STATE OF CONNECTICUS, PUBLIC DOCUMENT NO. 40, THIRD BIENNIAL REPORT OF THE ATTORNEY-GENERAL, FOR THE TWO YEARS ENDED JANUARY, 3, 1905

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WILLIAM A. KING

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Trieste

State of Connecticut

PUBLIC DOCUMENT No. 40

THIRD BIENNIAL REPORT

OF THE

ATTORNEY-GENERAL,

FOR THE

Two Years Ended January 3, 1905.

WILLIAM A. KING,

Attorney-General.

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ACT ESTABLISHING THE OFFICE OF ATTORNEY-GENERAL.

(General Statutes, Revision of 1902.)

CHAPTER 9.

Attorney-General.

§ 145. Election; office; vacancy. There shall be an attorney-general chosen by ballot in the same manner as other state officers on the Tuesday after the first Monday of November, 1902, and quadrennially thereafter, to hold his office for a term of four years from and after the Wednesday following the first Monday of the next succeeding January, and until his successor is duly chosen and qualified. He shall be an elector of this state, and an attorney-at-law of at least ten years' active practice at the bar of this state. His office shall be at the capitol. Any vacancy arising shall be filled by appointment by the governor for the unexpired term.

§ 146. General duties of. The attorney-general shall have general supervision over all legal matters in which the state is an interested party, except those legal matters over which prosecuting officers have direction. He shall appear for the state, the governor, the lieutenant-governor, the secretary, the treasurer, and the comptroller, and for all heads of departments and state boards, commissioners, agents, inspectors, librarian, committees, auditors, chemists, directors, harbor masters, and institutions, and all suits and other proceedings, excepting upon criminal recognizances and bail bonds, in which the state is a party or is interested, or in which the official acts and doings of said officers are called in question

in any court or other tribunal, as the duties of his office shall require; and all such suits shall be conducted by him or under his direction. When any measure affecting the state treasury shall be pending before any committee of the general assembly, such committee shall give him reasonable notice of the pendency of such measure, and he shall appear and take such action as he may deem to be for the best interests of the state, and he shall represent the public interest in the protection of any gifts, legacies, or devises intended for public or charitable purposes. All legal services required by such officers and boards in matters relating to their official duties shall be performed by the attorney-general or under his direction. All writs, summonses, or other processes served upon such officer shall, forthwith, be transmitted by them to the attorney-general. All suits or other proceedings by them shall be brought by the attorney-general or under his direction. He shall, when required by either branch of the general assembly, give his opinion upon questions of law submitted to him by either of said branches. He may procure such assistance as he may require. Whenever any petition for divorce shall have been referred to any committee of the general assembly, such committee may give to the attorney-general reasonable notice of all hearings on such petition, and he shall thereupon take such action as he shall deem to be just in the premises, and he shall appear before such committee in such cases whenever in his opinion justice so requires.

§ 147. Biennial reports; bond. There shall be prepared by him and submitted to the governor a biennial report of the doings of his office; and he shall give account to the treasurer of the state for all fees, bills of costs, and moneys received and expended by him by virtue of his office. He shall be duly sworn, and shall give bond in the sum of five thousand dollars.

State of Connecticut.

REPORT OF THE ATTORNEY-GENERAL.

ATTORNEY-GENERAL'S OFFICE,

HARTFORD, JANUARY 3, 1905.

To the Governor of the State of Connecticut:

In compliance with section 147 of the General Statutes I submit my report for the two years ending January 3, 1905.

Matters growing out of the enforcement of the inheritance tax law have demanded much time and attention from this office during the past two years. The estate of Owen B. Arnold of Meriden, inventoried in excess of $250,000, presented the first occasion for litigation. I appealed, in behalf of the State, from an order of the court fixing the inheritance tax, under the following circumstances:

The estate owned stocks and bonds of corporations organized outside of Connecticut, amounting to $75,000, on which the State claimed a tax of three per cent. The Court of Probate refused to allow this claim, and held that as the securities were issued by corporations not organized under Connecticut law they were not subject to the inheritance tax law. The case was taken, by reservation, to the Supreme Court, which tribunal sustained the claim of the State, and ordered the tax paid.

When it is remembered that Connecticut holdings of stocks and bonds of corporations organized outside of the State are very large, the importance of this decision, (Gallup's Appeal, 76 Conn., 617), becomes apparent in its effects on the future revenue which the State should receive from the inheritance tax. Generally, the tax is now being paid to the State in accordance with the law enunciated in that decision. There are, however, two cases now pending in

which the estates claim that they are not obliged to pay an inheritance tax on personal property outside of the State, or on money invested in corporations or partnerships organized and existing elsewhere than in Connecticut. One arises in the estate of George F. Gilman, late of Bridgeport, the other in the estate of Mary F. Hopkins, late of Stamford. The valuation of each estate approximates $800,000. The cases are now before our Supreme Court and will come to trial in January, 1905.

The State was compelled to appeal on the same question from the decree of the Court of Probate fixing the inheritance tax due from the estate of Oliver Bulkeley, late of Fairfield, deceased. The demands of the State, however, in that case, were recognized and paid by the executor after the appeal had reached the Superior Court and before trial, and the appeal was withdrawn.

The constitutionality of the law imposing a succession tax was brought before the Supreme Court in Nettleton's Appeal, 76 Conn., 235. The decision, handed down December 18, 1903, sustained the law on every point. Hon. Donald T. Warner was associated with me in the preparation and trial of the case.

The case entitled City of Hartford *vs.* Maslen *et al.*, involving the State's title to the land on which the Capitol stands and land adjacent thereto, was commenced by Attorney-General Phelps shortly before his term of office expired. He continued in the case, had sole charge of it, and acted alone as counsel for the State in the long trial in the Superior Court, and later in the Supreme Court, obtaining a decision in favor of the State before each tribunal. The case is reported in the 76 Conn., 599. This decision sets at rest all questions as to the ownership and control of the Capitol grounds.

Litigation is pending between the State and the City of Norwich over money arising from fines claimed by the State. The constitutionality of the Act creating the State Police is involved among other questions.

Shortly after the recent election of State officers, Mr. Henry T. Blake of New Haven brought proceedings before

Hon. George W. Wheeler, a judge of the Superior Court, claiming that a ballot, cast by Mr. Blake, in a New Haven voting district, had been illegally rejected by the moderator. The ballot was written, and had on it marks admittedly for purposes of identification. The avowed purpose of the proceedings brought before Judge Wheeler was to test the constitutionality of the secret ballot law. The Attorney-General was cited to appear, and, at the suggestion of Judge Wheeler, entered an appearance for the State. The case is still pending on an appeal taken by Mr. Blake to the Supreme Court.

The case as it appeared before Judge Wheeler presented the question of the constitutional right of the elector to cast a written ballot, in defiance of the statute providing that all ballots shall be printed. This claimed right is based on Article Six of our Constitution, which provides that "in all elections of officers of the State, or members of the General Assembly, the votes of the electors shall be by ballot, *either written or printed.*"

In effect, the claim is that this article of the Constitution confers on the elector the right to use either a written or printed ballot, as he may choose, and that the legislature has no power to deprive him of this choice, — as is clearly attempted by the provisions of the secret ballot law, in declaring that all ballots shall be printed.

The recent constitutional convention evidently did not so construe the existing constitution, for it adopted the same language, — "by ballot, either written or printed," and added the words, "or by voting machine authorized by law." . . .

In view of the fact also that since 1889 there has existed a statute declaring that all ballots shall be printed, it is clear that the constitutional convention could not have attached the meaning to the words quoted from Article Six, which Judge Wheeler, while rejecting the Blake ballot on other grounds, held to be the true meaning.

The language used by the constitutional convention in the draft submitted to the people is substantially that of one of the amendments to the constitution pending before the incoming General Assembly. The question is more than liable to arise,