

**BIENNIAL REPORT OF THE
ATTORNEY GENERAL OF
THE STATE OF COLORADO,
YEARS 1915 AND 1916**

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Biennial Report of the Attorney General of the State of Colorado, Years 1915 and 1916 by Fred Ferrar

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FRED FERRAR

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THE STATE OF COLORADO,
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OF THE
Attorney General
OF THE
State of Colorado



Years 1915 and 1916

FRED FARRAR

Attorney General

DENVER, COLORADO
JAMES BROTHERS, STATE PRINTERS
1917

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ATTORNEYS GENERAL OF COLORADO

FROM THE ORGANIZATION OF THE STATE

A. J. Sampson.....	1877-1878
Charles W. Wright.....	1879-1880
Charles H. Toll.....	1881-1882
David F. Urmy.....	1883-1884
Theodore H. Thomas.....	1885-1886
Alvin Marsh.....	1887-1888
Samuel W. Jones.....	1889-1890
Joseph H. Maupin.....	1891-1892
Eugene Engley.....	1893-1894
Byron L. Carr.....	1895-1898
David M. Campbell.....	1899-1900
Charles C. Post.....	1901-1902
Nathan C. Miller.....	1903-1906
William H. Dickson.....	1907-1908
John T. Barnett.....	1909-1910
Benjamin Griffith.....	1911-1912
Fred Farrar.....	1913-1916

YRABELL GROWATZ

ATTORNEY GENERAL'S OFFICE

Fred Farrar Attorney General
Francis E. Bouck Deputy Attorney General
Frank C. West Assistant Attorney General
Norton Montgomery Assistant Attorney General
Wendell Stephens Assistant Attorney General
Clement F. Crowley Assistant Attorney General
Ralph E. C. Kerwin Assistant Attorney General
Margaret E. Fallon Stenographer
Helen Cuthbertson Stenographer
Pauline Hughes Stenographer

(NOTE—For brief periods the following acted as special assistants: Clarence M. Hawkins, W. B. Morgan, John Horne Chiles.)

INHERITANCE TAX DEPARTMENT

Leslie E. Hubbard
..... Inheritance Tax Appraiser and Assistant Attorney General
Edwin L. McCulloch } Deputy Inheritance Tax Appraisers
Leo U. Guggenheim }
Edith Mary Stewart Stenographer
Margaret McDermott Clerk

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Biennial Report
of the
Attorney General
of the
State of Colorado

His Excellency,
GEORGE A. CARLSON,
Governor of the State of Colorado, Denver.

Sir: Pursuant to law, I submit a report of the work of this department for the period commencing with the first day of December, 1914, and ending with the 30th day of November, 1916.

Inasmuch as the work of this department has been largely a continuation of the work of the preceding biennial period, it would seem unnecessary to make a report of any length. The work has continued to be extraordinarily heavy and while many questions which arose during my first term of office were settled or determined during that biennial period, nevertheless some remained for determination during the biennial period just closed.

During my incumbency in the office of Attorney General the department has been a factor in the determination of many new questions arising out of or connected with the numerous constitutional provisions or statutes making what might properly be termed radical changes in the fundamental principles of our state government. I am pleased to say that many questions which were troublesome when these laws first became effective have now been settled, making for more definite construction and procedure under them. Probably the most interesting, from some viewpoints, was the determination of the question as to whether or not freehold cities operating under Article XX of the Constitution were subject to the state-wide prohibition amendment adopted by the people at the general election in 1914. The question arose by reason of the fact that under the authority given in the Charter of the City and County of Denver, the question of prohibition within the City

and County of Denver was submitted to the voters within the territorial limits of the City and County some time early in the year 1915. The vote was in favor of licensing saloons. Pursuant to the result of this election, the authorities of the City and County of Denver proposed to grant licenses expiring at a date later than the first day of January, 1916, the effective date of the state-wide prohibition amendment. It was agreed between myself and the Honorable James A. Marsh, City Attorney of the City and County of Denver, that an early determination of this question was advisable from every viewpoint. Accordingly, Mr. Marsh joined me in an application to the Supreme Court of the State of Colorado to take original jurisdiction of a case in *certiorari* to determine the right of the authorities of the City and County of Denver in this regard, and a decision was rendered by the Supreme Court in the case of *People ex rel. George A. Carlson as Governor and Fred Farrar as Attorney General, plaintiffs, vs. Clair J. Pitcher, Commissioner of Finance and ex-officio Excise Commissioner of the City and County of Denver, and August Koch, defendants*, in which the Supreme Court held that the City and County of Denver was amenable to the provisions of the Constitution concerning prohibition. The decision put at rest those claims which were advanced to the effect that the City and County of Denver, being a charter city, was entitled to determine the question for itself regardless of the action of the State as a whole.

Other decisions of interest to the state might be referred to, but inasmuch as they are rather generally known it would seem unnecessary to revert to them here.

PROSECUTION OF CASES ARISING OUT OF THE COAL MINE STRIKE OF 1913-1914

Pursuant to the direction given by your predecessor, the Honorable Elias M. Ammons, and maintained by yourself, this department continued the prosecution of indictments returned in Las Animas and Huerfano Counties in which various persons were charged with crime arising out of the coal strike in those two counties, and also continued in co-operation with the district attorneys having jurisdiction in the counties of Fremont and Boulder.

Prosecution of these cases was continued to the extent that circumstances and results seemed to justify. The difficulty of obtaining convictions became so great by reason of the dilatory tactics set up by the defense in petitions for change of judge, change of venue and similar things, and so much influence was brought to bear against the continuation of the further prosecution of any of these cases, that it was deemed advisable to dismiss most of them. This was accordingly done. A few of the more serious cases yet remain undischarged, and several, where convictions were obtained, are now pending on writ of error in the Supreme Court of this state.

This department used every effort consistent with the duty of prosecuting officers in the prosecution of these cases, and it is notable that out of all the numerous crimes of violence committed during the strike of the coal miners in the year 1913 to 1914, not one offender is today suffering a penalty for his crime. The difficulty of securing convictions in this class of cases has been such that I am almost compelled to state that the sum and substance of the work of this department in this regard has been to set a precedent which may at some future period in the history of the state enable some other officer or officers to take a stand without equivocation for the enforcement of the law and preservation of the peace in some similar crisis.

INTERSTATE IRRIGATION CASES

The Nineteenth General Assembly made an appropriation of \$50,000.00 for the defense of cases wherein attack was made from the outside against the state or its citizens in the matter of the use of the water of our streams for irrigation. The work done during the biennial period of 1913-14 was fully reported in my biennial report for those years. The Twentieth General Assembly very generously renewed that appropriation of \$50,000.00 and the defense of these cases has been vigorously maintained.

Probably the most important is the Wyoming-Colorado case, an original suit in the Supreme Court of the United States. This case has been fully argued and submitted and a decision may be expected within the next few months.

The Arkansas Valley suit (United States Irrigation Co. vs. Graham Ditch Co., *et al.*), which has been pending since 1910, and which has cost the State of Colorado alone, the sum of \$38,217.97, and the defendants directly affected probably a sum equal to or greater than this amount, was finally settled by an agreement between the various ditch companies in Colorado and the plaintiff. In addition thereto certain other ditches diverting water from the Arkansas River in Kansas entered into the agreement. The settlement required the payment of a certain sum of money by the defendant ditch companies to the State of Colorado, and the case was dismissed. Under the terms of this settlement the plaintiff yielded its claim for its appropriations as of date 1884 and in lieu thereof accepted, as against the defendant companies in Colorado, a date coincident with the commencement of the suit, that is, August 27, 1910. The other Kansas ditches joining in the agreement accepted a similar plan.

Neither the State of Colorado nor any of the officers of the state are parties to this agreement, and the state is left free to contest the question should it ever see fit to do so. However, this settlement, instead of reaching the complete result desired, seems to have encouraged the commencement of another case by other water users in Kansas, for, within the last few weeks, another case has been commenced in the United State District Court for the