

**BIENNIAL REPORT OF THE  
ATTORNEY GENERAL OF THE  
STATE OF COLORADO, FOR  
THE YEARS 1905 AND 1906**

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Biennial Report of the Attorney General of the State of Colorado, for the Years 1905 and 1906 by  
N. C. Miller

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**N. C. MILLER**

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THE YEARS 1905 AND 1906**



Report  
of the  
Attorney General  
of the  
State of Colorado  
for the  
Years 1905 and 1906

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N. C. Miller  
Attorney General



Denver, Colorado  
The Smith-Brooks Printing Company  
1906

L20224

# Attorneys General of Colorado

From the  
Organization of the State

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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.....	1895-1896
Byron L. Carr.....	1897-1898
David M. Campbell.....	1899-1900
Charles C. Post.....	1901-1902
Nathan C. Miller.....	1903-1904
Nathan C. Miller.....	1905-1906

Biennial Report of the  
**ATTORNEY GENERAL**  
of the  
State of Colorado

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DENVER, November 15, 1906.

To the Honorable,

JESSE F. McDONALD,  
Governor of the State of Colorado.

Sir—In compliance with the constitutional and statutory requirements of the State of Colorado, I beg leave to submit a report of the official conduct of the office of Attorney General from the 10th day of January, 1905, to the 15th day of November, A. D. 1906.

I submit herewith a complete list of criminal and civil cases pending in the various courts in which this office appeared for the State or its officers.

The opinions contained in this report do not include all that have been written during the biennial period. I have endeavored to select such as will be of more or less use hereafter, and have omitted those which have only a passing value.

A great many requests for opinions have been made by persons not entitled to receive them. These have been refused, except in a few cases. There is no law requiring the Attorney General to furnish opinions to persons other than State officers, the Legislature and State institutions.

The work of this office has been largely increased in recent years, owing to legislation which has cast additional burdens upon it. It is no longer true that the criminal work is the most important or the most laborious. The work that requires the most time relates to the civil law. For instance, the Revenue Act imposing the inheritance tax has made an immense amount of labor for this office, and vexatious questions are raised for which there is often no precedent. Although the law imposes no duty on this office to look after the collection of the inherit-

ance tax, yet the Governor has the right to direct the Attorney General to take care of all suits in which the State has an interest, and this has been done by a written order. Unless an issue is raised concerning the payment of the tax, there is no suit and we are not authorized to look into the matter.

In my judgment, the inheritance tax is becoming too large and important to be handled in this way. There has already been collected \$126,214; during my term of office, a judgment has been obtained against the Stratton estate for \$284,064.33, with interest from the 14th day of September, 1902, until paid. The accumulated interest now amounts to about \$76,000. The latter item is disputed by the executors and it is possible a writ of error will be sued out to test the validity of the judgment directing the payment of interest. The bookkeeping and auditing department of the State is in the Auditor's office, and my judgment is that a clerk should be provided who has authority to examine all papers and inquire into all proceedings concerning the inheritance tax, and when matters appear which should be litigated the Auditor has authority to call upon the Attorney General to represent the State. It would not be just to require the Attorney General's office to look into mere matters of routine; this detail work can be done better by the Auditor's office. In one or two instances, mistakes have been discovered which would more than pay the salary of such employe. How many more mistakes exist throughout the State undiscovered, I am unable to report. The law, as it now stands, imposes some duties upon county judges, district attorneys and county treasurers in the collection of this tax. Experience shows that the State's interests can not be properly looked after by local officials. Where the State has a large interest, it should have its own representative to look after it in one of the executive offices. The administration of the law relating to inheritance taxes has raised many difficult and intricate problems concerning which no precedents are found.

During this biennial period the Supreme Court has decided that each heir of the first class should have an exemption of \$10,000. A similar decision was rendered in the State of New York, and soon thereafter legislation was adopted making it clear that only one exemption of \$10,000 should be deducted from the entire estate. If this is the desire of our Legislature, a similar measure should be enacted.

The increasing value of lands, as well as their growing scarcity in Colorado, has made the duties of the State Board of Land Commissioners more exacting and difficult to discharge. Four years of experience as a member of this Board has impressed upon me the importance of doing the work in that office well. I do not believe that any private individual would undertake to deliver so many important papers affecting titles to land, unless the documents were examined by a competent attorney. We have employed a special counsel at \$1,500 a year,



but I believe the efficiency of this counsel would be improved by putting him under the direct control and supervision of the Attorney General. I may say that I am opposed to the present plan.

The legal work connected with the land office and the collection of inheritance taxes will afford all the labor that one good attorney can possibly do well. Leaving these out of consideration, the Attorney General's office has the additional work growing out of the department of irrigation added to the Engineer's office, and the collection of corporation taxes devolving upon the Secretary of State. This extra work, along with the work that has always been heretofore in the Attorney General's office, will be all that he and two assistants can accomplish.

The care of the public lands of the State is increasing each year. I do not believe the subject receives the attention it requires from the executive officers composing the State Board of Land Commissioners. It may have been all right to form this Board from the executive officers at an early date, but the growth of business in all the departments of the State has increased so that these officers are not able to give the business the attention it deserves. It would add very little to the cost of the management of the Land Office to constitute a board of three, who would give their entire time and attention to the affairs of this department. For instance, the register now receives a salary of \$3,000, and a deputy register \$1,800, and a chief appraiser is paid \$1,500. If a new board were made up of these three persons at a salary of \$3,000 a year, the gain to the State would far exceed the increased cost to the people. The additional expense would be \$1,200 in the case of the deputy register and \$1,500 in the case of the chief appraiser, or, altogether, an increased expenditure of \$2,700. The interests of the people would be better looked after. I have no doubt that the revenues of this office would be greatly increased and its efficiency improved if the Board could give the subject its entire attention. We have discovered in many instances that valuable tracts of land were being rented for a nominal sum, and have raised the rental. I have no doubt that many instances of this kind exist which have not come to the knowledge of the Board. I think that a constitutional amendment should be submitted to the people creating a land board of three members, giving them entire charge of the business of that office. The efficiency of the office will be improved without additional expense.

The lands of the State must be protected in regard to water, and how this can be done must be determined by inspection. This question is of such great importance that it can not be longer deferred unless the public lands of the State are to be rendered valueless. I think I can safely say that the Board, made up of executive officers, as it now is, has almost no knowledge of the physical condition of particular tracts of land. It is therefore impossible for the Board to deal with the question of irriga-

tion, and yet this problem must be solved in order to protect the value of these lands.

I believe that the new board should have a term of at least six years, and one member go out every two years. This would result in a majority of the board always having some knowledge of the business of the office. There are some counties in the State where the quantity of State lands is an impediment to the development of the county. These lands do not bear a proportionate share in the expense of maintaining county roads, public schools and courts of the county. Whatever profit is derived from the lands is paid into the State treasury, and is distributed throughout the State in proportion to the school population. The large cities derive the greater share of it, while the small counties where it is situated bear all of the burden of protection. I am convinced that the question of managing the State lands is of such vast importance that it should be submitted to a board who can give it entire attention.

On February 10, 1903, a suit was commenced in the District Court of the city and county of Denver to enforce the collection of the State license tax imposed on corporations. This suit is now pending in the Supreme Court of the United States on a writ of error taken out by the American Smelting and Refining Company. It has been set for argument on the 17th day of December, and will be disposed of before my term expires.

It has been impossible to collect this tax from corporations who saw fit to decline to pay, for the reason that the suit has been looked upon as a test case to settle the constitutionality of the law. Since the 22d day of March, 1902, there has been collected from corporations for the State license tax the sum of \$231,706.97.

The law framed for the organization of corporations was adopted at a time when they were not so important as they are to-day. Few corporations had a capital of a million dollars at the time the legislation was enacted. The growth of these concerns is so large to-day that it is safe to say that 80 per cent. of the business is conducted by them. This is the statement made by one of the federal judges.

The articles of incorporation filed with the Secretary of State under the general laws constitute a contract between the State and the company. There is no supervision on the part of the People as to those instruments. The statutes define what the articles of incorporation of various companies shall contain and what the limitations on their powers shall be, but there is no machinery provided by statute to enforce compliance with these laws.

A corporation organized for mercantile business may attempt to "ring in" a clause allowing it to do a banking business. A mining company may attempt to include a franchise to build a railroad. In fact, an examination of the articles of incorporation in the office of the Secretary of State will show that some

of them include almost everything within the field of business. The State is the loser of large sums of revenue by this policy, and the rights of the People themselves are not protected. Moreover, the statutes governing the organization of railroads are entirely different from those concerning mining corporations.

I would therefore recommend that a statute be adopted requiring the articles of incorporation to be submitted to the Attorney General for approval before they shall be filed by the Secretary of State.

During the last session of the Legislature a bill was drawn up to authorize the Governor to examine, personally or by his agent, the books and finances of every department and bureau of the State of Colorado. The measure fell by the wayside for want of time for its consideration. The lack of such power on the part of the Governor, except in the case of the offices of the Treasurer and Auditor, was passed upon in an opinion signed by Hon. Calvin E. Reed and myself. We jointly made a thorough examination of the law at the request of Governor Peabody, and united in the opinion that the Governor does not now possess the authority to examine the books and finances of the different bureaus and departments.

The statutes of the State of Colorado are almost destitute of any legislation on the subject of trusts and unlawful combinations. It is true that there are constitutional restrictions, but these provisions are not supported by any statutory legislation. Almost every state in the Union has adopted some laws on the subject which enable the Attorney General to make the proper investigations and take the necessary steps to determine such unlawful combinations. There is not even a statute in the State of Colorado authorizing the Attorney General to begin a *quo warranto* proceeding. In this respect the office is entirely subordinate to the district attorney. This should no longer continue, but an appropriate statute should be adopted giving the Attorney General, who represents the entire People, power to begin a *quo warranto* proceeding when, in his judgment, it is deemed necessary, or when he is ordered so to do by the Governor. I think this statute should be in the alternative. I find it so in most of the states. This statute should also be supported by proper legislation, defining trusts and unlawful combinations, and imposing proper penalties and authorizing legal proceedings to be taken for their enforcement.

The corporation laws should be amended so as to require all domestic corporations to have at least one resident director, or else appoint an agent in the State upon whom legal process can be served. It is possible, under the laws of Colorado, to organize a domestic corporation and have all the directors non-residents and thus evade the service of any process in the State of Colorado. In this respect, the legislation of this State is far behind that of other States.