

ATTORNEY GENERAL'S REPORT.

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 ATTORNEY GENERAL'S OFFICE, }
 TALLAHASSEE, November, 1862. }

His Excellency JOHN MILTON, Governor :

SIR—In the Report that I made previous to the meeting of the General Assembly at its last session, I took occasion to urge the necessity of a compilation or digest of the Laws of the State, and that suggestion not having been acted upon, I take the liberty of again calling attention to this very important subject. I do not deem it necessary to urge upon intelligent citizens what they must know, that a concise and accessible form of the statute law is absolutely necessary to the just and efficient administration of any government; and I need hardly inform those acquainted with the statute law of this State that its condition is such as, in many instances, to baffle research and defy comprehension; that it is scattered through numerous volumes or pamphlets; and that practically it is extremely difficult or impossible for citizens or officials to ascertain with certainty, if at all, what the law is on many subjects, causing endless perplexities, delays and confusion. All must see the necessity of a digest of these laws, and the placing of them in some accessible shape. I am persuaded that a mistaken notion of economy has actuated our legislators in deferring or omitting to attend to this matter. I think it can be shown that the annual loss to the State, besides the damage and expenses of private citizens, arising from a necessary and general ignorance of the laws, would more than three times defray the expenses of compiling and publishing a complete digest of the laws of Florida—a work which should be in the hands of every citizen of the State, both for his own and the public welfare. It must be remembered that it will take time to compile and publish a work of this kind, and that the sooner it is commenced the sooner will the State be relieved of the intolerable condition of her statute law which now exists, and which entails unnecessary burthens on public officers, and losses, uncertainty and confusion on private citizens.

I desire to direct attention to certain imperfections in the election laws of the State, and especially in connection with the voting of soldiers in the service of the Confederate States or of the State. It will be perceived, from an examination of Ordinance No. 53, providing for the exercise of the elective franchise by soldiers, in connection with the law regulating the canvass of the vote in the State, (Act Dec. 17, 1861,) that there is a practical incompatibility in the operations of the two. The utmost limit of time to which the canvass can be extended by law, by the Judge of Probate and Board of

county canvassers, is ten days from the day of the election. This time is obviously too short for the returns to be received from the various regiments in service in different parts of the Confederacy, and this has given rise to some difficulty as to the proper construction and operation of the law and ordinance taken together. It is obviously the intention of the ordinance that the soldiers should not be deprived of the benefit of the elective franchise under any circumstances, and it is still more obvious that the provisions of the law are imperative and must be obeyed, otherwise the whole election system of the State must be thrown into chaos. It will be the duty of the Legislature to apply some remedy to this state of things, not incompatible with the rights of citizen soldiers, taking especial care however to preserve the regularity of our elections, which is a paramount consideration in every free government.

The operation of the laws has called to my attention a defect therein, which I submit for the consideration of the legislature. By the common law, which is the law of the State in this respect, a writ of *mandamus* can only issue in term time of the Court. Cases have occurred in which the public business of the State has been obstructed, and private persons much incommoded, for want of power in the courts to issue this writ in vacation or at chambers. Although the alteration of the common law is always a dangerous and delicate process, yet where reasons exist under our system of government and laws, clearly showing the propriety of changing the rule of the common law in regard to any particular process, there should be no hesitation on the part of the Legislature to make the necessary alteration. A blind adherence to ancient custom or law is no less deleterious than an unreasonable desire for innovation. The writ of *mandamus*, by which a public officer or private citizen may be compelled to discharge the duties imposed upon him by law, should be issuable at all times, in order to secure the prompt execution of the laws, as well as incidentally to secure, in doubtful cases, a judicial determination of the law without the delay which is sometimes at present necessary.

The publication of the laws is a matter demanding the attention of the General Assembly. Justice requires that no citizen should be made subject to the operations of a law, the existence or provisions of which he has not the means of ascertaining. When the Legislature passes an act, it becomes a law immediately on receiving the approval of the Governor, and all citizens are bound to obey the same, or suffer the penalty of a violation thereof. A single copy of the law thus made is filed in the office of the Secretary of State, and until published, is practically beyond the reach or knowledge of the mass of citizens, who are bound by its provisions; and in some instances is unknown to the Judiciary and other officers appointed to enforce it. This is clearly unjust and impolitic, and should be avoided, if possible. I would suggest as a remedy for this that a

general law be passed fixing some definite time, subsequent to the adjournment of the Legislature, when all laws passed at any session shall commence to operate and be of force, except those in which an express provision is made to the contrary; and also fixing a period by which the laws shall be published and distributed. This will obviate the serious difficulties and inconvenience which arises from the present system. If this method be not deemed expedient, I would then suggest that some provision be made for the immediate publication of laws on their passage. One or the other of these remedies I think is due to the citizens who are to obey the laws, to the cause of justice and the interests of the Government.

The unsettled condition of the country has called my attention to a defect in the tax laws, which would not have been material perhaps but for the circumstances under which some portions of the State is placed. I allude to the difficulty or impossibility of collecting the taxes in those places held by the enemy, and in their vicinity. I refer also to the extreme hardship with which the law operates in many individual cases of soldiers in the service of the country, and refugees from the enemy. It will be remembered that there is no power in the Executive or other Department to omit or even suspend the operations of the tax law. The Tax Assessor and Collector is bound, legally, to proceed with due diligence to the collection of taxes under all circumstances, and is held responsible for failure to do so. In many instances this has been a source of embarrassment and hardship, not only to those subject to taxation, but likewise to the Tax Collectors themselves. It is to be hoped that the wisdom of the Legislature will devise some safe remedy for this defect in the law, by vesting in the Chief Executive the power to suspend the collection of taxes in certain cases, or by some other provision that will accomplish the purposes of justice, and not be incompatible with the interests of the State. Although I have no doubt that the public or the government is not disposed to visit upon delinquent Tax Collectors the penalty which the law provides in such cases, yet it is desirable that the Legislature should establish some legal mode by which this matter may be regulated, relieving thereby the Tax Collectors from the difficulties and responsibilities which they must now incur in many instances; and avoiding at the same time those abuses to which the conduct of public officers is liable when based merely upon public sentiment—often misdirected and uninformed—or what they conceive or desire to be public sentiment.

In connection with this subject, it may not be improper again to advert to the necessity of some improvement in the laws regulating the collection of taxes, and the responsibility and duties of tax collectors. In my last report I adverted to this subject, and take occasion again to do so, although properly it will come under the attention of the Comptroller and Treasurer. It will appear, I think,

from an examination of the books of these two offices, that a large portion of the taxes due in several counties of the State are still unpaid, not only in cases arising from invasion or its consequences, but in instances where no such reason exists. Without specifying the particular defects in the law that produces this state of things, it is sufficient for me to suggest that the officers who are entrusted with the supervision of Tax Collectors in the discharge of their duties should be vested with power to act with promptness, and even summarily, if necessary, in certain cases, and that these same officers themselves should be held strictly responsible for neglect and dereliction of their duty. The revenue of the State must be collected with impartiality; justice to individuals require this, no less than the support and maintenance of the Government itself.

I would suggest that some amendment be made to the law regulating the payment for military services, supplies, etc., rendered the State. It will be seen, from an examination of the law, that there is no specified manner by which the Paymaster or Quarter Master General is enabled to obtain the necessary funds to discharge the duties of his office, and no manner of regular accountability between his office and that of the Comptroller. If money is to be drawn from the Treasury on warrant of the Comptroller alone, which seems to be the general policy of our laws, and he is made responsible therefor, there should be some authorized process by which he may be enabled to draw for the amounts necessary in military disbursements, and make a subsequent settlement with the Paymaster as to the particular items of expenditure. This is the only suggestion in regard to the militia laws which I deem it important to make at this time; though, were that law likely to be practically enforced for some time, other suggestions might, I think, be made as to palpable defects that exist in the same.

It may not be improper that I should direct attention to the amended Constitution of the State, adopted by the Convention, and to the legislative action which is necessary in consequence thereof. I do not propose to specify the particular legislation required, deeming a suggestion all that is necessary in regard to the subject. A careful examination of the new or amended Constitution will show that it entails upon the Legislature certain duties in the adoption of laws for carrying out fully its provisions. These subjects have probably been left to the Legislature as requiring an amount of detail that it is improper and unnecessary should be included in the fundamental law of the State. An examination of the ordinances will also discover subjects for legislation. Many of the ordinances are made subject to revision or repeal by the Legislature, such for instance as are legislative in their character and do not partake in their nature of organic law, and such as do not create a contract or pledge the public faith. Much care will be necessary to avoid either

an infringement of the proper authority and functions of the Convention, or too much sensitiveness in regard to the proper duties of the Legislature.

A general view of the condition of the public law of the State presents many imperfections, which have been the cause of much embarrassment to those entrusted with the interpretation and execution thereof. The change of government, the adoption of a new Constitution, the ordinances of the Convention, and the variety of extraordinary legislation that has been demanded by the exigencies of the times, has given rise to many and various questions, which, under ordinary circumstances and in the common course of the government, could never have occurred. In the discharge of the duties of my office I have found it necessary to deal with questions involving the fundamental principles of government, as well as the interpretation of new provisions of the Constitution, and also of doubtful and inconsistent statutes or ordinances. In the opinions or advice that I have given, I have endeavored not only to render a strict interpretation of the law, from its express terms, without regard to temporary convenience; but, in cases where doubt was unavoidable, I have constantly had in view the harmony and efficiency of the government. I have endeavored to avoid, when possible, such construction of the law and the Constitution as would produce confusion or discord in the operations thereof, or between the different departments of the government. The questions arising in consequence of the various proceedings and ordinances of the convention, involving as they do primary principles of law and government, as well as public and legal policy, and for many of which there is no precedent, have created much difficulty and responsibility in my office as well as in the other departments of the government. I think, however, that the working of the State Government under the Constitution and the laws as they now exist have, as it were by use and attrition, smoothed away the original difficulties and obstructions inseparable from new forms and sudden and extraordinary emergencies. It is to be hoped that a general disposition will prevail in the Legislature to avoid all action calculated to produce new difficulties in these respects; and that those entrusted with the making of laws will consider the great importance of preparing them with care and accuracy, that their will may be plainly expressed and consequently understood, and that that harmony and certainty in the various operations of the government may be maintained, which is so especially necessary in the present exigencies of the country.

Very respectfully,
JNO. B. GALBRAITH.