State of the State
Governor Robert Williams
January 17, 1916

TO THE SENATE AND HOUSE OF REPRESENTATIVES OF
THE FIFTH LEGISLATURE OF THE STATE OF
OKLAHOMA.

By virtue of section seven, of article six, of the Constitution of the State of Oklahoma, the Legislature has been, by me, as Governor of said State, convoked in extraordinary session on this occasion.

Anti-Gambling Law.

The Fourth Legislature passed an act amending sections 2519, 2520 and 2528 of the General Statutes of 1893, of the State of Oklahoma, relating to gambling. This act was approved by the Governor on April 14th, 1913. The emergency clause not having been attached to said act, within ninety days after the adjournment of the Legislature a referendum petition was filed and caused said act not to take effect. On June 20th, 1914, the Governor issued a proclamation calling an election upon said referendum to be held on the first Tuesday of August, 1914. The result of said election having been certified to the Governor, in due course he issued his proclamation declaring said law to have been approved by a majority of the votes cast thereon and the same to have taken effect and was then in force as a law of the State.

The Supreme Court of the State in re P. J. Smith, No. 7645, on January 11, 1916, held that on account of certain omissions in the submission of said referendum question that the election thereon was void, and that said act was still not in effect. The referendum on this bill or act having been ordered and an election held on such referendum petition as to whether it would be within the power of the Governor to order another election thereon is a serious question. Had the election not been ordered it would naturally follow that time not being the essence of the power, the power of the Governor to call the election would not be exhausted, but the election having been called and held and afterwards held void, a serious question would arise as to whether it would be within the Governor's power to call another election on said referendum petition.

In addition the Fourth Legislature in extraordinary session, as representatives of sovereignty itself, enacted this anti-gambling law. On the submission of the referendum at the regular primary election for the nomination of state, county and municipal officers held throughout the State a majority of those voting on the anti-gambling act approved it. The Governor of the State declared the law to be in effect. Since then the law has been generally enforced by the officers of the State and been recognized as a law in effect. The regular session of the Fifth Legislature convened and remained in session for over sixty days, but no attempt was made to amend or repeal said law, the same being treated as in effect.

Even were it to be conceded that it is within the power of the Governor to reorder the submission of this referendum question to the people it would occasion additional expense, the cost of printing and the expense of circulating about three hundred thousand pamphlets.

By the re-enactment of this act by this special or extraordinary session and the attachment of the emergency so as to preclude the suspension of the act by another

referendum petition, this action by itself would amount to a saving that would go a long ways toward paying the expenses of such session of the Legislature.

It is my duty to recommend for your consideration the re-enactment of this act and that you declare that an emergency as to said act exists, and that said emergency be expressed by you in said act as contemplated by section fifty-eight, of article five, of the Constitution, of this State.

I further call your attention to the title of this act. There may be some question as to whether the title of the act altogether complies with section fifty-seven, of article five, of the Constitution, of the State. In the re-enactment of this measure I recommend that you consider a revision of the title so as to obviate any possible objection to the validity of the act on that ground.

GROSS PRODUCTION TAX.

Section 1, subdivision A, article 2, chapter 107, of Session laws 1915, of "An Act to provide a direct and indirect system of taxation; Article 1. Direct system of taxation –amendments. Article 2. Special taxes—mining property and gross revenue tax. Article 3. Validating the sections. Article 4. Declaring an emergency," approved March 11, 1915, provides for a gross production tax equal to one half of per centum of the gross value of ores produced therefrom bearing lead, zinc, jack, gold, silver, or copper, or asphalt; two per centum of the gross value of the production of petroleum or other mineral oil or gas.

Sections two, three, four (b) of said subdivision A, pages 180, 185, provide for its collection and distribution.

These sections have been before the Supreme Court of this State for consideration and construction, in re the Gross Production Tax of The Wolverine Oil Company, which was decided on the 12th day of October, 1915, and is now pending on petition for rehearing.

Amount collected by State Treasurer under Gross Revenue Tax Law, January 1st to March 11, 1915	$45,468.53
Amount collected by State Auditor under Gross Revenue Tax Law, March 11th, 1915 to January 15, 1916	53,090.14
Amount collected by State Auditor under Gross Production Tax Law, March 11, 1915, to January 15, 1916	633,267.31
Total	$731,825.98

This $633,267.31 is in the State Depository and is not subject to be used to pay the expenses of the state or state agencies until the matters growing out of the Wolverine Oil Company case are finally settled. In my judgment, a revision of these said sections would eliminate a great many of these objections and enable this tax to be used for the expenses and state purposes.

I, therefore, recommend for your consideration said sections one, two, three, four and four (b) of subdivision A, with a view of revising and amending them so as to meet all reasonable objections involved in said action and at the same time cause this gross production tax to be realized and converted into the treasury and through the proper source expended to meet the expenses of the state and state agencies.

If this tax were available the state would now be on a cash basis. State warrants bear interest at six per cent, while the state realizes only three per cent from the deposit of this fund. By the proper consideration and revision of these sections so that this tax can

be made immediately available, this difference between three and six per cent will be saved to the taxpayers. In a large measure, this saving will pay the expenses of this special or extraordinary session. But this recommendation for the consideration of these sections applies solely to these section and the recommendation for the consideration is restricted solely to these sections and the matter that is germane.

INTEREST, USURY AND PAWN SHOPS.

The question of the charging of extortionate rates of interest has occupied the foreground of discussion for some months. Questions essential to be determined preliminary to the consideration of the usury question have been obtained from the Solicitor of the Treasury, at Washington, through the Comptroller of the Currency, at my request. On December 8th the Solicitor of the Treasury wrote the Comptroller of the Currency as follows:

"I am in receipt of your note of the 7th instant, transmitting a communication from the Governor of Oklahoma, and requesting my opinion covering the inquiries made by him.

"I find the communication referred to raises two questions, namely:

"1st. Whether a state statute making usury a misdemeanor could be made to apply to an officer or agent of a national bank.

"2nd. How far can the penalties provided for by legislatures of the state can be made applicable, if at all, to national banks.

"1. There are many decisions of the Supreme Court of the United States to the effect that national banks are agencies of the national government, created by Congress to enable it to exercise and conduct its fiscal powers and operations, instruments of the Federal government created for public purposes, and as such necessarily subject to the paramount authority of the United States. The question is very fully discussed and many decisions cited in the case of Easton v. Iowa, 188 U. S. 220. This case presented a question similar to the one propounded by the Governor of Oklahoma, namely, whether an officer of a national bank could be prosecuted under a state law for receiving a deposit when the bank was in an insolvent condition, and the court declared:

"'Congress having power to create a system of national banks, is the judge as to the extent of the powers which should be conferred upon such banks, and has the sole power to regulate and control the exercise of their operations. Congress having dealt directly with the insolvency of national banks by giving control to the Secretary of the Treasury and the Comptroller of the Currency, who are authorized to suspend the operations of the banks and appoint receivers thereof when they become insolvent, or when they fail to make good any impairment of capital, and full and adequate provision having been made for the protection of creditors of national banks by requiring frequent reports to be made of their condition, and by the power of visitation of Federal officers, it is not competent for state legislatures to interfere, whether with hostile or friendly intentions, with national banks or their officers in the exercise of the powers bestowed upon them by the general government.

"'While a state has the legitimate power to define and punish crimes by general laws applicable to all persons within its jurisdiction, and it may declare, by special laws, certain acts to be criminal offenses when committed by officers and agents of its own banks and institutions, it is without lawful power to make such special laws applicable to banks organized and operated under the laws of the United States.'

"Many decisions to the same effect are cited in the 5th Fed. Anno. Stat. 131. There are a few decisions of the state courts to a contrary effect, but they seem to be overruled by the decisions in the cases above cited.

"It is shown by sections 5197-98 of the Revised Statutes that Congress has considered the matter of usury and it must be concluded has covered the subject as fully as was desired. This being so, I am of the opinion that an officer or agent of a national bank would not be amenable to a state law making usury a misdemeanor.

2. In cases of this kind the penalties provided in state laws could be made applicable to national banks and their officers by authority of Congress only, in like manner as Congress has by authority of section 5197-98 of the Revised Statutes, applied to national banks the state laws fixing the legitimate rates of interest banks may charge.

The letter referred to is herewith returned."

On December 28th the Solicitor of the Treasury again wrote the Comptroller of the Currency as follows:

"I am in receipt of your letter of the 20th instant, transmitting a further communication from the Governor of Oklahoma in relation to the application to national banks of state usury laws, and requesting my opinion upon the questions raised by the Governor's letter.

"The first question presented is whether sections 5197 and 5198 of the Revised Statutes of the United States exclude other penalties from being applied to national banks, and that a forfeiture provision enacted by a state voiding the entire contract would only apply to state corporations and banks and individuals and not to national banks.

"This must be answered in the affirmative. In the case of national banks the remedy afforded by section 5198, Revised Statutes of the United States, is exclusive, and the usury laws of the state do not apply except as they are made so by section 5197, Revised Statutes; that is, as to what rate of interest would be usurious.

Schuyler Nat. Bank v. Gadsgen, 191 U.S. 451;

Haseltine v. Central Nat. Bank, 183 U.S. 132;

Farmers and Mechanics Bank v. Dearing, 91 U. S. 29

Central Nat. Bank v. Pratt, 115 Mass. 539;

Davis v. Randall, 115 Mass. 547;

Hintermister v. First Nat. Bank, 64 N. Y. 212;

First Nat. Bank of Columbus v. Garlinghouse, 22 Ohio St. 492;

Wiley v. Starbuck, 44 Ind. 298;

Florence R.R. & Improvement Co. v. Chase Nat. Bank, Ala., 106 Ala. 364;

Slaughter v. First Nat. Bank of Montgomery, 109 Ala. 157;

First Nat. Bank of Dalton v. McIntire, 112 Ga. 232.

"Referring to the specific suggestion of Governor Williams that in the agitation there for usury legislation, a provision for the forfeiture of the entire principal where the contract was usurious, had been advocated, I would refer to the case of Oates v. National Bank, 100 U.S. 239, in which it was held that the validity of the contract was not affected by taking or reserving an unlawful rate of interest. For other decisions to like effect, see 5th Fed. Annotated Statutes, 133.

"The second question is, Does the provision in section 5198 that 'The person by whom it has been paid, or his legal representatives, may recover back in an action in the

nature of an action of debt, twice the amount of interest thus paid from the association taking or receiving the same,' permit the state, through its law officer, for the use and benefit of such person, to maintain such action, provided a state statute would so authorize? In other words, if the state statute made the state, through its law officer, the legal representative for such purposes to recover this penalty, would such a statute be valid and apply as to national banks, and would a suit thus instituted in the name of the state, by the district attorney, county attorney, or Attorney General for the use and benefit of such person, brought under special authorization by a state statute, lie as against the national bank, under sections 5197 and 5198.

"This question suggests whether the state could provide two modes of procedure, namely, suit by the state or an officer thereof as a 'legal representative' of a person who pays usurious interest; or a suit in the name of a state or an officer thereof 'for the use and benefit' of the person paying such interest.

"As to a state law making the state or an officer thereof a 'legal representative' of a person who pays usurious interest, I am of the opinion that it would not be valid. Such a law would give a definition to the term 'legal representative' not existing or seemingly contemplated at the time the Federal act was passed, and would no doubt be held to be an attempt to enlarge the Federal statute to a degree not warranted. In fact it would put something additional into the Federal statute not plainly there, which would get its force only from the state statute. This I believe would be exceeding the powers of the state under the ruling in Easton v. Iowa, 188 U.S. 220, and other decisions cited in the opinion of this office to you on the 9th instant.

"As to the other mode of procedure suggested, while I am rather inclined to the view that by virtue of section 914, Revised Statutes of the United States, proceedings could be maintained in the name of the state or an officer thereof 'for the use and benefit' of the person paying usurious interest, yet it is not by any means free from doubt. A suit in this form would affect only the parties, and not define or add to the terms of the Federal statute or go to the merits of the matter, or be obstructive of the administration of the law. It would be a question of practice.

"Section 914 of the Revised Statutes of the United States provides:

""'The practice, pleadings, and forms and modes of proceeding in civil causes, other than equity and admiralty causes, in the district courts, shall conform, as near as may be to the practice, pleadings and forms and modes of proceeding existing at the time in like causes in the courts of record of the state within which such district court is held, any rule of court to the contrary notwithstanding.'

"There are many decisions of the Federal courts to the effect that the United States courts under this section are bound by the state practice.

Sawin, Admr. v. Kenny, 93 U.S. 289;

Arkansas Smelting Co. v. Belden Co., 127 U.S. 379;

For other decisions, see 4th Fed. Anno. Stat. 567, et seq.

"These cases arose out of contract relations or other matters dissimilar to that connected with the question before me, namely a suit for a penalty under a federal statute. The nearest cases to it that I have been able to find grew out of suits to enforce penalties under the patent laws, but these are not very satisfactory.

"It appears that the Federal courts consider that they have a good deal of latitude in the words of section 914 above quoted. 'as near as may be. And herein lies the

uncertainty of what the Federal courts might hold if they had to decide the question. In Mexican-Cent. R. Co. v. Pinkney, 149 U.S. 207, the Supreme Court says:

"These words imply that, in certain cases, it would not be practicable, without injustice or inconvenience, to conform literally to the entire practice prescribed for its own courts by a state in which Federal courts might be sitting.'

"See also 4th Federal Statutes, Annotated, 565. Of course, there would be no trouble in the state courts, as they would be bound by the state statutes without question, and under the conformity statute mentioned (section 914 R. S. U. S.), the state practice as to parties should be followed in the Federal courts; but, as will be observed by a reading of the decisions cited, the latter courts might take a different view in the matter.

"The decisions cited by the Governor of Oklahoma in his letter go to the authority of the state to enact laws under the police power. I have very little doubt that this power of a state could be questioned. It would be in the line of regulating banking within the control of the state, but that would not give the state power to regulate national banks; and the only way I can see that the state might possibly invoke 5198 R.S., U.S., in the interests of its citizens and sound banking in the state would be to authorize suits thereunder in its courts in the manner indicated. And it would probably make this authority less liable to attack if it should be linked with like authority in recovering penalties imposed on state banks.

"The communication of the Governor of Oklahoma, which you transmitted to me with your letter, is herewith returned."

A state law prohibiting the excessive charging of interest should apply with equal force to both national and state banks. From the opinion of the Solicitor of the Treasury a state statute making usury a criminal offense would have no application to the officers, agents or employees of national banks.

No complaints have been made as to excessive rates on real estate loans. The abuse in the practice of usury, as a rule, applies to chattel loans and those secured by assignments of wages, and pledges. In providing against such abuse in other states such loans have been classified. In New Jersey the statute enacted to prevent such abuse has placed loans up to and including $300, exclusive of interest, in a class. (See laws of N. J., 1914, chap. 49, pp. 75, 80.) This is a wise cause. By this classification and protection of the small borrower the foreign lender in large sums on cattle and such chattels is not frightened and caused to withdraw his accommodations.

I recommend for your consideration the question of interest and usury and suggest that you consider the advisability of enacting a statute, following the limitations of the Constitution, which fixes the maximum legal rate at six per cent, and the maximum contract rate at ten per cent. In addition that you permit a small graduated principal incidental fee to be charged on chattel loans amounting to $100 exclusive of interest, the minimum incidental fee to be fifty cents. This graduated incidental fee, however, should be safeguarded in such a way as to prevent abuse and the avoiding of the interest laws by the lender by means of subterfuge. By way of penalty I recommend that you provide that as to chattel loans securing amounts up to three hundred dollars, exclusive of interest, wherever a rate of interest and incidental fee is charged or contracted for in excess of the amount permitted by the interest statute, that the filing of the mortgage shall not operate to create a lien in a civil or criminal proceeding; that in addition that the party paying the

excessive interest, or his legal representative, may recover from the party collecting same twice the amount of interest so paid, and that it shall be the duty of the county attorney to bring such action in the name of the state for the use and benefit of the party paying such excessive interest, in each action to be taxed as a part of the costs a fee equal to ten per cent of the amount recovered, provided in no case shall the fee be less than ten dollars, one-half of said fee to be paid into the county treasury to the credit of the road fund, and the other half to be retained by the county attorney as his compensation; that where this act is willfully violated with the consent or knowledge and acquiescence of the board of directors of a state bank, the Governor of the State may require the Attorney General to bring an action in the district court of the county in which the state capitol is located to have the charter of said bank cancelled and the bank liquidated through the banking department as in cases of insolvent banks; that in all actions brought to foreclose chattel mortgages or for the possession of chattels, by virtue of a chattel mortgage, or to foreclose a lien by virtue of a chattel mortgage, where the original debt, secured by such chattel mortgage, exclusive of interest, does not exceed three hundred dollars, the plaintiff be required to allege and prove that he has not violated this interest act, and where the proof shows a violation of this act that the lien be forfeited.

I further recommend that you consider and pass an act to regulate pawn shops.

HIGHWAY DEPARTMENT.

The Highway Department as organized pursuant to Act of March 15, 1915, Session Laws, 1915, chapter 173, at present consists of G. B. Noble, Commissioner, W. P. Danford, Acting State Engineer, C. G. Adkins, Assistant State Engineer, Miss May Sinsabaugh, bookkeeper and stenographer, and J. I. Tucker, Dean of the Engineering Department of the State University, acting in an advisory capacity under the provisional title of Consulting State Engineer. I quote from the annual report of the Commissioner of Highways for year ending December 31, 1915:

"We have registered and collected taxes or license fees from 25,019 automobiles and motor trucks, 1,755 motor cycles, 592 tractors and from 668 dealers in motor vehicles. The amount of taxes collected by this Department during 1915 is $154,198.58.

The amounts returned to the various counties as follows:

July apportionment _ _ _ _ _ _ _ _ _ _ _ _ $45,861.15
August apportionment _ _ _ _ _ _ _ _ _ _ _ 51,270.63
Total _ $97,131.78

Amount of deposit with State Treasurer, $57,066.80 which amount includes the 10 per cent. retained by the State for the collection of these taxes. The September, October, November and December apportionments will be refunded to the various counties as speedily as our bookkeeper can make up such apportionments, but it does not appear just when that will be, as an immense volume of new business will come upon us with the beginning of the new year.

The appropriations and expenditures for the operation of the Department have been as follows:

Acct. No.	Purpose	Appr'n.	Disb's'd.	Balance.
1	Com's. Salary	$2,400.00	$1,000.00	$1,400.00
2	Eng'rs. Salary	2,100.00	641.67	1,458.33
3	As't Eng. Salary	1,500.00	536.65	863.35

4	Sten'g'pr Salary	1,000.00	499.98	500.02
5	Fur. & F's'trs.	500.00	455.99	44.01
6	Printing	600.00	595.16	4.84
7	Regst. Tags	1,500.00	1,500.00	_ _ _ _ _
8	Contingent	3,000.00		
	Tags		750.00	
	Postage		1,510.00	
	Help and Travel		499.46	
	Total		$2,759.46	240.54
	Total _____	$12,600.00	$7,988.91	$4,611.09
Deficiency:				
	Postage	$5,000.00	$766.15	$4,233.85
	Reg'sy Tags	750.00	750.00	_ _ _ _ _
	Total	$5,750.00	$1,516.15	$4,233.85

Our total collections as above suggested were $154,198.58, ten per cent being retained by the State for the expense of this Department amounts to $15,419.85, our expenses were, total, $9,049.08, leaving a balance of $6,370.77.

Comments:

There seems to have been no adequate conception of the volume of detail and labor connected with the registration of vehicles. For three or four months the Commissioner and the regular office force have been obliged to work as high as fifteen hours a day, and frequently as high as seven clerical assistants borrowed from other departments were employed during the same period. This has resulted in making the Department merely a revenue-collecting agency, with no opportunity for that supervisory, administrative and engineering activity so essential to successful road building upon a large scale. Neither has there been opportunity to consider the larger and widely varying aspects of the tremendous undertaking contemplated in the law, namely, supervision over the construction and maintenance of about 13,000 miles of State Road system.

As a result of this amount of revenue-collecting work overflowing the capacity of our staff of workers, there have been numerous and well-founded complaints about the inefficiency of this Department, based chiefly upon the delays met in handling the business which the various counties were required to have with it.

With these frequent and vexatious, though absolutely unavoidable delays numerous controversies have also arisen relative to the scope and functions of this Department, the proper interpretations to put upon the law, and rulings to be considered and made. In most cases, in order to prevent a complete stoppage of all business routine matters have not been given the thoughtful and thorough consideration necessary to effectively safeguard the public interests, unquestionably these matters were justly entitled to have this care and study both with respect to the public interest and convenience in the matters involved as well as in regard to the large amounts of money involved. It is certain, also, that had there been the opportunity to have a representative of this Department actively covering the State, many abuses reports of which have come to us would have been prevented, while if all matters brought here for approval could

have been handled as they deserved, it would have been easy to conserve much public money. For these and many other important reasons not necessary to be set forth in detail at this point, it may be said that the crying need of this Department is for help, and the substantial provision must be made for salaries, supplies and equipment, if the public is to be fairly served in this vastly important work, and if proper credit is to be earned by this administration.

Mr. C. G. Adkins, the Assistant State Engineer, has devoted all of his time toward keeping the accounts and books in the collection of this fund. In addition to that, Nash Setzer, of the State Election Board, has given practically all of his time towards assisting in the clerical work of this Department. From June 22nd, 1915, to August 1st, 1915, Colonel A. N. Leecraft, Executive Secretary, and Irby Kolb, an executive stenographer, aided and assisted in the work in that Department. They were needed in the executive office, but the pressing necessities of the Highway Department, which was just being inaugurated under the act of March 15, 1915, moved me to cramp my department in order to aid that. Additional assistance from the Secretary of State, State Board of Public Affairs, State Examiner and Inspector and State Board of Agriculture was afforded from time to time as conditions would permit.

I recommend that you provide the following additional help for the Commissioner of Highways, to-wit: Chief Bookkeeper at a salary of $120.00 per month; one Clerk, to be ex-officio Cashier, at a salary of $110.00 per month; one additional stenographer at a salary of $75.00 per month; and to provide a special contingent fund for additional help to be employed during times of emergency. It might be advisable to also provide a combination place to help in the office and also to look after the collection of automobile license tax in the field so as to permit the Commissioner of Highways to give more of his attention toward the other duties of his office. Since the organization of this Department under the Act of March 15, 1915, the efforts of the Department have necessarily been, in a large measure, devoted towards the collection of this license tax.

The Commissioner of Highways has asked that provision be made for "surveying and drafting room equipment for the State Engineer's Department, including a working library of technical books and periodicals devoted to the professional subjects of road and bridge building, drainage and irrigation, sanitation, highway administration, and studies upon the testing and properties of all road-building materials found in this State. A highway laboratory suitably equipped to make the usual and recognized tests of sand, cement, stone, iron, concrete, clays, oils and asphalts, or other materials of recognized usefulness in highway." As to the highway laboratory the last Legislature provided for the installing of a laboratory in connection with the Department of the Commissioner of Health. This Department, if suitably equipped, can make the usual recognized tests of sand, cement, stone, iron, concrete, clays, oils, asphalts and other materials of usefulness in highway work. To provide for a laboratory to be attached to the Highway Department would in a measure cause a duplication of expenses. After the completion of the State Capitol Building these departments will be housed in one building, which will facilitate efficiency and economy. By the terms of the contract under which the Capitol Building is being erected the same must be completed and delivered to the State by September 15, 1917. Barring some casualty the time is not distant when this condition will be realized. I suggest that you consider the necessity as to whether any addition should be made to the

present laboratory facilities now provided for the Health Department in order to facilitate and safeguard road construction.

On September 23, 1915, I certified to a deficiency for the Department of Highways in the sum of $817.50 for tags, which is referred to as Deficiency Certificate No. 1, in said Department. On October 1, 1915, I certified to Deficiency Certificate No. 2, for said Department, in the sum of $2,500.00, covering stamps and incidentals. On January 4, 1916, Deficiency Certificate No. 3, for said Department, was certified to me, which covers $1,036.60 for registration certificates, letter heads, envelopes, second sheets, application blanks for delinquent tax, application blanks, error slips, rate books, ledgers, etc., and $3,000.00 to purchase forty thousand tags for the year 1916.

I recommend for your consideration the question of covering this by an appropriation out of earnings of the Highway Department, which is $15,418.85, or other funds available as in your judgment you may determine.

Section one, of article two, chapter one hundred seventy-three, under the head of "County and Township Organization" provides that:

"The Board of County Commissioners of each county, as soon as practicable, shall employ a competent engineer to be known as the county engineer, whose tenure of office may be terminated by the Board of County Commissioners, who shall perform the duties as hereinafter provided."

I recommend for your consideration the advisability of amending this section and make it the duty of the Board of County Commissioners to employ a competent engineer to be known as the county engineer, with the proviso that said board in lieu of appointing the county engineer may arrange with the State Highway Department to do the engineering work for said county, the county to pay only the actual expenses of the State Engineer and his assistants and to furnish such helpers as he may need. In some counties conditions may not justify the expense of employing a County Engineer and paying him the annual salary, and by this means the proper supervision may be had by a competent engineer from the State Highway Department without such annual expense.

Section one, article three, chapter one hundred seventy-three, (page 322 Session Laws, 1915), provides:

"There is hereby levied annually an advalorem tax of one-fourth of one mill upon all property in this state which may be subject to taxation upon such basis said tax so levied to be collected as other state taxes and when collected to be *covered* into the State's official depository and there credited to an account that shall be styled and known as the state highway construction fund. All moneys accruing in said account shall be deemed and construed to be a special fund held in trust for the use, as in this act provided, of the several counties in which the same shall be collected, and shall in no event be construed to be a fund of the State or a fund under its management. Each county's share therein shall be the amount paid in by said county. It shall be the duty of the State Board of Equalization to include said levy herein made in their total annual levy and to make proper return thereof to the respective counties of the State, and to collect same as provided by law for the collection of other taxes. It shall be the duty of the State Treasurer to give each county proper credit for all money paid into the State Highway Construction Fund and to keep proper record and accounts of all money paid to the respective counties from said fund as provided in this act."

Section two, of the same article, also provides:

"The county excise board in each county in the State is hereby authorized, at the option of said board, to make a levy of one-fourth of one mill upon all property in any said county subject to taxation upon an ad valorem basis; said levy when made and collected shall be covered into a county road construction fund; and shall be used for the construction and maintenance of county highways under the supervision of the board of county commissioners as provided in this act; provided, that in order to carry into effect the provisions of this act, the county excise board may levy for current expenses of said county not to exceed eight (8) mills."

Section 3, of said article, also provides:

"All counties in the state making a levy for any year of one-fourth of one mill tax upon all taxable property as provided in the preceding section, and having otherwise complied with the provisions of this act, as to submitting and having plans approved, shall be entitled to receive from the state highway construction fund all money in said fund to the credit of the county making the said levy. Application for aid from said state highway construction fund shall be made to the Department of Highways, and shall show that plans have been made and approved as provided herein, and the county levy to have been made by the county making the application and when approved by the Department of Highways, the Commissioner of Highways shall draw a voucher on the state depository, payable to the county treasurer, for such amount as may be therein to the credit of the county making such application, and it shall be the duty of the State Treasurer, as the officer in charge of such depository to honor such voucher and to pay set amount mentioned in such voucher to said county; provided, that said funds shall be expended by the respective boards of county commissioners under the supervision of said Department of Highways."

I have been advised that the railroads in this state are paying the tax authorized to be collected by said section one under protest, thereby saving their right to bring an action to recover same. I assume that they have doubts as to the validity of said act on account of section twenty, of article ten, of the Constitution of the State, which provides that:

"The Legislature shall not impose taxes for the purpose of any county, city, town, or other municipal corporation, but may, by general laws, confer on the proper authorities thereof, respectively, the power to assess and collect such taxes."

The Third Legislature passed an Act of March 10, 1909 (page 600, Session Laws, 1909), and section two, article seven, of that act provides, in part, as follows:

"There is hereby levied annually an advalorem tax upon all property in this state which may be subject to taxation upon such basis, a tax sufficient in addition to the income from all other sources, to pay the expenses of the state government for each fiscal year ending on the thirtieth day of June…provided, however that the total amount of such levy shall not exceed the maximum amount provided by the Constitution that may be levied on an advalorem basis for State purpose(s) 'including one-fourth of one mill for common school purposes to be levied, collected and distributed as other school money.'"

The Atchison, Topeka & Santa Fe Railway Company resisted the collection of this tax on the ground that it violated said section twenty, article ten, of the Constitution of this State. In A., T. & S. F. Ry. Co. v. State, 28 Okla., 94, the contention of the railroad was denied by the Supreme Court of this State. At page 108, section nine, of article ten, of the Constitution, was construed, wherein it was said:

"The foregoing provision of the Constitution in no way limits the purposes for which the State may levy a tax, but only fixes a limitation upon the amount it may levy for all purposes."

If this one-fourth of one mill is levied as a State tax for road purposes it is valid. Obviously that was the purpose of the Legislature, but certain expressions were inserted, obviously with the purpose of keeping said fund from coming under the operation of section fifty-five, of article five, of the Constitution of this State, which provides:

"No money shall ever be paid out of the treasury of this State, nor any of its funds, nor any of the funds under its management, except in pursuance of an appropriation by law."

It is my judgment that this road fund could be paid into the State Treasury and be paid out under the act authorizing it without a recurring specific appropriation. Betts v. Commissioners of Land Office, 27, Okla., 64; Riley v. Carrico, 27, Okla., 33.

The Attorney General of this State, on June 24th, 1915, so ruled. I quote from his opinion on the question:

"As to whether or not under the grant of power of section three, article sixteen, of the Constitution, the Legislature is authorized to pass section 2990 of the Revised Laws of Oklahoma so as to make it a continuing appropriation and binding, as long as it remains unrepealed, on the Treasurer to pay such vouchers when the funds are on hand, we respectfully submit that in the opinion of this office section 2990, Revised Laws, 1910, is within the grant of power conferred upon the Legislature by section three, article sixteen (section 319 of Williams' Ann., Constitution, and that it is a valid statute.

"The obvious purpose of Article XVI of the Constitution, was to grant to the Legislature special power to provide an adequate and practicable system for the improvement of roads, highways and other internal improvements, and a system of taxation for paying for the same, section three, of said article 16, being as follows:

"'The Legislature shall have power and shall provide for a system of levees, drains, and ditches, and of irrigation in this State when deemed expedient, and provide for a system of taxation on the lands affected or benefited by such levees, drains and ditches and irrigation, or on crops produced on such land, to discharge such bonded indebtedness or expenses necessarily incurred in the establishment of such improvements; and to provide for compulsory issuance of bonds by the owners or lessee of the lands benefited or affected by such levees, drains and ditches or irrigation.'

"It will be observed that by the foregoing section, the Legislature is not only granted the power, but is enjoined with the duty, 'and shall provide,' etc., when deemed expedient, to provide both for a system of internal improvements and for a system of taxation by which the expenses incurred in making and maintaining such improvements may be paid.

"In the exercise of this constitutional grant of authority in the discharge of the duties thus imposed upon it by the Constitution, the Legislature is no more limited in its power to provide for a system of taxation, complete, operative, adequate and practicable, than it is in providing for the system of improvements, but is given equal authority in making provisions for each system. There is nothing in such constitutional provision which implies that the revenue derived from such system of taxation shall become a State fund, to be controlled exclusively by the State in its sovereign capacity and to be paid out by Legislative appropriation only, but the framers of the constitution, cognizant of the

fact that it would not be necessary to ditch and drain or irrigate the entire State, but that some portions or districts within the State might become in need of such improvements while other portions might not, granted to the Legislature the power to provide for a system of internal improvements applicable to all districts where the expediency might arise, and to provide for a system of raising the revenue necessary to pay the expenses of such improvements, such expenses to be borne by the parties benefited or affected by such improvements. And being endowed with this special grant of power and being enjoined with this duty by the Constitution, the Legislature passed the Act approved May 29, 1908, in which the power to determine the necessity or expediency for such improvements in any particular district, is conferred upon the board of county commissioners, who are, also, given the power of determining the amount and making the assessment necessary to pay the expenses of such improvements. Section twenty-two, of the Act, approved May 29, 1908, as amended by the laws of 1909, which is section 2990, Revised Laws, 1910, provides:

"'That all public lands belonging to the State of Oklahoma which may be situated within the limits of any authorized drainage district shall be subject to assessment for benefits and allowance for damages the same as lands owned by private persons, and the State Treasurer shall pay the amount of assessments for benefits upon any such lands upon vouchers of the county commissioners of the county in which such lands may be situated and assessed.'

"Now if a separate legislative appropriation were required in each case where lands belonging to the state happened to be benefited by such improvements and the state thereby rendered liable for its portion of the assessment, the whole system would be rendered cumbersome, inadequate and impracticable and the purpose of the constitution to a great extent would be thwarted? We think, therefore, that were it necessary, the doctrine of *ab inconvenienti* is clearly applicable and that its application would be justifiable. But we do not think it necessary to invoke the application of this doctrine to this statute. It is our opinion that section three, article sixteen, of the Constitution, being a special provision, adopted for a specific purpose, granting a special power and imposing a special duty upon the legislature to make provisions for carrying out such purpose, logically carries with it the necessary power to discharge the duty thus imposed by providing an adequate and practicable system for carrying such constitutional purposes into effect. It is not necessary, therefore, to apply the doctrine of *ab inconvenienti*, nor is it necessary to view the Act strictly in the light of a continuing appropriation. As, in our opinion, section three, article sixteen, of the Constitution, is a special grant of authority to the legislature to carry out a specific purpose of the framers of the Constitution. And, this being true, it necessarily follows, in the absence of any limitation upon such authority, that the legislature should provide the necessary means for carrying such purpose into effect. This principle was followed in Riley v. Carrico, 27 Okla., 33, 110 Pac. 738, wherein our court construed article ten, of the Constitution, and held that it was not limited by section twenty-six, article ten, thereof, and that under section sixteen, of the Constitution, the legislature was especially vested with power to provide a system for the internal improvements therein mentioned and the power to provide the means and manner of discharging such indebtedness or expenses necessarily incurred in the establishment of such improvemnents [*sic*], citing Houston & Texas Railway Company v. Harry & Bros., 63 Tex. 259. The doctrine of power to provide the

means for carrying out a specific purpose is strongly announced by the Supreme Court of Indiana, in 23 Ind., 111; 24 Ind. 28.

And the Supreme Court of the United States, in passing on the power of Congress and the power of states under the Federal Constitution, to provide the necessary means to an end, has held that such power need not be specifically expressed, but may be implied whenever necessary to give effect to a power expressly granted. A very clear and concise expression of this doctrine, gleaned from the opinions of the Supreme Court of the United States, is found on page 137, Vol. 6, Ruling Case Law, as follows:

'Although the federal government is based upon delegated and enumerated powers, it is universally recognized that that which is implied in the Constitution is as much a part of it as that which is expressed. Accordingly a power may be implied whenever necessary to give effect to a power expressly granted. It has been said that there is not in the whole of the constitution a grant of power which does not carry with it others, not expressed, but vital in its exercise. It is recognized that it is not indispensable to the existence of any power claimed for the federal government that it can be found specified in the words of the constitution, or clearly and directly traceable to some one of the specified powers. Its existence may be deduced fairly from more that one of the substantive powers expressly defined, or from them all combined. It is a settled principle of constitutional law that the government which has a right to do an act, and has imposed upon it the duty of performing that act, must, according to the dictates of reason, be allowed to select the means. The sum and substance of the doctrine as to implied powers has been repeatedly asserted in language which has not become historic: Let the end be legitimate, let it be within the scope of the constitution, and all means which are proper, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the constitution, are constitutional.'

The line of decisions from which the foregoing text is deduced and from the language of which such text is in fact made up, settle the question of the authority of the legislature to provide the means and manner of giving effect to a special grant of power, and fully support Your Excellency's suggestion, on page four of your communication of the 10th instant, that

'This is a special grant of authority to the Legislature, and that being so the means and manner of carrying out the grant is to be determined by the Legislature.'

A similar grant of special power is conferred by Section 7, Article 10 of the Constitution (Section 272, Williams' Ann. Const.), and in fact said Section 7, Article 10, (Section 272, Williams' Ann. Const.), strengthens the power of the Legislature granted in Section 3, Article 16 (319), id., and helps to remove it from the limitations contained in Section 55, Article 5 (145), id."

The bank guaranty fund, under a similar delegation of power, has been treated by that department as not being subject to the provisions of Section 55, Article 5, of the Constitution of this State.

In the original opinion in the case of State of Oklahoma, ex rel. Chas. West, Attorney General v. Farmers National Bank of Cushing, No. 5852, filed January 5, 1915, not officially reported, the Supreme Court of this State reaffirmed the doctrine announced in State ex rel. Taylor v. Cockrell, 27 Okla. 630, that the depositors' guaranty fund was a State fund just as much so as the proceeds of the common school lands, taxes levied and collected for the maintenance and support of the common schools and then said:

"And the guaranty, like the school fund may be paid out pursuant to rules and regulations adopted by the State Banking Board, without any specific appropriations under the requirements of Sec. 55, Art. 5 Const."

This opinion has not been officially reported. On rehearing, another opinion was written, but nothing was said in that opinion that militates against the rule announced in the former.

Section 31, of Article 2 of the Constitution provides:

"The right of the State to engage in any occupation or business for public purposes shall not be denied nor prohibited, except that the State shall not engage in agriculture for any other than educational and scientific purposes and for the support of its penal, charitable, and educational institutions."

This is a special grant of power for the purposes therein specified. Ex parte McNaught, 23 Okla. 285.

When the Constitution of this State is construed as an entirety, you observe numerous grants of authority and see the underlying purpose of the framers of the Constitution. To hold that Section 55 of Article 5 of the Constitution of this State was a limitation on the exercise of the power to carry out these grants would exclude the authority of the Legislature to select the manner and means applicable to carry out these special grants and make the special grants abortive. If Section 55 of Article 5 of the Constitution applies in such cases it is impossible to carry on the necessary enterprises and industries at the various penitentiaries, asylums and other state institutions that are essential to be conducted in the interests of the State.

I recommend for your consideration the amendment of this section so as to remove all ambiguity or field for construction which would give the railroads or other large taxpayers of this State any ground to resist the payment or the validity of this tax.

Section 9 of Article 10 of the Constitution limits taxation on ad valorem basis for county purposes to eight mills with a provision that an additional two mills may be levied in aid of county high schools and of the common schools of the county.

Section 1 of Chapter 195, (Session Laws 1913, page 435), places an additional limitation other than that contained in Section 9, Article 10, supra, and limits the county levy for current expenses to not more than four mills, "provided, that any county may levy not exceeding one mill additional in aid of the common schools of the county; and provided that where the assessed valuation of any county is less than $4,000,000, the county levy shall not exceed six mills for current expenses, and one mill in aid of the common schools of the county; and provided further, that where the assessed valuation of any county is less than $10,000,000 and not less than $4,000,000 the county levy shall not exceed five mills for current expenses and one mill additional in the aid of the common schools of the county."

I recommend for your consideration the amendment of said section 2, supra, so as to permit the county to make a tax levy for general purposes and also for road purposes in addition to the one-fourth of one mill, the total levy not to exceed the limitation prescribed by Section 9 of Article 10 of the Constitution. I take it that the Legislature intended that the county, if it liked, could make a levy up to eight mills for road purposes in connection with the other levies to be made for current expenses. I recommend for your consideration the amendment of said section 2, to make it more definite and certain. If I have properly apprehended the intention of the Legislature this amendment should be

made in the nature of a declaratory act. For some counties, I am advised, have so levied the tax and where a declaratory act is passed the courts would probably follow the subsequent expresse legislative intention in the declaratory act. Western Investment Co., et al. v. Tiger, 221 U. S. 286.

I recommend that Section 3 be amended, substantially, to read as follows:

"All counties in the State having made a levy for any year of one-fourth of one mill upon all taxable property as provided in the preceding section, and having otherwise complied with the provisions of this Act, as to submitting and having plans approved, is entitled to receive from the state highway construction fund an amount equal to that derived by the county from said one-fourth mill county levy. Application for said sum from the state highway construction or department funds shall be made to the Department of Highways, and shall show that plans have been made and approved as provided herein, and the county levy to have been made by the county making the application and the amount or amounts collected thereunder, and when approved by the Department of Highways, the Commissioner of Highways shall draw a voucher on the State Treasurer, as custodian of the state depository, payable to the county treasurer for such amount, and it shall be the duty of the State Treasurer, as the officer in charge of such depository, to pay such voucher provided that said funds shall be expended by the respective boards of county commissioners under the supervision of said Department of Highways, and only after said department has approved the plans and the manner in which the same is to be expended."

The recommendations are limited to the sections specifically referred to, and I have not intended to recommend anything connected with said Act of March 15, 1915, except the matters relating to said sections.

MINING

The State Board of Public Affairs, as ex-officio Board of Prison Control, has an opportunity to acquire a lease containing 280 acres of coal, all except 40 acres lying within the limits of the McAlester Penitentiary grounds, for $3,000.00. Dr. J. J. Rutledge, of the Federal Bureau of Mines, who was assigned at may request by the Federal Bureau of Mines, inspected and reported to me on this coal as follows:

"A producing mine can be easily had by re-opening Old No. 3 Samples slope. About six months after re-opening, this mine should be capable of producing from two hundred to three hundred tons of coal per day. The cost of producing a ton of run of mine coal under the present mining scale, hand mining, after the surface equipment is provided, should not exceed $2.15 per ton."

He estimated the amount of coal capable of being mined from said Lease No. 2, which contemplated a recovery of fifty per cent. Of coal from the same, and that under the usual practice in the McAlester coal fields. He took twenty-seven cubic feet of solid coal in the seam to be mined as the amount of coal in one ton of 2,000 pounds, and he estimated that in the Upper Hartshorne seam on said lease on the basis of fifty per cent. Recovery of the coal in a seam that there was contained 863,615 tons, and in the Lower Hartshorne seam 921,471 tons.

On September 15, 1915, there had been paid to the Federal Government as advance royalty on said Lease No. 2, $6,100.00.

According to the Federal regulations there is required to be mined 15,000 tons on each lease annually after the fourth year.

The holder of the lease would be entitled to credit for this $6,100.00 for coal mined, barring a penalty of not exceeding $1,000.00.

The holder of the lease would be entitled to buy the surface at appraised value. This land lies within the bounds of the penitentiary grounds proper and the working of this mine by outside labor would have a tendency to imperil the discipline of the penitentiary.

The mining of coal by means of convicts for State use is within the modern policy of the use of convict labor. The State of Ohio is in the foreground of the modern plan of handling convict labor. On November 15, 1913, the Warden wrote me as follows:

"I am in receipt of your letter inquiring about the prisoners in the Ohio Penitentiary.

"The 1600 inmates of this institution are all employed in what we refer to as the "state-use" system of employment, that is all their labor is for the benefit of the state.

"Inside the walls we have various mills and industries, the products of which are consumed by other state and even county institutions, as the law prescribes that articles manufactured at this Penitentiary and also at the Ohio State Reformatory at Mansfield, O., must be purchased by state institutions and such county institutions as Childrens' Homes and Infirmaries.

"We manufacture soap, both toilet and bath, all kinds of knit goods, such as underwear and stockings, work and dress shirts, overalls and blouses, handkerchiefs, tinware, doors and sash, etc. We also have a state machine repair shop. All these are under the state-use system, as also is a large stone quarry, west of Columbus, at which we produce a high test grade of stone for road building and general purposes.

"In addition to these we have inside the walls various departments, such as painting, carpentry, blacksmith, printing, etc., devoted to institutional work only.

"At present there are working outside the walls in the neighborhood of 250 prisoners on the honor gangs, which we have perfected to a high degree. On the prison farm 56 prisoners worked all summer without guard. We also have prisoners at work at seven other widely scattered points of the state, principally at other state institutions.

"Ohio will soon begin the construction of a new penitentiary, which will be located on a farm 25 miles west of Columbus. There the prisoners will be engaged in farming work and also in the state-use manufacture of products as they are at this time. A woolen mill is to be installed to manufacture blankets and other woolen goods. The prison farm we now occupy consists of about 400 acres, from which about $15,000 worth of produce was raised this year, all of it for consumption at the penitentiary.

"The new prison farm will consist of about 1700 acres of excellent farm and timber land."

The State is required every year to buy coal for fuel for all of its State institutions and the amount increases year by year. The money with which fuel for the State institutions is purchased has to be collected from the taxpayers. The taxpayers have to pay for keeping up the courts and manning the police force of the State to suppress crime, and men who are placed within the penitentiary go there on account of their own acts. Men who have not been convicted of violating the law voluntarily work in the coal mines in these fields. The mining of coal by the State for State-use and for State institutions and State agencies is within the modern plan evolved for the management of prisoners. A great many of the prisoners in the prison at McAlester are trained coal miners. The State

can save money and help the taxpayers by mining this coal. It might be provided that under rules and regulations the Board of Prison Control could provide a reasonable compensation, say one-fourth or one-third of the usual charge for mining, and put that to the credit of the convict and if he has a family, remit that monthly to the family. The day's work for the convict in the coal mine must not exceed eight hours. When a reasonable task is completed, if it be done within a half day, then the miner's day's work should be completed and he be permitted to return to his cell or, if his conduct justifies it, to go to the reading room and the library for study and reading.

I am aware of the fact that some oppose the use of this labor in mining coal and with the argument that it is dangerous work. If this work is of such a dangerous character that a convict should not be worked at it, every coal mine in those fields should be closed to protect human life; for if it is too dangerous for the convict to work in, it is too dangerous for the free man to be permitted to work in. The same exercise of the police power that should restrain the State from placing the convict in there to mine coal to keep warm during cold weather those in the Feeble Minded Institution, Insane Asylum and Orphans' Home and other uses for said institutions should be exercised to restrain the free man from voluntarily putting himself in such a dangerous occupation that would probably make him a charge on society and the State. The State can be trusted better than the operator to keep the mine in a safe condition and to provide a safe place in which the convict is to work. I am not only for humanity, but also for reason.

We are now planning to put as many convicts on the roads as we practically can. But it is not practical at any time to work more than one-fifth of the convicts on the public highways; nor can we work them all on farms. The farmers of the State seem to be willing for convicts to be worked on farms with the view of making the penitentiaries self-sustaining and to reduce the burdens of taxation. The coal miners and operators should be willing for the State to use convicts to mine coal for State use. The farmer should not be made the butt end of everything and to bear every burden. I am the friend of every class of labor and unfriendly to no class or interest in the State. I believe that it is fair and just for the State to mine its own coal for State use, but for it to be done under regulations that will protect human life and health.

I recommend for your consideration the authorizing of the State Board of Public Affairs to acquire the necessary rights or leases, and enter into the necessary contracts as may be necessary for the mining of coal for State use and that State convicts may be employed under the supervision of the State Board of Prison Control for that purpose.

TWINE PLANTS.

Twine plants have been installed and operated by means of convict labor at the state prisons in Kansas, Indiana, Wisconsin, Michigan, Minnesota, North and South Dakota.

On October 28, 1913, the Wisconsin Warden wrote me as follows:

"In reply I am pleased to inform you, that we have a 140 spindle plant, with a daily capacity of 16,000 pounds.

"We have just closed our first year's business, which has been very satisfactory in every way and which will show a small profit or dividend. Our first year's output has been very satisfactory throughout the county and we found ourselves compelled to run the mill over time, in order to meet the demands of the season. The first year we manufactured only Standard and Sisal Twine, believing it was wise to first place our mill

in full operation and get our product on the market before attempting to manufacture all grades.

"This year, as we enclosed order blanks, we are manufacturing all lengths and grades of twine. We are adding to our mill the capacity of a $30,000.00 warehouse, which, like the mill, is a concrete building with up-to-date equipment. We employ about ninety men as convict labor in the twine plant."

On October 20, 1913, the South Dakota Warden wrote me as follows:

"We have here a plant of 100 spindles, which began operation March 17th, 1909. We are turning out about 3,000,000 pounds a year and have a ready market for it.

"We do business mostly with the Farmers' Elevators and confine our operations to one agent in a town.

"There was an appropriation of $70,000 for building and machinery; the cost of building and machinery exceeded this $70,000 by $8,000 which was paid from the Local Fund; besides this $78,000 there was a State Tax levied for the Twine Plant which brought in $325,000.00; this $325,000.00 is used for the operations of the mill and called the Revolving Fund.

Our books show a net profit of about $60,000 since we started; besides this , we have saved the farmers of this State $200,000.00 during the operation of the Twine Plant as a difference between the State price of Twine and the Trust price. It has acted as a leveler of prices and there is no telling how much the farmers would have to pay for twine if it were not for the State's Twine Plant; therefore, I consider that the result has been very satisfactory."

The Indiana Warden, on October 18, 1913, writes me as follows:

"We maintain and operate a twine mill, capacity 3,000,000 pound per year and we are increasing it to 6,000,000 pounds per year.

"We have at present 100 spindles which will give capacity for 3,000,000 pounds per year.

"The original cost of machinery to manufacture 3,000,000 pounds per year was $30,000.00.

"We find it a very profitable business as we sell out output at a profit.

"To operate this mill it takes seventy prisoners."

On October 18, 1913, the Superintendent of the Twine Mills for the Kansas Penitentiary wrote me as follows:

"Your letter of the 16th addressed to Cashier Twine Plant was referred to me, and I will say in reply that it will take about ninety (90) prisoners to operate a 120 Spindle Mill.

"You have a number of good operators confined in your Oklahoma State Prison, who learned the trade while they were confined in the Kansas State Prison. This class of work furnishes employment for men who are unable physically to do heavy manual labor. We have just completed one of the most modern, up-to-date mills and I suggest that you pay this Institution a visit, by doing so, you will get an insight not to be gained through correspondence. It will also give me pleasure to go into details."

On October 23, 1913, the North Dakota Warden wrote me as follows:

"In reply I will say that our mill is a one-system plant with 120 spindles and has a capacity of from 12,000 to 15,000 pounds of twine per day, that is 10 hours run.

"The cost of our plant as per our book account is approximately $80,000.00 divided as follows:

Buildings	$30,000.00
Twine and Rope Machinery	30,000.00
Power Plant and Equipment	20,000.00
TOTAL	$80,000.00

"The number of convicts employed in the mill is about 80. Of course, if this mill was manned by free labor this number could be reduced to about half.

"The manufacture of binder twine has poven [*sic*], beyond doubt, to be the most profitable industry at this institution and not only tends to regulate the price of twine throughout the State but its profits go a long way toward making the institution self-sustaining. We are not operating a bag factory at this place but understand the Washington State Prison at Walla Walla does make bags and you can probably secure the information desired from them."

On October 9, 1913, the Cashier of the Twine Plant of the Kansas Penitentiary wrote me as follows:

"By request of Hon. Thos. W. Morgan, Warden of the United States Penitentiary, I take pleasure in furnishing you with data relative to Twine Mills operated in this and other states.

"The Kansas State Prison Twine Plant was installed in 1899, having 100 spindles, each spindle producing 100 pounds twine in 10 hours, twine running 500 feet to the pound. In 1907, there was 20 spindles added and in 1912 there was 30 spindles added, bringing the total up to 150 spindles capable of producing 3,750,000 pounds per year.

"From 1899 to 1909 the twine was furnished to the dealer and the farmer at one price. This method of marketing the finished product was very unpopular with the dealers and as a consequence they would not handle the State twine. This made it impossible to market the output of the mills, necessitating of from four to six months each year shut down.

"In 1909, the plan of furnishing the dealer with a special price of one cent per pound under the price to others, interested the dealers and since then the mill has not been able to supply the growing demand for State twine. In the year 1912 the State of Kansas marketed four million pounds of twine, netting the State $40,000.00 and in addition, saved the farmers of Kansas $40,000.00 over prices maintained by other manufacturers.

A Twine Plant, operated by the State, has many advantages. It is especially beneficial to the farmer, because it keeps the price of Twine down to the lowest point, that is, consistent with the cost of manufacturing. The State can manufacture twine at 1c per pound profit and still undersell the Trust price 1c per pound.

A twine plant furnishes ideal employment for those confined behind prison walls. Its nature is such that many men who are unable to do hard manual labor, can engage in it without any injurious results, and at a profit to the State.

"On April 12th of this year, our Twine Plant was completely destroyed by fire. We are constructing a 120 spindle mill, with a capacity of 12,000 pounds per day. This mill is an exact duplicate of the International Mills. The buildings are fire-proof and are also equipped with a sprinkling system and is modern in every respect. The mills when

completed will represent an expenditure of approximately $60,000.00. This does not include the brick furnished by the State Brick Plant, or convict labor.

"For your information, beg to say, the Minnesota prison sold over 18,000,000 pounds of binder twine this season. The North Dakota Prison, located at Grove, N.D., sold 2,653,050 pounds. South Dakota Prison at Sioux Falls sold 3,000,000 pounds. Wisconsin Prison, located at Wampum, sold 2,850,000 pounds this season. The Indiana Prison at Michigan City, sold 1,775,000 pounds.

"In addition to the cost of the equipment and installing (same), a 120-spindle mill, a revolving fund, of at least $200,000.00 should be available, to carry on the business, that is to be used to purchase the material that enters into the manufacture of twine. This amount provides a substantial working basis for a plant of the above capacity.

"It is advisable to have a large fund available so that large quantities of fibre can be bought when the market is low. Buying raw material in large quantities, when low prices prevail on the market, insures better selling price, to the merchant trade on the finished product, and leaves a better margin to the State. With a substantial reserve fund, the State can better compete with the Trust."

On October 20, 1913, the General Manager of the Minnesota State Prison wrote me as follows:

"Replying to your favor of October 16th, will state that we have a twine factory consisting of about 500 spindles with a yearly capacity of 18,000,000 pounds. The cost of a mill of this size would be in the neighborhood of $175,000.00, exclusive of power and buildings, making a cost of $40,000.00 and $45,000.00 for one system as our plant consists of four systems of about 125 spindles each. Relative to the results will state that the mill has always proved a paying investment and we have accumulated a revolving fund of about $2,500,000.00 from an original investment of $250,000.00 which was paid back four or five years after it was appropriated….

"We work about 225 prisoners in the twine factory outside of which we employ ten citizens, consisting of Superintendent, Ass't. Superintendent, Twine Inspector and foremen."

On October 4,1915, the same Superintendent of the Kansas Twine plant, who wrote me in 1913, wrote me as follows:

"In reply to the Oklahoma party, I wish to give the following information:

"To start a twine mill of the same capacity as the one we have at this prison, the State of Oklahoma should set aside $200,000.00. It will take $50,000 to install power and machinery and put the mill in condition to produce twine. This will leave a fund of $150,000 to buy raw material and keep the mill in operation. This $150,000 should be enough to allow the State of Oklahoma to take advantage of the market when the price is right. This is more important, in fact the most important point in operating a prison mill.

"The next important point is to produce the quality. The quality and price on the finished product is the ruling factor of disposing of the finished goods. The only points in favor of the prison mill over the outside mills are the cost of producing. This figures one to one and one-half cents in favor of the prison.

"A mill built at the cost of the above figures is what is termed 120 spindles, 7 balling machine mill. It has two breakers, four spreaders, four draw frames, three finishers, one carding machine, one picker, one rope machine.

"These machines call for 200 Horse Power. The capacity of a mill this size is 3,000,000 pounds of twine per year, figuring the twine to run 500 feet to the pound.

"A prison mill with the proper amount of funds and under a business heading ought to produce a profit of $30,000 per annum, and still be able to give the twine to the trade at a price of one cent per pound below the price of the outside mills.

"Binder twine is made chiefly from Sisal Fiber. This fiber is produced in Yucatan and can be purchased at any time. The output of fiber exceeds the demand by a margin that assures the manufacturer his wants will always be supplied.

"The manufacture of twine gives the men a pleasant form of labor and adds a profit to the State."

In October, 1915, the Chief Clerk and the Warden of the Michigan State Prison wrote me:

"Your letter of the 27th ultimo came at a time when the Warden of this institution was away from here, and in answer we wish to inform you that the Legislative session of 1907 appropriated an amount totaling $235,000, for the purpose of installing and operating a binder twine plant.

"This plant was quite successfully operated the time the present incumbent entered upon his duties January 1, 1911. The output of the plant prior to January 1, 1911, was approximately two and a quarter million pounds of twine, while the same plant in the past year had an output of twelve million pounds of twine."

On October 9, 1915, the General Manager of the Minnesota State Prison wrote me as follows:

"Replying to yours of September 27th, would say that under separate cover we are mailing you our last biennial report which will give you the information requested regarding the twine and farm machinery industries and together with the following information, we hope that you will get all the data you desire.

"Our twine plant is what is known as a four system plant running 525 spindles, capacity of which is about 67,000 pounds per days of ten hours. The cost of a plant of this size at the present time would be in the neighborhood of some $200,000.00.

"Our revolving fund was originally $250,000. This was for the purchase of fibre [*sic*] and material for the carrying on of the business and has long since been returned to the State. Our revolving fund now amounts to over $2,500,000, and we would presume that in starting you would probably put in 100 spindles which would necessitate for the proper installing and running of same in the neighborhood of $250,000."

On October 4, 1915, the Warden of the Indiana State Prison wrote me as follows:

"Replying to your letter of the 27th ult., I have to say that our twine plant was started here in 1906. It has been fairly successful, but the sailing has not been very smooth. Opposition by the large manufacturers and prejudice against prison made twine have been constant handicaps.

"I am pleased to say that we are getting well started now and that our continued success seems fairly well assured.

"We have a revolving fund of $200,000.00—this we draw on for the purchase of fibre and originally for the purchase of machinery, to this we return the income from the sale of twine.

"We bought second-hand machinery, and I note by the reports of my predecessor that the original cost was a little over $32,000.00. This machinery consisted of 100

spindles and sufficient combers and breakers to keep them going. The whole outfit is known as a 100 spindle outfit. It will employ 65 to 70 men and the output is about 1,000 pounds per hour.

"I would advise that you visit us, or some other state that operates a factory, and get such facts and information as seem to you necessary in going into the matter advisedly.

"The great fact after all bearing upon the financial success of the plant is the fortune or misfortune in the purchase of the raw material."

On October 2nd, 1915, the Warden of the South Dakota Penitentiary, again wrote me as follows:

"I am in receipt of yours of the 27th ult., asking for information relative to our twine plant.

"Replying to this, wish to say that the South Dakota Twine Plant started operation March 17, 1909. An appropriation of $70,000 had been made for building and machinery, which proved, however, not to be quite enough and about $10,000 had to be taken from the local fund, so the building and machinery cost the State about $80,000.

"A tax had been voted by the people of South Dakota to create a fund of 327,000 dollars called the revolving fund. This is our working capital. Nothing can be paid out of the revolving fund except by a Legislative act.

"Our plant consists of one hundred spinners and we manufacture on an average of three million pounds of twine a year. In the six years that the plant has been in operation there has been added to the revolving fund in the way of profits, $120,000, thus making it an average of $20,000 a year. For the last two years, $1,200.00 a year has been deducted from the profit and placed in the profit and loss account for deterioration of machinery, etc.

"We have no trouble in selling our twine and could in fact sell considerable more than we are making. It is my opinion that the plant will be enlarged in the near future."

The manufacture of twine by means of convict labor at a State prison is not out of harmony with the "state-use" plan in the management of prisons. Twine manufactured at State prisons, as a rule, is not sold out of the State. It is manufactured for the use of the farmers of the State. The agricultural interests are so interwoven with the prosperity of the entire State that the manufacture of twine, while apparently an exception, is not an exception, but is a part of the recognized "state-use-' plan.

I reccommend [*sic*] for your consideration the advisability of making provision for the manufacture of twine by means of convict labor at the State prison in this State, and that you make an appropriation both for the installing of the machinery and, also, to create a revolving fund by which the fiber may be purchased for use in the plant.

REVOLVING FUNDS.

The Oklahoma Industrial Institute and College for Girls at Chickasha has a dormitory. It is essential that a revolving fund be established and prescribed for this institution that the dormitory may be conducted and the proper accounting made to the State, the revolving fund to be deposited in the State Depository.

Such is the case with the Medical Department of the State University on account of the hospital that is maintained by that Department. It is essential, too, that the hospital be maintained in order that the Medical Department may occupy a recognized place in the American System of Medical Colleges.

Such is the case as to the A. & M. College and the subordinate agricultural schools. That dairy plants, live stock industry and farming enterprises may be conducted by these various institutions revolving funds are essential and should be kept in the State Depository under regulations prescribed by the Legislature. That the State Home at Pryor, Feeble Minded Institution at Enid, the Asylums at Norman, Vinita and Supply, the Penitentiary at McAlester and the Reformatory at Granite may carry on the various enterprises to help make the same self-sustaining revolving funds, to be kept in the State Depository, should be provided and the rules prescribed for the keeping of same.

It seems to be the rule in other states, such as Minnesota, Michigan and Kansas, where industries are carried on by the prisons or other state agencies, to create revolving funds by means of which the industry may be conducted. See section 15344 volume 5, Howell's Michigan Statutes (2nd Ed.); Act of April 9, 1909, ch. 151 Minnesota Session Laws, 1909.

I recommend this subject as to the institutions named for your consideration. This will not necessarily call for appropriations but rather for the placing of available funds already appropriated in revolving funds so that the same and the net profits may be used for the carrying on of such industries or business.

VACANCIES.

Vacancies exist in the House of Representatives from Latimer and Cherokee Counties and in the Senate from the Caddo and Grady District and the Logan County District on account of resignations. I have information, but not official advice, that vacancies exist in the Senate from the Major and Alfalfa District and in the House from Woodward County, occasioned by death.

On account of the expense of holding a special election I have been requested by many not to order elections to fill these vacancies. The county attorney of Logan County visited me and advised me that to hold a special election in Logan County to elect a Senator would consume all their contingent fund and that they preferred that the special election be avoided if possible. I decided to await the assemblying of the Legislature in Extraordinary Session and to follow your joint advice on in the matter. Whilst the Constitution empowers the Governor to issue writs of election, it also makes each House the exclusive judge as to the qualifications of their members. In my judgment the joint action of the Legislature in seating members where vacancies exist is conclusive and where this is done by recognizing nominations made by the committee of the party of which the former member or Senator was a member would be fair. For instance, in the Logan and the Major and Alfalfa Districts the places were held by Republicans and in the Senatorial District composed of Caddo and Grady by a Democrat. If Central Committees of the party of the respective districts to which the former member belonged name or nominate their choice for the vacancy and such member was seated by joint resolution, in my judgment this would be conclusive and give each district the proper party representation, and that without any expense to the county or district. This is by way of suggestion. I have held up action in calling the special elections to see if this expense might be obviated.

I feel sure that the members of these two honorable bodies are zealous for expedition in the work before them and that this Extraordinary Session will be characterized with a desire to give the proper consideration to the matters recommended for consideration and an early adjournment. To that end you have my co-operation.

Respectfully submitted,

R. L. Williams,

Governor of the State of Oklahoma.

About Digitizing the Governors' State of the State Addresses

Section 9, Article 6 of the Constitution of Oklahoma provides as follows:

> "At every session of the Legislature, and immediately upon its organization, the Governor shall communicate by message, delivered to joint session of the two houses, upon the condition of the State; and shall recommend such matters to the Legislature as he shall judge expedient."

From statehood in 1907 to present, the state of the state addresses of Oklahoma's Governors have been recorded in pamphlets, booklets, and Senate Journals. One could not foresee the toll that time would take on the earliest of these documents. When these items first arrived at the Oklahoma State Archives, the leather bindings had dried considerably, cracking the spines significantly. Due to the acidity in the paper, many pages have darkened with age. Some of the more brittle pamphlets crumble at the slightest touch.

Thus when we decided to digitize these materials, we faced two challenges: the safety of the original documents and ease of viewing/reading for patrons. Our primary objective was that the unique and historic qualities of the documents should be reflected in the website. However, older fonts would not digitize clearly when scanned and even using a flatbed scanner could cause the bindings to worsen. An image of each page would increase download time considerably and any hand-written remarks or crooked pages could be lost. We decided to retype each document with every period, comma, and misspelled word to maintain the integrity of the document while placing some unique images of the documents online. Patrons can download the addresses quicker and view them clearer as well as save, print, and zoom with the Adobe Acrobat Reader. We have learned much from our efforts and we hope that our patrons are better served in their research on the state of the state addresses of Oklahoma's Governors.