

VIOLATES CONSTITUTION

County Treasurers Take Commission From School Fund.

STATE BOARD TAKES ACTION

By Resolution of the Board Attorney General Prout is Asked to Give An Opinion On the Legality of the Law.

Since Nebraska has been a state it has been customary to pay county treasurers a per centage out of the school monies by them collected. At last it has occurred to some one that this is contrary to the provision of the constitution which provides that all educational funds belonging to the state shall remain forever inviolate and undiminished, the interest and income whereof only are to be used.

Land Commissioner Follmer is said to be the man who brought the matter to the attention of the board of educational lands and funds. The board took no action on the matter, but authorized a resolution to be drawn asking Attorney General Prout for an opinion on the legality of the practice of paying county treasurers a commission out of the permanent school fund. Thousands of dollars have been paid out in this way. It is believed that the attorney general will give an opinion saying that the practice is not warranted by law. While it is authorized by statute, it appears to be plainly prohibited by the constitution. The supreme court has decided, however, that the premium paid for United States bonds when the permanent school fund is invested in such securities should be paid from the permanent fund.

If the statute authorizing county treasurers to receive 1 per cent on all school monies collected by them is found to be contrary to the constitution, it will be disregarded as invalid. If the opinion of the attorney general warrants the board in taking a decisive step may be taken without delay. There has been no talk of trying to recover the commissions already paid out, but the board desires to know whether the practice ought to be continued.

Constitutional Provisions.

The resolution which will be presented to the attorney general will call attention to the provisions of the constitution. Section 3, article 8, of the constitution, is as follows: "The following are hereby declared to be perpetual funds for common school purposes of which the annual interest or income only can be appropriated, to-wit: First, such per centum as has been or may hereafter be granted by congress on the sale of lands in this state. Second, all monies arising from the sale or leasing of sections numbered 15 and 36 in each township in this state, and the lands selected, or what may be selected, in lieu thereof. Third, the proceeds of all lands that have been or may hereafter be granted to this state, where by the terms and conditions of such grant, the same are not to be otherwise appropriated. Fourth, the net proceeds of lands and other property and effects that may come to the state, by escheat or forfeiture, or from unclaimed dividends, or distributive shares of estates of deceased persons. Fifth, all money stocks, bonds, lands, and other property, now belonging to the common school fund."

Similar to Boyd County Case.

Under this and other sections of the constitution Land Commissioner Follmer refused to acquiesce in the deed of 2,200 acres of land in Boyd county to settlers who claimed the land under the homestead law. The state had selected the land as a part of a grant from congress and Mr. Follmer contended that it became a part of the school lands and therefore the legislature had no power to authorize state officers to relinquish its claim upon the property. A suit pending in the state courts to oust the settlers is to be prosecuted by Attorney General Prout.

The supreme court has held that escheated estates mentioned in this act belong to the permanent school fund and the legislature cannot by special act devote the proceeds thereof to a special subject. This is what the legislature has attempted in section 20, chapter 28, entitled "Fees" wherein it provides that a county treasurer shall receive one per cent commission on all fees collected by him.

The constitution, in defining what constitutes the permanent school fund, among other things includes "all moneys arising from the sale or leasing" of school lands. Farther on the section refers to "net proceeds of escheated estates." As there is no qualification in the first part of the section it is assumed it means the gross proceeds of all moneys derived from the sale or leasing of school lands.

Books Show Loss.

The books of the state treasurer and the land commissioner on their face show that part of the permanent school fund never reaches the state treasury. County Treasurer Knight yesterday paid \$22,000 in collections to the state treasurer. Of that amount \$12,000 was the principal on

school lands. While the state treasurer actually receives \$12,000, the books of Land Commissioner Follmer show that \$12,120 is due the state. The \$120 never reaches the state treasury. It is retained by the county treasurer in accordance with section 20, chapter 28, statutes of 1903, as his one percent commission.

The supreme court has decided that the premium for the purchase of county bonds as an investment for the permanent school fund shall come out of the temporary school fund and not from the permanent fund. It has also held that the payment of warrants out of the school fund is unlawful. The last legislature attempted to reimburse several county treasurers for over payments to the school fund by passing an act that they should be reimbursed from the school fund. State Treasurer Mortensen declined to honor the warrants on the ground that the legislature could not appropriate money from the permanent school fund. Where county treasurers receive a commission for collecting school funds, they are able to get it because they take it before the money is in the hands of the state treasurer.

Funds Inviolable.

The security with which the framers of the constitution intended to hedge about the school funds of the state is expressed in the following section of the constitution:

Section 3, article 8: "All funds belonging to the state for educational purposes, the interest and income whereof only are to be used, shall be deemed trust funds held by the state, and the state shall supply all losses thereof, that in any manner accrue, so that the same shall remain forever inviolate and undiminished. And shall not be invested or loaned except on United States or state securities, or registered county bonds of state; and such funds with the interest and income thereof, are hereby solemnly pledged for the purposes for which they are granted and set apart, and shall not be transferred to any other fund for other uses."—Lincoln Journal.

RESISTS ULTRA VIRES PLEA

Attorneys Take Poke at Krug Brewing Company—A Madison County Case.

Lincoln, Dec. 11.—Attorneys A. G. Wolfenbarger, S. J. Tuttle and S. O. Campbell, the latter of Madison, have filed a brief in supreme court in reply to one filed by W. V. Allen of Madison setting out a defense of the Fred Krug Brewing company of Omaha to liability on a saloon bond. In Madison county judgment for \$2,200 was secured by Mrs. Nora Lewis because of the death of her husband who purchased liquor of F. W. Horst and Fred Loerke. The brewing company was bondsman and sold the saloonmen liquor. Former Senator Allen made a hard fight in district court and in supreme court he sets up the plea of ultra vires against the signature of the saloon bond by the brewing corporation. This is the first time such a plea has been made and it is interesting from the fact that saloon bonds throughout the state are frequently furnished by brewing companies who sell liquor to saloon men.

In this case the bond was signed by L. H. Dietrick, attorney in fact for the company. It is alleged that there is no proof that he had the right to sign the bond and that the signature exceeded the power of the brewing company.

Opposing attorneys in their brief say the proof of authority is unnecessary as the execution of the bond by this attorney was admitted. They assert that the execution of the bond in question appears to be designed to promote the brewing company's legitimate and profitable operation and most especially so in connection with the facts established by the evidence that the company owned the building wherein the saloon was operated, and rented the same to the principal on the bond, and furnished him with funds wherewith to purchase his license and then sold him its own manufactured products, wherewith to slake the thirst of his customers. The attorneys argue that the brewing company is stopped from pleading ultra vires because facts have been pleaded which make it impossible according to legal procedure for this to be done.

In this connection the brief says: "From this evidence one conclusion only is legitimate. The corporation defendant bought said property; leased same to principal in the bond sued on; furnished money for the license and obligated itself on the bond, to increase the market for its product, which object was thereby accomplished. To urge that it was done for any other purpose would be humorous if not ludicrous. 'The fruits and benefits of these transactions, depending absolutely on the bond in question, it has had. It must not now be allowed to escape its liability thereupon.'"

Her Pocketbook Stolen.

Hastings, Neb., Dec. 13.—One day this week a young lady school teacher employed in the city schools left her pocketbook containing \$20 on the counter in one of the largest stores, while she went to inspect goods in another department. When she returned the pocketbook was gone, and a careful search failed to reveal it. It is supposed that it was taken by a petty thief in the guise of a customer.

HAD A NARROW ESCAPE

Bohemian Farmer at Snyder in a Smashup.

HIS BUGGY WAS WRECKED.

Man Was Injured, but not Seriously, by Collision With an Engine—Car Foot Blown off by the Wind—Cow Catcher Wrecked at Oakdale.

Snyder, Neb., Dec. 12.—Special to The News: A Bohemian farmer living near here, is very glad to be alive today. The local freight train, running between Cornlea and Scribner, took the wheels from his carriage and nearly converted him into a dead one. He had just left Conrad's mill with two sacksful of flour and while there the miller warned him about the train. His horses, seeing the approaching train, stopped still, but the farmer whipped them up and over the rails they went. Then the fireworks. The buggy was struck in the rear and badly smashed. The farmer was injured, but not seriously.

Rolling Stock Wrecked.

Scribner, Neb., Dec. 12.—Special to The News: A Burlington freight car, with the roof entirely off was one of the features of a freight train which pulled in here last night from Oakdale. The wind had torn the top away on the trip enroute.

An engine without a cowcatcher was also drawn in this week. It jammed into a car at Oakdale when the coupling bar was not in readiness.

Ainsworth G. A. R. Elects Officers.

Ainsworth, Neb., Dec. 12.—Special to The News: The members of Ainsworth post, G. A. R., met Thursday evening and elected the following officers for the ensuing year: Commander, C. F. Boyd; senior vice commander, John Sullivan; junior vice commander, C. A. Baily; chaplain, H. G. Goddard; officer of the day, I. Walker; quartermaster, H. O. Paine; sergeant, Robert Martin; officer of the guard, J. G. Kimball.

RAN INTO A BARB WIRE FENCE

Dell Kirkpatrick of Ainsworth, Eight Years Old, Has His Eye Badly Injured.

Ainsworth, Neb., Dec. 12.—Special to The News: Dell Kirkpatrick, the eight-year-old son of William Kirkpatrick, while out playing ran onto a barb wire fence and cut his left eye so badly that the lid hung down on the cheek. Dr. Summers was called and sewed it up but it is feared that it will be permanently damaged.

DISTRICT TELEPHONE OFFICE

Atkinson to Have a New Service to Towns West and North—Business Change.

Atkinson, Neb., Dec. 12.—Special to The News: The Edwards Woods Grain company, who are running a private wire from Omaha into the Black Hills, will open an office in Atkinson. This will be a district office and will furnish a fifteen minute telephone service to towns west and north as far west as Fairfax, South Dakota. Mr. T. F. Shuffelbom, who will have charge of the district, has arrived and expects to have the office open for business by January 1. The Mrs. Everts millinery stock has changed hands. The purchasers are Miss Lowe of Chicago and Miss Bailey and Mrs. Harvey of Stuart. The style of the new firm will be Lowe & Bailey. The stock has been moved to the brick block on west Main street and will be greatly enlarged.

Atkinson boasts a new organization in the "Atkinson Bowling Club." The bowling alley has been leased for the season and is now in first-class condition. The club will soon be in position to meet teams from neighboring towns.

ADJOURN COURT.

The Docket Has Been a Heavy One This Term.

Hartington, Neb., Dec. 12.—District court adjourned this morning in order to let the judge commence his regular term in Dixon county. They were not able to dispose of over one-half of the jury cases docketed in this county. Some very important jury cases are compelled to lay over until the next regular term, which will commence the first Monday in March, 1904, and continue three weeks.

County Attorney J. V. Pierson of Ponca, Dixon county; County Attorney F. D. Funk of Bloomfield, Knox county; and C. J. B. Harris, from Yankton, S. D., are in attendance at the sitting of the court.

Mrs. Richard R. Eby and Mrs. Jackson P. Snow, the former of Hartington and the latter of St. James, in this county, have gone to Sioux Falls, S. D., where they will both undergo operations for cancer. These ladies are old settlers of Cedar county and their husbands were both soldiers in the war of the rebellion.

Oakland's New Masonic Hall.

Oakland, Neb., Dec. 12.—The Masonic order of this city held an informal dedication of a new hall Wednesday night, when large delegations were here from Tekamah, Decatur,

Craig and all neighboring towns. Initiations and degree work were the order of the evening, after which a general good time was had. Refreshments were served.

The new hall is complete in every particular and is sumptuously furnished. Carl Borg and Miss Emma Johnson of Newman Grove were married at the bride's home Wednesday. The groom is a well known Oakland merchant.

MUST ANSWER FOR FORGERY

William Hart Will be Brought to Dodge County From Oklahoma for Forging a Check.

Fremont, Neb., Dec. 12.—William Hart is under arrest at Medford, Okl., and will be brought back to Dodge county to answer a charge of forgery. Sheriff Bauman left for Oklahoma on Wednesday to receive the prisoner and accompany him on the trip hither. The requisition from Governor Meeker was duly honored by Governor Ferguson of the territory, and unless a fight is put up by the relatives of Hart, who live at Medford, the sheriff will start back to Fremont with his man immediately.

The offense with which Hart is charged is the forging of a check at North Bend on November 25. It purported to have the signature of E. Maher, a farmer living near there, and was drawn for \$18.45. Hart passed the check upon T. J. Castle, a dealer in general merchandise. He purchased a few small articles at Castle's store and received change in cash for the greater part of the amount. The check was drawn upon a bank at Morse Bluff.

Hart had been doing farm work around North Bend for some months. He is suspected of having committed other acts of a criminal nature in the past. He will be lodged in jail here until his preliminary hearing.

BANK DIRECTOR HAS TO PAY

Depositor Sues On Ground That He Placed Faith in Published Report and Recovers.

Columbus, Neb., Dec. 14.—The court instructed a verdict for \$300 for the plaintiff in the suit brought by Peter Phillips, a Butler county farmer, against Louis Hahn, a director of the Bellwood bank, which failed in January, 1902. Hahn had signed a published report the previous month certifying the bank to be in good, sound condition, and Phillips alleged that upon the strength of this report he deposited in the bank during the months of December, 1901, and January, 1902, sums of money aggregating \$1,900. The testimony of Mr. Hahn went to show that even had he exercised due caution in keeping posted with the bank's affairs he was not the only one misled by the artful work of the men responsible for the failure, and among others were practical business men.

The case has attracted considerable attention throughout the state and will probably be appealed. One of the questions involved is the extent of responsibility of bank directors in the actual business management of bank affairs, and the present verdict is one to make directors duly cautious in the future about placing their names to instruments purporting to be a true report of the condition of their banks.

WANTS TO BE DECLARED SANE

Mrs. Mabel Whitney, Who Escaped From a South Dakota Asylum is Trying to Prove Herself.

Sioux City, Dec. 15.—Mrs. Mabel Whitney, who made a sensational escape from a South Dakota hospital for the insane at Yankton and a lonely and wearisome walk to Elk Point, S. D., is demanding the restoration of her legal status as a sane person.

The middle of last week Mrs. Whitney left the Hotel Garretson of this city, where she had been engaged as checker since her escape from the asylum, and went to Sioux Falls. She showed pluck in going into South Dakota, where under the order of the court committing her to the hospital for insane she was liable to arrest and incarceration in the asylum from which she escaped in so thrilling a manner. Her confidence in her own sanity and her own rights was evidenced by her going direct to the home of Sheriff Huston.

E. E. Wagner of Alexandria was employed as her attorney for a rehearing in her case. This the county judge granted, after which he summoned A. B. Wheelock, S. A. Brown and E. A. Orr, all well known citizens of Sioux Falls, to act as a special jury or commission to pass upon her sanity. The examination was held Saturday afternoon, and it is expected the findings of the special jury or commission will be reported to County Judge Bailey shortly.

Mrs. Whitney's mother, who lived with her during the time she was a resident of Sioux Falls prior to being pronounced insane, and on whom the duty devolved of caring for Mrs. Whitney's little son, Harold, has written that the child is now with his aunt, Mrs. J. M. McDougal of Lakota, N. D. One of Mrs. Whitney's first acts, should she be declared sane by the special commission, will be to secure possession of her boy.

FIRE DEPARTMENT MEETING

Firemen Make the Special Session a Success.

ARRANGE FOR THE CONVENTION.

Appoint Necessary Committees and Take Other Action Preliminary to the State Meeting in Fremont During January—To go in Special Car.

[From Saturday's Daily.] The Norfolk firemen made up for their lack of interest in the regular department meeting of Wednesday evening by turning out in force to the special meeting that had been called by Chief W. L. Kern for Friday night and much business was transacted.

In the absence of President R. H. Reynolds, M. J. Romig was chosen to preside and the object of the meeting was stated by Chief Kern.

A committee of three consisting of Chief Kern, H. W. Winter and S. R. McFarland was named to see about securing a special car to carry the Norfolk delegation to Fremont for the annual meeting of the Nebraska State Volunteer Firemen's association which meets there January 19, 20 and 21. The naming of the committee on decorating the car was left until the next regular meeting, as that duty would not require attention until just previous to leaving for the convention.

The committee on securing rooms and accommodations which precedes the regular delegation, was named, and consists of President C. E. Hartford of the state association, H. C. Truman and H. A. Pasewalk.

A committee on printing to look after the badges, was named and is composed of President Hartford, H. W. Winter and W. L. Kern. The newly elected delegate to the convention from each company is to ascertain the needs of the respective companies on the badge question and report to the printing committee. The new delegates are Venus Newow of the Pioneer Hook and Ladder company; J. E. Sanford of the Mast Hose company, and Hugo Paul of the Queen City Hose company. The department decided to pay for the badges this year.

It was the sense of the meeting that all members of the state association and delegates to the state meeting should at once hand their dollar dues to Secretary S. R. McFarland before the first of January, as he must report to the state secretary at that time.

J. C. Cleland advises the department of a new plan regarding the convention and that is for the delegates, or as many as possible to bring their wives with them. The plan was heartily endorsed by President Hartford at the meeting last night, and there is a prospect that a number of the Norfolk delegates will take their wives with them to the meeting.

The department voted to extend a special invitation to the Creighton and Pierce departments to join the Norfolk delegation here and accompany them to Fremont in the special car that will be provided. The delegation will leave the city for Fremont on the early passenger the first day of the convention, and will arrive there in time to participate in the first day's proceedings and remain at least until Thursday night.

The prospects now are that the Norfolk delegation will consist of not less than twenty-five. The department took favorable action on having the firemen's hall open and heated during the winter Sunday afternoons for the convenience and pleasure of the firemen.

NEWS AT BATTLE CREEK.

Popular Young People Betrothed Yesterday—Other Items.

Battle Creek, Neb., Dec. 14.—Special to The News: Rev. J. Hoffman announced the betrothal of Mr. John Hagemeier and Miss Minnie Fenske yesterday at the Lutheran church. Mr. Hagemeier is a well known young man, coming here about two years ago from Missouri. The bride is the oldest daughter of Mr. and Mrs. Chas. Fenske.

The home of Mr. and Mrs. James was made happy by the arrival of a little son Saturday.

Herman Peters of Pierce was visiting here yesterday at the Preuss home northwest of town.

Martha Eucker of Lindsay was a guest at the home of her brother, Herman Eucker.

Battle Creek has been in darkness for some time—when the moon don't shine—but C. A. Hedman has put a nice street lamp in front of his store on Main street. It is the only one light.

Grandpa Hale, well known over the county, and close to ninety years of age, is very sick at this writing and there is scant hope for his recovery. The most of his children are at his bedside.

The Battle Creek Mutual Insurance company will hold its annual general meeting here on December 28, in the German school house. This company is doing business in Madison, Butte, Boone, Antelope, Knox, Pierce and Stanton counties and is incorporated for \$50,000.

L. B. Baker shipped a carload of corn to Chicago Friday.

Thrice Wounded at Gettysburg. Lyons, Neb., Dec. 14.—R. F. Comer of Lyons died Saturday night of heart failure. He had been ill eight months

THE OLD RELIABLE



Absolutely Pure THERE IS NO SUBSTITUTE

with dropsy and heart trouble. He leaves a widow and six children. Mrs. Comer has been an invalid herself for four years. Mrs. Comer was a veteran of the civil war and was 65 years of age. He carried to his death two pieces of shell received at the battle of Gettysburg, Pa., where he was wounded three times. During the war he served two terms of enlistment, once with the Fourth and afterward with the Fourteenth Vermont infantry. He was one of the earliest settlers of Burt county and had always been a prominent democrat.

ALL OF THEM "BIRDS."

Remarkable Experiences of a Bird Fancier of Kentucky.

[From Saturday's Daily.] The following was sent out by the associated press under date of Louisville, Ky., December 4:

"Mrs. William Robbin has married David Buzzard. It is her fourth matrimonial venture. She was a Miss Martin, daughter of one of the best known Bourbon county families.

She first married Robert Crow. He died and she married John Sparrow six months afterward. She and Mr. Sparrow did not agree, and a divorce followed. Mrs. Sparrow became Mrs. William Robbin, but again a divorce was found advisable.

After a year of lonely life, Mrs. Robbin has become Mrs. David Buzzard. She has two Crows, one Sparrow, one Robin and a Buzzard at her home. She says she prefers "birds" for husbands."

She Has Cured Thousands Given up to Die.

DR. CALDWELL OF CHICAGO

Practicing Alopathy, Homeopathy, Electric and General Medicine.

Will, by request, visit professionally

NORFOLK, NEBRASKA, PACIFIC HOTEL, THURSDAY DEC. 31, ONE DAY ONLY



returning every four weeks. Consult her while the opportunity is at hand.

DR. CALDWELL initiates her practice on the special treatment of diseases of the eye, ear, nose, throat, lungs, female diseases, diseases of children and all chronic, nervous and surgical diseases of a curable nature. Early consumption, bronchitis, bronchial catarrh, chronic catarrh, head-ache, constipation, stomach and bowel troubles, rheumatism, neuritis, sciatica, liver and bladder diseases, diabetes, indigestion, obesity, interrupted menstruation, slow growth in children, and all wasting diseases in adults, deformities, club-foot, curvature of the spine, diseases of the brain, paralysis, heart disease, dropsy, swelling of the limbs, strictures, open sores, pain in the bones, granular enlargements and all long standing diseases properly treated.

Blood and Skin Diseases.

Pimples, blotches, eruptions, liver spots, falling of the hair, bad complexion, eczema, thrush, itching, burning urine, passing urine too often. The effects of constitutional sickness or the taking of too much injurious medicine receives special treatment, from its relief and a cure for life.

Diseases of women, irregular menstruation, falling of the womb, bearing down pains, leucorrhoea, sterility or barrenness, ovaritis, Dr. Caldwell says she will show them the cause of their trouble and the way to become cured.

Cancers, Gout, Fistula, Piles

and enlarged glands treated with the subcutaneous inject method, absolutely without pain and without the loss of a drop of blood. Most scientific methods of this advanced age some of the largest hospitals throughout the country. She has no superior in the treatment of the above diseases, deformities, etc. She has lately opened an office in Omaha, Nebraska, where she will spend a portion of each week treating her many patients. No incurable case accepted for treatment. Consultation free. Dr. O. A. Caldwell, 120 N. 1st St., Chicago, Ill.

Address all mail to Bee Building, Omaha, Neb.