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FIRST ANNUAL REPORT  
OF THE  
ATTORNEY GENERAL  
FOR THE YEAR 1879.

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# REPORT.

OFFICE OF THE ATTORNEY GENERAL, }  
STATE OF NEVADA, }  
CARSON CITY, January 1st, 1880. }

HIS EXCELLENCY,

JOHN H. KINKEAD,

GOVERNOR OF THE STATE OF NEVADA :

*Sir:* In accordance with the requirements of law, I have the honor herewith to submit to you this, my annual report, for the year ending December 31st, 1879 :

My official term began on the 6th day of January, 1879. I have found the laws inadequate for the purposes intended in many instances, or sections of one Act in conflict with those of another, and sections of the same Act that conflict with one another, and shall, in my next report before the meeting of the Legislature, point out such conflicting Acts and sections, and recommend such changes as I may deem for the best interest of the State.

The calls for official opinions have been very numerous. I have given many written legal opinions which are of record, and very many more verbal opinions of which no record is kept. Those written I will transmit to my successor in office.

Section 17, of Article IV of our Constitution, provides, among other things, that "each law enacted by the Legislature shall embrace but one subject and matter properly connected therewith, which subject shall be briefly expressed in the title, and no law should be revised or amended by reference to its title only; but in such cases the Act as revised, or section as amended, shall be re-enacted and published at length."

This provision is mandatory, and any law embracing more than one subject matter, or containing sections within the body of the

Act not expressed in the title; and an Act which is expressly amendatory or revisory, and does not comply with it substantially, would be held by our courts as nugatory.

From an examination of our statutes, it will be seen that there are sections of Acts not referred to in their title, and attempts have been made to revise and amend laws by reference to their titles or sections only; so I feel it my duty to respectfully suggest, through you, to the Legislature, that it would be wise that each Act should contain but one subject and the matter connected therewith, which shall be expressed in its title; and that all Acts expressly amendatory or revisory of other Acts should be, by republication of the parts intended to be amended or revised, not only by titles, but also by their chapter or date of approval.

This course will insure the validity of legislation in so far as this feature of the section of the Constitution is conserved.

At the session of the Legislature in 1879, a bill was introduced to create a State Board of Equalization, for the purpose of equalizing property in two or more counties of this State, but failed to become a law.

I think we ought to have a law of that kind to govern us, as it would have a tendency to equalize property throughout the State, and prevent discrimination in the assessment of the same class or species of property, and would have the effect to establish a uniform valuation for all kinds of property throughout the State.

Since I came into office, I have learned that the State has some claims against the General Government, growing out of our Indian wars; but have not been able to get at the facts or figures. I have, therefore, made out and sent to John Mullan and Sidney I. Wailes a power of attorney to appear for me before any or all of the departments and Congress at Washington, and, in the name of the State of Nevada, to ask, demand, and receive any and all money that may be due from the Government to the State of Nevada, which action, on my part, I hope, will meet with the approval of Your Excellency and the Legislature when it convenes.

The law makes it the duty of the Attorney General to attend to and prosecute all criminal cases on appeal to the Supreme Court, and to attend to all other cases in which the State is interested. Following you will find a list of all such cases attended to by me, and the disposition made of the same:

Soon after the adjournment of the last session of the Legislature, I was called upon by the Controller for an opinion as to the constitutionality of the law appropriating the sum of thirty thousand (\$30,000) dollars, for the purpose of creating, establishing, and supporting an asylum for the indigent poor and maimed of this State. I gave it, as my opinion, that the law in question was in conflict with Section 3, of Article VIII of the Constitution, which opinion has been confirmed by a decision of the Supreme Court of the State of Nevada, in the case of Keyser & Elrod vs. J. F. Hallock, State Controller.

The Controller and myself have found it necessary to visit different parts of the State, during the past year, for the purpose of prose-

cutting parties for a violation of revenue laws, and I have to report that the laws in this respect (with very few exceptions) have been complied with.

In June, 1879, I was sent by the Warden of the State Prison to Elko, to collect a bill due the State Prison, for boots and shoes furnished one Israel Cohn, who was insolvent, and had made an assignment of his property for the benefit of his (Elko County) creditors. Upon an examination of his affairs, I became satisfied that it would be better for the State to compromise with the creditors of said Cohn. I accordingly settled by accepting seventy-five cents upon the dollar of the amount due from said Cohn, which sum has been paid, and I am pleased to say that my action in the matter has been approved by the Warden and the Board of Examiners.

In May, 1879, I commenced an action, in the name of myself, as a member of the Board of Examiners, against S. B. Smith, of Aurora, to recover an amount due the State Prison for boots and shoes sold and delivered to said Smith by the Warden of the State Prison, and recovered judgment against Smith. The largest portion of said judgment has been paid; the balance will be paid in a short time.

On the 29th day of December, 1875, an action of ejectment was commenced in the Circuit Court of the United States of the Ninth Circuit District of Nevada, by John H. Adams and William S. Mesick against the State Board of State Prison Commissioners of the State of Nevada, and M. R. Elstner and P. C. Hyman, the Warden and ex-Warden of said prison, having for its object the recovery of the possession of the land and premises whereon is situated the State Prison of this State. In the year 1878, judgment was rendered by said Court in favor of the State. A motion for a new trial was made, and at the March term, 1879, of said Court, said motion was denied, ending in favor of the State a long and vexatious litigation, and thus has been set at rest the much mooted question as to the ownership of the State Prison property. Much credit is due to the energy and ability of my predecessor, General John R. Kittrell, and his assistant, General Robert M. Clarke, who conducted the legal proceedings in the Court on the part of the State.

My attention has been called to the fact that parties making application to enter unsurveyed Government lands of the United States, under what is known as The Desert Land Act of March 3d, 1877, have included in such entries lands belonging to the State, coming within the sixteenth and thirty-sixth sections donated by an Act of Congress to the State of Nevada, for school purposes. I have called the attention of John Mullan, State Land Agent, at Washington City, D. C., to the fact, and he has presented the claims of the State to the said land in a very able manner before the Commissioner of the General Land Office at Washington, who, I have no doubt, will order the said applications to be rejected, and the said sixteenth and thirty-sixth sections listed over to the State for the purpose contemplated by said Act of Congress.

*State of Nevada vs. The Northern Belle Mill and Mining Company.*

Appealed from the Eighth Judicial District Court, in and for the County of Esmeralda.

This is an action commenced for the recovery of the tax on the proceeds of the mines for the quarter ending December 31st, 1876, and judgment rendered in the lower Court in favor of the State.

The defendant appealed to the Supreme Court. The case was submitted on briefs on the 20th day of March, 1879, and is still undecided.

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*Francis L. Aude, Petitioner, vs. John H. Kinkead, Respondent.*

This was a petition for a writ of mandamus to compel you, as Governor, to issue a commission to the petitioner as District Judge of the First Judicial District, in and for the County of Storey. He claiming that under Section 5, Article VI, of the Constitution, the First Judicial District was entitled to three District Judges, and the law of 1866, redistricting the State of Nevada into judicial districts, and reducing the number of District Judges in the First Judicial District to one, was unconstitutional and void.

The case was argued on the 3d day of February, 1879, and the petition for a mandamus was dismissed.

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*State of Nevada vs. California Mining Company.*

This was a reargument of the case to test the Constitutionality of an Act of the Legislature of 1879, entitled "An Act to discontinue litigation touching inequitable claims for taxes and penalties."

Argued and submitted March 31st, 1879, and is still undecided.

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*State of Nevada vs. Edward Malin.*

Tried and convicted of the crime of embezzlement, in the District Court of the First Judicial District, in and for the County of Storey. Appealed from an order overruling a demurrer to the indictment, and a motion for a new trial.

Judgment affirmed.

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*State of Nevada vs. Robert Frazier.*

The defendant was indicted for murder. Tried and found guilty of manslaughter in the District Court of the Sixth Judicial District, in and for the County of Lincoln.

Appealed from an order overruling a motion for a new trial. Judgment of the Court below reversed, and cause sent back for a new trial.

*Keyser & Elrod, Petitioners, vs. J. F. Hallock, State Controller, Respondent.*

This was a petition to the Supreme Court to compel the Controller to draw his warrant in favor of the petitioners, to be paid out of the appropriation set apart for the purpose of establishing and maintaining an asylum for the indigent poor and maimed of this State. The case was argued and submitted April 7th, 1879, and the petition for a mandamus was dismissed, the Court holding that the law was unconstitutional.

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*James Sias, Petitioner, vs. J. F. Hallock, State Controller, Respondent.*

This was a petition to the Supreme Court for a mandamus to compel the Controller to draw his warrant in favor of the petitioner against the appropriation for the payment of rewards in certain cases. Following are the facts: James Sias, while Sheriff of Eureka County, Nevada, and Deputy United States Marshal, arrested and assisted in bringing on a conviction of W. T. Bell and George Wilson, for robbing the United States mail at Cherry Creek, White Pine County, Nevada. One G. R. Knuckles claimed to be entitled to receive the reward, because he had given to Sias such information as to the whereabouts of the said Bell and Wilson as led to their arrest, and had assisted in bringing about their conviction. The claim of Knuckles was presented to and allowed by the old Board of Examiners, against the protest of Sias. In January, 1879, the claim of Sias was presented to the new Board of Examiners, and by them referred to me. I recommended the allowance of the said claim by the Board, in order that the whole subject matter might be passed upon by the Supreme Court. I also advised the Controller not to draw a warrant for either of the parties, and compel one or the other of them to apply for a writ of mandamus for the purpose of compelling him (the Controller), to draw his warrant, which course James Sias pursued. The case was argued on the 17th day of April, 1879. The Supreme Court held that Bell and Wilson being arrested under a United States warrant, tried and convicted by a United States Court, for an offense committed against the United States, and the postal department pays its own reward in cases of this kind, neither Sias nor Knuckles were entitled to receive the rewards; and the intent of the Legislature was that the reward should not be paid, except the party was arrested, tried, and convicted by a State Court. The petition for a writ of mandamus was dismissed.

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*The State of Nevada vs. William Soule.*

Appealed from the Sixth Judicial District Court, in and for the County of Eureka. Charge, burglary. Appealed from an order overruling motion for a new trial. Argued and submitted. No decision yet rendered.

*State of Nevada vs. M. M. McCormick, F. O. Connor, H. B. Smith,  
J. Mansfield.*

Appealed from the Sixth Judicial District Court, in and for the County of Eureka. Indicted, tried, and convicted for a violation of the opium law. Sentenced to imprisonment in the county jail. Defendants appealed. The appeal was dismissed. The Supreme Court holding that the judgment of the Court fixed the grade of the crime as for a misdemeanor, they therefore had no jurisdiction of the subject matter.

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*State of Nevada vs. John Davis.*

Appealed from the District Court of the Second Judicial District, in and for the County of Ormsby. Charge, jail-breaking. Argued and submitted. As yet there is no decision rendered.

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*State of Nevada vs. John Davis.*

Appealed from the Second Judicial District Court, in and for the County of Ormsby. Charge, assault with intent to kill. Judgment affirmed.

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*Ex Parte Philipp Diedesheimer.*

This was an application for a writ of habeas corpus by the petitioner, who claimed that he was illegally distrained of his liberty under a warrant of arrest issued out of Justice Moses' Court, of Township No. 1, in Storey County, by James Jewell, Constable of said Township. This action was commenced to test the validity of an Act of the Legislature of 1879, entitled "An Act to protect the owners of stock shares, \* \* \* \*", and permitting the owners of a certain number of shares to visit the mine, \* \* \* \*". Diedesheimer was the Superintendent of the Hale and Norcross mine, and had posted the notices, as required by law, stating the day of the week on which authorized stockholders would be permitted to visit the mine. Under the aforementioned Act, one A. B. Thompson presented himself at the office of the said Superintendent, with the requisite number of shares of stock, and demanded admission to the underground works of the mine. The said Diedesheimer refused the said Thompson admission to the mine, claiming that he had done all that the law required of him, by posting the notices, and the Supreme Court held that he had so done, and ordered that he be released from custody.

*State of Nevada vs. Wm. N. Knoz.*

This party was arrested for a violation of the Insurance Laws, tried by a jury in the Justice Court of Reno Township, found guilty and sentenced to pay a fine of five hundred dollars, or go to jail for six months. The defendant appealed to the District Court of the Second Judicial District, in and for the County of Washoe, where the case is now pending.

*State of Nevada vs. M. Marks.*

Appealed from the Fifth Judicial District Court, in and for the County of Lander. Charge, assault with intent to kill. Case now pending in the Supreme Court.

*Ex Parte Rudolf Mahen.*

This was an application for a writ of habeas corpus, to Judge Sawyer of the United States Circuit Court for the District of Nevada, by the petitioner, who claims that he was illegally detained by the Sheriff of Storey County.

The facts are as follows:

The petitioner was soliciting orders in Virginia City, for the sale of goods by sample, without first having paid the license, as required by the Drummer Act. He was arrested by the Sheriff for so doing.

The petitioner claims that the Act of the Legislature imposing a tax upon traveling merchants and drummers, \* \* \* \* is in conflict with Subdivision 3 of Section 8 of the Constitution of the United States, and is an attempt to regulate commerce between the several States. Our Supreme Court has held the law to be Constitutional.

The case was argued and submitted, and Judge Sawyer now has it under advisement.

*The State Board of State Prison Commissioners vs. Frank Boskowitz.*

This was an action commenced by me upon orders from the Warden of the State Prison, for the recovery of money due the State Prison, for boots and shoes sold and delivered to the said defendant by said Warden. Bonds have been given for the payment of the same by monthly installments.

Respectfully submitted,

M. A. MURPHY,  
Attorney General.