

If you are in northeastern Iowa this summer, be sure to drive by way of Scotch Grove and Hopkinton. The Auld Kirk, almost anyone can tell you where to find it. And perhaps someone along a street or in a gas station can tell you whether there are still Sinclairs with the ancient querns (millstones) for doorsteps. Or direct you to a farm where the sons of John Sutherland turned the first soil in the new homeland.

Don't be in a hurry. I may want to meet you there.

FROM WESTMINSTER TO DES MOINES

by Leonard Abels
Des Moines, Iowa

The following article was written by Mr. Abels in 1959 at the direction of Atty. Gen. Norman Erbe. Mr. Abels was then serving as assistant attorney general of Iowa. The paper was presented before the Polk County Historical Society in 1967.

Photographs of Iowa's attorneys general appear on pages 52, 53 and 54, through the courtesy of LeRoy Pratt of Des Moines. The original photographs are on display in the office of the present attorney general, Richard Turner.

A chart showing terms of service appears at the conclusion of the article.

Historical Background

This is the story of Iowa's attorneys general. Before describing the men who have held the office and the events which marked their administrations, two questions should be answered: "What is an attorney general?" "How did the office happen to become part of our state government?"

The attorney general is the lawyer for the state. The office exists as part of our system of government, because it existed as part of the English system upon which ours is based. In England there was one sovereign, the king or queen. In the United States, we have a union of sovereign states, each with its own attorney general.

The attorneys general of England were appointed by the hereditary monarch. Under government "of the people, by the people and for the people" we elect our attorneys general at the state level, although the attorney general of the United States is appointed by the President.

Perhaps the most famous of the English attorneys general was Sir Edward Coke, who served under Elizabeth I and James I. Coincidentally, the union of the crowns of England and Scotland by the coronation of James I also marks the termination of the period for which the Common Law of England serves as precedent in most courts in the United States. Coke's administration of the office was marked by a number of trials of alleged traitors, including those of Essex and Raleigh.

Under the Continental Congress and the Congress of the Old Confederation, generals of another sort were the chief concern of the government. In 1789 Edmund Randolph of Virginia was appointed by President Washington as the first attorney general of the United States. Randolph's qualifications have not been universally acclaimed by the historians. John B. McMasters, in the *History of the People of the United States*, says:

Randolph . . . was a man of no decision of character, and a most consummate master of the art of splitting hairs. So fertile was his mind in distinctions of useless nicety, objections and objections to objections, that, no matter which side of a question he set out to argue, he was certain to bring up on the other . . .

With the territorial expansion of the United States, additional personnel was needed to discharge the function of lawyer for the government in territory not yet admitted to statehood. Thus the single-person aspect of the office evolved to departmental status. Territorial attorneys were the historical link whereby the office of lawyer for the sovereign was carried from Westminster to Iowa.

CYRUS S. JACOBS was the first attorney appointed for the Territory of Iowa. He is described in Edward H. Stiles' *Recollections and Sketches of Early Lawyers* as "a Southerner

by birth and instinct" and "high tempered, sensitive and quick in a quarrel." Jacobs was appointed but never served. Evidently the traits of character described and frontier manners and customs proved too volatile a mixture, for Stiles reports: "He was killed in an unfortunate encounter in one of the streets of Burlington."

ISAAC VAN ALLEN of Albany, N.Y., was the second attorney appointed for the Territory of Iowa and the first to actually perform duties under such appointment. The sources of biographical material on Van Allen are meager but it appears reasonable to assume from his name and place of origin that his ancestors may have come from Holland and taken land along the Hudson in the days when New York was known as New Amsterdam. From available information it becomes clear that life on the frontier was not conducive to long tenure, for Van Allen died in office at Rockingham, Scott County, having served from 1838 to 1840.

CHARLES WESTON, the third territorial attorney, was also a native of New York. He came to Iowa after appointment as territorial librarian, in which office he served until appointment as territorial attorney to fill the vacancy caused by the death of Isaac Van Allen. His tenure was from 1840 to 1843.

JOHN G. DESHLER of Ohio was the fourth territorial attorney. He served from 1843 to 1845 and returned to Ohio at the end of his term.

EDWARD JOHNSTONE was the fifth and last territorial attorney. He was born in Westmoreland County, Pa., in 1815, and in 1837 he came to Fort Madison where he took up the practice of law. In addition to the office of territorial attorney, which he held from 1845 to 1846, he served at various times as clerk of the Territorial Legislature and commissioner of the Half-Breed Tract. He became acquainted with Joseph Smith of Nauvoo and after Smith's death at the hands of a Carthage, Ill. mob he was reported to have expressed regret that he had failed to preserve for history a number of letters he had received from Smith.

The office of territorial attorney ceased to exist in Iowa when Iowa became a state. At this point, logically, one would expect the office of attorney general of Iowa to have been created. However, neither the framers of the Constitution of 1846 nor the members of the first three sessions of the General Assembly made any provision for such office. From 1846 to 1853, the duties of lawyer for the State were performed by officers called prosecuting attorneys, there being one elected in each county.

It should be remembered that in 1846 the theory which holds that the least government is the best government was in vogue, and rigid economy in all affairs governmental was the order of the day. Thus it is that we find reported in the accounts of the Constitutional Convention, sentiment among the delegates to the effect that compensation of public officers should be kept low. Concentration of power in the hands of officials who remained at the seat of government between legislative sessions was feared. One delegate, for example, is reported to have commented that too-great a salary would permit the governor to ride to his office in "a carriage drawn by four horses. Let him walk to work like other people," he concluded. Confining the handling of the State's legal business in the hands of the county prosecutors was, of course, consistent with theories of decentralization in government. By 1853 the need for an attorney general was sufficiently evident to the General Assembly, and the office was created by statute. In 1857, the provision of the Constitution of Iowa, under which the office now exists, was adopted. The framers of the 1857 Constitution also abolished the office of county prosecuting attorney and provided for district attorneys to be elected in each judicial district instead. Local prosecutors continued to be elected by judicial districts until 1884 when the Constitution was amended to allow resumption of the practice of election by county. The 1884 amendment shortened the title to "County Attorney."

The terms "Department of Justice" and "Office of the Attorney General" encountered in the laws of Iowa are, for practical purposes, interchangeable. However, strictly

speaking, the Department includes the supervisory power of the attorney general over county attorneys, whereas the Office includes only the attorney general and his professional and secretarial staff. Ordinarily, the attorney general does not function as a prosecutor at the trial court level; that is primarily the function of the county attorney. The work of the office of attorney general is most correctly thought of as including the general duties of a lawyer for all departments and officers of the state and as functioning only at the appellate level in matters of criminal prosecution.

Having defined the office of attorney general and traced its ancestry from Westminster to Des Moines, it is now possible to examine the lives of the men who have held the office and to discuss some of the events of significance in the history of the office and the history of Iowa. For this purpose, two phases of development, 1853 to 1895 and 1895 to the present time [1959], lend themselves conveniently to treatment. Emphasis in the first period will be on the lives of the men, as the incumbents in that period left no written reports of their activities. From 1895 to the present time a printed biennial report of the work of the office has been required by law, making it possible to examine the problems of each attorney general in his own words.

Attorneys General 1853-1895

DAVID C. CLOUD of Muscatine was the first attorney general of Iowa. He was elected under the provisions of an act of the Fourth General Assembly which provided for a two-year term at a salary of \$800 a year, payable in equal quarterly installments. He held office from 1853 to 1856. Cloud was born in Champaign County, Ohio, in 1817. At that time public schools remained in session only three months of the year. During his entire life, David Cloud is said to have had only six months of formal schooling. At the age of 15 he was apprenticed to a carpenter; he continued in that trade upon coming to Muscatine, then called Bloomington or Bloomington Landing, Iowa, with his bride in 1839.

Judge S. C. Hastings hired Cloud to do some carpentry at his residence and paid him in law books. Whether the medium of payment resulted from the judge's lack of other means or was at the request of Cloud is not known. We do know that Judge Hastings, after serving as chief justice of Iowa, chief justice of California and attorney general of California, prospered as a title attorney in Spanish Land Grant cases and became sufficiently affluent to endow the Hastings School of Law at the University of California. It may be that the transaction in question resulted from a combination of the Judge's desire to further the study of law and David Cloud's desire to become a practitioner of one of the recognized professions.

Cloud labored at the carpenter's trade by day and studied by night, and despite the lack of formal schooling or incandescent lighting, he mastered his books and passed the bar in 1846. In 1849 he was elected county prosecutor of Muscatine County and in 1853, attorney general. As attorney general it was his duty to prosecute and defend lawsuits at the direction of other state officers; to render opinions at the request of such officers and legislators; to prepare deeds, patents, and other documents; and to serve as reporter of the Supreme Court.

Cloud never performed the last duty. Whether by his choice or by the court's is not clear, but Judge Greene continued to report the decisions of the Supreme Court throughout Cloud's term of office. It may be that lack of formal schooling deprived David Cloud of the requisite literary skill to compile the reports. However, this is doubtful as he subsequently authored two books, *The War Powers of the President* and *Monopolies and the People*, as well as a manuscript, *The Fugitive Slave Decision*. Cloud is reported to have been an abolitionist. After serving as attorney general, he served one term in the General Assembly and was chairman of the Ways and Means Committee in the House. He died in Chicago in 1903.

SAMUEL A. RICE, Iowa's second attorney general was the first elected under the present provision of the Constitution.

Apart from the fact that he was not required to act as reporter of the Supreme Court, his duties were substantially the same as those prescribed under the earlier act. Rice was born in Catteraugus County, N. Y., in 1828. At an early age he moved to Ohio with his parents, where his father died. He supported his mother and sisters by working as a river pilot on the Ohio and Mississippi Rivers. He also saved enough money to complete the course in law at Union College, Schenectady, N. Y. Upon graduation he came to Iowa where he practiced at Fairfield and Oskaloosa.

Like his predecessor, Samuel Rice gained his experience in representing the public by serving a term as county prosecutor. He was elected attorney general in 1856 and re-elected in 1858. After speaking at a recruiting drive early in 1860 he resigned from office and organized the 33rd Iowa Infantry Regiment of which he was colonel. He was promoted to brigadier general and died in 1864 from wounds received at the Battle of Jenkins Ferry, Ark. In the span of 36 years he had been a river pilot, practicing attorney, attorney general and brigadier general.

CHARLES C. NOURSE was born in 1829 at Sharpsburg, Washington County, Md. In 1841 his family moved to Fairfield County, Ohio, where he clerked in a general store. After graduation in 1850 from Transylvania University, Lexington, Ky., he taught school and practiced law in Lancaster, Ohio. In 1851 he moved to Keosauqua, Iowa, where he was elected county prosecutor.

Nourse was active in politics and government. He served as chief clerk of the House during the Fifth General Assembly and later as secretary of the Senate. He was one of the chief organizers of the Republican Party in Iowa, upon the dissolution of the Whig Party. He was a delegate to the Chicago Convention in 1860 and helped nominate Abraham Lincoln. After the resignation of Samuel Rice in 1860 he was elected attorney general. He served in that capacity until elected district judge in 1864. It is said of him that he was an ardent prohibitionist but opposed formation of a separate Prohibition Party. He died in retirement in Sierra Madre, Calif., in 1912.

ISAAC L. ALLEN, Iowa's fourth attorney general, was born in Vermont. Little concerning his early life is known. It is interesting to speculate whether he may have been related to Ethan Allen of Vermont, the captor of Ft. Ticonderoga. Isaac Allen came to Toledo, Iowa from Marion in 1855 and there had a successful law practice. He was a graduate of the Albany, N. Y., school of law. In 1858 and in 1862 he was elected district attorney. According to Chester C. Cole's *The Courts and the Legal Profession in Iowa*, he was "irascible in argument, making things unpleasant for both Court and opposing counsel." At the State Convention in 1864 he was nominated on the fourth ballot and was elected attorney general in October. He took office in January 1865 and resigned from office in January 1866 "because of mental disorders." He died at Mount Pleasant in December of 1868.

FREDERICK E. BISSELL of Dubuque was appointed to fill the vacancy caused by the resignation of Isaac Allen. He was a native of New York, born in 1819 at Madrid and educated at Potsdam Academy, St. Lawrence County. Bissell came to Dubuque at the age of 25 where he instructed in a private school, which he had founded, while studying law on the side at the office of one James Crawford. He was elected to the city council in 1845, and in 1856 he became president of the Dubuque, St. Paul & St. Peters Railroad Co. The financial crash of 1857 cost him his wealth but he turned his energies to his law practice, which prospered. In 1866 he was appointed attorney general and was elected to a full term in the fall election of that year; he died before completing it.

HENRY O'CONNOR, born in Dublin, Ireland in 1820, was appointed to fill the vacancy caused by the death of Frederick Bissell. O'Connor was a Republican at the time of his appointment, having formerly been a Whig. He had been educated by private instruction received from the Monks at Tullow. He came to New York City in 1840 and there learned the tailor's trade. Later he moved to Cincinnati where he studied law part-time while earning his living as a tailor. In 1849 he took up the practice of law at Muscatine. He is described by Stiles as a brilliant orator. In 1852 he was a presidential elector and cast his vote for Gen. Winfield Scott.

In 1858 he was elected district attorney. During the Civil War O'Connor served first as a private in Co. A of the First Iowa Infantry and later as major in the 35th Iowa Infantry Regiment. After serving as attorney general, he was appointed solicitor in the State Department by President Grant in 1872 and held the position for 14 years. He died at the Soldier's Home in Marshalltown in 1900.

MARSENA E. CUTTS was the second native of Vermont to hold the office of attorney general in Iowa. Stiles describes him as noted for sarcasm in debate: "A master of the ironic and the sardonic." He was born in 1833 and moved to Sheboygan, Wisc., in 1853 where he taught school and studied law. He practiced law in Iowa at Montezuma and Oskaloosa. In 1872 he was appointed attorney general to fill the vacancy caused when Henry O'Connor resigned to accept federal appointment. He was elected to full terms in the fall of 1872 and 1874. Previously he had served in both the Senate and House in the General Assembly. In 1880 he was elected to Congress and was re-elected in 1882; he died in 1883.

JOHN F. McJUNKIN was born in Washington County, Pa., in 1820, and admitted to the Pennsylvania bar in 1858. In 1859 he took up the practice of law in Washington County, Iowa, and served in the Senate during the 10th and 11th Sessions of the General Assembly. McJunkin was the author of a joint resolution introduced in the 10th General Assembly calling upon Congress to abolish slavery. In 1876 he was elected attorney general and re-elected in 1878; he died before completing his second term. It is said he was worked to death. In the words of Stiles:

He was far from being rugged physically and the arduous duties of his office, combined with his other professional labors completely wore him out. He died in the hard-worked harness.

SMITH McPHERSON was appointed to fill the vacancy caused by the death of John McJunkin. He was born in Morgan County, Ind., in 1848 and educated in the common schools. In 1870 he was graduated from the law school of the State University of Iowa (SUI) and thereafter practiced at Red Oak in Montgomery County. Prior to his appointment as attorney general he had served as district attorney, also via

appointment to fill vacancy in office. Of him Stiles says: "He worked hard, lived well and died poor."

A. J. BAKER, born in Marshall County, Va., in 1832, moved with his family to Butler County, Ohio, in 1838 and to Burlington, Iowa, in 1848. He received a common-school education and later attended Howe's Academy, now Iowa Wesleyan College at Mount Pleasant. Thereafter he taught school for a few years, studied law in the office of C. B. Darwin at Burlington, and was admitted to the bar in 1855. During the Civil War he was first lieutenant of Co. E, 17th Iowa Infantry. After the war he practiced law in Schuyler County, Mo. and was elected attorney general of that state in 1869. In 1875 he returned to Iowa and took up practice at Centerville as the partner of Francis Marion Drake, one of the founders of Drake University. In 1884 he was elected attorney general of Iowa and was re-elected in 1886. He was the author of *Injunction and Abatement Laws in Iowa* and *Baker's Annotated Constitution of the United States*.

JOHN Y. STONE, 11th attorney general of Iowa, was born in Sangamon County, Ill., in 1843. His family moved to Mills County, Iowa, in 1856. During the Civil War he enlisted in Co. F, 15th Iowa Infantry and later was second lieutenant of that company. After the war he studied law in the office of William Hale of Glenwood and became his partner upon admission to the bar. Stone served for a number of years in the General Assembly, having been elected to the House in 1867, 1869, 1875 and 1877 and to the Senate in 1871. He was elected attorney general in 1888 and served three terms. He was appointed code commissioner in 1896.

As has been pointed out, the first 11 attorneys general have left us no published reports of the events of their terms of office. However, from the available information, the office can be identified with problems having their present-day counterparts, as well as with events which have been remembered in general history. For example, the reported remarks of the delegate at the 1846 Constitutional Convention on four-horse carriages brings to mind the perennial discussion on how much should be allowed for the governor's automobile.

The reported abolitionist tendencies of Cloud and McJunkin mark the beginning of the movement which has given us such familiar terms as "Fair Employment," "Human Rights" and "Integration." Cloud's book on monopolies can be related to the subsequent events in the field of antitrust, fair-trade and the like which have become so commonplace in the news. His book on the emergency war powers recalls the emergency legislation of World War II with its accompanying host of boards, bureaus, offices and authorities. The prohibitionist leanings attributed to Nourse certainly bring to mind problems of more recent date. As will be seen, however, the existence of published reports covering the period of 1895 brings the picture of the office into much clearer focus.

Attorneys General 1895-1958

MILTON REMLEY, 12th attorney general of Iowa, was born in Virginia in 1844. He moved with his family to Johnson County, Iowa, and was graduated from the SUI law school in 1867. After admission to the bar he practiced at Anamosa in Jones County from 1868 to 1874 and thereafter at Iowa City. He was elected attorney general in 1894 and served three terms.

In 1898, Remley submitted to Gov. Francis Marion Drake the first of the published Reports of the Attorney General. This report contained a narrative account of the activities of the office of attorney general covering the period from 1895 to the date of its submission and included a list of criminal appeals and other cases handled in that period. The bulk of the report consisted of the full text of opinions rendered to state officers and other authorized recipients. The pattern set by the 1898 Report has, in general, been followed in all subsequent reports.

One of the principal duties of the attorney general is that of legal adviser to state officers. Frequently the advice given takes the form of a written opinion. Such opinions are not law nor can they amend the law. To authorized recipients they serve the same purpose as the advice given by private practitioner to private client. In addition, when followed, they

protect the public officer to whom issued from the charge of willful maladministration, should his course of action be challenged by court proceedings. Opinions are not precedent in the sense that decisions of Courts of Record are precedent but they are generally given consideration by the courts. The list of authorized recipients has varied from time to time but in general has grown steadily since 1853 as new departments, boards, bureaus, commissions and offices have been created by the General Assemblies. Prior to 1897, county attorneys were included in the list. They were deleted with the adoption of the Code of 1897 and have never been restored. Since the county attorneys are a part of the Department of Justice to the degree that they are subject to the supervision of the attorney general, what they actually receive in answer to questions submitted by them is supervision in formulating their own opinions rather than opinions as such. Remley commented in his 1898 Report:

Prior to the first of October 1897, when the new code went into effect, it was the duty of the attorney general to give official opinions in writing to the county attorneys of the state. There being ninety-nine county attorneys and numerous state officers who were legally entitled to opinions from the attorney-general, this duty has been very onerous and has required great labor and research. During the year 1895, there were 181 written opinions prepared by the attorney-general. During the years 1896 and 1897, there were 301 opinions.

The 1897 Code was an enacted code as distinguished from a compiled code. This means the entire book was enacted by the legislature rather than as a series of acts passed at different times collected in the book. The 1897 Code was compiled by a code commission appointed for the purpose of revising and codifying the laws and its effort was then submitted to and enacted by the General Assembly. One of the code commissioners was John Y. Stone who had had six years experience as attorney general. It seems not unlikely that his first-hand experience may have had something to do with the deletion in question. As a practical matter the deletion has had

little effect. Supervisory letters are received, used and referred to today by the county attorneys in exactly the same manner as though they were full-fledged opinions. County attorneys remain by far the most prolific authors of questions. A supervisory letter requires just as much "labor and research" whether or not it be called an opinion.

Cigarettes were a topic of interest during the term of Remley. The "Cigarette Bill" enacted by the 26th General Assembly in 1896 made it a criminal offense to "manufacture, sell, exchange, barter, dispense, give in consideration of any property or any services, or in evasion of the statute, or keep for sale any cigarettes, or cigarette paper, or cigarette wrapper, or any paper made or prepared for the purpose of being filled with tobacco for smoking."

On April 4, 1896, Remley addressed a letter to Gov. F. M. Drake on the constitutionality of the "Cigarette Bill."

I have given the matter careful consideration. The right of the general assembly of the state to pass any bill it believes to be for the promotion of the health, morals or welfare of the state, is unquestionable. All legislative authority of the state is vested in the general assembly . . . The bill in question is an exercise of the police power of the state. The general assembly is the sole and exclusive judge of the time and manner in which the police power of the state shall be exercised and its action shall be liberally construed . . . The power of the state to impose restraints and burdens upon persons and property for the conservation and promotion of public health and order and prosperity is a power originally and always belonging to the states, not surrendered by them to the general government, nor directly restrained by the constitution of the United States, and essentially exclusive.

In his Report transmitted to Gov. Leslie M. Shaw in January 1900, Remley singled out the American Tobacco Co. among the many "foreign corporations or associations" that he felt were continually violating the laws of Iowa.

It is capitalized at many millions of dollars. It manufactures and sells tobacco in its various forms. It is authorized to do business in this state without even filing a copy of its articles of incorporation. It has the benefits of the markets of this state, and pays not one dollar of tax. It not only violates the laws of the state with reference to the sale of cigarettes, but has given certain printed and written guarantees to our own citizens that it will hold them harmless from all fines, costs and expenses if they will sell, in violation of law, cigarettes manufactured by said company.

One duty of the attorney general is to prosecute and defend criminal appeals in the Supreme Court. According to the Reports of Remley, 46 such cases were submitted to the Supreme Court in 1897 (as compared with 56 in 1957). Of the 1897 appeals, "keeping an opium joint" is the most unique listed. The reported crimes were of 22 varieties with the various degrees of homicide involved in six cases and comprising the most numerous type. In 1899, there were submitted 67 criminal appeals, with homicide and assault heading the list at seven cases each. Also noted are six cases each of larceny, seduction and liquor violation. The 1902 Report listed 68 criminal appeals involving 19 categories of crime. Again homicide headed the list with nine cases.

CHARLES W. MULLAN was Iowa's 13th attorney general. He was born in Wayne County, Ill., in 1845. His parents moved to Blackhawk County, Iowa, in 1846, where he resided for the rest of his life. He attended public school in Waterloo and during the Civil War served as private in the 47th Iowa Infantry. Thereafter he attended Upper Iowa University at Fayette. He was admitted to the bar in 1870, having studied law in the office of Orrin Miller in Waterloo. He served six years as city attorney of Waterloo and six years as Blackhawk's county attorney. During the 27th and 28th sessions of the General Assembly he was a member of the Senate. Upon completion of his tenure as attorney general, he was appointed district judge of the 10th judicial district and was twice re-elected. He died at Rochester, Minn., in 1919.

Four Reports were submitted by Charles Mullan during his tenure as attorney general. With respect to the number of homicides reported by him in 1902, he further commented in 1904:

In my last report I commented upon the unusual number of murder cases which had been tried during the two years previous. At that time I thought the number of murders committed in the state was exceptional, and that there would be a marked decrease during the next biennial period; instead of this being true, the number of murders has increased during the last two years, and thirty-three cases in which the defendants were charged with murder have been appealed to the Supreme Court.

In the 1906 report Mullan states:

There has been a slight increase in the number of appeals in criminal cases during the last biennial period. At the September term, 1905, there were seventy appeals in criminal cases upon the docket of the Supreme Court. Of this number eleven were in cases where defendants had been indicted for the crime of murder.

In his 1907 Report, Mullan distinguished between opinion and advice in classifying the published correspondence appearing in that volume:

Schedule F contains a few of the many letters which were written in response to inquiries from county officers and others as to the interpretation of statutes, and as to the law in cases which have arisen in the state. The last letters are not official in their character and frequently contain a simple suggestion instead of the expression of an opinion. They relate to matters of public interest as to which uniform action is desirable in the state, and it is thought advisable to include the same in this report.

HOWARD WEBSTER BYERS was born at Woodstock, Richland County, Wisc. in 1856 where he received a common school education. In 1877 he moved to Harlan, Shelby County, Iowa, where he worked as farm laborer, school teacher, law clerk and clerk in a general store. He was admitted to the

bar in 1888. He served in the House during the 25th, 26th and 28th sessions of the General Assembly. He served as attorney general from 1907 to 1911. His reports indicate enforcement of laws pertaining to gambling, liquor and vice as major problems of his administration. In his 1909 Report he said:

. . . plans were going on for better enforcement of the criminal laws of the state, and especially the statutes affecting the operation of saloons, gambling and bawdy houses. Investigation along these lines had disclosed a condition of affairs in the state that was not only a reflection upon every public officer, both state, county and municipal, who was in any degree responsible for the enforcement of those laws, but a matter of humiliation and shame to every good man and woman in the state; in other words, indifference to and defiance of the laws — in some parts of the state the very atmosphere was poisoned and polluted with disrespect and contempt for constituted authority, and many such places were being jokingly referred to as the state of C---, or the state of B---, or the state of D---.

He continued:

In some of those cities the city authorities were in a sense in partnership with law breakers and criminals. Under an agreement, and by the payment of certain stipulated sums, saloonkeepers were granted privileges prohibited by the laws of the state. . . .

Byers was also concerned about cigarettes, although more directly with their consumption than with their sale. He said in his 1910 Report:

Much is being said nowadays about the white plague, and much good is being accomplished toward wiping it out; its victims, however, are numbered by the hundreds while the victims of what has recently been termed the 'yellow finger' plague can be counted by the thousands, and the shame of it is that a large percentage of them are boys under twenty-one years of age. Fifteen or more years ago the sale of cigarettes was made unlawful in this state, and it is against

the law today to sell them anywhere in Iowa, but notwithstanding this, the signs of the use of the deadly weed is observable on every hand, and only a short time ago one of the greatest railroad systems of the country made an order that after a certain date no person with 'yellow fingers' should be employed or retained in the system.

GEORGE COSSON, 15th attorney general of Iowa, served from 1911 to 1917. He was born in La Clede County, Mo., in 1876 and was graduated from the SUI law school in 1898. He was experienced in the field of public law, having served as county attorney, special counsel under Byers, and state senator. He authored and enforced the "Red Light" law and advocated the abolition of capital punishment. In his 1916 Report he expressed concern over the number of homicides committed in Iowa as follows:

The large number of murders committed annually throughout the United States and in the state of Iowa in proportion to the number committed in all other civilized countries of the world is causing the most thoughtful consideration of the students of sociology and good government. When it is considered that as many or more murders are committed in Des Moines every year than are committed in all London, and more in the state of Iowa than in all of Great Britain, and considering that the average number of convictions in the United States is only two to four out of every hundred whereas it ranges from 50 to 95 out of every hundred in civilized foreign countries, and when it is further considered that the cost of crime in nine months in the United States is equal to our entire national debt, and that only a part of the cost of the crime in the state of Iowa, as reported to the board of parole, each year amounts to a million dollars, our legislature can well afford to give consideration to this question from the mere economic standpoint, even if they disregard the more important consideration of the welfare of society and injury inflicted upon the innocent and unfortunate.

A matter of greater familiarity in present times also received mention in the 1916 report. Today, perhaps the most publicized field of law enforcement is that relating to the operation of motor vehicles. The problem also existed in 1916 and Cosson said:

For over three months I have kept two men exclusively at work investigating violations of the motor vehicle law. As a result of this over seven hundred persons have been arrested or cited to appear and thousands of dollars have been paid into the state treasury.

At this point, many readers will inquire; "Where did the attorney general obtain the investigators?" The answer is that formerly the governor kept several investigators on his staff who, as a matter of practice, operated under the direction of the attorney general. Although this is no longer the case, the attorney general presently is authorized by statute to requisition special agents from the Department of Public Safety when he deems it necessary.

HORACE M. HAVNER, 16th attorney general of Iowa, served from 1917 to 1921. He was born near Corydon, Wayne County, Iowa, in 1871 and was graduated from the SUI law school in 1899. During the Spanish-American War he served as a private in the infantry. He was the first attorney general who was born in Iowa. Since he served as attorney general during World War I, it is not surprising to find reference to problems arising out of wartime conditions mentioned in his reports. Such an item appears in the 1918 Report:

A vast amount of time of the special agents has been spent in assisting the government in connection with war work in keeping conditions clean around the army cantonment. This included assistance to the government and military police with reference to the unlawful sale of liquor and its transportation and with reference to prostitution.

It has been noted that the problem of motor vehicle violations received mention in the 1916 Report. In 1918 the matter of collecting registration fees arose. It seems that motorists were required to register their automobiles but were not issued plates. Of course, this had its advantages, as the legislature

had no need to ponder the question as to whether to issue one plate or two nor had it any need to determine whether plates should be used for more than one year. However, the situation also had its disadvantages in that it was impossible to tell at a glance whether an automobile had been registered or to identify violators of the law of the road who departed from the scene without leaving calling cards. The loss of revenue appeared the most serious disadvantage at the time and Havner reported:

. . . we have taken the matter of the enforcement of this law up repeatedly with the various county attorneys and have satisfied ourselves that as the law now stands, it is wholly impracticable in the matter of enforcement. If the collection of this tax is to be enforced by the local officers, a plan something similar to the Hunter's License statute, *with an annual plate* to be distributed from the auditor's office, would be a much more workable plan in the enforcement of the law.

With the talk in recent years about the need for highway speed limits and more recently, secondary road speed limits, one may have the feeling such matters are very modern problems. The 1918 Report reveals that the problem of speeding on the highways did not originate with Detroit's finned contributions to the atomic age. In his 1918 Report, Havner said:

Another matter concerning which there has been serious complaint and for which there is no penalty, is the excessive speed of automobiles upon the highways. The speed of an automobile cannot be regulated upon any highway except that which is inside the corporate limits of an incorporated town, the only penalty at present being that of the presumption of contributory negligence in case an injury occurs if the automobile is traveling at a rate of speed above twenty-five miles per hour.

Neither is the crime popularly called OMVI [Operating a Motor Vehicle while Intoxicated] as recent an innovation as might be thought. The 1918 Report also contains a word on that subject:

Some of the most serious automobile accidents in this state have occurred through the reckless operation of machines by drunken drivers. A fine of \$25.00 is not sufficient.

The combination of liquor and the automobile against the peace and dignity of the State of Iowa was also recorded in a somewhat different manner in the pages of the 1918 Report:

. . . we have been confronted in the last two years with a situation where a man who was Chief of Police of a city was in a beastly state of intoxication and so forgot his duties that he rode up and down the streets in an automobile with two women of questionable character.

Whether or not the chief was celebrating the signing of the Armistice is not revealed. However, the unrest of the times was reflected in the field of law enforcement and in his 1920 Report, Havner stated that the work of the office had been greatly augmented in the preceding biennium "by reason of the conditions following the world war and the wave of crime which followed in the wake of the war."

BEN J. GIBSON of Adams County was Iowa's 17th attorney general and served from 1921 to 1927. He received his education in Adams County common schools, Corning High School, and at the University of Nebraska, where he was graduated from the courses in liberal arts and law. His experience in public life included terms as state senator and county attorney of Adams County. His military record included service in the Iowa National Guard from 1901 to 1916, captaincy of the 3rd Iowa Infantry in Mexican border service in 1916 and 1917, and service as captain in the 72nd U.S. Infantry during World War I. His opinions had a unique quality of conciseness to the degree that in the present day parlance of the office personnel an opinion which is short and directly to the point is frequently referred to as a "Ben Gibson Opinion."

The Reports of Gibson submitted in the years 1922, 1924, and 1926 reveal a variety of problems. The Reports of Cosson and Havner had made mention of problems arising from the operation and registration of automobiles. In the 1922 Report

auto theft was a matter of concern. Gibson said:

The cities of Iowa have reported as stolen 989 motor vehicles of which 687 have been recovered. The percentage of recovered automobiles. . . is approximately 70 percent. This is so much greater than in any of the surrounding states as to entitle the officers of these cities as well as the peace officers of the state to commendation.

National Prohibition was in effect in 1922 and the sale and consumption of a product called "hootch" was a matter of concern to law-enforcement officials. Gibson's 1922 Report continued:

In this connection also I am impressed with the thought that the manufacture and sale of so-called 'hootch' is a menace not only to law enforcement but to the very life and health of our people . . .

The increasing number of automobiles stimulated the sale of gasoline and petroleum products which led to price increases. In his 1924 Report, Gibson commented:

In the year 1923 the prices of gasoline became so high that a general protest arose. The prices charged were without doubt unreasonable and unfair. The supply of crude oil was greater than ever in the history of the nation. The price of production was lower. It follows that protest was justified. The attorneys general of the United States met at Chicago and gave consideration to the problem, adopting resolutions and appointing committees to investigate and take such action as might be necessary.

The 1926 Report foretold the coming depression as it contained items under the headings "Bank Receiverships" and "State Funds in Closed Banks." In the words of Gibson:

It is indeed unfortunate that during the past two years a large number of state and savings banks and loan and trust companies have failed. This department has nothing to do with such institutions as going institutions. However, under the law, when such institutions are closed the Attorney General acts as advisor for the Superintendent.

JOHN FLETCHER of Polk County was attorney general from 1927 to 1933. He was born in Scott County in 1876 and received his education in country school, Iowa State Teacher's College and the SUI law school. Other public office held by him were city attorney and mayor of Avoca, assistant attorney general and district judge.

During Fletcher's administration of the office the Bureau of Criminal Investigation, which had been made part of the Department of Justice in 1915, was vigorously enforcing the liquor laws. In 1928, Fletcher reported:

. . . The following liquors have been seized, condemned, and disposed of as provided by law in connection with the activities of the bureau: Alcohol . . . 1437 gallons, Hootch . . . 794 gallons, wine . . . 50 gallons, Brandy . . . 50 gallons, Gin . . . 2,125 gallons, Beer . . . 53,195 bottles.

Organization to combat crime was also noted in the 1928 Report wherein Fletcher states to the governor:

In the year 1927, through the cooperation of your office and this department there was held a school of instruction for the sheriffs of the state lasting a period of three days. Such good results followed in the matter of law enforcement for the state that in 1928 your office, and this department cooperating, called together all the sheriffs and county attorneys of the state, together with certain chiefs of police . . . for a general conference and school of instruction.

The school of instruction was evidently a success, for mention of further sessions is made in the 1930 and 1932 Reports. In 1932, a state police radio system was installed in cooperation with the Iowa State Bankers Association. During the early years of the Depression, those banks which managed to remain open were quite likely to receive unwelcome visitors inclined to make substantial withdrawals without the customary formalities.

EDWARD L. O'CONNOR was born in Johnson County in 1891 and served there as county attorney prior to his election as attorney general. He was graduated from the SUI law school and during World War I served as first lieutenant of

Field Artillery. Bank robberies continued to be a serious problem during his first two years in office and he reported in 1934:

On many occasions the state peace officers have had to face machine gun bullets from gangsters and are constantly assuming some of the most dangerous hazards in police work for the state. In this age of organized crime and racketeering, it is necessary for the state to equip its peace officers with equal if not better equipment than used by the criminal gangster.

The Depression continued and was accompanied by a variety of problems. In 1936, O'Connor reported:

The depressed condition of the public welfare generally made it necessary and expedient for many new laws to be passed in order to relieve existing conditions. With the repeal of the eighteenth amendment, new beer and liquor laws have been placed upon the statute books of the state. Many new tax laws have been enacted and other remedial action passed by the legislature . . . The feeling of unrest which seems to prevail in the period of transition through which we are passing, has increased the burdens of the Attorney General's office as well as the general burdens imposed upon all the departments of the state government.

Also in the 1936 Report:

Due to the unceasing fight that our bureau of investigation has made on organized crime of the major type and with the assistance of a state police radio system, I am happy to report there were only four bank robberies in the state of Iowa during the year 1936.

JOHN H. MITCHELL of Fort Dodge was Iowa's 20th attorney general. He was graduated from the SUI law school and had served as a member of the 45th and 46th General Assemblies. In his 1938 Report he makes mention of the problems of law enforcement brought about by the slot machine or, as it is more familiarly called, the "one-arm bandit."

He said:

One of the most important activities of the Bureau of Investigation is that of attempting to eliminate slot machines in the State of Iowa. . . .

Early in our administration we rendered an official opinion in connection with the possession of slot machines . . . we have received very fine co-operation from most of the peace officers. . . a great deal of progress has been made in eliminating these machines in Iowa. . . .

In 1939, the Department of Public Safety was created and the Bureau of Criminal Investigation was transferred to it. Since that date the function of the office of attorney general in criminal matters has been confined to the handling of criminal appeals in the Supreme Court, except for matters arising incident to supervision of the work of the county attorneys.

FRED D. EVERETT of Albia, Iowa's 21st attorney general, was born at Bloomfield, Davis County, in 1876. He was graduated from the SUI law school and had served in the infantry during the Spanish-American War. He took office in 1939 and died before the end of his term.

JOHN M. RANKIN of Keokuk was appointed to fill the vacancy caused by the death of Fred D. Everett. He was born in Fulton County, Ill., in 1873 and was a graduate of the Chicago-Kent College of Law. Prior to his appointment he had held public office as district court judge and as member of the 39th, 40th and 41st sessions of the General Assembly. He had served in the Illinois Infantry in the Spanish-American War. Following his appointment he was elected to a full term in 1942 and re-elected in 1944 and 1946. Like his predecessor, he died in office. Rankin was the only attorney general since 1917 who was not born in Iowa.

Gambling appears to have remained a major problem from the appearance of the slot machines noted in the 1938 Report. In his 1942 Report, Rankin said:

With reference to pin ball machines giving free games the court held that the giving of such free games constituted consideration and that, therefore, the device had the three essential elements of gambling . . .

In his 1944 Report, Rankin made reference to the decision of the Supreme Court of Iowa in the case of State vs. Kellison, a criminal appeal involving the question whether homicide by means of an automobile operated by an intoxicated driver amounted to manslaughter. The defendant had prevailed in District Court. In reporting the result of the appeal, Rankin said:

The state appealed to the Supreme Court however, and obtained a reversal, the Supreme Court holding that the driving of an automobile on the public highway while the driver is intoxicated is a crime under the laws of Iowa and that if such driver causes the death of another he is guilty of manslaughter.

No particular variety of crime was given special note in the 1946 Report but Rankin commented:

It is a matter of common knowledge that crime is on the increase and will continue to increase during the ensuing biennium. Improvement in methods of transportation has facilitated the rapid movement of criminals from one jurisdiction to another

ROBERT L. LARSON of Iowa City was appointed to fill the vacancy caused by the death of John M. Rankin. He was elected to a full term in 1948 and re-elected in 1950 and 1952. In 1953 he was appointed Justice of the Iowa Supreme Court and was elected to a full six-year term in 1954. Justice Larson was born at Fairfield, Iowa in 1898. He was graduated from Fairfield High School and Parsons College. He attended the University of Chicago and received his law degree from SUI. Prior to his appointment as attorney general he held office as assistant county attorney of Johnson County and assistant attorney general. He is the author of a significant law review article titled *The Importance and Value of Attorney General Opinions*.

Larson's tenure as attorney general is best known for his successful war on organized gambling.

LEO A. HOEGH of Chariton was appointed to fill the vacancy resulting from Larson's appointment to the Supreme Court. He was born in Audubon County in 1908 and is a graduate of the SUI law school. During World War II he served as lieutenant colonel in the Army. During his

part-term as attorney general he emphasized the need for continued enforcement of gambling laws and for liquor law enforcement. He was elected governor in 1954. Since he held the office of attorney general at neither the beginning nor the end of the term in which he served in the office, he submitted no biennial report.

DAYTON COUNTRYMAN, of Nevada, Story County, was elected Iowa's 25th attorney general. He was born in Woodbury County in 1918 and is a graduate of the SUI law school. During World War II he was an officer in the Army Air Corps and piloted a B-29 during the raids on Japan from bases in the Marianas Islands. He holds the rank of lieutenant colonel in the Air Force Reserve [1959]. Prior to his election as attorney general he served as county attorney of Story County.

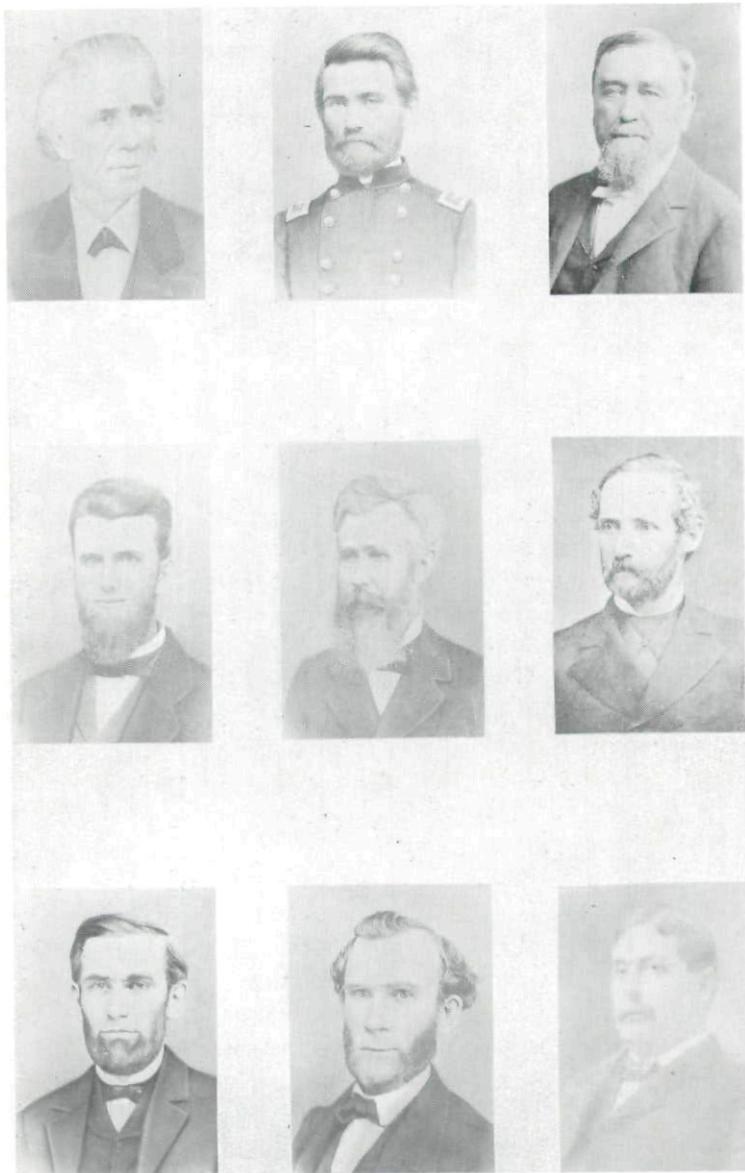
His term of office is best known for his vigorous campaign for liquor law enforcement and for the organization of peace officer associations in each county of the state.

NORMAN A. ERBE, the present [1959] attorney general, was elected to the office in 1956 and re-elected in 1958. He was born at Boone in 1919, the son of a Lutheran pastor and the youngest of six children. He attended Boone High School and SUI until 1941 when ordered to active military service. He served with the 8th Air Force in England and piloted a B-17 on combat missions over Europe. He holds several decorations, including the Distinguished Flying Cross, the Air Medal with three Oak Leaf Clusters and several theatre ribbons. After World War II, while resuming his studies in law at SUI, he joined the Iowa National Guard and is now [1959] a staff officer of the 34th Division Artillery. He has served as Boone county attorney and as special assistant attorney general for the Highway Commission. He is co-author of an annotated volume of *Highway, Road, and Street Laws* and an annotated compilation of *Iowa Drainage Laws*. He is married and the father of three daughters. He resides in Boone and drives daily to Des Moines. He believes in impartial enforcement of all laws without specialization in any one variety and in permitting local enforcement authorities to perform their duties without interference. He is assisted in the performance of his duties by a staff of 12.

In addition to writing opinions, appearing in all civil cases involving the state and charitable trust cases and handling criminal appeals and *habeas corpus* proceedings in the Supreme Court, the attorney general has numerous other duties. He is *ex officio* member of the Printing Board, the Insurance Commission, the Board of Law Examiners and the Pittsburg Plus Committee. He serves as legal adviser to all departments and is specifically required to counsel the Board of Engineering Examiners, Soil Conservation Committee, commissioners of soil conservation districts, Highway Commission, Welfare Department, and Tax Commission. He is required to initiate all proceedings for revocation of licenses under the practice acts for the medical, osteopathic, chiropractic, chiropody, optometry, dentistry, cosmetology, nursing, pharmacy and barbering professions or trades as well as to enjoin unlicensed practice thereof. He is required to examine articles and amendments to articles of incorporation of building and loan associations and insurance companies. He is required to examine and approve all departmental rules and regulations and to process all claims against the state for submission to the General Assembly. He examines all leases, conveyances, abstracts and other documents pertaining to state land which, in the case of the conservation commission alone, runs to tremendous volume. He is required to perform certain special duties with respect to removal of errant public officers, with respect to *quo warranto* proceedings against unlawful corporations and *de facto* officers and with respect to combinations, pools and trusts. During sessions of the General Assembly he is at the beck and call of legislators desiring bill-drafting service other than that provided by legislative personnel. He confers with public officials and gives them legal advice. He must also lend a sympathetic ear to callers with problems real or fancied even though such problems may prove outside the pale of prescribed powers and duties. For example, during the first nine months of 1958 the attorney general and his staff participated in a total of 3,304 individual conferences of from 15 minutes to four hours with public officials and others. During the first nine months of the current year [1959] the attorney general and his staff wrote over 2,942 letters including letter opinions.

Thus the road from Westminster Hall of Lord Coke's time to Des Moines in 1958 has witnessed many changes in the duties of attorney general as it traversed the route via Washington, Burlington and Iowa City. In Iowa there have been 26 attorneys general. Of them, 17 received their legal training in law school. Twelve of the 17 were graduated from the SUI law school. The remaining five with law school background each attended a different school, those schools being Union College, Schenectady, N. Y.; Transylvania University, Lexington, Ky.; Albany Law School, Albany, N. Y.; The University of Nebraska; and the Chicago-Kent College of Law. Eight of the attorneys general were admitted to the bar after study in a law office. Only one, David Cloud, was self-taught. Since 1911 all attorneys general have been graduates of a law school and of the twelve holding office in that time only John Rankin was a graduate of a law school other than that of SUI. One attorney general was a carpenter, one was a river pilot, one was a tailor, two clerked in a general store, one was a farm laborer, and many were school teachers before admission to the bar. All were native-born American citizens except Henry O'Connor who was born in Dublin, Ireland. Until 1917, no Iowa-born citizen held the office, but after 1917 only one, John Rankin, was born outside Iowa. Residents of 21 counties have held the office. Muscatine, Mahaska, Polk, Montgomery and Johnson Counties have each provided two attorneys general.

Fifteen of the attorneys general have served in the Armed Forces; five in the Civil War, three in the Spanish-American War, four in World War I, and three in World War II; one, Samuel Rice, was killed in war. Four attorneys general died in office, of whom one, John McJunkin was said to have been worked to death. Two attorneys general died in state institutions. At least two died while holding other public office. Twenty-three held other public offices. Ten of them served in the General Assembly. Eleven held office as district or county attorney and five as judge. One, A. J. Baker, served as attorney general in another state and one, Charles Nourse, helped nominate Abraham Lincoln. All-told, the 26 were honorable men and worthy heirs of the mantle of Lord Coke.



from left to right

top row: David C. Cloud, Samuel A. Rice, Charles C. Nourse
middle row: Isaac L. Allen, Frederick E. Bissell, Henry O'Connor
bottom row: Marsena E. Cutts, John F. McJunkin, Smith McPherson



from left to right

**top row: A. J. Baker, John Y. Stone, Milton Remley
middle row: Charles W. Mullan, Howard W. Byers, George Casson
bottom row: Horace M. Havner, Ben J. Gibson, John Fletcher**



from left to right

top row: Edward L. O'Connor, John H. Mitchell, Fred D. Everett
middle row: John M. Rankin, Robert L. Larson, Leo A. Hoegh
bottom row: Dayton Countryman, Norman Erbe

ATTORNEYS GENERAL

Name	Years Served
° Cyrus J. Jacobs	+ 1837
° Isaac Van Allen	1838-1840
° Charles Weston	1840-1843
° John G. Deshler	1843-1845
° Edward Johnstone	1845-1846
“Prosecuting Attorneys”	1846-1853
David C. Cloud	1853-1856
Samuel A. Rice	1856-1861
Charles C. Nourse	1861-1865
Isaac L. Allen	1865-1866
Frederick E. Bissell	1866-1867
Henry O’Connor	1867-1872
Marsena E. Cutts	1872-1877
John F. McJunkin	1877-1881
Smith McPherson	1881-1885
A. J. Baker	1885-1889
John Y. Stone	1889-1895
Milton Remley	1895-1901
Charles W. Mullan	1901-1907
Howard W. Byers	1907-1911
George Casson	1911-1917
Horace M. Havner	1917-1921
Ben J. Gibson	1921-1927
John Fletcher	1927-1932
Edward L. O’Connor	1932-1937
John H. Mitchell	1937-1939
Fred D. Everett	1939-1940
John M. Rankin	1940-1947
Robert L. Larson	1947-1953
Leo A. Hoegh	1953-1954
Dayton Countryman	1954-1957
Norman Erbe	1957-1961
Evan L. Hultman	1961-1965
Lawrence F. Scalise	1965-1966
Richard Turner	++ 1967-

° Territorial attorney general

+ Appointed, but did not serve.

++ Chart has been brought up to date.

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