

**REPORT OF THE
ATTORNEY-GENERAL OF
THE STATE OF COLORADO
FOR THE YEARS 1901-1902**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649073924

Report of the Attorney-General of the State of Colorado for the Years 1901-1902 by Chas. C. Post

Except for use in any review, the reproduction or utilisation of this work in whole or in part in any form by any electronic, mechanical or other means, now known or hereafter invented, including xerography, photocopying and recording, or in any information storage or retrieval system, is forbidden without the permission of the publisher, Trieste Publishing Pty Ltd, PO Box 1576 Collingwood, Victoria 3066 Australia.

All rights reserved.

Edited by Trieste Publishing Pty Ltd.
Cover @ 2017

This book is sold subject to the condition that it shall not, by way of trade or otherwise, be lent, re-sold, hired out, or otherwise circulated without the publisher's prior consent in any form or binding or cover other than that in which it is published and without a similar condition including this condition being imposed on the subsequent purchaser.

www.triestepublishing.com

CHAS. C. POST

**REPORT OF THE
ATTORNEY-GENERAL OF
THE STATE OF COLORADO
FOR THE YEARS 1901-1902**

REPORT
OF THE
ATTORNEY GENERAL
OF THE
STATE OF COLORADO
FOR THE
YEARS 1901-1902

CHAS. C. POST, Attorney General



SMITH-BROOKS LIBRARY

DENVER, COLORADO
THE SMITH-BROOKS PRINTING CO., STATE PRINTERS
1902



BIENNIAL REPORT
OF THE
ATTORNEY GENERAL
OF
COLORADO

TO HIS EXCELLENCY,
JAMES B. ORMAN,
GOVERNOR OF COLORADO.

Sir—In obedience to constitutional and statutory requirements, I have the honor to submit to Your Excellency the following report of my official actions from the 8th day of January, A. D. 1901, to the 15th day of November, A. D. 1902.

I have attended in person at the State Capitol during the sessions of the General Assembly and of the Supreme Court, and have appeared in all actions in which the state has been a party or been interested; I have prosecuted all actions relating to matters connected with the executive department; have delivered written opinions on all questions submitted by any branch of the executive and legislative departments and have prepared forms for contracts and other writings required by the state.

You are further advised that no moneys belonging to the state have been received by my office. In all suits brought, the matter of expenses and costs has been referred to the Board of Audit, so that I have not received or disbursed any moneys in my official capacity.

IMPORTANT STATE CASES.

The most important litigation in which the state has ever been involved is pending at this time in the action known as:

KANSAS VS. COLORADO.

Litigation between states, except as to the determination of boundary lines, is practically unknown. At the present time there are but two cases of this nature before the Supreme Court of the United States, that of *Missouri vs. Illinois*, involving the question of the pollution of the waters of the Mississippi river, and the case of *Kansas vs. Colorado*, involving the right to the use of the waters of the Arkansas river for the purposes of irrigation.

In this case, Kansas contends for the enforcement of riparian rights as they existed at common law. Riparian rights are those which are properly appurtenant to lands bordering on streams. Under this doctrine, the owner of such lands is entitled to the undiminished flow of the water to his own land, without interference by the users above him.

Colorado defends upon the ground of the necessities of the case that call for a different, higher and more widely beneficial use—the right to divert such waters and apply the same to the reclamation and irrigation of arid lands. This custom, known as the Doctrine of Appropriation, has prevailed in Colorado since its earliest settlement, and has been rec-

ognized by various congressional enactments, and has never been questioned until the present time.

Relying upon their heretofore undisputed right so to do, the citizens of Colorado, since the organization of the territory, have taken from the Arkansas river, 713 ditches with a total appropriation of 5,877 cubic feet of water per second, and have thereby brought to a high state of cultivation over 500,000 acres of land which, but for this aid, would remain barren.

In the same period the citizens of Kansas, asserting the same right, have constructed over 500 miles of canals and ditches, and have reclaimed over 150,000 acres of land.

By their statutory recognition of the right of appropriation and its practical use on a large scale, we claim that that state can not consistently deny the validity of appropriations on this side of the line and seek to obtain by federal interference the flow of water across the line, that it may then be immediately appropriated to the same uses which they deny to ourselves.

When it is considered that the agricultural and horticultural products of the state exceed in value the output of the precious metals, and that every dollar of this vast industry is threatened, should the contention of the complaining state prevail, there should be no parsimony in dealing with this vital and pressing question.

The legislature of Kansas, in 1901, made a large appropriation to commence the suit, which will doubtless be followed by still larger appropriation by the legislature to assemble in 1903, to vigorously continue its prosecution.

I, therefore, recommend to Your Excellency to urge upon the general assembly a liberal appropriation for the expenses of this suit, which requires an historical presentation of the use and custom of all

arid lands in the Louisiana and Mexican cessions to appropriate water for irrigating purposes. For, if our contention in this instance is not sustained, we must expect similar attacks as to the water of all the streams which cross the boundary lines of the state.

THE REVENUE LITIGATION.

The Thirteenth General Assembly passed a General Revenue Act, drafted on the bill framed by the Revenue Commission, being a complete revision of the revenue law of the state and introducing many changes, in the hope of obtaining a fair adjustment of the valuation of corporate and other property. It provided for the selection of a certain number from among the county assessors, to be known as the State Board of Assessors, who were required to perform the duties heretofore placed upon the State Board of Equalization.

The constitutionality of this provision was attacked by suit brought in the District Court of Pueblo, in which suit, the relators assuming that the State Board of Equalization was still the proper body to perform such functions, prayed this writ of mandamus to compel such latter board to make the assessment for 1901.

This mandamus was granted, whereupon the case was taken on behalf of the state to the Supreme Court. While pending in that court, and before final argument could be secured upon this writ of error, the State Board of Assessors were enjoined by the Federal Court from proceeding as directed by the Act of 1901.

Under this conflict of jurisdiction, in order to prevent danger of the entire loss or great delay in the collection of the corporate revenue for that year, a special session of the general assembly was called, which, while it re-enacted the Revenue Act of the

preceding session in substance, omitted its creation of a State Board of Assessors, the validity of which board was the principal contention in both the mandamus suit and the injunction cases. The result of such action was that the issue before the Supreme Court and in the Federal Court became no longer of practical interest to the contending parties, according to the decision by each of said courts, and the suits in both courts were dismissed.

COLLECTION OF INTEREST ON STATE TAXES.

For many years past, it has been a custom of the treasurers of the various counties, with some few exceptions, to remit to the state treasurer the amount of taxes, less the interest collected thereon from the taxpayer. The interest thus collected on both county and state taxes was treated as belonging to the county, and was applied to county purposes. To this extent, therefore, the state revenues were depleted. I believed that under the law the state was entitled to all the interest and penalties thus collected from taxpayers upon delinquent state taxes, and that the various counties were liable to the state for the amounts so collected and applied to county purposes.

Shortly after assuming the duties of office I caused suit to be brought against the board of county commissioners of Prowers county, to test the question of the ownership of such funds. Judgment was obtained by the state in that case, and upon appeal to the Court of Appeals, was affirmed. *State vs. Prowers County*, 69 Pac., 73.

This view of the law was approved by the general assembly and enacted as section twelve of the Revenue Act, which provides that all interest and penalties shall be distributed in the same proportion as the tax.

I am now arranging with the boards of county commissioners of the various counties, so that the sums due from each may be duly allowed and promptly remitted to the state treasurer.

This work has involved an examination, on the part of this office, of the books of the county treasurers of all the counties of the state since the admission of the state, and where a county was organized since that time, from the date of such organization, to the present time.

This work has been done with painstaking thoroughness in order to determine the amounts that should be paid. In this work I have had the courteous assistance of the various officers in the counties, which has done much to facilitate the great labor involved. The work has been performed principally by my special assistant, D. B. Carey, Esq.

The amount thus recovered will be not less than two hundred and twenty-five thousand dollars.

CRIMINAL CASES.

From the 8th day of January, 1901, to the 15th day of November, 1902, this office has appeared on behalf of the people of the state in thirty-five criminal cases, coming to the Supreme Court from the various district courts of the state. The list presented shows the status of each case at the date of this report. Where the words "at issue" occur, it indicates that the argument on the part of the people has been prepared, printed and filed so that the case is ready for the submission docket of the Supreme Court.

In many cases the abstract presented by the appealing party was doubtless very hurriedly prepared, and this has made necessary an examination of the entire original record on the part of this office.

The Supreme Court has from time to time suggested the advisability of an act allowing parties convicted of crime a reasonable opportunity for making an application to the appellate courts for a super-seedeas. Under the prevailing practice, as soon as sentence is imposed the defendant is conveyed at once to