

**REPORT OF THE ATTORNEY
GENERAL OF THE
STATE OF CALIFORNIA**

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Report of the Attorney General of the State of California by Various

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**REPORT OF THE ATTORNEY
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STATE OF CALIFORNIA**

BIENNIAL REPORT

OF THE

ATTORNEY GENERAL

OF THE

STATE OF CALIFORNIA

1911-1912

STATE OF CALIFORNIA



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REPORT OF ATTORNEY GENERAL.

SAN FRANCISCO, September 15, 1912.

To His Excellency, HIRAM W. JOHNSON,
Governor of California,
Sacramento, California.

SIR:

I herewith transmit to you the report required by law of the business of the Attorney General's office for the two years ending September 15, 1912. The work reported covers civil cases, criminal appeals, official opinions, and miscellaneous matters, and there is appended the reports from the District Attorneys of the State of the felony cases instituted in the several counties.

CIVIL LITIGATION.

The report shows a marked increase in civil litigation in which the State and its various boards and officers have been involved. During the preceding two years, I appeared in 197 civil cases. During the present biennial period, I have appeared in 410 civil cases, have finally disposed of 77, and tried, argued and submitted 65 others, leaving 268 cases still in course of litigation. In addition to the above, I have instituted 438 tax suits to collect delinquent franchise taxes from corporations, many of which have been settled and the tax paid, while others are in course of adjustment. Among the cases argued and submitted are 62 brought by various corporations, attacking our present taxing system. All of these cases were filed in February of 1912, and have all been tried, argued, and submitted for decision.

The following are some of the more important cases:

Inheritance Tax Cases. My last report showed much litigation arising through the enforcement of the State Inheritance Tax Law, and a number of similar cases have been brought and tried since that report was filed, and some are still pending.

The Estate of Moffitt was shown in my last report and involved the right of the State to charge an inheritance tax against the entire community property. The right of the State in this regard was upheld by the State courts, and the case went to the Supreme Court of the United States, where the right was again affirmed.

Through these several cases the law on this subject has been practically settled, and is now being quite satisfactorily observed and enforced.

San Pedro Harbor Cases. These cases were commenced prior to my last report, and reference is therein made to them. Prior to the presentation of such report these cases had been tried before the Superior Court of Los Angeles County, and were then under submission. Shortly after the filing of that report, judgment was entered in favor of the State and fully supporting its contention. Thereafter the defendants appealed to the Supreme Court, the cases were, during the present year, briefed and argued in such court, have been submitted, and now await decision. Should the judgments rendered by the lower court meet with affirmance, such judgments will result in freeing San Pedro harbor of the claims of private owners, thus making it, in fact, a public harbor, while the principle established will have like application throughout the entire State.

We have endeavored through this litigation to gain for the State an affirmance of the principle that the State holds title to tide lands, as well as to the lands covered by the inland navigable waters, in trust for all the inhabitants of the State, and that the inhabitants have the right of access to, and use of, such lands for the purposes of navigation, commerce, and fishery. In short, that the State holds the title in trust for the people, who are the beneficiaries of such trust, and that the State may not, by conveyance or otherwise, destroy the trust property, or deprive the people of its beneficial use.

Our contentions in this behalf were sustained by the judgments of the trial court, and an affirmance of those judgments will result in restoring to, and preserving for, the State and its people property and privileges of incalculable value.

Bearing upon this matter of tide lands, and the jurisdiction of the State over the same, another question requires mention. The legislature, in the session of 1909, passed an act through which the Board of State Harbor Commissioners was authorized and directed to institute condemnation proceedings against the claimants of some one hundred and twenty-five (125) lots adjoining India Basin in the harbor of San Francisco. At the same session another act was passed, providing for the issuance and sale of bonds to the amount of one million dollars, to provide a fund out of which the judgments in such proceedings should be paid.

These acts are found in the Statutes of 1909, at pages 711 and 713, respectively.

I understand that the lands sought to be condemned are covered by the tidal or navigable waters of San Francisco Bay. Assuming this to be true, the purpose of these acts is inconsistent with the position of the State, and with the judgment of the court in the tide land litigation above referred to.

Many years ago the lots in question were conveyed to individual claimants, but it is the State's contention that these conveyances were unauthorized, and, therefore, void. If this contention be correct, there is no outstanding title to condemn, but, without condemnation, the State can retake these lands, if the same be required for harbor exten-

sion and improvement. Though conveyances of a part of the harbor bed have been made, I think it is clear that the State may retake the lands conveyed whenever the same are required for harbor improvement in the furtherance of the shipping facilities of the harbor. If the claim of the State in this regard be resisted, it would seem that ejectment, rather than condemnation, proceedings would be the proper remedy.

I am informed that the proceedings contemplated by these acts have been commenced, and it would seem advisable that these cases be held in abeyance, at least until the decision of the Supreme Court has been rendered in the tide land cases above mentioned.

This same question has come up in another form. Through proceedings incident to street improvement and extension, the city and county of San Francisco has sought to levy assessments upon certain of the tide lands in San Francisco Bay, owned by the State, and payment of the amounts so levied has been demanded. Payment has been refused, on the ground that these lands are devoted to a public use, namely, navigation, commerce, and fishing, and that, by reason of this devotion to a public use, the same are not subject to such assessment.

An action has been brought by the City to recover the amount of one of these assessments, and in such action this office has appeared on behalf of the State. Through this action the law upon the subject will be determined.

While the State does not seek to avoid the payment of any assessment charge that may be legally levied against it, the officers having the custody of the moneys of the State are impelled by their duty to refuse payment of these demands until their legality is established. If the State has not the power to deprive the People of the beneficial use of these lands through sale, it is difficult to see how such lands can be legally taxed or assessed by a municipality, for the right to tax or assess ordinarily involves the right to take, if the tax or assessment be not paid.

Through these several cases it is believed that the law upon these questions will be definitely settled.

Pullman Company Tax Cases. These cases were referred to in my last report, and were then pending. They involved the validity of the assessment of the property of The Pullman Company. They have since been settled by payment to the State of about \$100,000, being the taxes, penalties, and costs in full.

CORPORATION LICENSE TAX.

By a recent decision of the Supreme Court in the case of *Mulford vs. Curry*, considerable uncertainty as to the application of the corporate license tax act has arisen. Since the decision of the same court in the cases of *Kaiser Land and Fruit Co. vs. Curry*, in which action the constitutionality of the law upon many grounds was attacked, and its validity upheld by the court, it was assumed by this and other depart-