

MORE HELP AND MORE PAY FOR COUNTY ATTORNEY URGED BY JUDGE M'CARTHY

Report to Supreme Court Points Out the Difficulties With Which Public Prosecutor Has to Cope

EXTRACTS FROM JUDGE M'CARTHY'S REPORT.

"Court in Ada county is in session practically all of the year around. For the month of January, 1912, there will be at least 15 criminal cases on the calendar in which a grand jury has returned indictments. In addition to this there are the preliminary examinations before the magistrates and numerous criminal cases in justice and probate courts. Furthermore, the prosecuting attorney's time and advice is constantly needed by the county commissioners.

"Under these conditions, it is simply ridiculous to ask an attorney to perform all of this work for \$1500 per year without deputies or assistants. No matter how industrious the prosecuting attorney may be, he cannot attend to all of this work in justice to himself and the public.

"There is no use in having criminal laws and courts for the trial of criminal cases and then being so niggardly with the office of prosecuting attorney, the most important office of all, so far as the enforcement of the criminal laws is concerned.

"It is the worst possible policy for an employer to overwork and underpay his employees, and this applies to a public corporation as well as to a private employer.

"In my opinion these resolutions (providing for constitutional amendments) are more important and more vital than most of the statutes passed at the recent sessions of our legislature.

"The present provision handicaps the public in the matter of the enforcement of the law.

"Before we pass any more criminal laws, or indulge in any more glittering generalities about the enforcement of the law, we should come to the assistance of the officer whose primary duty it is to enforce it."

The enforcement of the criminal laws of this state hinges upon the salary of the county attorney and his right to employ deputies when he needs them.

Judge Charles F. McCarthy, in a report to the supreme court of the state, points out the defects in the present statutes that deal with the remuneration of the county officers and blames the legislature for whatever lack of enforcement of the laws there may be in this county and in the state in general.

He says the county attorney is worked to death, that he has more duties to perform than one human being can handle, that he is utterly powerless to enforce all of the statutes because he is so overcrowded with work and because he is unable, under the present laws, to employ deputies to assist him.

Judge McCarthy says that the present salary of \$1500 a year is a ridiculously small amount and that it is useless to expect the officer to enforce the laws when the statute gives him so much work and absolutely no assistants.

He believes that the legislature should not enact further criminal laws until it passes legislation that will enable the commissioners to pay the attorney not more than \$3000 a year and gives him the right to employ such deputies as he may need.

The court does not think that the legislature's refusal to pass the resolutions calling for an election on such a constitutional amendment was justified and

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Alshie, associate justice.

"Gentlemen: This being my first year upon the district bench I would not feel justified in making any long report to your honors touching defects and omissions in the laws. Moreover, the able report of the Hon. Carl A. Davis, senior judge of this district, leaves little to be added.

"I will confine myself to pointing out one defect in our organic and statutory law which was impressed upon me while serving as prosecuting attorney of Ada county and which has been further impressed upon me during my service as district judge.

"Section 6, article 18, of the constitution of the state of Idaho as amended in 1910, provides that the sheriff, county assessor, auditor and recorder and clerk of the district court shall be employed by the county commissioners to appoint such deputies and clerical assistants as the business of their offices may require, said deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners. The supreme court has held that only those officers specifically mentioned in this section are entitled to deputies and clerical assistants, thus necessarily excluding those not mentioned. Fremont county versus Brandon, 6 Ida., 482, at 488.

"The same section of the constitution provides that the county commissioners may employ counsel when necessary, but the supreme court has held that this does not apply to criminal cases and the county commissioners are not authorized to employ counsel to assist the prosecuting attorney in criminal cases. Conger versus Commissioners of Latah county, 5 Ida., 347.

"The supreme court has also held that under this section of the constitution the commissioners have no power to employ an attorney to act by the year as legal adviser for the county. Meller versus Board of Commissioners of Logan Co., 4 Ida., 44.

"Section 18, article 5, of the constitution of the state of Idaho provides that the prosecuting attorney shall receive as compensation for his services a sum not less than \$500 per annum nor more than \$1500 per annum, to be fixed by the board of commissioners. Therefore the prosecuting attorney must attend to practically all the legal work of the county and for this he cannot receive more than \$1500 per year.

"In a county where there are only two short terms of court a year, but little criminal work and but little work for the commissioners, the minimum salary fixed by the constitution may be sufficient. In the ordinary county at present it is possible that the maximum is sufficient. In Ada county conditions are very different.

In Session the Year Round.
"Court is in session practically the

year round. The criminal calendar is called monthly and of late there have been several criminal cases on the calendar every month. For the month of January, 1912, there will be at least 15 criminal cases on the calendar in which a grand jury has returned indictments. In addition to this there are the preliminary examinations before the magistrates and numerous criminal cases in justice and probate courts. Furthermore, the prosecuting attorney's time and advice is constantly needed by the county commissioners.

"Under these conditions, it is simply ridiculous to ask an attorney to perform all this work for \$1500 per year without deputies or assistants. No matter how industrious the prosecuting attorney may be, he cannot attend to all this work in justice to himself and the public.

"The city attorney of Boise City now receives \$150 per month, while the prosecuting attorney of Ada county receives only \$125 per month. The duties of the city attorney are no more important than those of the prosecuting attorney, and are not nearly so numerous nor so burdensome.

"There is no use in having criminal laws and courts for the trial of criminal cases and then being so niggardly with the office of prosecuting attorney, the most important office of all, so far as the enforcement of the criminal laws is concerned. It is the worst possible policy for an employer to overwork and under pay his employees, and this applies to a public corporation as well as to a private employer. I am informed that the same condition prevails in some of the other large counties, and it is only a question of time before it will be true of them all.

Constitutional Amendment.

"During the last session of the legislature a resolution was drafted and presented calling for an amendment of section 6, article 18 of the constitution so as to provide that any of the county officers, the prosecuting attorney among the others, may be empowered by the county commissioners to appoint such deputies and clerical assistants as the business of their offices may require, such deputies and clerical assistants to receive such compensation as may be fixed by the county commissioners.

"Another resolution was drafted and presented calling for an amendment of section 18, article 5 of the constitution so as to provide that the minimum salary of the prosecuting attorney shall be \$500 per annum and the maximum salary \$3000 per annum. Both resolutions were passed by the house but failed of passage in the senate during the closing hours of the session.

"In my opinion these resolutions are more important and more vital than most of the statutes passed at the recent sessions of our legislature. The present provision handicaps the public in the matter of the enforcement of the law.

"Before we pass any more criminal laws, or indulge in any more glittering generalities about the enforcement of the law, we should come to the assistance of the officer whose primary duty it is to enforce it. In view of the importance of the matter and the scant recognition given it by the legislature, I feel justified in calling it to your attention.

"In my judgment amendments to the constitution as suggested should be submitted to the electors of this state at the next general election, and to that end appropriate resolutions should be passed by the next session of the legislature.

"Very respectfully,
"CHARLES F. MCCARTHY,
"District Judge, Third
Judicial District."

REFUSED TO CLOSE DEAL; COMMISSION ON SALE DEMANDED

Is a real estate firm entitled to a commission for securing a buyer to a piece of property listed with it, when the owner of the property backs down on the deal after the papers have been drawn according to his terms?

The above question was ore given a jury to decide in Judge Bower's court last evening and after a deliberation of a little more than a half hour they returned a verdict in favor of the defendant and against the real estate firm bringing the suit for commission.

The case was one in which Colvin & Rinard brought action against Hugh Martin and wife to recover \$250 alleged to have been earned in effecting a real estate deal in which they procured William Freiman as a purchaser for a piece of property listed with them for sale by Mr. and Mrs. Martin. After all the terms were agreed upon and the papers ready for signature, it was claimed that Mr. Martin and his wife refused to close the deal, although the terms set down by them were agreed upon by the purchaser, who was able and willing to make the deal. The entire day was spent in hearing the case and the verdict of the jury was not rendered until 6:30 o'clock. Several new points of law were involved in the case and the plaintiffs announced that an appeal to the district court would be taken.

BIG ADDITION TO THE SHRIVER MILL

Work will be started tomorrow on a three-story addition to the C. E. Shriver planing mill at Seventeenth and Hancock streets, the entire addition to be used as a bee supply house, adding largely to the industry, which has been carried on by Mr. Shriver for the past two years. Finding his business growing to such an extent that his present quarters were inadequate, he decided to build the addition to his mill and devote more

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time to that industry. Last year he handled over \$10,000 worth of bee supplies of all kinds and will more than triple that amount next year.

Thirty carloads of honey was shipped out of southern Idaho in 1912, states Mr. Shriver, the producers being able to get a better price for their produce from outside wholesale houses than can be secured here from the retail trade and consequently preparations are being made to ship a larger amount next year, which will require more material. In addition to hives and sundry supplies, Mr. Shriver will handle bees, honey, beeswax and various other products from the apiaries of the Boise valley.

Phone 31 for Good Coal, Idaho Coal & Seed Co., A. L. Lee, Mgr., 8th & Grove, "One Block South of Overland Corner." Adv. 12

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