

**REPORT OF THE ATTORNEY
GENERAL OF THE STATE
OF COLORADO, FOR THE
YEARS 1891 AND 1892**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649073900

Report of the Attorney General of the State of Colorado, for the Years 1891 and 1892 by Joseph H. Maupin

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JOSEPH H. MAUPIN

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GENERAL OF THE STATE
OF COLORADO, FOR THE
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ACCESSION NO. 2529

State Historical and
Natural History Society

JUN 9 - 1905

DENVER, COLORADO.

REPORT

PRESENTED BY

W. C. Ferris

OF THE

ATTORNEY GENERAL

OF THE

STATE OF COLORADO,

FOR THE

YEARS 1891 AND 1892.

JOSEPH H. MAUPIN,
ATTORNEY GENERAL.

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COLORADO SPRINGS, COLO.
THE GAZETTE PRINTING COMPANY, STATE PRINTERS.
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REPORT
OF THE
ATTORNEY GENERAL OF COLORADO.

STATE OF COLORADO,
ATTORNEY GENERAL'S OFFICE,
DENVER, COLO., November 29, 1892. }

To His Excellency, JOHN L. ROUTT,

Governor of Colorado.

SIR—I beg leave, respectfully, to submit the following report, pursuant to law requiring the incumbent of this office to report to the Governor biennially:

1. The rapid growth and material development of this State, the consequently necessary increase, from time to time, of the number of district and other subordinate courts, the creation by the last General Assembly of an additional appellate court to facilitate the disposition of the multiplying causes for review by appellate jurisdiction, are facts which forcibly suggest the increasing importance and onerous character of the duties pertaining to this office.

2. In addition to the duties named, numerous equally important responsibilities are imposed upon the Attorney General, as a member of different boards which are created by the Constitution and statutes, of which the principal are, the State Board of Land Commissioners, the State Board of Equalization, and the State Board of Education. The Constitution vests in the first-named board the sole power to control and dispose of the public lands, and the beneficent purposes for which they were granted to the State, the sacred trust impressed upon them by the terms of both the grant and our State Constitution, requiring that the merits of each of the numerous applications for lease and sale of said lands should be considered and determined, are some of the serious considerations which claim the attention of every conscientious member of said

board. The mere mention of the Board of Equalization, which has for its purpose the adjustment of the burdens of taxation, in order that they may be equally borne by all citizens, and that the State government may obtain its necessary revenue, is sufficient to suggest the importance of the duties and magnitude of the responsibilities to be performed and discharged by its members. Your Excellency, as a member with me of each of said boards, is familiar with the exacting nature of the work required of them, and you are sensible of the extent to which all of the people of the State are concerned in its intelligent and faithful performance. It has been unavoidably necessary to devote so much of my time to official duties of this character and other matters, a part of which are hereinafter mentioned, that I have been compelled to leave almost entirely the work of the character first named—the attendance upon the courts and management of State litigation—to my able assistant, Mr. Henry B. Babb, who, I am glad to say, has, in the performance of such duties, uniformly protected and advanced the interests of the people with unexcelled promptness and efficiency. During my entire term of office it has been unnecessary to expend any money in the employment of special counsel in State cases of unusual difficulty and importance, and no part of the appropriation to meet such exigencies, which is under the control of the Governor, has been expended for this purpose.

3. The State litigation mentioned embraces:

First—The preparation for the appellate courts, by briefs and the argument of cases in which the State is interested, which are brought for review from the lower courts, and suits which are originally brought in said appellate courts.

Second—Cases in the district courts to which some State officer is a party and requests the assistance of the Attorney General, or in which the Governor directs the Attorney General to represent the State.

Third—Cases in the United States courts and land offices, in which the title or claim of the State to public lands is involved.

4. Pressing duties which were deemed to be of greater importance to the people have prevented this office from appearing in many of the cases of the class last mentioned, and the official integrity of those whom the United States

government has appointed to adjudicate such cases has, at times, been the sole protection of the State in the matters in controversy. The greater part of such cases, however, have been those in which the proceedings were chiefly formal in character, and in which the protests of the State, stating the defenses to the applications, respectively, were sufficient to secure a reasonably fair trial. Some of the cases of the class last mentioned, as will appear later on, are of the utmost importance to the State; and in such, the interests of the State have been vigilantly defended.

5. Some idea of other duties of the office is suggested by official opinions, which are hereinafter published, in addition to the two hundred letters, more or less of the same advisory character, which have been written to county and other officers, and many hundreds of letters to other persons. The law prescribing the duties of the office does not require the Attorney General to advise county officials and other persons than the State officials specified in said law; and perhaps a better practice would be to decline to answer inquiries from other persons than those specified, but it is frequently as easy to yield to the inclination to oblige the person seeking information as it is to refuse.

6. In addition to the foregoing, there have been, during my term of office, eighty-eight requisitions from the Governor of this State upon the Governors of other States and Territories, for the extradition of fugitives from justice of this State, and seventy-seven requisitions upon the Governor of this State from the Governors of other States and Territories for the extradition of fugitives, from their respective jurisdictions, found in this State. All papers of this character are referred to the Attorney General, who decides as to their formal sufficiency before the Governor grants or refuses the process requested. It has been, during my administration, and I think for a number of years, the practice of this office to conform to the rules adopted by the Inter-State Extradition Conference, which met in New York city in 1887. The occasion for procuring the extradition, from another State, of escaped criminals, is somewhat infrequent in many parts of the State, and it is not surprising that district attorneys, and sometimes other persons who act without authority, should be unfamiliar with such proceeding, and should not, in case of emergency, at once know what text books to consult for proper legal direction. This has been the cause of great inconvenience

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and delay in some cases, and I think it would be well if the General Assembly would make the rules above mentioned statute law, so that in any case information as to the correct proceeding would be easily accessible.

7. I believe that this brief statement of the duties of the office is sufficient to suggest to the General Assembly that such appropriation should be made for my successor in office as will enable him to employ one or more assistants, having the highest order of legal ability.

8. The following are some of the most important cases which have been tried or heard in the appellate courts, or are pending for trial or final hearing, with a brief statement of the nature of each one mentioned:

The case of *Carlile vs. Henderson* was an amicable suit by the State Treasurer against the State Auditor, to test the power of the General Assembly to increase the salary of the former during his term of office. The statute upon which the action was based, increased the amount of his official bond from \$300,000 to \$1,000,000, and increased the salary from \$3,000 to \$6,000 per annum. This act went into effect upon the day which, by law, he should qualify, and he gave the increased bond. Acting upon advice from this office, the Auditor refused to pay the increased salary; and the Supreme Court, in the case of *Carlile vs. Henderson*, recently decided, has construed the law the same way.

The *Greenwood Cemetery Land Company vs. John L. Routt et al.*, and *S. H. Baker vs. Id.*, are suits involving the controversy, already familiar to the public, relating to the sale of certain school lands, near the city of Denver, generally known as the "Argo" lands. The first case was tried on its merits, in the District Court of Arapahoe county, last June, and judgment rendered for the plaintiff, from which an appeal was taken by defendants to the Supreme Court, where it is now pending and will soon be decided.

The principal objection to the sale relied on by the defendants, who are the members of the present Land Board, is that the former board attempted to delegate all the power vested in it by statutes, relating to advertisement and sale, to the register of the board, no member of said board being present at such sale, nor in any other way giving it attention. From this abandonment of its trust by the board, it is contended that all other irregularities complained of resulted; and I believe that no more

important civil case was ever tried in this State, inasmuch as it involves principles which affect all educational interests of the State, depending upon the proceeds of school lands, for all time to come.

M. V. B. Wason vs. the same defendants (the Land Board), was a proceeding to enjoin the sale of school lands in Creede, which had been platted by the board and advertised for sale. The principal question was as to the power of the board to declare a lease forfeited for breaches of covenant by the lessees, which, by the terms of the lease, worked a forfeiture, there being no power to make such contract expressly vested in the board by statute. The District Court of Montrose county gave judgment for the defendants, and suit was not further prosecuted.

In re Cummins, Application for writ of *habeas corpus*, was brought originally in the Supreme Court. The decision in this case fixed, for the first time in this State, the important principle in criminal law that the fact that the prosecuting witness was *particeps criminis* with the accused is no defense to a prosecution for obtaining money under false pretenses.

The case of *The Collier & Cleaveland Lithographing Company vs. John M. Henderson, Auditor*, is important, in that the law established by its final determination denies the power of the General Assembly to authorize the expenditure of any public money for any purpose, except legislative uses, in any other way than by bill regularly passed and submitted to the Governor for his approval or veto. The plaintiffs in this case sought to compel the Auditor to issue his warrant for the printing of the State Engineer's report, which had been done according to a supposed contract with the Secretary of State, made pursuant to a concurrent resolution of both houses of the General Assembly, directing the printing of a larger number of said reports, with a larger number of pages, than was provided for by the statute, such excess number being "for distribution among the people." The Court of Appeals sustained the position taken by the Auditor and this office, holding that said resolution was not law enacted in the formula and manner prescribed by the Constitution, that it was therefore void, and no valid contract could be made upon its authority. The saving to the State, by thus restricting the frequently too inconsiderate action of the Legislature in directing expenditures, can be best estimated by those who are familiar with accounts against the