Arizona. Attorney General. AG1.1 :1921-22

BIENNIAL REPORT OF ATTORNEY GENERAL,

1921 -- 1922

W. J. GALBRAITH.

ATTORNEY GENERAL.

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Attorney General.

In his report the attorney general recommends a complete revision of the Arizona code.

Recommends that the state be permitted by law tp purchase and provide insurance for the protection of the state employes.

Recommends that the state engineer's office be converted into a state highway department by the legislature.

Recommends an amendment to the constitution which limited the terms one might hold the governor's office to two and also recommends that the legislature pass a law providing for an extension of time for consideration of legislative bills by the governor

In his oppinion acts of the legislature should not become effective before July 1, following their enaction, ex;ect emergency measures.

Numerous other recommendations, too many.

To His Excellency,
the Governor of the
State of Arizona.

The following is the report from the Department of the Attorney General for the years 1921 and 1922:

Upon taking office we found the court and office work in very good shape. There were but two or three unfinished cases pending in the courts, with practically no office work, so that the Department started with a virtually clean slate.

The cases that were pending upon taking office, were cases involving the jurisdiction of the Corporation Commission. With the consent and approval of the Corporation Commission we secured the services of the same attorney who had been handling the work under the previous administration. We deemed it advisable to retain him to complete the work then under way because of his detailed familiarity therewith.

Upon taking office we found that practically every fund except the salary fund and contingent expense fund, was exhausted, although this office still had six months to run on the then existing appropriation. We take pride in the fact that we finished this six months' period and ended the fiscal year with one of the largest unexpended funds of any executive department in the state, to-wit: $1321.05.

One of the outstanding phases of the work of this Department for the past two years has been undertaking, through legal proceedings, the lowering of the exorbitant freight rates which have been paralyzing, and will continue to paralyze, the industry of this state if allowed to continue. A great deal of time has been expended by this Department in getting this matter in hand, acquiring exact information, instituting suits and preparing briefs. To that end one trip to Washington has been necessary, one trip to Chicago, and on two occasions two members of this Department have appeared before the United States District Court at Los Angeles. We are hopeful that good effect of these efforts will be shown during the coming year. The question of freight rates is of tremendous importance to this state, and this Department is using every effort within its power to accomplish speedy return to noticeably lower rates.

This question of freight rates is not an Arizona question. It is a problem that is facing and is being fought vigorously by every one of the forty-eight states in this country. Very obviously a problem of such importance and magnitude cannot be settled quickly. To date, not one of the forty-eight states appears to have made any considerable progress in its combat against the railroad rates, thus showing the strength of the opposition by railroads.

At the beginning of the term this office filed suit preparatory to beginning at the beginning Arizona's contest against the railroad rates, but we shortly learned that there were already other cases instituted by other states that were then pending before the Supreme Court of the United States. We deemed it advisable, both from an economical point of view and from a saving of time, energy and other respects, to let lie in abeyance Arizona's initiated cases, and to appear in the cases then pending before the United States Supreme Court, for the reason that practically all of the points were raised in those cases.

In February 1921, the State of Arizona, with other states, appeared in the Wisconsin rate case, and that case has been pending ever since, before the United States Supreme Court, without determination. There are other cases pending in the Supreme Court of the United States, to-wit: Illinois, Nebraska, New York and Texas. These, together with the Wisconsin case, in our opinion, raise all points that may be raised in the legal attack on freight rates, and it would be useless waste of time and money to the State of Arizona to institute suits, when the same questions can be and will be decided in these other cases, and therefore, that particular line of attack on railroad rates is being confined for the present to aiding and assisting the other states in their attack on these rates, which cases are already before the Supreme Court of the United States.

Another conspicuous case handled by this Department during the first year was the case involving the determination of the Industrial Commission, created by the Fifth State Legislature. Upon that suit being instituted this Department expressed the opinion that the case would be decided adverse to the state, and for that reason additional outside counsel was called in to support and uphold the law created by our last legislature. As you will recall, the Supreme Court decided adversely to the state's position.

Historically the office was taken over by the present incumbent on the 3rd day of January, 1921, and thereupon Mr. George R. Hill of Globe, was appointed Assistant Attorney General, and William A. Harkins was also appointed Assistant Attorney General. Miss Antoinette Barrett was appointed secretary to the Attorney General

and was given a commission as Assistant Attorney General for the purpose of signing warrants and other office documents in an official capacity. The office started with two stenographers, Elsie Swenson and May Going. Upon the convening of the legislature it became imperative that additional stenographic service be employed, and at one time during the session of the legislature it was necessary to employ as many as five stenographers to carry on the amount of work in this office.

It will be recalled that on the first of the calendar year 1921, nearly all of the state officers were entirely new, and an overwhelming percentage of the county officers all over the state were new, and this office was nearly swamped in attempting to assist the state and county officials in the proper functioning of their duties. This congestion lasted until after the legislature adjourned.

Shortly after the work of this office was undertaken, six tax cases against Gila County were brought into this Department for attention. These actions involved a large sum of money in the nature of taxes. Four cases were also filed against the counties of Pima, Coconino, Yavapai and Maricopa, known as the old Railroad Bond Cases, involving approximately a half million dollars. These were cases of the first importance, and, due to the congestion of work, it was a physical impossibility for these highly important cases to be handled by the regular members of this office. Therefore special counsel was called upon to associate with and represent this Department in these cases.

There also arose the Harris-Ingalls controversy which has been pending in the courts for two or three years. This office deemed it advisable in this case to retain the same attorney who had been handling the case theretofore because of his complete familiarity with the details of this work.

Shortly after taking office, the tremendously complicated and delicate financial situation of this state at the beginning of the term of office, engaged the attention of this Department, and it became necessary to close several banks in the state and have receivers appointed therefor.

Soon after taking office we deemed it highly advisable to the state that all the county attorneys, together with the Attorney General, should form an association to be known as the "County Attorneys' Association, to the end that the law officers of the state should become mutually and personally acquainted

each with the other for harmonious relations, and that we should meet together from time to time to adopt plans and policies favorable to the state's legal affairs, and to endeavor to adopt uniform interpretation of laws that were receiving widely diverging views. The various county attorneys adopted in splendid spirit this plan and policy, and it is my opinion that the Association has been of great value to this state and noticeably assisted all of us in the discharge of our legal affairs.

On the 24th of June, 1921, this office lost through death, Assistant Attorney General, William A. Harkins. His death was a loss to this office; he was a tremendous worker, a man of energy and possessed of a mature judgment that made him very valuable to the public duties to which he devoted himself.

During the spring of 1921 this office took upon itself the duty of writing to all of the judges, county attorneys and justices of the peace in this state, asking that thereafter they keep careful note from time to time of opportunities for remedying our present legislation and suggesting new legislation that would facilitate law work, and asking them to forward their notations to this office as a central gathering point, with the view that when the next legislature meets this information may be compiled and presented to the legislature for its convenience. We have been very much gratified by the splendid response along this line.

In the fall the duties of this office increased surprisingly. It seems from the beginning of our term the work has constantly and progressively increased almost from week to week. During the summer months we were in hopes that the work would lighten, but quite the contrary came to pass, and early in the fall of 1921 it became necessary to appoint another assistant to take the place of Mr. William Harkins. We were very fortunate in being able to secure the services of Judge F. W. Perkins of Flagstaff; a man of maturity and experience who has for seven years occupied the position of Judge of the Superior Court of Coconino County. While this office has been somewhat criticized for appointing Judge Perkins, owing to the fact that he was a member of the legislature, still we believe that his services as assistant attorney general have been much more valuable to the state than would his services as a legislature for any brief special session of the legislature.

Effective the first of October 1921, Miss Antoinette Barrett resigned from office, and thereupon Miss Ethel Donn of Phoenix, Arizona, was appointed to the position of secretary to the Attorney General.

With the fall, there came to this office a new phase of work that has necessitated most careful handling and has required a great deal of attention. Information began to reach this office that affairs in some of the counties were not all that might be and this office was called upon by the counties for assistance, in addition to discharging its normal duties regarding the state as a whole. The end of the calendar year 1921 found this office giving very considerable attention to the affairs of four separate counties, and to that end we have conducted grand jury investigations in two counties and are preparing for further work along that line elsewhere.

I desire to call your attention to one matter of most serious concern to this state. While it is not properly within the province of Attorney General as such official, yet the matter is of such significance it may be referred to with propriety in this record; and that is that during the spring and summer of 1921 the state of Arizona received some highly regrettable advertising and objectionable notoriety regarding the depressed financial condition both of the state and business in this state. This appeared to be widespread throughout the state of California, which is a financial heart of our state and of the entire western United States. The only conclusion deducible was that a large number of people had hysterically proclaimed from one end of California to the other that the state of Arizona was in a most stringent financial condition, and that business in this state was completely and unredeemably bankrupt. Bankers and business men all over California seemed to regard Arizona, because of this unfortunate outburst, as a veritable plague spot for industrial and financial investment. Naturally it was my duty to endeavor to offset this, and it was my pleasure to speak before several public gatherings, Chambers of Commerce, Rotary Clubs, etc., in an effort to counteract this unfortunate publicity.

I do not know what can be done from a state point of view, to guard against a further repetition of such an exaggerated and unfortunate affair, but it undoubtedly has been very embarrassing to the business men of this state and proved a severe obstacle to them in recovering from the depressed financial condition.

At the beginning of the year 1922 several county matters were engaging our earnest attention. In one county the county grand jury had indicted and also preferred charges for the removal of the local county attorney, and this office was called upon to press

both charges. This was most unpleasant but nevertheless it was a duty and this office was as disinterested in the outcome as any prosecuting office could well be other than to see the law properly applied.

It was also the duty of this office to present to the grand jury in Navajo county the question of the death of a man named McLennan. We also conducted the preliminary hearing on a murder charge against one Enoch Wilson, also of Navajo County. We were particularly concerned in this last charge because of certain international aspects contained therein.

Shortly after the first of the year infested cotton seed imported from Texas, was discovered in Yuma County and this office took charge of the case, deeming it a matter of the utmost significance, and we proceeded with the prosecution of the guilty party. In addition to the vigorous prosecution of this case, we endeavored to put on a campaign in the cotton growing districts to warn farmers against the purchase of seed from unknown people. We also wrote the railroads urging their cooperation in the more careful guarding against importation of cotton seed, to which request the railroads gladly acceded and cooperated.

In February we were again called on to investigate a case involving the death of one so-called "Red" Osborn at Benson. After a careful investigation and examination of the witnesses the matter was turned over to the hands of the county attorney to prosecute.

During the month of April reports came to this office from different sources, of alleged acts of California people coming into Arizona in the vicinity of the head of the Cibola Valley and there committing acts and depredations which threatened to seriously injure the Cibola Valley at high water stages of the Colorado River. This was in violation apparently of a previous injunction issued in Yuma County. Early in May we made a personal investigation of the conditions in the Cibola Valley, personal interviews were held with authorities in the Palo Verde Valley, California, and a complete field investigation was made. The investigation led to the conclusion that the charges were true. We immediately took steps to prevent a recurrence of these threatened acts.

Following immediately upon the heels of this trip to the Cibola Valley came the rise of the Colorado River and the Palo Verde levees were broken and the valley seriously innundated. This led to further investigation. The people of the Palo Verde Valley then asked the assistance of Arizona for emergency relief. As the outgrowth of this the Governor of California and the Governor of Arizona appointed delegates to investigate the conditions and report. This joint committee made a full examination of conditions, held public hearings at Blythe, and submitted a report looking to emergency relief, and having in view an ultimate policy which would inure to the interests of Arizona, particularly with regard to the development of the resources along the Colorado River and the conservation of the property of this state and the residents in this state.

At about this same time an organization known as the Ku Klux Klan was brought into conspicuous notoriety and required, and received, considerable attention from this office. At the peak of the investigation by this office a serious breach was threatened between this office and the office of the county attorney of Maricopa County, in which controversy the original investigation of the Ku Klux Klan would have been lost sight of in a minor struggle as to who should conduct this investigation. Feeling that in the end no good could come to the public through such a minor controversy, this office refused to be involved in such an issue, believing that an investigation by the county attorney would be far better than an open breach between the county law department and the state law department.

After the first of July the effects of the approaching election became most obvious. Nearly every department of our state government, as well as the county governments, showed the effects of the approaching political contest. In many instances the work was absolutely at a standstill in the public offices and entirely too much work which should properly be county work, was referred from the counties to this office for our attention. It was suspiciously like the old game of passing the buck. This office attempted, with its limited force, to give diligent attention to all these matters but we were almost overwhelmed with work, and at times matters have not been given the careful and prompt attention that should have been given them, due to the fact of our limited force and the failure of

the county authorities to attend to matters that were really their own concern.

Immediately after July first the railroad strike became a matter that received most careful attention from this office. At times it looked as if conditions were exceedingly serious but the deliberate minds of the leaders appeared to keep control of the situation, and as a strike the controversy caused, on the whole, very little legal concern to the state at large.

The matter of corporations employing so-called "gunmen" in the guise of deputies and private watchmen, is a matter which some persons seriously criticized, but so long as the state laws are not violated it seems to be more a matter of policy that is up to the railroads, and of no immediate concern to this office or the state. This office has adopted the policy and believes firmly, in the non-interference of the state in economic industrial readjustments as long as the laws of the state are not violated. Issues between labor and capital ordinarily should not be within the purview of governmental functions.

This office points with a pardonable degree of pride, to the fact that on July 1st, 1922, we turned back to the general fund of this state, to reduce the taxpayers obligations, the sum of $7500.00. We trust this will establish a precedent for the future incumbents in this office, and in view of the tremendous amount of work that has been handled in this office it cannot be charged that this saving was done at the expense of work that should have been done.

The election campaign, of course, reduced public work to a minimum and since the election it has been inadvisable for this office to institute the prosecution of several very important cases that should be prosecuted; but with only two months remaining we felt it advisable to suspend the prosecution and not embarrass the incoming administration with work that we might institute but not finish.

The Central Bank matter will undoubtedly take a great deal of attention for the next two years, and it is much better that the incoming attorney general initiate his own case under his own theories

in that connection rather than to have me institute proceedings and immediately after having them instituted drop out of the prosecution. The same is true with regard to proceedings against state officials in connection with the Maricopa Land deal, the state deposits in the Central Bank, and other similar cases.

A brief inspection of the records of this office will show that we have accomplished in our short two years, a tremenduous amount of work with a relatively small staff, and at the same time effected a very substantial saving to the people not only in connection with our appropriation, but also in our care and conservation of the state's interests. It has been a matter of great pride to this department to know that we can retire from public office with a knowledge that we have conscientiously tried to faithfully execute our trust, and we believe that we have been very successful. Mistakes have been made from time to time, but on the whole we have profited by our mistakes, and it is to be regretted that the new incumbent of this office could not have lived over our term of office with us so that he might carry on into his term the experience gained in the past two years.

In conclusion, after our term of office and the experience gained in the past two years, it seems advisable that we put in writing a number of suggested changes and recommendations with regard to the legal and economic affairs of this state, believing some of these suggestions may be of constructive good.

In the first place it is recommended that some definite steps be taken looking toward a complete revision of our code, which revision should include the title of all acts passed since statehood, all calls for special sessions of the legislature, and the governor's vetoes. These are highly important for the proper interpretation of our laws.

We would recommend legislation to the effect that the state may purchase and procure industrial insurance to take care of state employes who may be injured within the scope of their employment.

The State Highway Engineer's office should be converted into a State Highway Department, by legislation.

Our constitution itself could well be amended along the lines of the organic part of our government. We have in mind in this connection the elimination of a large number of elective offices and the cutting down of needless expenses called for in our present constitution. It is quite conceivable that the election of a governor and auditor or treasurer would be sufficient, and let the governor appoint the other executive officers. The Secretary of State's office could well be abolished and a lieutenant governor appointed by the governor when the governor leaves the state from time to time. It is quite conceivable that we could do away with the election of legislative representatives and substitute for them the members of the boards of supervisors from the various counties. In any event it is my recommendation that the legislature meet one year after the governor takes office. This would give the governor an opportunity for at least one years' experience before making his recommendations to the legislature.

The governor's term should be restricted to two terms, and he should be granted more time in exercising his veto.

Acts of the legislature should not take effect, in my opinion, until July first following, except for emergency legislation. July first is when our fiscal year begins, and gives more opportunity for the people to familiarize themselves with the law and for the laws to be printed and published.

Our constitutional and statutory laws in reference to taxation should be corrected, and particularly with reference to the taxation of mines and mining property.

With regard to the Board of Pardons and Paroles and work in connection with the penitentiary, it is my firm belief that the present system of the Board of Pardons and Paroles should be abolished. After two years of experience I am opposed to the present system. If we are to have a Board of Pardons and Paroles at all it would appear to be much better and more advisable to have a board appointed by a responsible power, to sit for a term of six years, the first board to sit for two, four and six years respectively, a new member to be appointed every two years. The board should not consist of elective officers sitting ex-officio, as at present.

I believe that every member of the present Board of Pardons and Paroles is opposed to the present system.

In my opinion the law relative to good time credits to the prisoner in the penitentiary, should be abolished. Good time credits should be a matter left to the Board of Pardons and Paroles. Also, in connection with prisoners in penal institution, I recommend and strongly urge the passing of a law to the effect that any man who had once previously been convicted of a felony, upon conviction in this state of a felony, shall automatically be sentenced for life and his case then left in the hands of the Board of Pardons and Paroles. I can see no good reason why, when a man has once been convicted of a felong and served his time and has not learned his lesson but has again gone out and preyed upon the public and again been convicted of a felony, he should thereafter be turned lose upon the public until he has established satisfactorily to an experienced Board of Pardons and Paroles that he is again worthy of being turned at liberty among his fellowmen.

It would also seem that in those cases where personal sureties are allowed to go on public bonds, particularly bonds securing the state and county, the persons so signing as surety should execute a first mortgage on their real estate to secure their bond, otherwise when the pinch comes their former financial status seems to have invariably dissolved to the detriment of the state.

It is also well worth considering the passing of a law to enable county attorneys to issue writs in the nature of a subpoena, whereby alleged witnesses to criminal acts may be compelled to appear before the county attorney and give testimony under oath previous to trial and subject to prosecution for perjury. This would undoubtedly be of great assistance to county attorneys in the investigation of criminal acts. At present only grand juries have this power, and it is a decided incumbrance to prosecutors.

The state should also be allowed the right in prosecution of criminal cases to comment on the failure of the defendant to testify at his trial.

The state should also require the defendant in criminal cases to give notice in advance of the nature