Board of County Commissioners. When such plat has been so approved the electors residing in such addition are entitled to register and vote at any city or town election.

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**F. C. Kress, Secy. School Census, Dillon, March 31st, 1902.**

**School Trustees—Election.**

The law relating to the election of school trustees is rather vague and indefinite upon the question of how many trustees should be elected at each spring election. It appears to have been the inten-

tion of the law to provide that at least one trustee should be elected each year. In districts having five trustees not more than two should be elected each year, each for the term of three years.

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**Thomas D. Long, State Land Register, March 31st, 1902.**

**State Lands—Improvements—Preference Right.**

Improvements on State Lands include only water ditches, and not the water right, unless water right is attached to the land under section 3493, Act of 1899, page 88.

Preference right must be exercised immediately upon close of bidding upon particular land involved.

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**Hon. Joseph K. Toole, March 31st, 1902.**

**Notary Public.**

Women are eligible to the office of Notary Public.

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**D. A. Cory, Esq., Secy. State Arid Land Grant Com., April 10, 1902.**

**Arid Land Commission—Warrants.**

Under section 3543, Pol. Code, Laws of '97, page 185, in case there is no money in fund A of any district, then the expense of the Arid Land Grant Commission shall be paid out of fund C and such expense shall be apportioned between the several districts in such manner as the Commission shall deem just. Under the above section the Commission may take up warrants issued for expense against an abandoned district having no money in fund A by issuing warrants upon another district, provided that it is the opinion of the Commission that it is just that such other district should stand the expense represented by the warrants issued against the abandoned district, such exchange of warrants being an apportionment of the expense between the several districts.

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**Hon. W. W. Welch, State Supt. Pub. Instruction, April 14, 1902.**

**School Trustees—Vacancy—Election—Tie Vote—County Supt.**

In the case of a vacancy in the office of school trustee, resulting from a failure to elect by reason of a tie vote for office of school trustee at the school election, the county superintendent should appoint some competent person to fill such vacancy.

**Hon. W. W. Welch, State Supt. Pub. Instruction, City, Apl. 14, '02.  
School Trustee.**

The Board of School Trustees has only such power as is conferred upon it by statute, and there is no statute in this State giving the Board the power to loan the funds of their district under any circumstances.

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**W. G. Preuitt, Esq., Secy. Board of Stock Commrs., April 14, 1902.  
Bounty Law—Affidavit.**

Under Section 3071, Pol. Code, as amended laws of '99, page 100, the affidavit of killing must be made by the person who killed or caused to be killed the animal of which the skin is presented. Such person must be the direct cause of the killing and the affidavit cannot be made by one who purchased the skin from the person who claims to have killed the animal. The affidavit must be made by a person who can, and does swear positively that he killed or caused to be killed the animal of which the skin is presented, and it cannot be made upon information and belief, as is the affidavit of the two resident freeholders.

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**F. H. Ray, Esq., Asst. State Examiner, April 14, 1902.**

**Taxation—Indian Reservation—Half Breed.**

Personal property upon the Flathead Indian Reservation belonging to a white man is taxable, notwithstanding he is married to an Indian woman, and is residing with her upon the reservation.

The property of half breeds of the Flathead or other Indian tribes upon that Reservation occupying the status of Indians is not taxable, but if they have severed their tribal relations their property is taxable.

The status of a half breed depends upon the circumstances of his birth and whether or not he sustains such relations with his mother's people as makes him a tribal Indian. The fact that he has Indian blood in him is not sufficient of itself to exempt him, for the general rule is that his condition follows that of his father and not of his mother.

The question of the status of a half breed for the purpose of taxation is largely one of fact, his Indian blood raising no presumption in his favor that he is exempt.

**Jacob Loeb, Chairman Board of Appraisers L. & C. Co., April 15, '02.**

**Board of Appraisers—Real Estate—Assessment.**

The Board of Appraisers has authority to fix valuations only upon real estate. The term real estate is defined by section 3680, Pol. Code, and 1076, Civil Code. The determination of what constitutes real estate is often a mixed one of law and of fact, and the Board of Appraisers should apply the definitions given in the above mentioned sections to the particular facts as they exist in each particular case.

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**Charles H. Hall, Co. Atty., Missoula, April 23, 1902.**

**Tax Deed—Redemption.**

Under Sec. 3895 Pol. Code, the owner of property sold for delinquent taxes has the right of redemption of said property indefinitely until the notice required by said section has been given and the deed applied for. If the purchaser fails to apply for deed at the time specified in said Notice, the owner of the property may thereafter redeem said property, the same as if the notice had never been given.

Query: Upon failure of the purchaser to apply for deed at the time mentioned in his notice, would he not be required before being entitled to deed to give a new notice thirty days before he applies for such deed?

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**F. H. Ray, Esq., Asst. State Examiner, May 5th, 1902.**

**Licenses—Banks.**

Under Section 4061 Pol. Code, all State banks are liable for payment of license, no matter when organized, or under what laws, notwithstanding the provisions of Sec. 401, Civil Code, as amended laws of 1897, page 231.

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**Hon. Joseph K. Toole, Governor, May 5th, 1902.**

**Constitutionality—Bonds—Municipal Corporations.**

House Bill No. 77, Laws of 1901, page 15, is constitutional.

The fact that said bill fixes an arbitrary rate of interest upon the bonds of the municipalities mentioned in it and makes it mandatory upon such municipalities to sell them to the State at par, if the State desires to purchase them, does not render such law unconstitutional for the reason that there is no constitutional prohibition covering this proposition.

**J. F. Wegner, Esq., Chairman Board of Co. Commrs., May 6, 1902.**

**Jurors—Justices of the Peace.**

A juror in the Justice Court is not entitled to a per diem unless he is actually sworn in the trial of the case.

**A. C. Warner, Esq., Co. Clerk, Choteau, May 12, 1902.**

**Bounty Law—Affidavit.**

Under Sec. 3071 Pol. Code, as amended by laws of '97, page 100, a merchant who grubstakes others to kill wolves or coyotes cannot make the affidavit of killing for the reason stated in opinion to W. G. Preuitt, April 14, 1902, relative to the making of the affidavit by a merchant who has bought skins.

**Mr. C. H. Martien, Co. Assessor, Helena, May 12.**

**Taxes on Excess of Premiums, Collection of, Insurance Companies  
Personal Property.**

Under Sec. 3940-3948, Pol. Code, the Assessor should proceed by seizure and sale to collect taxes on personal property when the same are not a lien on real property and said taxes after demand are not paid.

Under Sec. 681 Civil Code, taxes are due from Insurance companies only on excess of premiums and real estate.

**J. H. Duffy, Co. Atty., Anaconda, May 14, 1902.**

**Sunday Law—Arrest.**

Section 530, Penal Code, is limited in its application to the owner or proprietor of the theater or the manager of the company who aids in opening or maintaining any theater.

Under Sec. 1636 Penal Code, an arrest cannot be made for a misdemeanor at night, except upon the direction of the magistrate endorsed upon the warrant. Any arrest made otherwise than this would be illegal and would render the officers who serve the process liable for damages for false imprisonment.

**F. L. Mefford, Esq., Rosebud County, Rosebud, Mont., May 14, 1902**

**County Seat.**

Under the Act of Legislature creating Rosebud County, (Session Laws 1901, pages 97-8) providing that the town of Forsyth shall be

the county seat until the permanent county seat shall be designated in the mode and manner provided by law, such selection of a county seat must be made in the manner provided in sections 4751-65 Political Code of Montana, providing for the removal of county seats, that method being the only one provided in the laws of Montana.

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**Hon. W. W. Welch, Supt. Pub. Instructions, May 21, 1902.**

**School—School Board—Indians.**

Children of part Indian blood, maintaining their tribal relations and receiving rations and supplies from the Government are wards of the Government, and should receive their education under the supervision of the agents of the Government. The same rule applies if the fathers of such children are Indians and wards of the Government.

Under subdivision 15, Sec. 1797, Pol. Code, as amended (Session laws 1901, page 122) where such children reside upon an Indian Reservation and their home is located within a school district of Montana, they may for convenience attend school in another district and the money due by apportionment to such children may be transferred to the school district in which they desire to attend school, or the school board of the latter district may charge such children tuition. If latter course is taken the money due by apportionment should not be transferred.

If such children are not wards of the Government and their home is not situated within any school district of Montana, the board of school trustees of a district adjoining may admit them to school in such district upon their paying tuition.

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**Sam Hilburn, Co. Treasr., Kalispell, May 23, 1902.**

**Licenses.**

Under Sec. 4063 as amended, (laws of 1901, page 143), saloon licenses are negotiable and transferable and may be used by the person to whom transferred for the conducting of the saloon at any place in the county where issued, provided that such place does not require a license of a higher grade than the license so transferred.

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**Fred L. Gibson, Co. Atty., Rosebud Co., Forsyth, June 9, 1902.**

**Witness Fees—Mileage.**

Under Section 4653, Pol. Code, witnesses in criminal actions in

courts not of record, and on coroner's inquests, are not entitled to receive either witness' fees or mileage.

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**R. Lee Kelley, Clerk Dist. Ct., Powell Co., Deer Lodge, June 11, '02.  
Clerk of District Court.**

Under Section 12 of Act creating Powell County, (Session Laws 1901, page 106), the successor to the Clerk of the District Court therein named must be elected at the general election to be held in November, 1903.

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**Donald Bradford, Esq., June 16, 1902.**

**Arid Land Grant Commission—Bonds.**

Under Section 3536a, Political Code, (Session Laws of 1899, page 53) the State Arid Land Grant Commission has authority to issue bonds for the construction of water systems for the reclamation of private or State lands in the same amount per acre as for Carey lands, and the selling price per acre of the water for such land should be the same as for Carey lands and water.

The question of whether the State Board of Land Commissioners has authority to grant a right of way for canal lines and reservoir sites desired by the State Arid Land Grant Commission, at a less price than the appraised value per acre of the land embraced within said right of way, not decided.

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**Hon. W. W. Welch, Supt. Pub. Instruction, June 20, 1902.**

**Supt. of Public Instruction—Attorney General—State Officers, Advice to by Attorney General—School Bonds—School District.**

Under Section 460, Political Code, it is the duty of the Attorney General to advise State Officers relating to the duties only of such officers. No duty is prescribed for Superintendent of Public Instruction in regard to the creation of new School Districts, and the Attorney General will not advise Superintendent of Public Instruction as to validity of proceedings creating new school districts after the same have been created.

When boundaries of a school district are changed, either by forming a new district within the territory of the original one, or by transferring a portion of the territory to another corporation, the old district owns and holds all permanent property situated within its boundaries, and assumes all debts incurred for the building and furnishing of school houses.

**Hon. Joseph K. Toole, Governor of Montana, June 25, 1902.**

**Governor—Reform School—Release of Inmates—Pardoning Power.**

Sections 3091 and 3093, Penal Code of Montana, contain provisions for release of inmates of State Reform School. In addition to the provisions of said statutes the Governor has the power to release the inmates of the Reform School by the exercise of Pardoning Power.

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**Hon. A. H. Barret, State Treasurer, June 25th, 1902.**

**Interest—Permanent University Fund—University Bond Fund.**

Money derived from interest on bonds purchased with Permanent University Fund should be credited to University Bond Fund.

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**Charles H. Hall, Co. Atty., Missoula County, Missoula, July 1, 1902.**  
**School Trustees—Buildings, Erection of by School Trustees for  
 Other Than School Purposes.**

Under statutes of Montana Boards of School Trustees have not power to build a dwelling house to be rented to the school teacher of the district, even though such dwelling, being near the school house, would aid in securing protection of the school property against trespasses.

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**Hon. A. H. Barret, State Treasurer, July 11, 1902.**

**Game and Fish Fund—State Treasurer—Warrants.**

The income arising on account of funds collected under the Game and Fish laws of the State, and the assessment of one-tenth of a mill in the respective counties, should be placed by the Treasurer in a separate fund, known as the Game and Fish Fund, and not placed in the General Fund.

Warrants in payment of expenses incurred in connection with the Game Warden's office should be drawn upon such Game and Fish Fund.

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**Mr. George D. Pease, Co. Atty., Gallatin Co., Bozeman, July 14, '02.**  
**Bridges—Canals—Co. Commrs.—Railroads—Roads—Road Super-  
 visors.**

Where a canal or ditch crosses a highway which has previously been laid out, the expense of constructing and maintaining bridges must be borne by the owner of such canal or ditch. (See Sec. 2728 Pol. Code).

But where a canal or ditch is crossed by a public road or highway which has been laid out subsequent to the construction of such canal or ditch, the duty to build, maintain and repair bridges across the same rests upon the road district as a part of its road work.

Sec. 73 of Road Act of 1901, (Session Laws 1901, page 39) construed to mean that the owners of railroads, canals and ditches must have them in such condition when a highway is being laid out across them, that the road work may go ahead without damage to the property of such owners, and without delay to the road authorities. In other words, that the duty is thrown upon such owners to take care of their roads, canals or ditches while road work is being done across them, and not require the building or maintenance of bridges across such roads, canals or ditches, at the expense of their owners.

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**Mr. C. B. Doggett, Co. Assessor Broadwater Co., Townsend, July 23, 1902.**

**Taxation—Assessments—Money—Deposits.**

Money owned by residents of Broadwater County, and deposited in banks outside of the county or state, is assessable in said county of Broadwater.

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**Mr. E. M. Hall, Co. Atty., Sweet Grass Co., Big Timber, July 26, '02.**  
**Cities—Corporations—County Commrs.—Elector—Qualified Elector—Registration—Special Elections—Towns.**

A petition to the Board of County Commissioners for the organization of the inhabitants of a portion of a county into a municipal corporation can be legally signed by electors generally possessing the qualifications mentioned in Sec. 1181, Pol. Code, whether they be registered or not.

The terms "elector" and "qualified elector" are used in codes as convertible terms. Registration is not one of the qualifications of an elector, but a regulation of the exercise of the right of suffrage.

At a special election called by County Commissioners under Sec. 4721, Pol Code, to determine question of incorporating a part of a county, only those electors possessing qualifications mentioned in Sec. 1181, Pol. Code, and whose names appear in the official register and check list of a district within the territory described in the petition, are entitled to vote, and such electors can only vote in the precinct in which they were last registered.

**Fred L. Gibson, Co. Atty. Rosebud Co., Forsyth, July 26, 1902.**

**Rosebud County—Clerk of Court—Co. Commrs.**

Under Senate Bill No. 21, Session 1901, page 97, the Clerk of the Court and County Commissioners of Rosebud County, provisionally appointed by the legislature in said Bill, hold their offices only until the next general election after their appointment and until their successors are elected and qualified. Their successors should, therefore, be elected at the general election of 1902.

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**Mr. Fred H. Hathhorn, Co. Atty. Yellowstone Co., Billings, Aug. 2, 1902.**

**Roads—Road Trustees—Highways—Towns—Unincorporated Towns.**

Under the provisions of House Bill No. 71, of Seventh Legislative Assembly, (Session Laws 1901, page 18) all public roads and highways are placed under the supervision and control of road trustees, excepting those within the limits of incorporated cities and towns. Such supervision and control extends equally to public roads and highways in unincorporated towns, and such trustees have authority to spend their road money in keeping the same in repair.

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**E. M. Hall, Co. Atty. Big Timber, Montana, Aug. 8, 1902.**

**Big Timber—Petition for Incorporation.**

Held that a certain petition for incorporation presented to the Board of County Commissioners of Sweet Grass County is sufficient and should be considered by the Board, and that a certain clause added to said petition is surplusage and immaterial and does not affect the legality or regularity of said petition.

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**Chas. Scharf, County Clerk, Boulder, Aug. 15, 1902.**

**Registry Agent—Notary Public.**

A Notary Public is ineligible to hold the office of Registry Agent of election under Section 1201, Political Code.

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**Max Waterman, White Sulphur Springs, Aug. 22, 1902.**

**Election—Country Free High School—Voter—Women.**

A woman to vote at an election called for the purpose of determining the question of the establishment of a County Free High School must possess the qualifications stated in Sec. 1777, Pol.

Code, as amended by the laws of '99, page 138. A woman need not be naturalized to become a citizen if her husband is a citizen of the United States.

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**Hon. W. W. Welch, Supt. Public Instruction, Aug. 25, 1902.**

**County Free High Schools, Principal of.**

The principal of a County Free High School must be the holder of a State Certificate of the highest grade, issued in some state or a graduate of some reputable university, college, or normal school, and have had an experience of at least five years in teaching.

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**Hon. Joseph K. Toole, Pres't. State Board of Equalization, Aug. 26, 1902.**

**Assessors—State Board of Equalization—Bank Stock—County.**

Assessment of bank stock should be made against stockholders directly, the assessor securing from the cashier or other accounting officer of the bank a verified statement as required in Section 3691, Pol. Code.

Every private banker under sec. 3695, Pol. Code, is also required to make out a verified statement showing the condition of his bank, and said section further prescribes the procedure in assessing same.

It is the duty of the Board of Equalization of each county to take up this return with the assessor, and if he has not fully assessed the share holders of banks as required by law, to compel him to do so.

The procedure by the State Board of Equalization to compel the assessor to properly assess bank stock where he has failed to assess the same, or has made an inadequate assessment is as follows:

1. Said Board must procure from assessor a verified return, made by the cashier or accounting officer from the several banks in his county, as required by sections 3691 and 3695, Pol. Code, which returns said Board has power to call for.

2. After this return is secured from assessor, the procedure is not clear. Whether said Board could compel Board of County Commissioners or County Clerk to extend the increased assessment on the tax roll, has not been adjudicated.

3. Under section 3734, Pol. Code, State has a remedy against the assessor and the sureties on his official bond for all tax on property within his county, which, through his willful failure or neglect, is unassessed. The facts upon which a cause of action

would exist under said section, as well as the method of securing evidence, are stated in the opinion.

4. The county would also be liable, as stated in subdivision 3, as well as the assessor.

5. The Board of County Commissioners could order county clerk to extend taxation list, so as to include proper bank assessment but if they should refuse, State's remedy would be suit against the county or assessor, as stated in subdivision 3 and 4.

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**Mr. Joseph C. Smith, Co. Atty. Powell Co., Deer Lodge, Sept. 2, '02.**

**Powell Co.—Registration—County Seat—Attorney General.**

1. No provision being made in the act creating Powell County for the use of official register books made up of the voters residing therein while the same was a part of Deer Lodge County, all residents of Powell County must be newly registered in order to entitle them to vote at the election to be held in November, 1902.

2. Section 3 of the Act creating Powell county, provides that the City of Deer Lodge shall be the county seat until changed by law, and change of county seat can only be effected in the manner prescribed in sections 4157-65, Pol. Code, as amended by Act of Seventh Legislative Assembly, (Session Laws 1901, pages 145-6.)

3. Attorney General will not advise upon matters not involving present duties of officers.

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**J. H. Calderhead, State Auditor, Sept. 2, 1902.**

**Bureau of Agriculture, Etc., Printing and Publishing Report of State Auditor.**

The appropriation for the publication and distribution of fifty thousand copies of Report of Bureau of Agriculture, Labor and Industry, contained in general appropriation bill of Seventh Legislative Assembly, (Session Laws 1901, page 175) was intended by the Legislature to be applied to the payment of the expenses to be incurred by State Auditor in distributing copies of said report, as well as for the publication thereof, and was not to cover the latter expenses alone. The bill of the State Auditor for expense incurred in the work of distribution, if found by State Board of Examiners to be correct, should have been allowed.

(See Opinion to J. H. C. April 30, 1901, upon same subject.)

**Max Waterman, Co. Atty. Meagher Co., White Sulphur Springs,  
Sept. 3, 1902.**

**School District—Bonds—Election, Notice of.**

A notice of election to be held for the purpose of determining the question of the issue by a school district of bonds for the purpose of building and furnishing a school house, which states only the amount of the bonds, the purposes for which the money is to be used, and the time when redeemable, wholly omitting the rate of interest of the bonds, is insufficient and an election held thereunder void, and the issue of such bonds illegal.

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**Hon. Joseph K. Toole, Governor State of Montana, Sept. 5, 1902.**

**Penitentiary.**

There is nothing in the statutes of this state to authorize the temporary release of a prisoner from the penitentiary under proper escort, for the purpose of seeing his sister, who is about to die.

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**Mr. W. Hudnall, State Examiner, Helena, Sept. 5, 1902.**

**Clerk of Court, Fees of.**

A filed a petition for letters of administration, and B thereafter filed a petition for letters of a like nature. A withdrew his petition and letters were granted to B. After two years B was ousted by the court, and A filed a petition for letters of administration, which were granted. All of these petitions were filed in the same State. Under these circumstances A should pay a second fee upon the filing of a second petition.

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**Mr. J. H. Duffy, Co. Atty. Deer Lodge., Anaconda, Sept. 6, 1902.  
Co. Commrs.—County, Newly Created, Representatives, Appor-  
tionment of.**

1. The present constitutional term of County Commissioners is four years, and County Commissioners having been elected in Deer Lodge County in November, 1900, none should be elected in 1902, and the terms of the present incumbents will depend upon the approval or rejection of the amendment to the constitution to be voted upon at the coming election.

2. At election to be held in November of this year, the usual number, or six representatives in the Eighth Legislative Assembly

should be elected in Deer Lodge County, and Powell County should elect one representative.

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**Hon. Joseph K. Toole, Governor of Montana, Sept. 8th, 1902.**

**School Lands—Trespassers.**

By section 10 of the Enabling Act the title to sections 16 and 36, of each township in the State is absolutely vested in the State, whether survey has been made or not.

The State has such a right in such unsurveyed school lands as entitles it to protect the timber standing thereon by appropriate action at law, against actual or would-be trespassers, and the question of whether an official survey has or has not been made is one which affects, not the right of the State to the land, but its remedy for any injury thereto. In the absence of official surveys, other proof could be offered to identify the land.

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**Dr. M. E. Knowles, State Veterinarian, Helena, Sept. 8, 1902.**

**State Veterinarian.**

Where proclamation has been issued by Governor, in accordance with provisions of Section 3008, Political Code, a prosecution may be maintained for the violation of the regulations and restrictions contained therein.

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**Mr. W. Hudnall, State Examiner, Sept. 9, 1902.**

**Habeas Corpus—Clerk of District Court, Fees of.**

Under Section 4612, Political Code, Clerk of District Court, should not collect fee upon institution of habeas corpus proceeding.

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**Jesse L. Smith, Esq., County Clerk, Red Lodge, Sept. 8th, 1902.**

**Banks, Private—Assessment—Taxation—Non-resident Partner.**

Under Sec. 3695, Pol. Code, the property of a private bank for the purpose of assessment and taxation, is divided into three classes: 1, Cash items; 2, Credit items; 3, Personal property.

In the assessment of such property the only deductions authorized to be made under said section are as follows: 1, From the amount of cash items, the amount of current deposits; 2, From the amount of credit items, the amount of all accounts payable other than current deposit accounts.

The surplus and undivided profits of a private bank are not assessable as such, but are to be included in the assessment of the property of such bank, either as cash items, as credit items, or as personal property.

In this respect the law with reference to the assessment of private banks differs from the law as to incorporated banks, as, under section 3691, Pol. Code, in assessing the property of an incorporated bank, the amount of its surplus or reserve fund is taken into consideration.

The fact that one of the partners of a private bank is a non-resident, does not exempt the firm from taxation of its property, or any of it, situated in this State.

Method of assessing property of a private bank from list and valuation of its property, as contained in its condensed statement of resources and liabilities, illustrated.

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**John Bonner, Esq., Chairman Bd. of Co. Commrs., Missoula, Sept. 10, 1902.**

**Deputies—County Officers.**

The change of a county from the fifth class to third class, while it raises the maximum limit in the number of deputies allowed to county officers under sections 4597 and 4602, Pol. Code, does not affect the discretionary power of the Board of County Commissioners to fix a less number and a less rate of compensation of such deputies.

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**Hon. W. W. Welch, Sup't. Pub. Instruction, Sept. 22, 1902.**

**County Free High Schools, Principal of—Same, Trustees of.**

The requisite qualifications of the principal of a County Free High School are stated in our opinion to Hon. W. W. Welch, dated Aug. 25, 1902.

The questions as to whether a particular certificate is of the highest grade issued in another state, and whether a particular university, college or normal school is a reputable one under the statutes, are questions of fact to be determined by the Board of County High School Trustees, and are not questions which involve considerations of a legal nature, about which the Attorney General could advise.

**Mr. J. H. Murphy, Co. Atty. Jefferson Co., Boulder, Oct. 4, 1902.**

**License—Lawyer—Insurance Agent—Real Estate Agent.**

The several professions or businesses mentioned in section 4072, of the Political Code, are separate and distinct, and separate licenses should be charged for each. Under said Section 4072, Pol Code, (1) a lawyer who is also an insurance agent must pay two licenses; and (2) an insurance agent who is also a lawyer and real estate agent must pay three licenses.

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**Mr. Joseph C. Smith, Co. Atty. Powell Co., Deer Lodge, Oct. 4, 1902.**

**County Officer—County Attorney—Residence.**

A person to be eligible to be elected to a county office, must, in addition to being a citizen of the United States have been a resident of the State for a period of one year, and of the county thirty days preceding his election.

A man who came into Montana for the first time on the 5th or 6th of last December would not be eligible to be elected to the office of county attorney at the coming general election.

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**E. M. Hall, Esq., Co. Atty., Sweet Grass Co., Big Timber, Oct. 6, 1902.**

**School Trustees—Vote.**

Under subdivision 6 of Section 1797, Political Code, it is necessary for the school trustees, before building or removing school houses, or before purchasing or selling school lots, to submit the question to the voters of the school district.

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**Fred L. Gibson, Esq., Co. Atty. Forsyth, Oct. 7, 1902.**

**Registration—Electors.**

Under Sec. 1210, Pol. Code, as amended (Laws 1897, page 118) if a person who has been registered in any year, shall, during that year, change his residence before the period of registration closes, he shall notify the registry agent with whom he registered, of such change, and request him to cancel such registration. This provision applies to all registration districts, whether containing more than one thousand electors or not.

Under the above section, if a person, having been previously registered in any district, shall subsequently change his residence after the period of registration closes, he must give like notice and obtain a like certificate before he will be entitled to register again. This

latter provision applies only to districts not containing incorporated towns or cities of more than one thousand electors, and does not apply to the years of general registration provided in section 1206, for the reason that during such years all electors in all registration districts in the State, must register under any circumstances.

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**Mr. Fred L. Gibson, Co. Atty. Rosebud Co., Forsyth, Oct. 7, 1902.**

**Registration—Rosebud County.**

By reason of the creation of Rosebud County all electors residing therein should re-register for the coming fall election, although they were registered in the years 1898 and 1900, while the territory now embraced within said county of Rosebud was a part of the county of Custer.

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**John A. Shaw, Esq., Helmville, Powell Co.; Oct. 8, 1902.**

**Registration—Electors—Residence.**

Electors must be registered in the county in which they reside.

For the purposes of registration or voting a person must not be considered to have gained a residence in any county into which he comes for temporary purposes merely, without any intention of making such county his home.

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**Hon. A. H. Barret, State Treasurer, Oct. 8, 1902.**

**Inheritance Tax, Refund of—County Treasurer—State Treasurer.**

Where the county treasurer has received the amount due from an estate as inheritance tax under the law as found in Session Laws of 1897, pages 83-92, and has remitted 60 per cent of said tax to the State Treasurer and transferred the remaining 40 per cent to the general school fund and a claim of \$50 for expenses of appraisement under section 15 of said Act is thereafter presented to the county treasurer, the said claim should be paid in full by the county treasurer and a claim should then be presented to the State Auditor for the rebate of \$30, the State's proportion of such expense.

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**Mr. W. Hudnall, State Examiner, Oct. 14, 1902.**

**Clerk of District Court, Fees of—Defendants in Civil Actions, Appearance Fees of.**

Under Sec. 4636 of the Political Code, but one filing fee should be charged defendants in civil actions, whether there be one or more,

and whether they plead jointly and afterwards plead separately, or plead separately in the first instance.

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**H. C. Walker, Poplar, October 16, 1902.**

**Registration—Transfer—Indian Reservation.**

Under subdivision 11, section 1210, page 121, Laws 1897, an elector registering in Dawson County removing to and living upon an Indian reservation in Valley County, can register and vote in the latter county, provided he acquired a residence in some county in Montana prior to taking up residence on Indian Reservation, and provided he is not employed by the Government while on such reservation.

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**Hon. W. W. Welch, Supt. Pub. Instruction, Oct. 29, 1902.**

**County Free High School, Qualifications of Assistant Principal of.**

The act of 1899, creating county free high schools as amended by the act of 1901 (Session Laws 1901, page 11) provides in section 14 (as amended) for the appointment of such assistant teachers as may be necessary, but does not prescribe the qualifications of such assistant teachers. Section 1911 Political Code as amended in Session Laws 1897, page 146, provides the qualifications of a teacher in a high school, but has reference to district high schools, and it is doubtful whether it has application to teachers in county free high schools.

It is a matter of discretion with the board of county free high school trustees to determine the qualifications of an assistant teacher in a county free high school under whatever rules or regulations they may see fit to prescribe.

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