

**State Examiner, Powers and Duties of. Public Officials,
Cash and Bank Deposits of. Cash and Bank Deposits, Right
to Count.**

The State Examiner has not the legal right of access to the cash or bank accounts of county officers for the purpose of counting the same.

N. B. Since the foregoing opinion was rendered the power has been conferred by Chapter 84, Laws of 1915.

February 19, 1915.

Hon. H. S. Magraw,
State Bank Examiner,
Helena, Montana.

Dear Sir:

Sometime ago you addressed a communication to this office requesting that I give my official opinion relative to the necessary steps

to be taken by you in the event a state, county or city official refuses to give you or your deputies access to their cash and bank deposits, for the purpose of counting the same.

The legislature pursuant to the command of Article VII, Section 8 of the Constitution made provision for the appointment of a State Examiner, and defined his powers and duties by Chapter 3, Article 11 of the Political Code of 1895. This Article was afterwards amended in so far as it relates to your powers and duties, by the Act of March 6, 1903, being Chapter C of the laws of the eighth legislative Assembly, (Revised Codes, 1907, Sec. 208 et seq.) This Act must receive strict construction. (*State vs. Aetna Banking and Trust Co.*, 34 Mont. 397). Section 209, Sub. I, makes it the duty of the State Examiner to examine once at least every year, the books and accounts of state and county officers and boards having the control and management, collection or distribution of any public moneys of any character or description. Subdivision 3 of the Section, confers power upon the State Examiner to examine at least once a year, the books and accounts and vouchers in the offices named. Nowhere in the law are the word "cash," "currency," "money" or equivalent words used. In the case above cited, the Supreme Court said:

"We need not consider what rule of statutory construction applies to statutes not penal in character. Chapter C of the Laws of 1903 is a highly penal statute, and the rule, universally recognized, is that a statute of this character must be strictly construed. The rule is founded upon the principle that the power of punishment vests in the legislature, not in the courts. 'Strict construction, as applied to statutes, means that they are not to be so extended by implication beyond the legitimate import of the words used in them as to embrace cases or acts not clearly described by such words, and to bring them within the prohibition or penalty of such statutes. It does not mean that words shall be so restricted as not to have their full meaning, but that everything shall be excluded from the operation of statutes so construed which does not clearly come within the meaning of the language used.' (26 Am. & Eng. Ency. of Law, 657).

It is not sufficient to say that there is no good reason for the omission from Section 497 above of the phrase we are now asked to supply. 'Where the language of a statute is clear, it is not for the court to say that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions.' (26 Am. & Eng. Ency. of Law, 601). 'It is, however, the object of the construction of penal as of all other statutes to ascertain the true legislative intent; and while the courts will not, on the one hand, apply such statutes to cases which are not within the obvious meaning of the language employed by the legislature, even though they be within the mischief intended to be remedied, they will not, on the other hand, apply the rule of strict construction with such technicality as to defeat the purpose of ascertaining the true meaning and intent of the statute.' (26 Am. & Eng. Ency.

of Law, 659). If the intention of the legislature is made manifest by the language employed in the Act, then there is no occasion for resorting to rules of construction or interpretation. If the language is plain it will be construed as it reads and the words employed given their full meaning."

The words "books," "accounts," and "vouchers" have well defined meanings, and the word "cash," or its equivalent may not be applied to, or embraced in either, and in view of the language used by the Supreme Court in the case cited, it is idle to assume the words "cash" or any equivalent term may be read into the statute.

The conclusion follows that you have not the right of access to the cash or bank deposits of a public official, for the purpose of counting the same, but must rest content with the examination of the books, accounts and vouchers, and to this end public officers must afford all reasonable facilities for investigation, under penalty. (Sec. 210), and must make and return exhibits to the State Examiner under oath, in such form and in such manner as he may prescribe.

Yours very truly,

D. M. KELLY,

Attorney General.