APPENDIX.

ATTORNEY GENERAL'S REPORT.

ATTORNEY GENERAL'S OFFICE,
Tallahassee, November 8th, 1846.

To Hon. W. D. MOSELEY, *Governor of Florida.*

The law organizing the office of Attorney General, has made it his duty annually to report to the Governor of the State, "as to the effect and operation of the acts of the last previous session, the decisions of the courts thereon, and referring to the previous legislation on the subject, with such suggestions as, in his opinion, the public interest may demand."

Notwithstanding the period which has elapsed since the adjournment of the first General Assembly has been too short for a full developement of the operation of the laws enacted by it, in their various ramifications, the total change which is so happily seen and felt in our government, and the success with which the different departments of that government have entered upon the discharge of the important duties prescribed them, so as to impart animation and vigor to the constitution formed by the people for their government, justifies the opinion that the legislation of the last session of the General Assembly was well digested and wholesome; and that it is characterized by an earnest desire to promote the public welfare, and a consistency with the supreme law, unknown during the existence of the Territorial form of Government.

Amidst the conflicting opinions always attending the commencement of an undertaking, in its results so deeply interesting to all, it should be a matter of congratulation that the system of our government has been so successfully brought into operation, and its parts so well adjusted, as to be beneficial in all their movements. To frame laws organizing the offices of the different departments, and define with sufficient particularity the duties and responsibility of the officers—to digest a system of revenue, equal and uniform, and adequate to the wants of an economical government—to organize the militia of the State—to provide a general election law, and for the election of the numerous officers throughout the State—to protect our fisheries, and apportion the representation of the State—to provide for the ascertaining and securing the funds applicable to the purposes of education; in a word, to give vitality to a sovereign State, by securely committing to the hands of the people their inestimable privilege of self-government, was an arduous and responsible task. By the industry and labors of the first General Assembly, this has been accomplished: and the gyves of territorial vassalage no longer exist, except in the remembrance of their annoyances. It should, therefore, be a matter of surprise, that the defects and omissions are so few, rather than that any should exist.

I am not aware that the courts have made any decisions affecting the constitutionality of the laws heretofore passed. From the equivocal language, however, of the act organizing the circuit courts, the power of a judge to call an extra term has been questioned. Inasmuch as the good order of society, and

despatch of business in the courts, will frequently require the exercise of this power, and to avoid, in future, all doubt as to the intention of the law, it should, in plain and explicit terms, be vested in the judges of the different circuits.

In the discharge of the duties of my office, my attention has been called to several omissions in the laws relating to the collection and disbursement of the revenue of the State Thus the arbitrary power given the county commissioners of each county of remitting "insolvencies," "overcharges," and other improper taxation, requires some qualification or check, so as to guard against the ill-advised or wanton remission of the taxes, after they have been assessed. There being no appeal from the decisions of these Boards, and the Comptroller being bound to recognize and allow their certificates of remission to the Sheriffs in the settlement of their accounts, the revenue of the State is liable to be diminished, as the peculiar notions of the Commissioners of each county, on the propriety and lawfulness of the taxes assessed, may dictate. The great discrepancy between the sums returned to the Comptroller's office as having been assessed, and the amount actually collected, with the large amount certified as having been remitted, show that something should be done to protect the interest of the State in this particular.

This deficiency is, in a measure, attributable to the fact that the proceedings of the Commissioners are now altogether *ex parte*—the party taxed and making the application alone being represented. As the applications for relief are most generally made, when the sum assessed is large, and is urged by the vigilance and activity of the applicant, the State being unrepresented, is in most instances the sufferer. To adjudicate properly the intricate questions of law, and sometimes of fact, frequently arising on the propriety or constitutionality of the tax assessed, will, with all the assistance which can be given, always be exceedingly perplexing to the inexperience of those to whom the law has confided this duty: it would be folly to expect it, when the proceedings are altogether *ex parte*.

I would, therefore, suggest that the General Assembly make it the duty of the Solicitors of the different circuits, a proper compensation being allowed them, by themselves or deputy, to appear on behalf of the State, before the Commissioners of each county, when sitting for the purpose of remitting 'insolvencies,' and other improper taxes; and that in cases of doubt, or when the interest of the State requires it, they be authorized and empowered to stay the remission of the tax, until the matter can be referred to the Attorney General for his decision, which should be binding on the commissioners, until overruled by the courts of the State. Thus the interest of the State would be protected, and a glaring inequality in the operation of the law, as it now exists, by which what is deemed taxable in one county, may be declared not to be so in another, would be, in a measure, remedied. A check to the contradictory decisions of the Boards of the different counties being provided, a correctness and uniformity in the construction and administration of the revenue laws would result, which cannot exist, so long as the unlimited and uncontrolled power of construing and administering them, is committed to as many different sets of individuals as there are counties in the State, and who are as dissimilar in their qualifications as in their ideas of right and wrong.

The language of the law imposing a capitation tax "upon each and every white male inhabitant over the age of twenty-one years" should be so modified as to exempt idiots and lunatics; so also, should slaves, being idiots or lunatics, or disabled by age or bodily infirmities, be declared not to be subject to taxation. These exceptions were doubtless over-looked in the hurry of business, as their justice and humanity must be manifest to all.

The disbursement of the funds of the State in the payment of court expenses and expenses for criminal prosecutions, should claim the serious attention of the General Assembly. On this head reform is absolutely necessary to avoid the levying of higher taxes than frugality would require, but which the prodigality of a system so loose and incomplete as the present will demand. The laws of

the Territorial government relating to the payment of these expenses, and which the State has adopted, are confused and in many cases inapplicable to our changed form of government. This has rendered the duties of the Comptroller difficult and responsible: it has required the constant vigilance and a highly commendable firmness on the part of this officer to prevent the revenues of the State from being swallowed up by demands from every section of the State, composed of numberless small items, claimed to have accrued as court expenses, or in the prosecution of criminals; and for which the parties, from the course pursued under the Territorial government, and from the uncertainty of the laws, doubtless conceived themselves entitled to remuneration from the State Treasury. The following statement of the accounts presented and audited to this date, shows what an exhausting drain these expenses have been, and will continue to be on the treasury:

Contingent expenses of Courts,			1,756 05
CRIMINAL PROSECUTIONS: Western Circuit,		1851 35	
Middle "		3619 24	
Eastern "		948 64	
Southern "		187 03	
			6,606 26
			$8,362 31

This amount, being about one-fifth of that necessary for the support of State Government, is larger than it would have been under a proper Fee Bill, specifically enumerating the charges to be allowed, and in cases of criminal prosecutions, requiring the party convicted to pay all costs to solicitors, sheriffs, clerks and witnesses. In no case should the costs of these officers and witnesses be allowed to be a charge upon the Treasury until proper and vigorous steps have been taken to compel the party convicted to pay, and it shall clearly appear that he is unable to do so. The facility with which payment of these expenses is obtained at the Treasury of the State tempts the officers in the collection of them to a leniency highly prejudicial to the State: but which would not exist if *their interests* were made to depend somewhat on their active exertions in this respect. A Fee Bill should, therefore, be prepared and adopted.

But a fee bill would not correct all the evils now existing---it would only mitigate them. The system of paying these expenses out of the State treasury, and at the seat of government, is radically wrong, and will always be liable to abuses. Independent of the great inconvenience to the officers of court and others, of having to travel or send so great a distance to settle their claims, the Comptroller can necessarily have no knowledge of their correctness, and will be surrounded by difficulties at every step in his examinations. If he rigidly discharges his duty to the state, the proofs which he will require will in most cases be productive of delay and vexation to the claimant; whilst, if he should be confiding or negligent, the doors of the treasury will be opened to the greedy hands of all. The certificate of the presiding judge will be but a weak barrier to these demands, and an evidence of their correctness far from being satisfactory: for the giving of it soon degenerates into mere matter of form. Amidst the many and pressing duties by which these officers are surrounded whilst on the circuit, it would be expecting too much to suppose that they could scrutinize, with sufficient particularity, long accounts, so as to estimate every over charge or improper item. I would therefore suggest, as the most effectual means of remedying the inconveniences and abuses of the present system, that the General Assembly require the counties, respectively, to defray their own court expenses, and expenses for criminal prosecutions; the State relinquishing to them a sufficient portion of the taxes heretofore imposed for State purposes, to cover these expenses, and, of course, diminishing to that extent the State taxes. A sure guarantee against abuse will be obtained by thus placing these expenses under the superintendence of those who will have to provide, by taxation on themselves, for their payment. The tax-payer being brought into im-

mediate contact with them, will be stimulated by his interest to see that nothing is allowed but what is strictly correct; and the juries and citizens of each county will be brought to feel a deeper interest in the administration of the criminal laws,—at least so far as to procure a punctual collection of fines and forfeitures. A rigid economy in the administration of justice being secured in each county, the citizens thereof will, in all probability, be relieved from a large part of the taxes which would have been necessary had the State continued to manage and defray this item of expenditure.

And again, by thus relieving the State from these expenses, which are too fluctuating to be estimated with any degree of accuracy, the General Assembly could ascertain with some certainty, the amount necessary to be raised for the support of the State government: and would avoid being annually compelled blindly to run the scale of taxation up or down, as if their legislation on this subject was the result of chance.

In the organization of the Militia, some defects in the "Militia Act" have been developed. They have mostly arisen from an omission in the law to order an election for Battalion officers as directed by the Constitution—which, (art. 7, sec. 1,) declares "That all the militia officers shall be elected by the persons subject to military duty *within the bounds* of their *several* Companies, *Battalions*, Regiments, Brigades and Divisions, under such rules and regulations as the General Assembly shall from time to time direct and establish." The Act carefully defines the bounds of the several Divisions, Brigades and Regiments, and provides for the election of their respective officers. It also points out the mode of ascertaining the limits of each company, and the time and manner of election of Company officers; but it is silent, in these respects, as to the Battalion.

It is true that the latter part of section 11 enacts that, "Each Colonel immediately after his election, on first Monday of April after having received his commission from the Governor, shall sub-divide his Regiment into two Battalions by a line, leaving the portion of men as nearly equal on both sides as may be; and he shall communicate the same to the Lt. Colonel and Major, and shall assign to each his Battalion in writing;" but this is not a compliance with the provision of the Constitution. It is an attempt to substitute the officers of a regiment—for the law makes the Lieutenant Colonels and Majors officers of the several regiments, and their election to be "by the qualified voters of the several regiments," for the officers of a battalion; and to transfer to the Colonel the selection or appointment of those officers, when the constitution had secured to those liable to military duty, within the bounds of the battalion, the right of selecting their own. The election of the Lieutenant Colonels and Majors by the regiments, is not an election by the several battalions, within the meaning of the constitution, which, contemplated the battalion as being as much an integral part of the regiment, as the regiment is of the brigade, or the several companies of the battalion. As the election of a regimental officer by the brigade, would be a violation of the constitution, so will the election of a battalion officer by a regiment. In consequence of this disregard of the constitution, in some of the regiments composed of two counties, each of which constitutes a battalion, the Colonel, Lieutenant Colonel, and Major, all reside in the same county; thus depriving the battalion of the adjoining county, not only of its right to select its own officers, but compelling it to submit to those who are citizens of another county. The eighteenth section seems to have been designed to prevent this injustice, by securing to the battalions their constitutional privilege. Its provisions, however, so far as they relate to the officers of the battalion, are without application and nugatory; for the law failed to order an election of battalion officers, and none have consequently been commissioned as such; and the dividing lines, within which the battalion officers are required to reside, are only designated by the Colonel, *after the election* of the Lieutenant Colonels and Majors by the regiments as officers of the regiment. Indeed, from the expression, "holding a

commission in the battalion," occurring in this section and elsewhere, and others of a similar character, it is manifest that at least a part of the act was prepared under the belief that provision had been made for the election of battalion officers, as well as for those of the division, brigade, regiment, and company.

This omission should be supplied by additional legislation, declaring the officers of the battalion and their duties, and ordering their election in conformity with the Constitution—the provisions of which cannot be evaded, however much their wisdom and policy, in this particular, may be doubted.

Although some confusion may result from an alteration of the law, under which the present organization has been accomplished, yet it is better that its imperfections should be corrected at once, than overlooked until the critical hour of danger, when they will be seized upon to disorganize and paralize this arm of our government. If the proper legislation is had at once, no officer, it is believed, will wish to retain the privileges of a commission, which it is necessary should be annulled, that the symetry of our military code may be established, in its constitutional strength and beauty.

The militia act is also defective, in not designating the manner and tribunal before which elections to the various offices in the militia may be contested and determined. It declares (Sec. 15) that "contested elections shall be determined under the same rules as are required by the general election law."—This is entirely too indefinite; for the election law contains no general provision under which this class of contested elections can be brought. Its rules relate to the different offices therein specified, and vary with each of them. Thus the manner of contesting the election of a Senator or Assemblyman is entirely different, and before a different tribunal, from that of a sheriff, clerk, or county commissioner. But if it were ascertained to which of these officers the above clause referred, its rules would be altogether inapplicable. It is therefore without any force, and no redress is afforded him who should feel aggrieved.

I would also suggest that it be made the duty of the Adjutant General to record in his office the commissions issued to the officers of the militia. Heretofore this duty has been performed by the Secretary of State, and the record of all military commissions retained in his office, whilst it evidently more appropriately belongs to the military bureau.

These are the most important defects in the operation of the laws of the last General Assembly, which have come under my observation. Others probably exist, which the limited view afforded by their recent enactment fails to detect, but which time and occasion will make apparent. Were it within the limits of my duties, to refer to other than the legislation of the "last previous General Assembly," I would direct your attention to the confusion and impolicy of many of the laws of the late Territorial Government, which the State has adopted into its code. Their numerous imperfections and omissions would afford abundant and important material for comment. The digest of these laws, in course of preparation, will, however, do much to correct these evils, and enable the General Assembly readily to perceive where additional legislation will be necessary.

JOSEPH BRANCH.