REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

PENNSYLVANIA

FOR THE

Two Years Ending December 31, 1908.

M. HAMPTON TODD,

Attorney General.

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REPORT OF THE ATTORNEY GENERAL

FOR THE

Two Years Ending December 31, 1908

OFFICE OF THE ATTORNEY GENERAL,

Harrisburg, Pa., January 1, 1909.

To the Senate and House of Representatives of the Commonwealth of Pennsylvania:

In conformity with law I have the honor to submit a summary and report of the official business transacted by the Attorney General during the two years ending on December 31, 1908.

I entered upon the performance of the duties of the office of Attorney General on January 17, 1907. Hon. Frederic W. Fleitz was reappointed and commissioned as Deputy Attorney General, a position which he continues to occupy, and I retained in their several positions the office staff of my predecessor.

The Act of March 21, 1907 (P. L. 26) created the office of Assistant Deputy Attorney General, making the salary thereof three thousand five hundred dollars per annum, and also authorized the Attorney General to appoint an additional stenographer at a salary of one thousand dollars per annum. The Governor appointed Hon. Jesse E. B. Cunningham Assistant Deputy Attorney General, and upon his confirmation by the Senate he was duly commissioned and entered upon the performance of the duties of his office on the first day of May, 1907, and has continued in the performance thereof.

By Act of June 1, 1907 (P. L. 382), the salary of the Private Secretary to the Attorney General was increased from eighteen hundred dollars to two thousand dollars per annum, and the salary of one stenographer was increased from nine hundred dollars to one thousand dollars per annum, thus giving each of the stenographers of the Department the same salary. By the same Act the salary of the messenger was increased from six hundred dollars to nine hundred dollars per annum.

Prior to June 1, 1907, the collections made by this Department were paid in as received and reported quarterly to the State Treasurer and to the Auditor General. Since the Act, approved May 25, 1907, went into effect, viz: on June 1, 1907, such collections have been paid to the State Treasurer each day as received and reported to him and the Auditor General daily, as required by the provisions of said Act of Assembly.

OPINIONS.

Copies of opinions, rendered by this Department to the Governor and the several heads of departments, State boards, State institutions and State officials during the preceding two years, are hereunto annexed and made part of this report.

There is also appended hereto, and as part hereof, schedules showing the applications made during the last two years for writs of quo warranto, for permission to use the name of the Commonwealth in the institution of suits, charters of insurance companies and banks approved, tax appeals, cases argued in the Supreme and Superior Courts of this Commonwealth, list of cases pending in said courts, proceedings instituted against insolvent banks, trust companies, insurance companies and building and loan associations, actions instituted by the Commonwealth, and collections made and from whom.

SUMMARY OF THE BUSINESS OF THE ATTORNEY GENERAL'S DEPARTMENT FROM JANUARY 1, 1907, TO DECEMBER 31, 1908.

Quo warranto proceedings in Common Pleas of Dauphin County,		2
(5 applications refused; 2 discontinued; 4 abandoned; 7 pending).		
Injunction proceedings in Common Pleas of Allegheny County,		2
Equity proceedings in Common Pleas of Dauphin County,	2	
In other counties,	5	
Total,		7
Actions in assumpsit instituted in Common Pleas of Dauphin County,		7
Orders to show cause, etc., against insolvent companies and associations,		21
Mandamus proceedings in Common Pleas of Dauphin County,		1
Cases argued in Supreme Court of Pennsylvania,		8
Cases argued in Superior Court of Pennsylvania,		2

Tax appeals in Common Pleas of Dauphin County,	922
Bridge proceedings under Acts of 1895 and 1903,	3
Formal hearings before the Attorney General,	31
(Quo Warranto, 19; under Act of June 9, 1891, 1; under Act of April 26, 1855, 3; use of the name of the Commonwealth, 4; mandamus, 2; under Act of May 7, 1887, 1; under Act of March 5, 1906, 1.)	
Judgments entered by Commonwealth in re Allegheny National Bank of Pittsburg,	4
Insurance charters approved by Attorney General,	41
Bank charters, etc., approved by Attorney General,	14
Applications for sewerage approved by Attorney General,	195
Formal opinions rendered in writing,	136
Cases now pending in Supreme Court of Pennsylvania,	10
Cases now pending in Superior Court of Pennsylvania,	4
Cases now pending in U. S. Circuit Court,	1
Proceedings under Acts of April 26, 1855, (P. L. 331), and May 23, 1895 (P. L. 114),	2
Proceedings under Act of March 5, 1906, (P. L. 81),	1
Applications under Act of June 9, 1891, (P. L. 256),	1
Applications under Act of May 7, 1887, (P. L. 94),	1

COLLECTIONS.

For 1907,	$256,516 13
For 1908,	566,503 37
Total,	$823,019 50

SPECIAL CASES.

CRIMINAL AND CIVIL CASES GROWING OUT OF THE CAPITOL INVESTIGATION AUTHORIZED BY THE LEGISLATURE OF 1907.

In a concurrent resolution of the Legislature of Pennsylvania, approved the 30th day of January, A. D. 1907, it was set forth, inter alia, that statements had been made by certain public officials and others to the effect that expenditures of moneys in connection with the construction and furnishing of the new State Capitol had been made in an irregular manner, and in excess of the amounts which could be lawfully expended for that purpose. The terms of this resolution provided for the appointment of a joint committee of seven members, to make a full investigation of all the circumstances and transactions connected with the erection, construction and furnishing of the State Capitol, including, first, all contracts let, and the manner of letting said contracts; second, all moneys expended, and the manner of expending such moneys; third, such other matters relating to the erection, construction and furnishing of said Capitol as to said joint committee seem pertinent.

By a concurrent resolution approved May 8, 1907, the Legislature authorized the said joint committee to continue its work beyond the date of final adjournment of the Legislature, and directed the said committee at the conclusion of its labors to make its report and recommendations to the Governor. In accordance with said resolution a joint committee, consisting of three members of the Senate and four members of the House of Representatives, was appointed, which said committee, after a thorough investigation, conducted at both executive and public sessions, with the assistance of Messrs. James Scarlet and James A. Stranahan, duly appointed as counsel therefor by the Governor, and with the assistance of experts, made a comprehensive report consisting of more than two hundred and fifty typewritten pages, to the Governor, on the 16th day of August, 1907. The said report concludes with certain general findings and recommendations. Two of the general findings and conclusions of the said joint committee are to the effect that the contracts awarded to the Pennsylvania Construction Company, John H. Sanderson and George F. Payne & Company, by the Board

of Commissioners of Public Grounds and Buildings in connection with the furnishing of the new Capitol building were illegal and unauthorized by law, and that fraudulent invoices for furnishings were presented, accompanied by false certificates, and warrants issued thereon with intent to cheat and defraud the State. In conclusion, the joint committee recommended, inter alia, that its report be placed in the hands of the Attorney General "with instructions to institute such criminal and civil proceedings as may in his judgment be warranted by law and the facts found by this Commission against any and all persons concerned in the fraudulent transactions set forth in this said report and named specifically in its several findings and conclusions, and against all persons who may be directly or indirectly involved therein, to the end that the money unlawfullly taken from the State may be recovered and punishment meted out to all offenders."

Pursuant to said recommendation, the report of said joint committee was placed by the Governor in the hands of the Attorney General, and after due consideration and investigation twelve criminal informations were made against John H. Sanderson, the contractor, Joseph M. Huston, the Architect, James M. Shumaker, Ex-Superintendent of Public Grounds and Buildings, William P. Snyder, Ex-Auditor General, and William L. Mathues, Ex-State Treasurer, based upon twelve separate invoices and warrants for Capitol furnishings, in each of which said informations the said defendants were charged with conspiracy to cheat and defraud the Commonwealth by the presentation, certification, settlement and payment of false and fraudulent invoices for materials supplied in the furnishing of the new Capitol Building. Twelve informations were also made against H. Burd Cassel, representative of the Pennsylvania Construction Company, the said Joseph M. Huston, James H. Shumaker, William P. Snyder, and William L. Mathues, founded upon twelve separate invoices for metallic furniture, supplied for the new Capitol building, in each of which informations the defendants were likewise charged with conspiracy to cheat and defraud the Commonwealth by the presentation, certification, settlement and payment of false and fraudulent invoices for metallic furniture.

A criminal information was likewise made against the said Sanderson, Huston, Shumaker, Snyder, Mathues and George F. Payne and Charles G. Wetter, contractors, charging them with conspiracy to defraud the Commonwealth in the matter of the presentation and payment of false and fraudulent bills for decorating and painting.

In addition to the above mentioned informations the following informations were made, to wit, information against the said Cassel, Huston, Shumaker, Snyder, Mathues, and Frank Irvine, a traveling

auditor in the Department of the Auditor General; information against the said Sanderson, Huston, Shumaker, Snyder, Mathues, and Charles F. Kinsman, Wallis Boileau, John G. Neiderer, and George K. Storm, members of the Pennsylvania Bronze Company; information against the said Cassel, Huston, Shumaker, Snyder, Mathues, Irvine and Stanford B. Lewis, the associate and assistant of the said Joseph M. Huston; information against the said Cassel, Huston, Shumaker, Snyder, Mathues and Lewis; and information against the said Sanderson, Huston and Shumaker; in all of which information the defendants were likewise charged with a criminal conspiracy to cheat and defraud the Commonwealth in the manufacturing, supplying, charging and making payment for various articles of furniture for the new Capitol Building.

Two informations against the said Charles G. Wetter, two informations against the said H. Burd Cassel, one against the said Sanderson, one against the said Sanderson and Huston, and one against the said Cassel and Huston, were likewise made, charging the said defendants with the crime of making various false pretences in connection with the furnishing of said Capitol building. Indictments were framed on all of said informations and presented to the Grand Jury of Dauphin County, which body returned that each of said indictments was a true bill.

On the 27th day of January, 1908, the said John H. Sanderson, Joseph M. Huston, James M. Shumaker, William P. Snyder, and William L. Mathues were arraigned for trial in the Court of Quarter Sessions of Dauphin County, upon one of said indictments, to wit, the indictment returned against said defendants at No. 239, Sept. Sessions, 1907, of said court.

Upon motion of counsel for the said Joseph M. Huston, a severance was granted as to him, and the case proceeded to trial against the remaining defendants. The trial was proceeded with as expeditiously as possible, but was not concluded until the 13th day of March, 1908, upon which date a verdict was returned, finding the said John H. Sanderson, James M. Shumaker, William P. Snyder, and William L. Mathues guilty as indicted. On the 11th day of April, 1908, motions for new trials and in arrest of judgment were made in behalf of each of the defendants convicted as aforesaid, which motions were argued on the 6th day of October, 1908.

On the 11th day of December, 1908, Honorable George Kunkel, President Judge of Dauphin County, before whom said cases were tried, handed down an opinion overruling the motions for a new trial and in arrest of judgment, and directed the defendants to present themselves for sentence on December 18, 1908, on which date the said John H. Sanderson, William P. Snyder, William L. Mathues, and James M. Shumaker, were sentenced to pay the costs, and to

each pay a fine of $500 and undergo imprisonment in the eastern penitentiary by separate or solitary confinement at hard labor for a period of two years. Each of the said defendants immediately entered an appeal in the Superior Court, which court, on application of counsel for the defendants, ordered that each appeal should operate as a supersedeas upon the respective defendants giving bail to be approved by the court below, in the sum of $25,000.00 each, conditioned to prosecute the appeals with effect or forthwith surrender themselves to comply with and abide by the sentence of the said Court of Quarter Sessions of Dauphin County. These appeals are now pending in the Superior Court and will be argued at an early date.

The indictment upon which the said defendants were convicted charged them with entering into and carrying into execution a conspiracy to cheat and defraud the Commonwealth by means of the presentation, certification, settlement and payment of an invoice dated March 28, 1906, for designed wooden furniture, to wit, sofas, tables, clothes trees, etc., charged at the sum of $53,318.60, which said invoice the Commonwealth alleged was false and fraudulent, both as to the measurements at which the articles of furniture therein mentioned were billed, and as to the prices at which said articles of furniture were charged.

On the 12th day of May, 1908, the said H. Burd Cassel, Joseph M. Huston, James M. Shumaker, William P. Snyder, William L. Mathues, and Frank Irvine were arraigned upon one of the above mentioned indictments charging them with a conspiracy to defraud the Commonwealth by means of the presentation, certification, settlement and payment of an invoice for metallic furniture for one of the rooms of the new Capitol building alleged by the Commonwealth to be a false and fraudulent invoice. On the 28th day of May, 1908, a severance was granted by the court as to the said Frank Irvine and the trial proceeded as to the remaining defendants, terminating on the 13th day of June, 1908, by a verdict finding the defendants not guilty and directing the prosecutor, James T. Walters, County Detective of Dauphin County, to pay the costs. On July 22nd, 1908, leave was granted by the Court of Quarter Sessions of Dauphin County to the District Attorney of the said county, to enter a nol pros as to the said Frank Irvine.

Throughout the preparation and trial of these cases, the Attorney General's Department was ably assisted by James Scarlet, Esq., and Hon. John E. Fox, who were retained as special counsel for the Commonwealth, and by John Fox Weiss, District Attorney of Dauphin County.

To the end that these cases might be properly presented and

prosecuted, it was necessary to employ the services of expert witnesses, detectives, officers for the service of subpoenas, etc.

It is the purpose of this Department to promptly try another criminal case growing out of the alleged contract of the said John H. Sanderson for Capitol furnishings and April 5, 1909, has been fixed by the Court of Quarter Sessions of Dauphin County as the date for the next trial.

In so far as civil proceedings for the recovery of the moneys fraudulently obtained from the Commonwealth are concerned, it has been deemed advisable to await the disposition of the issues arising in the criminal prosecutions before instituting civil proceedings.

PROCEEDINGS AGAINST INSOLVENT STATE BANKS.

During the last two years several cases have been tried by this Department in which the question of the exclusive right of the Banking Department of the Commonwealth to control the proceedings incident to the winding up of the affairs of insolvent banks under the jurisdiction of that Department was raised. The proceedings were instituted under the 9th section of the Act of February 11, 1895 (P. L. 4), creating a Banking Department for this Commonwealth, and defining its purposes and authority. By this section a method of dissolving and closing up the business of a state banking corporation, when such corporation is in an unsound and unsafe condition to do business or when its business or manner of conducting the same is injurious and contrary to the interests of the public is provided. When from examination of the papers, books and affairs of any such corporation the Commissioner of Banking has reason to conclude that proceedings are necessary, he is directed to forthwith communicate the facts to the Attorney General, whose duty it then becomes to make application to one of the Courts of Common Pleas of the Commonwealth for the appointment of a Receiver to take charge of such corporation's property and wind up its business. If the immediate protection of depositors and other creditors demand such action, a temporary receiver may be appointed by the Commissioner of Banking after a hearing before and with the consent of the Attorney General.

In view of the large amount of assets owned by banks, trust companies and building and loan associations, under the supervision of the Banking Department of this State, it is imperative that the jurisdiction of that Department to institute proceedings for the dissolution and winding up of the affairs of insolvent institutions

should be exclusive. In the year 1907 there were 471 banks and trust companies, and 1,400 building and loan associations subject to the supervision of the Banking Department, which institutions were possessed of assets aggregating $1,852,597,935.00, which amount is $721,575,045.00 more than the total resources of the 745 national banks in Pennsylvania during the same year.

The right of a private suitor to apply to a court of competent jurisdiction for the appointment of a receiver to conserve the assets of an insolvent state banking institution, and to prevent their dissipation, has never been denied by the Commonwealth, but the representatives of the Commonwealth have contended that the receiver appointed at the instance of the Banking Commissioner and Attorney General, under the provisions of the said act of 1895, is the only receiver invested with authority to wind up the business of the corporation and distribute its assets, and that the court to which such application is made by the Banking Commissioner and Attorney General, is the only court having jurisdiction to decree a dissolution of the corporation. It has been further contended by the Commonwealth that if a receiver has been appointed upon the application of a private suitor or under a stockholder's bill for the preservation of assets a receiver appointed at the instance of the Attorney General under a decree of dissolution made in accordance with the provisions of the said act of 1895 supersedes the receiver appointed in any other proceeding, and is entitled to receive from such receiver all of the assets and property of the institution in question, for the purpose of carrying into effect the decree of dissolution and winding up the business of the corporation. These questions were involved in the following cases:

Commonwealth ex rel. Attorney General vs. Iron City Trust Company.

On November 20, 1907, the Attorney General, acting upon information communicated to him by the Banking Commissioner, filed a suggestion in the Court of Common Pleas of Dauphin county, at No. 430 Commonwealth Docket, 1907, under the provisions of the said 9th section of the act of 1895, for the appointment of a receiver to wind up the business of the Iron City Trust Company of Pittsburg, Pa., upon the allegation that said company was in an unsound and unsafe condition to do business and was insolvent. The said Iron City Trust Company filed an answer to the rule granted to show cause why a receiver should not be appointed setting forth, inter alia, that on October 23, 1907, W. D. McKeefrey, a citizen and resident of Leetonia, Ohio, and John McKeefrey, N. J. McKeefrey and W. D. McKeefrey, all citizens and residents of Leetonia, Ohio,

doing business under the firm name of McKeefrey & Company, presented their bill of complaint in equity in the Circuit Court of the United States for the Western District of Pennsylvania at No. 30 November Term, 1907, alleging that they were creditors of the said Iron City Trust Company in amounts exceeding the sum of $2,000; that the assets of said company could not be converted into cash in time to meet its liabilities, and that unless receivers were appointed its property would be sacrificed and its stockholders and creditors subjected to damage and loss; that on the same day the defendant corporation filed its answer to said bill admitting the facts set forth in the bill and joining in the prayer for the appointment of receivers; and that thereupon W. L. Abbott and H. S. A. Stewart were appointed Receivers by the said Circuit Court.

The case came on for a hearing on December 19, 1907, in the Court of Common Pleas of Dauphin county, at which time the testimony was heard and arguments of counsel made.

On the 20th day of February, 1908, the Court of Common Pleas of Dauphin county entered a decree in that court dissolving the said Iron City Trust Company, and appointing J. Denniston Lyon Receiver thereof, with instructions to institute such proceedings in the said Circuit Court as might be proper to procure the revocation of its decree appointing receivers for said corporation, and upon such revocation to take possession of the property and assets of the corporation, close its business and dispose of its property and assets according to law. Proceedings were duly instituted in the said Circuit Court, which proceedings are still pending and undetermined in that court.

Lincoln Saving and Trust Company Case.

The Lincoln Savings and Trust Company was a corporation in the City of Philadelphia, engaged in the business usually conducted by trust companies, and by reason of the nature of its business and the provisions of the Act of Assembly under which it was incorporated, it was an institution subject to the supervision of the Banking Department of Pennsylvania. As early as April, 1907, the Commissioner of Banking found it necessary to appoint a temporary receiver for this institution. From that time down until the 18th of June, 1908, this institution was under the close supervision of the Banking Department, on which day, while an Examiner of the Department was engaged in making an examination of the condition of the said Lincoln Savings and Trust Company at its place of business in the city of Philadelphia, Jeremiah C. Jones, a stockholder of said company, filed a bill in equity in the Court of Common Pleas No. 4 for the County of Philadelphia, sitting in Equity, at

No. 1990 June Term, 1908, averring that said company could not convert its assets into cash in time to meet obligations then pressing, and praying for an injunction to restrain the officers of said company from doing business as a trust company, and for the appointment of a receiver to take possession of the property of the defendant company for the benefit of the complainant in the said bill and all other parties in interest.

On the same day the said Lincoln Savings and Trust Company, by its President, filed an answer to said bill admitting the allegations in the bill and joining in the prayer for the appointment of a receiver in order that the assets of the company might be conserved for the depositors and creditors, whereupon, the court made a decree appointing Samuel M. Hyneman, Esq., receiver, who immediately took possession of the property and assets of the said company.

On the following day the Commissioner of Banking notified the Attorney General, under the said 9th section of the act of 1895, that the said Lincoln Savings and Trust Company was in an unsound and unsafe condition to do business, that its capital was impaired and its reserve below the requirements of law, and requested the Attorney General to institute the necessary proceedings for the appointment of a receiver to wind up its business, in accordance with the provisions of the said act of 1895. The Attorney General, pursuant to said request, immediately filed, in the Court of Common Pleas of Dauphin county, a suggestion for a rule on said company to show cause why a receiver should not be appointed to take charge of its property and wind up its business. In response to this rule the said company, on the 24th day of June, 1908, filed its answer setting forth the proceedings so as aforesaid had in the Court of Common Pleas No. 4 of Philadelphia county.

The case came on for a hearing before the said Court of Common Pleas of Dauphin county, on June 25, 1908, which court, after hearing the testimony, decreed that the said Lincoln Savings and Trust Company be dissolved and its corporate existence ended, and that Charles F. Warwick, Esq., be appointed receiver to take possession of the property and assets, close its business and dispose of its property and assets according to law.

Shortly after the appointment of the said Charles F. Warwick, a rule was granted at the instance of the Attorney General, the Commissioner of Banking and the said Charles F. Warwick, by the said Court of Common Pleas No. 4 of Philadelphia county, upon the said Jeremiah C. Jones, the said Lincoln Savings and Trust Company and the said Samuel M. Hyneman, receiver, to show cause why the decree of said Court made on June 18, 1908, appointing the said Samuel M. Hyneman receiver, should not be superseded, and the said

Samuel M. Hyneman directed to turn over and account for to the said Charles F. Warwick all of the assets and property of the said Lincoln Savings and Trust Company, which rule, after argument, was discharged by the said Court of Common Pleas No. 4 of Philadelphia county.

In the opinion discharging said rule the said Court of Common Pleas No. 4 of Philadelphia county, after pointing out that it had not been asked to dissolve the corporation or to give time for making good an impaired capital or to make a decree based upon proofs of unsound or improper conduct of business, held that the jurisdiction of the Dauphin county court at the instance of the Commonwealth is not exclusive; that the proceedings instituted in that court did not necessarily supersede the proceedings instituted in the said Court of Common Pleas No. 4 of Philadelphia county; and that there is nothing in the said act of 1895 which gives to the proceedings brought in the name of the Commonwealth the exclusive force claimed for them.

Appeals were taken by the Commonwealth and by the said Charles F. Warwick from the action of the said Court of Common Pleas No. 4 of Philadelphia County to the Supreme Court of Pennsylvania, which court, without filing an opinion, disposed of the case by stating on November 8, 1908, that the action of the said Court of Common Pleas No. 4 of Philadelphia County was affirmed, on the opinion of the court below, by a majority of the Supreme Court.

It is important that the affairs of insolvent banks should be wound up by receivers who will thoroughly examine each account and report every violation of law and suspicious circumstance incident to the past administration of the affairs of such institutions. It is respectfully submitted that receivers appointed at the instance of the officers of the Commonwealth will be more likely to make such investigations than receivers whose appointments are derived directly or indirectly through the action of the officials under whose management the institutions have failed. It would seem from the decision in the Lincoln Savings and Trust Company case that additional legislation is necessary to vest in the Banking Department exclusive jurisdiction to institute proceedings for the dissolution of insolvent banking institutions and for the appointment of receivers to wind up their business.

CASES RELATING TO TWO CENT RATE LEGISLATION.

In obedience to an almost unanimous public sentiment the Legislature of 1907 passed the act "To regulate the maximum rate and minimum fare to be charged for transportation of passengers by railroad companies and prescribing the penalty for violation thereof," which law received Executive approval April 5, 1907. (P. L. 59.)

By the first section of this act it is provided that after the 30th day of September, 1907, no company operating a railroad, in whole or in part in this Commonwealth, shall demand or receive more than two cents fare per mile, or for a fraction thereof, contracted to be traveled or traveled, by any passenger on such railroad in this Commonwealth: Provided, that the minimum fare charged by such company need not be less than five cents.

By the second section of the act it is provided that any railroad company demanding or receiving any greater compensation for the transportation of any passenger than is therein authorized shall be subject to a penalty of $1,000 for each and every offence, which penalty shall be payable to the county where such illegal charge is made.

About the time this legislation became effective a large number of suits in equity were instituted by different railroad companies operating in Pennsylvania against different counties of the Commonwealth to restrain the enforcement of these provisions. By reason of the great number of actions brought and because these actions were pending for trial in nearly every Court of Common Pleas of the Commonwealth, it was physically impossible for this Department to represent the interests of the Commonwealth in all of these cases, but because the rights of the people of the Commonwealth were involved in the questions raised, and because the right of the Legislature to regulate or control passenger rates was challenged by certain railroad companies operating under charters granted by the Legislature of Pennsylvania, this Department deemed it to be its duty to assist the county of Philadelphia in the trial of the most important case arising under the legislation regulating passenger rates. The Attorney General accordingly represented the interests of the Commonwealth in the trial of the case of the Pennsylvania Railroad Company vs. Philadelphia county, reported in 220 Pa., 100, and in the case of the Philadelphia and Reading Railway Company against the county of Philadelphia, now pending in the Court of Common Pleas No. 4 of Philadelphia county.

Pennsylvania Railroad Co. vs. Philadelphia County.

On May 21st, 1907, the Pennsylvania Railroad Co. filed a bill in equity in the Court of Common Pleas No. 4 of Philadelphia county against the county of Philadelphia, averring that the said Pennsylvania Railroad Co. was incorporated by an act of the Legislature of Pennsylvania, approved April 13, 1846, and divers supplements thereto; that by the original act it was authorized to construct a railroad from Harrisburg to Pittsburg, with a branch to Erie, which branch, however, has never been constructed; that by section 21 of the said act of 1846 the said company is authorized to charge such rates of fare, &c., "as to the president and directors shall seem reasonable" within certain limits, among others, three cents a mile for through passengers and three and a half cents per mile for way passengers; that by subsequent acts of assembly, purchases, leases, &c., the said company has acquired control of and operates a large number of railroads, upon which certain rates of fare have been established, some exceeding two cents a mile; that its charter is a contract which cannot be altered or annulled; that the said act of April 5, 1907, limiting the maximum fare to two cents a mile, is unconstitutional, inter alia, because it deprives the said railroad company of its property rights without compensation and due process of law, alters its charter and subjects it to the payment of unreasonable penalties; that by reason of the risk of multitudinous suits and the possibility of excessive recoveries the company is entitled to equitable relief; and praying that the said act of 1907 be decreed unconstitutional and void, and that an injunction be granted to restrain the county of Philadelphia from bringing any suits against the said Pennsylvania Railroad Company for violation of its provisions.

The answer of the county of Philadelphia, in which the Commonwealth joined, denied the effect of the facts alleged in the bill and averred that the Legislature of Pennsylvania has the right to regulate the business of the Pennsylvania Railroad Company as a carrier; that said company has subjected itself to the general railroad act of 1849, to the act of 1855, reserving to the Legislature the right to alter, amend or repeal charters, and to the constitutional amendmen of 1857 to the same effect; and moreover, by writing filed March 8, 1901, has formally declared itself under and subject to the present constitution of the state and accepted all its provisions, and particularly the provisions of the 16th and 17th articles thereof, providing, respectively, that "The General Assembly shall have the power to alter, revoke or annul any charter of incorporation now existing and revocable at the adoption of this constitution or any that may

hereafter be created whenever, in their opinion, it may be injurious to the citizens of this Commonwealth, in such manner, however, that no injustice shall be done to the corporators," and that "No railroad, canal or other transportation company in existence at the time of the adoption of this article shall have the benefit of any future legislation by general or special laws, except on condition of complete acceptance of all the provisions of this article."

The answer further denied that the said act of 1907 alters plaintiff's charters, but alleges that if it did the Legislature has the right to alter them, and denied that the alteration, if any, does injustice to the corporators and stockholders.

The case came on for a hearing, at which hearing the said Pennsylvania Railroad Co. declined to offer any evidence showing its freight rates or receipts, and in determining whether the act in question would work injustice to the corporators the court considered its effects upon passenger traffic alone.

The county and Commonwealth contended, on the other hand, that for the proper determination of this question all receipts from all sources, freight, passenger, express business, &c., should be taken into consideration, in order to ascertain whether the stockholders in the corporation in question would receive a proper return upon their investment, and contended that none of the capital was invested in passenger traffic alone in such a way that it could be divided from the general capital.

The said Court of Common Pleas of Philadelphia county decided in substance that the above quoted provision respecting fares in the original charter is a contract which still remains in force as to the original line, notwithstanding the said act of 1855 and the formal acceptance of the present constitution by the said Pennsylvania Railroad Company; that receipts, other than from passenger traffic, are not to be considered; that as a regulation of the said railroad companies intra-state passenger business in its entirety the act, under existing circumstances, is unreasonable and confiscatory; and that, viewed as an alteration or revocation of the said company's franchises, to establish and enforce over the lines of road now operated by it and which have been acquired since 1855, such rates as its president and directors may deem reasonable under the said act of 1846, the act of 1907 is unconstitutional because it does injustice to the corporators of the Pennsylvania Railroad Company by establishing so low a maximum rate of fare for the carriage of passengers as to render that branch of the plaintiff's business unremunerative, but provided no compensation for the loss thereby occasioned. The court below accordingly adjudged that the said act of 1907 cannot be enforced against the Pennsylvania Railroad Com-

pany, and restrained the County of Philadelphia from demanding fines and attempting by action to collect them, if the maximum rate which the act attempts to establish should be disregarded by said railroad company.

On October 18, 1907, an appeal was taken by the County of Philadelphia from the decision of the said Court of Common Pleas of Philadelphia county to the Supreme Court, and after argument therein the opinion of the majority of the Supreme Court was delivered by Mr. Chief Justice Mitchell, on January 20, 1908, from which majority opinion Justices Mestrezat, Potter and Stewart dissented. In disposing of the contention of the Pennsylvania Railroad Company, sustained by the court below, to the effect that the right to fix rates given by the said act of 1846 is in the nature of a contract between the railroad and the State, which cannot be impaired by subsequent legislation, Chief Justice Mitchell said:

> "In view of our reasons for affirming the decree of the court below, it is not essential that we now pass upon this question. If it were we would order a reargument and dispose of it. For the present we leave the immunity of the Pennsylvania Railroad Company proper from legislation fixing passenger rates at a maximum below that which its board of directors are authorized to fix by the act of 1846, that being the only point raised by this appeal, as an open question."

Having eliminated from consideration this question, it is stated in the majority opinion of the Supreme Court that the exact question to be determined is not the general constitutionality of the act of 1907 but the right to enforce it against the Pennsylvania Railroad Company, which right depends upon whether the provisions of the act would do injustice to the corporators of the said company. After pointing out that the provisions of a statute need not be unreasonable to the extent of being actually confiscatory of the corporators' property or rights in order to be invalid, because the point of injustice may be reached long before that of confiscation, the conclusion of the court below that the enforcement of the act of 1907 would, under the testimony in this case, work injustice to the corporation, was affirmed, and the appeal dismissed.

The practical effect of the decision in this case is to exempt the Pennsylvania Railroad Company from the operation of the said act of 1907, leaving all other railroad companies operating in this state subject to its terms, until any such corporation, claiming that the operation of the said act works injustice to its stockholders, has proven in the proper court the fact of such injustice.

Philadelphia and Reading Railway Company vs. Philadelphia County.

The Philadelphia and Reading Railway Company is now engaged in an attempt to obtain a decree exempting it from the operation of the said act of 1907, which case is now pending in the Court of Common Pleas No. 4 of Philadelphia county.

Numerous other railroad companies are likewise attempting to secure exemption from the operation of this law.

COMMONWEALTH OF PENNSYLVANIA VS. CLAIRTON STEEL COMPANY.

Tax on corporate loans held by banks or savings institutions which paid the taxes on the shares of their capital stock prior to the first of March of the tax year.

The Clairton Steel Company, a corporation of the State of Pennsylvania, by its Treasurer, made report to the Auditor General of the State of Pennsylvania for the year 1906. showing the amount of its indebtedness to be $9,290,446.64. These reports show, inter alia, $1,162,000.00 of bonds, and $7,916,064.00 of mortgages owned by individual residents of Pennsylvania; $69,000.00 of bonds held by Pennsylvania corporations, and $1,039,000.00 of bonds owned by State banks and savings institutions chartered under the laws of Pennsylvania.

Upon the 25th day of March, 1908, the Auditor General settled and entered, and the State Treasurer approved an account against the defendant company, in which the tax of four mills was charged upon $2,277,916.64 of bonds and mortgages, being those referred to above. From this account defendant duly appealed to the Court of Common Pleas of Dauphin county, first paying into the State Treasury $4,800.00 as tax on loans for the year 1906, and claiming that the $1,035,000.00 of bonds which were held by State banks and savings institutions which paid the four mills tax upon the shares of their capital stock into the State Treasury before the first day of March, 1906, were exempt from the payment of the tax by reason of the exemption contained in the Act of July 13, 1897, (P. L. 292). This exemption was denied by the Commonwealth, and the case was tried on April 22, 1908, and subsequently the Dauphin county Court rendered an opinion in which the contention of the defendant company was sustained. An appeal from that decision was taken to the

Supreme Court to No. 7 May Term, 1908, and the case was duly argued at that term of court, and after full presentaion and argument the opinion of the Court below was sustained and the case decided against the Commonwealth.

ALLEGHENY NATIONAL BANK.

On the 16th day of May, 1908, the Allegheny National Bank of Pittsburg, Pa., was found to be insolvent, and was closed by order of the Comptroller of the Currency. On this date there was on deposit in said bank moneys of the Commonwealth to the amount of $523,-477.18. On the date upon which said bank was closed the State Treasurer was in possession of four separate bonds of said bank, purporting to be bonds for the security of said funds, two of said bonds having personal sureties thereon, and to each of the other two was attached a contract of suretyship executed by corporate sureties. These bonds were as follows:

1. Bond No. 21, dated May 14, 1898, in the penal sum of $2,000,-000.00, with John Caldwell, Jr., Joshua Rhodes, J. McM. King, Walter Chess, Thomas Evans and W. Montgomery, as sureties thereon.

2. Bond No. 249, dated July 30, 1902, in the penal sum of $2,000,-000.00, with William Stewart, Walter Chess, William Montgomery, Thomas Evans, Robert McAfee, William H. Latshaw, Joshua W. Rhodes, and Henry Oliver, as sureties thereon.

3. Bond No. 1044, dated April 28, 1908, in the penal sum of $500,-000.00, with the suretyship contract of the United States Fidelity and Guaranty Company to the extent of not more than $250,000.00 attached thereto.

4. Bond No. 1045, dated April 28, 1908, in the penal sum of $500,-000.00, with the suretyship contract of the Fidelity and Deposit Company of Maryland to the extent of not more than $250,000.00 attached thereto.

On the 18th day of May, 1908, judgments were entered against the said personal sureties on bonds Nos. 21 and 249, by virtue of warrants of attorney contained therein, in the Court of Common Pleas No. 2 of Allegheny county, and on May 29, 1908, the sureties on said bonds, and defendants in said judgments presented their petition to the said Court of Common Pleas No. 2 of Allegheny county, and obtained rules to show cause why said judgments should not be

opened and the petitioners let into a defence. In the petitions for said rules it was averred, inter alia, that on the 28th day of April, 1908, the Board of Revenue Commissioners and the Banking Commissioner of the Commonwealth of Pennsylvania, adopted a resolution substituting said bonds Nos. 1044 and 1045, with corporate sureties thereon, in lieu and place of said bonds Nos. 21 and 249, and directing the State Treasurer to return to said bank said bonds Nos. 21 and 249, upon which the petitioners in said proceedings were sureties.

In reply to the allegations contained in said petitions counsel for the Commonwealth admitted that the resolution was passed, but contended that inasmuch as the funds on deposit in said bank, on the date said resolution was passed, aggregated $534,226.40 at the close of business for that day, and at no time prior to the closing of said bank amounted to less than $523,477.18, and the suretyship contracts attached to said bonds Nos. 1044 and 1045 aggregated only $500,000.00 the said Board of Revenue Commissioners had no legal authority to substitute said bonds Nos. 1044 and 1045 for said bonds Nos. 21 and 249.

The case came on for hearing upon rule and answer and after argument the position of the Commonwealth was sustained and the rules to open the judgments discharged. Appeals have been taken by some of the defendants to the Supreme Court, and Monday, January 25th, 1909, has been fixed by the Supreme Court as the date for argument upon said appeals.

During the course of this litigation a dividend of 40 per cent. was paid to the depositors in said bank, the Commonwealth receiving, through this Department, from Robert Lyons, Receiver of said bank, on October 28, 1908, the sum of $209,532.54, being 40 per cent. of its deposit in said bank. Before the discharge of the rules to open the judgments entered against the personal sureties as aforesaid, the said United States Fidelity and Guaranty Company and the said Fidelity and Deposit Company of Maryland, corporate sureties as aforesaid on bonds Nos. 1044 and 1045, each filed a bill in equity in the said Court of Common Pleas No. 2 of Allegheny county against the said bank, its Receiver, the Attorney General and State Treasurer of the Commonwealth, setting forth that these companies had been induced to become sureties for the said Allegheny National Bank by fraudulent representations on the part of said bank, and averring that the bonds upon which they were the respective sureties had not been legally approved by the Board of Revenue Commissioners and Banking Commissioner of the Commonwealth. The bills in question concluded with a prayer for a preliminary injunction to restrain the officers of the Commonwealth from entering

judgment against the said companies upon the warrants of attorney contained in said bonds, and from instituting any action for the collection of the same, and also asked that the Court order the suretyship contracts to be cancelled or surrendered and delivered to said companies. Upon the filing of said bills in equity preliminary injunctions were granted as prayed for. The Attorney General's Department has filed motions to dissolve these preliminary injunctions and has demurred to said bills in equity, assigning as the cause of demurrer and the ground for dissolving said injunctions that the said Court of Common Pleas No. 2 of Allegheny county had no jurisdiction to entertain said bills or grant said injunctions, for the reason that, whilst the proceedings are nominally against the Attorney General and State Treasurer, they are, in substance and in law, suits against the Commonwealth, and have been brought without legislative permission. These motions and demurrers are now pending for argument in the court aforesaid.

COSMOPOLITAN NATIONAL BANK.

On September 5, 1908, the Cosmopolitan National Bank of Pittsburg having become insolvent, was closed by the Comptroller of the Currency, upon which date the Commonwealth had on deposit in said bank the sum of $100,000.00. As security for this deposit the State Treasurer had in his possession three bonds of the said bank, with sureties thereon as follows:

1. Bond dated October 29, 1906, with the American Bonding Company of Baltimore, Maryland, as surety thereon, to an extent not exceeding $100,000.00.

2. Bond dated March 30, 1908, with the United States Fidelity and Guaranty Company of Baltimore, as surety thereon, to an extent not exceeding $50,000.00.

3. Bond dated September 9, 1908, with the Fidelity and Casualty Company of New York as surety thereon, to an extent not exceeding $25,000.00.

No interest had been paid on this deposit for the period of 127 days prior to the date of the closing of said bank, making the amount of interest due at that time, at the rate of 2 per cent. $695.89. These bonds were transmitted to this Department for collection. Upon receipt of notice from this Department to make payment, representatives of the said surety companies met for the purpose of adjusting their respective liabilities, and a settlement was made on

October 31, 1908, in which said companies were charged with interest on said deposit at the rate of 2 per cent. to the date upon which default was made, and at the rate of 6 per cent. from that time to the date of payment, making the total amount due the Commonwealth on the date of settlement $101,583.58, which said amount was, on the said 31st day of October, 1908, paid to the said Commonwealth through this Department by the said companies, in the following proportions:

American Bonding Co., of Baltimore, ...	$58,047 76
United States Fidelity and Guaranty Company of Baltimore, ...	29,023 88
Fidelity and Casualty Company of New York, ...	14,511 94
Total, ...	$101,583 58

CONSTITUTIONALITY OF THE ACT TO PRESERVE THE PURITY OF THE WATERS OF THE STATE.

The case of Commonwealth vs. Emmers, reported in 33 Pa. Superior Ct., 151, and in 221 Pa. 298, is of interest and importance to the people of this Commonwealth.

Edward Emmers was indicted, tried and convicted in the Court of Quarter Sessions of Montgomery county of the offence of discharging sewerage into the Schuylkill river, contrary to the provisions of the act of April 22nd, 1905 (P. L. 260), entitled:

> "An act to preserve the purity of the waters of the State for the protection of the public health."

An appeal was taken from this conviction to the Superior Court, upon which appeal the defendant, through his counsel, attacked the constitutionality of the said act of 1905, contending that its provisions were in violation of the Fourteenth amendment to the Constitution of the United States, and of Section 7 of Article III of the Constitution of Pennsylvania.

The opinion of the Superior Court sustaining the constitutionality of the act, affirming the judgment of the Court of Quarter Sessions and directing that the sentence of the defendant be carried into effect, was delivered February 25, 1907. From this judgment of the Superior Court an appeal was taken to the Supreme Court, which court, on May 11, 1908, affirmed the judgment of the Superior Court on the opinion of that Court delivered by Mr. Justice Porter.

M. HAMPTON TODD,
Attorney General.

OFFICIAL OPINIONS

OF

The Attorney General

FOR THE

TWO YEARS ENDING DECEMBER 31st, 1908.

M. HAMPTON TODD,
ATTORNEY GENERAL.

OPINIONS GIVEN TO THE GOVERNOR.

OFFICIAL OPINIONS OF THE ATTORNEY GENERAL.

TERM OF SUPERINTENDENT OF PUBLIC GROUNDS AND BUILDINGS.

Under the act of 26th March, 1895 (P. L. 22), the term of office of the Superintendent of Public Grounds and Buildings is four years. The incumbent who served the four years named in his commission has no status after that time notwithstanding no successor had been appointed.

Office of the Attorney General,
Harrisburg, Pa., Feb. 1, 1907.

Hon. Edwin S. Stuart, Executive Department.

Sir: You have asked me, first, when the term of the appointment of the Superintendent of Public Grounds and Buildings ended, and, second, what is the status of the Superintendent after the expiration of the term for which he was appointed.

The Act of Assembly approved the 26th of March, 1895 (P. L. 22), Section 5, provides for the appointment, by and with the advice and consent of the Senate, of an officer to be known as the Superintendent of Public Grounds and Buildings. "The term of office of the Superintendent shall be four years, and his duties shall be as follows."

I understand that Mr. Shumaker was commissioned for the period of four years from the 21st of January, 1903. I am of opinion

First. That Mr. Shumaker's term ended with the 20th day of January, 1907, and the office thereupon became vacant; and

Second. As a necessary consequence, Mr. Shumaker has had no legal status in connection with this superintendency since the expiration of his commission.

In Commonwealth v. Armstrong, 30 Leg. Int. 432, Paxson, J., ruled:

> "A public officer, elected or appointed for a definite term, cannot hold over upon a failure to elect or appoint his successor, unless by virtue of some law or ordinance."

There is no law extending the term of the Superintendent of Public Grounds and Buildings beyond the term of four years named in the Act of Assembly.

Very respectfully,
M. HAMPTON TODD,
Attorney General.

ROAD MAP SURVEY.

The expense of making road map survey generally cannot be paid from the funds apportioned under the ninth section of the act of May 1, 1905 (P. L. 321), to the counties but so much thereof as shall be done in any one county may be paid out of the fund apportioned to that county.

Office of the Attorney General,
Harrisburg, Pa., Feb. 27, 1907.

Hon. Edwin S. Stuart, Governor:

Sir: I have before me the letter of Hon. Joseph W. Hunter, State Highway Commissioner, addressed to you under date of February 5, 1907, which was referred to me by you in your letter of the 20th inst.

I understand, in addition to the facts stated in Mr. Hunter's letter, that Governor Pennypacker vetoed the contingent fund appropriation to the Highway Department in 1905, and that he was of opinion that all expenses, including surveys for State maps, should be paid out of the general appropriation; that out of that general appropriation, by agreement with the Auditor General, the sum of $35,000 per year was set aside for all contingent expenses, including map surveys; and that the balance of the appropriation was then apportioned between the counties of the State under the provisions of the Ninth Section of the Act of May 1, 1905 (P. L. 321). This contingent fund has been exhausted, and the State Highway Commissioner further sets forth in his letter that, at an interview with Governor Pennypacker and Auditor General Snyder in November, 1906, it was decided that a further sum of $30,000, or so much thereof as was necessary, should be set aside to be applied to road map surveys. The State Highway Commissioner asks whether this money can be used for this purpose.

I am of opinion that, when the money was apportioned under the Ninth Section of the Act to the several counties, it can be expended only for the purposes of the apportionment within the respective counties, and that the $30,000, referred to by Mr. Hunter, must necessarily come out of that money, and I do not find any authority in the Act to make a reapportionment of the appropriation so as to make this sum available.

I am further of opinion, however, that, so far as the map surveys are concerned, so much thereof as shall be done in any one county may be paid out of the fund apportioned to that county, the language of the Ninth Section of the Act being, "The cost of the same, including all necessary surveys, etc." This language contemplates that surveys should be paid for out of the general fund apportioned to each county. This is a matter entirely within the knowledge and control of the State Highway Commissioner. If

there are funds, as apportioned, unexpended in the counties, I am of opinion that the Highway Commissioner can draw warrants against those funds for the payment of his employes who are working on map surveys in those counties.

I return herewith Highway Commissioner Hunter's letter of February 5th, 1907, addressed to you.

Very respectfully,

M. HAMPTON TODD,
Attorney General.

INTERNATIONAL TRUST COMPANY.

An application for a charter for a trust company having a capital less than $125,000, under the provisions of the act of 1874 and its supplements, should be refused.

Office of the Attorney General,
Harrisburg, Pa., March 13, 1907.

Hon. Edwin S. Stuart, Executive Department.

Sir: I have before me Mr. Miller's letter of the 12th inst. referring to me the application for charter of The International Trust Company for the "purpose of insurance of owners of real estate, mortgagees and others interested in real estate from loss by reason of defective titles, liens and incumbrances," with a capital of ten thousand dollars, divided into two hundred shares of the par value of fifty dollars each.

I advise that you decline to grant any charters under this clause in the Act of 1874 and the amendments thereto, to corporations with an authorized capital of less than $125,000, ten per cent. of which must be paid in and so shown on the face of the certificate.

I herewith return the application for the charter.

Very respectfully yours,

M. HAMPTON TODD,
Attorney General.

PITTSBURG, McKEESPORT AND WESTERN STREET RAILWAY COMPANY.

Where in a protest to a charter, questions are raised that are mixed ones of law and fact, these should be determined by the courts after the issuance of the charter.

Office of the Attorney General,
Harrisburg, Pa., March 28, 1907.

In re Application for a Charter by the Greensburg & Western Street Railway Co.

Hon. Edwin S. Stuart, Governor of the Commonwealth of Pennvania:

Sir: I have examined the Articles of Association in this matter, together with the brief submitted on behalf of the Pittsburg, Mc-

Keesport & Greensburg Railway Company, protesting against the approval of this charter, and am of opinion that the questions raised are mixed ones of law and fact, which should be determined by the courts in due course, and therefore I concur in the recommendation of Mr. John F. Whitworth, Corporation Clerk, in his communication of March 12th, 1907, to the Secretary of the Commonwealth, recommending that the application for a charter in the above case be approved.

I return herewith the papers and documents submitted to me.

Very respectfully yours,

M. HAMPTON TODD,
Attorney General.

ELLWOOD CITY AND HAZEL DELL RAILWAY COMPANY.

The Governor is advised to approve the application for charter of the Ellwood City and Hazel Dell Railway Company, notwithstanding the protest, the questions raised by the protest can be determined by the courts.

Office of the Attorney General,
Harrisburg, Pa., March 28, 1907.

In re Application for Charter by the Elwood City and Hazel Dell Railway Company.

Hon. Edwin S. Stuart, Governor of the Commonwealth:

Sir: It does not appear from the application for the charter in the above matter or from the protest against granting the same, that Spring Avenue and Lawrence Street in the Borough of Ellwood City, at this time, have any street railway tracks laid thereon. The protestant claims that it has a prior right to the occupancy of these streets by virtue of its charter of incorporation and municipal consent.

Questions of this kind should be determined in due course of law by the courts where opportunity can be had by both parties to be fully heard and the controversy decided according to right and justice. No injustice can be done by approving the application for a charter in this instance. The company that is prior in time, if it shall be able to show compliance with the law, will be adjudged by the courts to be prior in right.

I therefore advise you to approve the Charter of the Ellwood City and Hazel Dell Street Railway Company which is now pending before you.

I return you herewith application for charter and other data submitted to me.

Very respectfully yours,

M. HAMPTON TODD,
Attorney General.

PHILADELPHIA MAGISTRATES.

A letter from the Mayor of Philadelphia to the Governor, setting forth the names of six magistrates as elected but not certifying that they selected courts as required by the act of 5th February, 1875 (P. L. 276), is not a compliance with the act and the Governor cannot issue the commissions to the magistrates thereon.

Office of the Attorney General,
Harrisburg, Pa., April 3, 1907.

In re Magistrates.

Hon. Edwin S. Stuart, Governor of the Commonwealth.

Sir: I have your communication of the 23rd of March, 1907, enclosing a copy of a letter from Hon. John Weaver, Mayor of Philadelphia, dated March 6, 1907, wherein he sets forth the names of six Magistrates as having been certified to him as elected on the 19th of February, 1907, but does not certify that they appeared before him and selected courts as required by the act of 1875, the Mayor expressing the opinion that the Act of 1875 only provided for a quinquennial drawing, and that such drawing had been held in March 1905, you ask whether the communication of March 6th, 1907, from the Mayor is a compliance with the provisions of the 6th Section of the Act of 5th of February, 1875 (P. L. 76).

The language of the section of the Act referred to is as follows:

"After the magistrates have selected their courts as aforesaid, it shall be the duty of the Mayor of the said city to certify to the Governor of the Commonwealth the names of the several magistrates with the number of the courts selected by each, and the Governor shall forthwith commission each of the said magistrates as of the court chosen by each."

Until you have received the certificate provided for by this Act from the Mayor of Philadelphia, you cannot issue a commission to any of the Magistrates. I am therefore of opinion that the communication from Mayor Weaver, of March 6, 1907, is not a compliance with the provisions of the Act, and I advise that you communicate this fact to His Honor, John E. Reyburn, present Mayor of Philadelphia for his information and guidance.

Very truly yours
M. HAMPTON TODD.
Attorney General.

STROUDSBURG & BUSHKILL TELEPHONE COMPANY—CORPORATIONS—MERGER—INCREASE OF CAPITAL—ACTS OF FEB. 9, 1901, AND APRIL 29, 1901.

There is nothing in the Act of May 29, 1901, P. L. 349, providing for the merger and consolidation of corporations, which authorizes an increase of capital stock by means of a merger agreement, and any increase of capital must be made in the manner provided by the act of February 9, 1901, P. L. 1.

Office of the Attorney General,
Harrisburg, April 9, 1907.

Hon. Edwin S. Stuart, Governor of the Commonwealth:

Sir: The articles of agreement providing for the consolidation of the above named companies recite that the authorized capital stock of the Stroudsburg & Bushkill Telephone Company is $1,000, and the authorized capital stock of the Monroe Telephone Company is $3,000. The third section thereof provides as follows: "The capital stock of the said consolidated or new corporation shall be $33,000, to be divided into 1320 shares of the par value of $25 each."

Consolidations of such companies are provided for by the Act of Assembly approved April 29, 1901, P. L. 349, and entitled "An act supplementary to an act entitled an 'Act to provide for the incorporation and regulation of certain corporations,' approved April 29, 1874, providing for the merger and consolidation of certain corporations."

This act provides, among other things, that "it shall be lawful for any corporation * * * to buy and own the capital stock of, and to merge its corporate rights, powers and privileges with and into, those of any other corporation, so that by virtue of this act such corporations may be consolidated, and so that all the property, rights, franchises and privileges then by law vested in either of such corporations so merged shall be tranferred to, and vested in, the corporations into which such merger shall be made."

The Stroudsburg & Bushkill Telephone Company was authorized to issue $1,000 of capital stock. The Monroe Telephone Company was authorized to issue $3,000 of capital stock. The articles of agreement providing for the merger of these two corporations state that the capital stock of the new company shall be $33,000, or $29,000 in excess of the capital stock of the united companies. There is nothing in the act authorizing an increase of capital stock by means of merger agreement. Under the language of the act the powers and privileges of each company would become vested in the consolidated or new company; hence it results, as a mathematical demonstration, that the new company will be authorized to issue capital stock equal in amount to the capital stock of the one company plus the capital of the other company, which is $4,000. The act contemplates that any increase of the capital stock of such

corporations shall be made in the manner provided for in the Act of Assembly of Feb. 9, 1901, P. L. 1, either by each company taking the necessary steps prior to merger or by the new company taking such steps after merger.

It is contended by counsel for the merging companies that such an increase of capital is authorized by the last clause of section 3 of the Act of May 29, 1901, P. L. 349, the language relied upon being as follows:

> "But such a merger and consolidation shall not be complete, and no such consolidated corporation shall do any business of any kind until it shall have first obtained from the Governor of the Commonwealth new letters patent, and shall have paid to the State Treasurer a bonus of one-third of 1 per centum upon all its capital stock in excess of the amount of capital stock of the several corporations so consolidating, and upon which the bonus required by law had been theretofore paid."

This language has no reference to an increase of the capital stock through a merger agreement, but does have reference to the unpaid bonus on the capital stock of either or both of the merging companies at the time of the merger; that is, if, by way of example, the Stroudsburg & Bushkill Telephone Company, prior to the agreement of merger, had increased its authorized capital stock from $1,000 to $30,000, and the merger had then been agreed upon, before such merger could become effective and any business of any kind done by virtue thereof, the clause quoted requires that the bonus tax on the increase of capital stock of $29,000 would have to be paid; or, if the authorized capital stock of the Monroe Telephone Company prior to the merger had been duly increased from $3,000 to $32,000, the bonus tax on such increase of $29,000 would likewise have to be paid before any business of any kind could be done under said merger.

I am therefore of opinion that the proposed merger of these companies, as provided in the articles of agreement, is not authorized by law, and I accordingly advise that letters-patent be not issued thereon.

Very respectfully,
M. HAMPTON TODD,
Attorney General.

WOLF'S ELECTION CERTIFICATE.

V. was duly commissioned April 18, 1906, as alderman of the Eighth Ward of Allegheny city. On March 19, 1906, W. instituted proper proceedings to contest the election of V. and on March 2, 1907, the quarter sessions court decreed that W. was elected and a certificate of his election held February 21, 1906,

was filed in the office of the Secretary of the Commonwealth March 12, 1907. V. took an appeal to the Supreme Court, which was not a supersedeas. Held that a commission should be issued to W.

Office of the Attorney General.
Harrisburg, Pa., April 19, 1907.

Honorable Edwin S. Stuart, Governor of the Commonwealth.

Sir: Your letter of April 11th, 1907, referring to me for advice the certificates of election of George Wolf to be an Alderman in and for the Eighth Ward of the City of Allegheny, County of Allegheny, Pa., also copy of decree of the Court of Quarter Sessions of Allegheny County, and certificates and correspondence in relation thereto, has been received.

From an examination of the certificates and papers before me, I find the existence of the following facts:

At the election held February 21st, 1906, Charles Von Moss was returned by the Election Board as a duly elected Alderman and Justice of the Peace of the Eighth Ward of the City of Allegheny, Pennsylvania; That the said Charles Von Moss filed in the office of the Prothonotary of Allegheny County, within thirty days after the election, his acceptance of said office as required by Acts of 13th April, 1859, (P. L. 592), and 22nd March, 1877, (P. L. 12), (as per opinion of Deputy Attorney General Snodgrass, construing said acts, reported in 4 Pa. C. C., 539), and that the said Prothonotary certified the same, under his seal of office, to the Secretary of the Commonwealth, as required by said Act of 22nd March, 1877, supra.

That, on the 19th day of March, 1906, one George Wolf instituted proper proceedings in the Court of Quarter Sessions of Allegheny County at No. 79 December Term, 1905, to contest the election of the said Charles Von Moss, and that a certificate from the Clerk of said Court of Quarter Sessions of Allegheny County, under date of April 10, 1906, to the effect that said contest had been instituted, was filed in the office of the Secretary of the Commonwealth, on April 16th, 1906.

That Honorable Samuel W. Pennypacker, then Governor of the Commonwealth, under advice of the Deputy Attorney General, issued to the said Charles Von Moss, under date of April 19th, 1906, a commission as Alderman of said Ward in said city.

That on the 2nd day of March, 1907, the Court of Quarter Sessions of Allegheny County, handed down its decree in said contested election, finding that the said George Wolf had received two hundred and seventeen (217) legal votes for said office, and that the said Charles Von Moss had received but two hundred and fifteen (215) legal votes for said office; that the said George Wolf, contestant, was legally elected to said office and ordering that, "a proper certificate thereof be issued."

That on the 12th day of March, 1907, the certificate of the prothonotary of Allegheny county, under date of March 8th, 1907, was filed in the office of the Secretary of the Commonwealth, certifying that the said George Wolf was duly elected to said office at the election held on the 21st day of February, 1906.

In addition to the above facts, appearing of record, I am informally advised by the counsel for the said George Wolf, that an appeal has been taken from the judgment of the Court of Quarter Sessions of Allegheny County, entered March 2nd, 1907, in favor of the said George Wolf as aforesaid, to the Supreme Court, but that said appeal has not been made a supersedeas, either by order of the Appellate Court or the Court below.

Under these facts you ask to be advised as to whether a commission should now be issued to the said George Wolf.

The act of 21st June, 1839, (P. L. 376), entitled, "An Act providing for the election of Aldermen and Justices of the Peace," after making provision for contesting the election, in Section 3 thereof, proceeds as follows:

> "And such complaint shall not be valid or regarded by the court unless the same shall have been filed within ten (now thirty) days after the election, in the prothonotary's (now clerk's) office, and in case such complaint be filed in due time the prothonotary (now clerk) shall transmit by mail immediately to the Governor, a certified copy thereof, and in such case no commission shall be issued until the court shall have determined and adjudged on such complaint as aforesaid."

The Act of April 15, 1845, (P. L. 470) in Section 21 provides as follows:

> "That in all cases where the election of the justices of the peace shall be contested, the justices then in commission shall continue to exercise and discharge the duties of their respective offices until their successors are duly commissioned and qualified."

But the Act of 26th April, 1889, (P. L. 60), entitled, "An Act providing for the issuing of commissions in cases of contested elections," is as follows:

> "Section 1. Be it enacted, etc., That from and after the passage of this act, whenever it shall appear by the returns of election laid before the Governor, by the Secretary of the Commonwealth, as now required by law, that any person has been duly elected to the office of prothonotary, clerk of the courts, recorder of deeds, or register of wills, judge, or any other officer receiving a commission from the Governor, in any of the several counties of this Commonwealth, it shall be the duty of

> the Governor to issue a commission to such person, notwithstanding that the election of such person to any or either of said offices may be contested, in the manner now provided by law; Provided, That whenever it shall appear by the decision of the proper tribunal having jurisdiction of said contested election, that the person to whom said commission shall have issued, has not been legally elected to the office for which he has been commissioned, then a commission shall issue to the person who shall appear legally elected to said office; the issuing of which commission shall nullify and make void the commission already issued, and all power and authority under said commission first issued, shall thereupon cease and determine; Provided, further, That this act shall not in any manner affect any contest now pending."

As a Justice of the Peace of a township, borough or ward in a borough, or Alderman, as he is designated in a ward of a city, is an "officer receiving a commission from the Governor", it was the duty of Governor Pennypacker to issue a commission to the said Charles Von Moss notwithstanding the fact that his election was contested. The purpose of the Act of 1889, supra, is to provide that the Governor shall act upon the prima facie state of affairs as they exist upon the election returns, and take such subsequent action as a change in the circumstances may demand. Hence, it is provided by said act that,

> "Whenever it shall appear by the decision of the proper tribunal having jurisdiction of said contested election, that the person to whom said commission shall have been issued, has not been legally elected to the office for which he has been commissioned, then a commission shall be issued to the person who shall appear legally elected to said office; the issuing of which commission shall nullify and make void the commission already issued."

The only reasons that might now be urged against the issuing of a commission to the successful contestant, George Wolf, are:

1. That there is no evidence that he has filed in the office of the prothonotary of Allegheny county a certificate of his acceptance of the office as required by the Act of 1877, supra., which fact is to be certified by the Prothonotary to the Secretary of the Commonwealth, prior to the issuing of a commission; and

2. That, by reason of the appeal from the judgment of the Court of Quarter Sessions of Allegheny County to the Supreme Court, it does not yet "appear by the decision of the proper tribunal, having jurisdiction of said contested election," that the said Charles Von Moss was not legally elected to the office.

With reference to the first reason, I am of the opinion that the filing of such acceptance is not necessary upon the part of one who is a successful contestant of the election, at least where the contest is not decided by the court until more than thirty days after the election. The acceptance of the officer is to be filed within thirty days after the election, and if an Alderman or Justice of the Peace fails to file such acceptance within thirty days after the election, it is only proper that he should be held, by implication, to have declined said office. This is the substance of the opinion rendered by Deputy Attorney General Snodgrass, 4 Pa. C. C., 539.

In the case in hand, the said George Wolf could not possibly have filed such acceptance within thirty days after the election. That he desires to accept the office is evidenced by the fact that he has instituted a contest therefor, and carried it to a successful conclusion in the court below. It would be manifestly unjust to deprive him of the fruits of this victory by refusing him a commission because he has not done something it was not within his power to do.

With reference to the second reason, it may be stated that the appeal of the said Charles Von Moss, from the judgment of the Court of Quarter Sessions of Allegheny County, must have been taken subject to the provisions of Section 12, of the Act of 19th May, 1897, (P. L. 67), which provides as follows:

> "In appeals in contested election cases, the appeal shall not operate as a supersedeas, unless so ordered by the court below, or the Appellate Court, or any judge thereof, either by general rule, or special order, and upon such terms as may be required by the court or judge granting the order of supersedeas."

As above stated, I am informally advised that the appeal was not made a supersedeas.

> "An appeal is a mere incident to an action; a judgment is the result or consequence of the action, and the appeal is the mode of seeking to have the judgment of the inferior court corrected by the Appellate tribunal. An appeal is the commencement of a new proceeding in an action after its determination by the rendition of a final judgment, and is distinct from that which results in its recovery."

A. & E. Ency. of Law, Vol. 2, page 426, Note.

A supersedeas has the effect of suspending further proceedings in relation to a judgment, but it does not, like a reversal, annul the judgment. It is preventive in its nature, but does not set aside what the trial court has already adjudicated. In the absence of a supersedeas there is nothing to prevent the enforcement of the judgment

of the court below. There is nothing in the Act of 1889 to indicate that the Governor is to await the final disposition of the contest in an appellate court before issuing a commission.

I am, therefore, of the opinion that the taking of the appeal should not in any way affect your action on the facts as they existed after the rendition of the judgment of the Court of Quarter Sessions of Allegheny County; and as that judgment is, "the decision of the proper tribunal having jurisdiction of the contested election," deciding that the said George Wolf has been legally elected to said office, a commission should now be issued by you to him.

Very truly yours,
J. E. B. CUNNINGHAM,
Asst. Deputy Attorney General.

LAUREL SILK MANUFACTURING COMPANY.

Where the protest to a charter on account of simularity of names is made by a foreign corporation not authorized to do business in this State, there will be no confusion in this State as to the names, and the charter should issue.

There is no confusion of title between the Laurel Silk Manufacturing Company and the Laurel Silk Co.

Office of the Attorney General,
Harrisburg, Pa., April 25, 1907.

Honorable Edwin S. Stuart, Governor of the Commonwealth of Pennsylvania:

Sir: Your letter of April 15th, 1907, referring to this Department for advice, the application of the Laurel Silk Manufacturing Company for a charter, has been duly received.

From the papers on file and the records of the proper offices, it is made to appear that an application, in due form, was filed for the incorporation of the Laurel Silk Manufacturing Company. A protest against granting a charter on this application, on the ground of similarity in names, was filed with the Secretary of the Commonwealth by the Laurel Silk Works. Honorable John F. Whitworth, Corporation Clerk, filed an opinion with the Secretary of the Commonwealth, recommending that the application of the said Laurel Silk Manufacturing Company be approved and a charter granted thereon.

The Laurel Silk Works, protestant, is a foreign corporation, organized under the laws of the State of New Jersey, and the records of the State Department of this Commonwealth fail to disclose that the protestant is authorized to do business in this Commonwealth or has any standing to contest the present application of the Laurel Silk Manufacturing Company.

Decisions and rulings in cases of this kind are not made for the purpose of protecting the private rights of corporations, domestic or foreign, but to prevent confusion in the several departments of the State government, and to prevent uncertainty in the imposition and collection of State taxes. In view of the fact, therefore, that the protestant is a foreign corporation, unauthorized to do business in Pennsylvania, and not liable to taxation in this Commonwealth, the confusion and uncertainty above referred to cannot arise in this case.

Again, the Department having the supervision of the work of granting charters holds that there is not such a similarity in the name of the company applying for a charter to that of the protesting company as to lead to confusion in the records of that Department, or in those of any other department of the State government, even if the protesting company were, or should hereafter, be authorized to do business in this Commonwealth. If the protestant apprehends that, by reason of a similarity in names, the proposed corporation will interfere with its business, the protesting company has its remedy in the courts.

I have the honor, therefore, to advise that the protest should be overruled, the application for a charter approved and letters patent issued thereon.

Very truly yours,

J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

BRIEF ON POWER OF GOVERNOR TO REMIT FORFEITED BAIL.

The Govenor has the right to remit the forfeiture of a recognizance at any time prior to the payment of the proceeds of the forfeiture into the treasury.

In this case the Governor is advised to refer to the Pardon Board for investigation the petition for the remission of the forfeiture.

Office of the Attorney General,
Harrisburg, Pa., May 1, 1907.

Honorable Edwin S. Stuart, Governor of the Commonwealth:

Sir: Replying to your request for a brief upon your constitutional right to act upon the application of Francis R. Faucet for remission of the forfeiture on a forfeited recognizance, I have the honor to submit the following:

This application is made by Francis R. Faucet, who was the surety on a recognizance for the appearance of Carrie Lumadue, for trial in the Court of Quarter Sessions of Philadelphia County, on a charge of keeping a bawdy house and selling liquor without a license. The recognizance was entered into on the 15th day of February, 1905, in the sum of $600, conditioned that the said Carrie Lumadue should be and appear at the then present sessions of the Court of Quarter Sessions for trial.

On the 16th of February, 1905, the case was returned to the Court by the magistrate, and a bill of indictment was found against the defendant on February 20, 1905.

On March 3, 1905, the defendant was called for trial and failing to appear the recognizance was forfeited. The recognizance for the appearance of the defendant contained a warrant of attorney to confess judgment thereon. Judgment was entered on the forfeited recognizance on the date of its forfeiture and damages assessed on January 30, 1906, for the sum of $632.70.

The forfeiture of a recognizance is a judicial act and conclusive of the breach of it. Until the money has been actually collected and brought into Court and a decree of distribution entered, no private party has a vested interest in the proceeds of a forfeited recognizance. It is a debt due the Commonwealth for the use of the county in which it was entered.

QUERY: HAS THE GOVERNOR OF THE COMMONWEALTH POWER TO REMIT THE FORFEITURE?

Section 9 of Article IV of the Constitution provides:

> "He (the Governor) shall have power to remit fines and forfeitures, to grant reprieves, commutations of sentence and pardons, except in cases of impeachment; but no pardon shall be granted nor sentence commuted except upon the recommendation, in writing, of the Lieutenant Governor, Secretary of the Commonwealth, Attorney General and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice and in open session, and such recommendation, with the reasons therefor, at length, shall be reported and filed in the office of the Secretary of the Commonwealth."
>
> "The Governor's power to remit fines and forfeitures extends to all cases except those in which the fine is payable in part to a private person. In such case it cannot be remitted because this would be depriving this individual of his property without due process of law. The fines and forfeitures which he may remit are those only which are payable to the State * * * By virtue of his power to remit forfeitures, the Governor may remit a recognizance, even though judgment in favor of the county has been entered upon it."

White on the Constitution of Pennsylvania, page 286.

The Supreme Court of Pennsylvania has passed upon the exact question in issue, in the case of Commonwealth vs. Denniston, 9 Watts, 142. In this case the defendant, Denniston, entered into a recognizance in the Court of Quarter Sessions of Allegheny County, conditioned for the appearance in court for trial, of a person

charged with larceny. The recognizance was forfeited, action brought thereon in the name of the Commonwealth for the use of the county, and a judgment confessed by the defendant, Denniston. Subsequently, the Governor, by letters patent, remitted the forfeiture. A case was stated to determine whether the Governor had power to make such remission. The Court below decided that he had such power. An appeal was taken to the Supreme Court and the judgment of the lower court affirmed. In the course of the opinion of the Supreme Court, Justice Rogers used the following language:

> "The right of the Governor rests upon the Constitution, for by that instrument he has power to remit fines and forfeitures and grant reprieves and pardons (pardons now to be granted upon the recommendation of the Pardon Board), except in cases of impeachment, and that right the Legislature can neither abridge nor impair. The act (of 24th March, 1818) puts the counties as the recipients of the money arising from fines and forfeitures in the place of the Commonwealth * * * But until the money is collected and paid into the Treasury the constitutional right of the Governor to pardon the offender and remit the fine or forfeiture remains in full force * * * The right, therefore, of the Governor, to remit can not be affected by proceeding to judgment on the recognizance, as the nature of the recognizance remains the same after as before the judgment."

Again, in Commonwealth vs. Shick, 61 Pa., 495, a recognizance was given by Shick for the appearance of Kaunheimer to answer a criminal charge. The recognizance was forfeited and in an action of debt the Commonwealth obtained judgment and issued execution against Shick as surety on the recognizance. The Governor afterwards remitted the forfeiture and the Court set aside the execution. The prosecutor in the case, Hanstetter, then removed the case to the Supreme Court on the ground that he had a vested interest in the recognizance, which the Governor could not remit. It is provided by legislation that after recovery on a forfeited recognizance, the person injured by the commission of the crime shall have a certain share of the proceeds. The Supreme Court decided that the Governor might remit the forfeiture at any time until the proceeds of the judgment were paid into the Treasury.

These cases establish the right of the Governor to remit the forfeiture at any time prior to the payment of the proceeds of the forfeiture into the Treasury.

Whether the circumstances of this case would justify the establishment of a precedent of this kind is not a matter upon which the writer has any inclination to express an opinion, but should not refrain from directing attention to the case of Commonwealth vs.

Flucker, 11 Phila., 405, a case in which a rule was granted by the court to show cause why the forfeiture of recognizance similar to the one now in question should not be omitted. In disposing of this the one now in question should not be remitted. In disposing of this rule, Judge Briggs used the following language:

> "We see no reason to disturb this forfeiture. The condition of the recognizance was clearly broken, and in consequence, the forfeiture regularly made. The recognizance was entered into March 3, 1875, for defendant's appearance to March term, 1875. On the 11th of the same month a true bill was found against the defendant, and the next day he was called for trial; not appearing, the recognizance was forfeited.
>
> It is of first importance to the administration of criminal justice in this county, where the district attorney has such a vast amount of business to dispose of, that he be not embarrassed by the absence of the parties returned for trial. He has to examine the return, prepare the bill of indictment, submit it to the grand jury, and if it be returned 'true,' to prepare for trial by subpoenaing his witnesses, etc.
>
> After performing this labor, and being baffled by the absence of the defendant, he is surely justified in holding the forfeiture.
>
> Parties becoming bail should be made to understand such act is something more than mere convenience to the defendant. It carries with it a corresponding duty to have the defendant on hand at the time for trial; and failure in this respect may fix a liability from which there may be no relief, except with the consent of the counsel representing the Commonwealth. Such consent in this case being refused, the relief asked for is not granted.
>
> Rule discharged."

It does not appear from the papers on file that the petitioner made any effort to have the merits of the grounds, upon which he asks to have the forfeiture remitted, investigated by the court by an appeal to the equitable powers of the court in the shape of a rule to show cause why the judgment entered on the forfeited recognizance should not be opened, and the present petitioner permitted to defend.

Again, whilst the Governor has power to remit fines and forfeitures and to grant reprives without action upon the part of the Pardon Board, yet it seems to have been the practice to refer an application such as the present to the Pardon Board for its consideration. In view of the fact that the application is based largely upon the averment of certain facts, for instance, the reformation of the defendant and the expenditure of a large sum of money by the applicant, the truth or falsity of which averments should be investigated

in order to reach correct results, I would respectfully suggest that this petition for the remission of the forfeiture be referred to the Pardon Board for investigation.

Respectfully submitted,

J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

COMMISSION TO JUSTICE OF THE PEACE, EAST DEER TOWNSHIP, ALLEGHENY COUNTY.

Where a justice of the peace removes from the district for which he is elected, but did not resign his office, an election held to fill the vacancy is a nullity because a vacancy did not exist. A removal from the district does not of itself create a vacancy.

Office of the Attorney General,
Harrisburg, Pa., May 13, 1907.

In re Application of John Woffington for a Commission as Justice of the Peace in East Deer Township, Allegheny County.

Hon. Edward S. Stuart, Governor:

Sir: From the papers on file and the records in the Office of the Secretary of the Commonwealth the following appear to be relavant facts in reference to the above application:

At the spring election of 1905 Charles Uhlinger was duly elected one of the Justices of the Peace for East Deer Township, Allegheny County. He therefore filed his acceptance of said office with the Prothonotary of the said county of Allegheny, which acceptance was duly certified by said Prothonotary to the Secretary of of the Commonwealth, and he was thereupon duly commissioned as Justice of the Peace for a term of five years from the first Monday of May, 1905.

At the spring election of 1907 J. A. Woffington was voted for as one of the Justices of the Peace of said township to succeed the said Charles Uhlinger, on the theory, as stated in the letter of the Prothonotary of Allegheny County, on file in the office of the Secretary of the Commonwealth, that a vacancy existed in said office by reason of the alleged removal of the said Charles Uhlinger from said township of East Deer to the borough of Springdale in said County.

The said J. Woffington filed his acceptance of said office with the Prothonotary of Allegheny County, who certified the same to the Secretary of the Commonwealth. By reason of the fact that there was at that time no evidence in the office of the Secretary of the Commonwealth that a vacancy existed in said office, no commission was issued to the said J. A. Woffington. On the 5th day of March, 1907, the said Charles Uhlinger, after the spring election of 1907, tendered to the Governor of the Commonwealth his resignation of

said office of Justice of the Peace, to take effect April 20, 1907, which resignation was accepted by the Governor of the Commonwealth on March 7, 1907. There is no evidence in the papers on file going to show whether or not the constable of said township of East Deer gave twenty days notice by advertisement preceding the February election of 1907 of a vacancy in said office of Justice of the Peace. It is claimed, however, by the said J. A. Woffington that such notice was given.

Under the above state of facts the question arising is whether the said J. A. Woffington is entitled to receive a commission by virtue of his election in February, 1907, or whether there is now a vacancy in the office of the said Justice of the Peace, to be filled by appointment by the Governor of the Commonwealth.

The election of Justices of the Peace is governed by the Act of 22nd of March, 1877 (P. L. 12). The second section of this Act provides as follows:

> "It shall be the duty of the constable of the proper ward, district, borough or township to give at least twenty days notice, by advertisement preceding the election to be held on the third Tuesday of February of each year, of the expiration of the term of the commission of any alderman or justice of the peace that may expire on or before the first Monday of May following, and also of any vacancy that may happen by death, resignation or otherwise."

Section 3 of the same Act provides as follows:

> "If any vacancy shall take place after any ward, district, borough or township election, by reason of the erection of any new ward, district, borough or township, or from the neglect or refusal of any person elected to accept a commission within sixty days after the date thereof, or by death, resignation or otherwise, such vacancy shall be filled by appointment by the Governor until the first Monday of May succeeding the next ward, district, borough or township election."

The applicant for a commission, J. A. Woffington, contends that a vacancy existed in said office by reason of the removal of the duly elected and commissioned Justice of the Peace, Charles Uhlinger, during his term of office, from the township for which he was elected and that this was such a vacancy as is contemplated by the second section of the Act of 1877, *supra*, and entitled the voters to elect a successor to the said Charles Uhlinger at the spring election of 1907.

There is no record evidence that the notice required by said section 2 of the Act of 1877 was given by the constable of the township of the existence of the alleged vacancy.

> "The provisions of this section are mandatory and under them twenty days notice by the constable is a condition precedent to the election of a person to fill a vacancy in the office of justice of the peace caused by death, resignation or otherwise."

Justice of the Peace Appointments. Opinion of Deputy Attorney General Elkin, 16 Pa. C. C., 335.

It is, however, unnecessary in this case to make the validity of the election of J. A. Woffington depend alone upon the question of notice. If there was no actual vacancy the election was a nullity, and for the purpose of the present inquiry it may be assumed that the requisite notice was given under the Act of 1877. Under the Act of February 22, 1902, no Justice of the Peace shall act as such unless he shall reside within the limits of the district for which he was commissioned, but it does not necessarily follow that, because a Justice of the Peace has removed from the district for which he was commissioned, a vacancy is thereby created in his office. He can perform no official acts outside of his district, but it is not every removal from the district that will create a vacancy. The question of residence is one of intention, to be determined before a proper tribunal under the evidence presented. In the present case there was no determination of the question of intention at the time the spring election of 1907 was held, and therefore, legally there was no vacancy to be filled at that election; consequently there was no vacancy in the office of Justice of the Peace in East Deer Township, Allegheny county, until the resignation of Charles Uhlinger, under date of March 5, 1907, was accepted by the Governor. In fact, the presentation of such resignation by Charles Uhlinger indicates that up until that time he was the duly elected Justice of the Peace for the township in question.

In view of the fact that a vacancy now exists in said office by reason of the resignation of Charles Uhlinger, accepted March 7, 1907, the Governor should fill such vacancy by making an appointment under the third section of the Act of 1877, and as such vacancy has taken place since the township election of this year, such appointment should be made until the first Monday of May, 1908.

Respectfully yours,

M. HAMPTON TODD,
Attorney General.

BERNARD CORR COMPANY—CHARTER—PURPOSE—SPIRITUOUS AND MALT LIQUORS—ACTS OF APRIL 29, 1874, APRIL 10, 1897, AND JULY 9, 1901.

Under the act of April 29, 1874, P. L. 73, as amended by the acts of April 10, 1897, P. L. 20, and July 9, 1901, P. L. 624, letters-patent may issue to a corporation created for the purpose of "buying, rectifying, compounding, bottling and selling spirituous and malt liquors and mineral waters at wholesale."

There may be some question as to the power of the court, under the license laws, to grant a license to a corporation for the sale of spirituous liquors; but that is a question for judicial determination upon which the Attorney-General's Department expresses no opinion.

Office of the Attorney General,
Harrisburg, Pa., June 4th, 1907.

Honorable Edwin S. Stuart, Governor of the Commonwealth:

Sir: In the matter of the application of Bernard Corr Company for a charter, referred by you to this Department for advice as to the propriety of granting letters patent upon the application filed, I beg to state that after hearing counsel for the applicants and the representative of the Department of State, the following conclusions have been reached by this Department.

It is stated in the brief filed by counsel for the applicants that Bernard Corr, one of the applicants for the charter, now has a wholesale liquor license in the city of Philadelphia, and that if the charter applied for is granted, an application will be made for the transfer of the license of the said Bernard Corr to the proposed corporation. The purpose for which the corporation is to be created, as stated in the second paragraph of the application, is as follows: "Buying, rectifying, compounding, bottling and selling spirituous and malt liquors and mineral waters at wholesale." Before directing that letters patent issue on this application you must find that the purpose stated is within the purposes of the class of corporations specified in section 2 of the corporation act of April 27, 1874, and the several supplements thereto.

This inquiry raises the question of whether or not there is legislative authority for the formation of a corporation for the purpose set forth in this application.

Paragraph 18 of section 2 of the act of 29 April, 1874, (P. L. 73) authorizes incorporation for the purpose of carrying on any mechanical, mining, quarrying or manufacturing business "excluding the distilling or manufacturing of intoxicating liquors." The words "intoxicating liquors" include vinous, spirituous, malt and brewed liquors, and the act, therefore, prohibits incorporation for the purpose of distilling or manufacturing any intoxicating liquors. The amendment of this paragraph of 10 April, 1897 (P. L. 20), contains this language:

> "and also *including* the manufacturing and brewing of malt liquors but *excluding* the distilling and manufacturing of *spirituous* liquors."

From the date of this amendment charters could therefore be granted for the manufacturing and brewing of malt liquors, but the granting of charters for the distilling and manufacturing of spirituous liquors was still prohibited.

The act of 9th July, 1901, (P. L. 624), amending the general corporation act, provides as follows:

> "And also including the manufacturing and brewing of malt liquors and also including companies for the transaction of any lawful business not otherwise specifically provided for by act of assembly."

It will be observed that the clause in the amendment of 1879 "excluding the distilling and manufacturing of spirituous liquors" has been omitted from the amendment of 1901. Incorporation for the purpose of "buying, rectifying, compounding, bottling and selling spirituous and malt liquors and mineral waters" is not specifically provided for by an Act of Assembly. The question then recurs: Is the certified purpose a lawful business within the meaning of the amendment of July 9, 1901? That it is a lawful business is sufficiently established by the fact that it is made the subject of taxation by the revenue laws of the State. It is true that the proposed corporation cannot conduct such business until it is duly licensed by a proper court and paid the requisite license tax or fee. The department of the State Government clothed with the power of granting charters is not concerned with the question of granting or transferring a license to the proposed corporation. It has no power to grant or refuse or to transfer such license. There may be some question as to the power of the court, under the license laws of the Commonwealth, to grant a wholesale or retail license, to a corporation for the sale of spirituous liquors, but this is a question for judicial determination, upon which this Department expresses no opinion. All that this opinion is intended to cover is that the purpose stated in the application for this charter is for conducting a lawful business, which is not inhibited by any statute and is within the scope of the amendatory act of 1901.

I therefore advise that the application for the charter be approved, and that letters-patent issue thereon.

Respectfully

M. HAMPTON TODD,
Attorney General.

IN RE PITTSBURGH No. 8 COAL COMPANY—CORPORATIONS—APPLICATION FOR CHARTER—NAMES—SIMILARITY—AMENDMENT.

Application having been made for the incorporation of the "Pittsburgh No. 8 Coal Company," and it appearing that there are already on the state records

three companies of practically the same name, viz., "Pittsburgh Coal Company," the application should be refused; but if the name were amended to "Pittsburgh No. 8 Vein Coal Company," the application may be allowed.

Office of the Attorney General,
Harrisburg, Pa., June 5, 1907.

Honorable Edwin S. Stuart, Governor of the Commonwealth:

Sir: Your letter of May 31st referring to this Department for advice the application of the Pittsburg No. 8 Coal Company for a charter, together with the protests filed against said application, has been received.

From the papers on file and the records of the proper offices, it is made to appear that an application in due form was filed for the the incorporation of the "Pittsburg No. 8 Coal Company." A joint protest against issuing letters patent on this application was duly filed in behalf of the Pittsburg Coal Company of Pennsylvania, a corporation duly incorporated under the laws of Pennsylvania, and doing business within this Commonwealth, and the Pittsburg Coal Company, a corporation incorporated under the laws of the State of New Jersey and duly registered in the State of Pennsylvania, both of which corporations have their principal office at No. 232 5th Avenue, Pittsburg. It is alleged in the protest that the purpose of the incorporation of the said Pittsburg No. 8 Coal Company is practically the same as that of both protestants and that the similarity in names will lead to confusion and embarrassment both to the protestants and the public, and, further, that the protesting corporations are entitled to protection at the hands of the Commonwealth from the incorporation of a company under a name prejudicial to the interests of the protestants.

Hon. John F. Whitworth, Corporation Clerk, under date of May 20, 1907, filed an opinion with the Secretary of the Commonwealth, recommending that the applicants for a charter be required to adopt another name for the reason that there are already on the records of the Department of the Secretary of the Commonwealth, three companies of practically the same name, viz: Pittsburg Coal Company, and no more should be incorporated under a similar name if confusion is to be avoided in the several State Departments. On the other hand, the applicants for the charter contend that the words "Pittsburg No. 8" are used very extensively to designate the particular vein of coal in which the proposed corporation intends to invest; that this particular vein of coal has a well known reputation in eastern Ohio and corresponds to what is known as the Pittsburg vein or seam of coal in western Pennsylvania. The applicants for the charter therefore contend that the business they propose

to engage in will not interfere with the business of the Pittsburg Coal Company and that confusion will not arise from the use of the name under which they desire to be incorporated.

In disposing of cases of this nature, it is important that their disposition should rest upon proper considerations in order that a uniform practice may prevail. The State government is not so much concerned with financial results to the existing and proposed corporations or the probable effect upon the business of the respective companies, as it is concerned with the question of avoiding confusion in the records of its several departments, and in the prevention of uncertainty in the imposition and collection of State taxes and the service of judicial process.

In this case the proper officer of the department having supervision of the granting of charters holds that there is such a similarity between the name of the proposed corporation and the names of corporations already created under the laws of this Commonwealth, or duly registered for the purpose of doing business herein, as would lead to confusion and uncertainty in the matters in which the Commonwealth is vitally interested and has a right to protect herself. The opinion of that officer seems to be based upon proper grounds, and in the opinion of this Department should be sustained.

You are therefore advised that the joint protest hereinbefore referred to should be sustained and that letters patent should not be issued to the applicants under the name of "PITTSBURG NO. 8 COAL COMPANY," but if the applicants for the charter see fit to adopt another name, for instance, "PITTSBURG NO. 8 VEIN COAL COMPANY," or any name that will avoid the difficulties presented by the use of the name now proposed, letters patent should be issued on the application so amended.

Very truly yours,

M. HAMPTON TODD,
Attorney General.

IN RE McDONALD BREWING COMPANY—CORPORATIONS—MANUFACTURE AND SALE OF BREWED AND MALT LIQUORS—PROTESTS.

The manufacture and sale of brewed and malt liquors is a lawful business, and letters-patent therefor should not be denied because of a protest signed by residents of the vicinity of a proposed brewery, alleging that the owners thereof were non-residents, the locality a residential place, and that the erection and conduct thereof would depreciate values of real estate, annoy residents and lower the moral tone of the community.

Whether the proposed corporation should be licensed is a judicial question to be passed upon by the proper court.

Office of the Attorney General,
Harrisburg, Pa., July 5, 1907.

Honorable Edwin S. Stuart, Governor of the Commonwealth:

Sir: In the matter of the application of the McDonald Brewing Company for a charter, referred by you to this Department for advice, I have the honor to reply as follows:

From the papers before me, it is made to appear that an application was regularly filed in the office of the Secretary of the Commonwealth by Henry Arnold, L. J. Chambon and J. E. Schlieper for a charter for a proposed corporation to be known as the "McDonald Brewing Company." It is set forth in said application that said corporation is to be formed for the purpose of "the manufacture and sale of brewed and malt liquors," and that the business of the corporation is to be transacted in McDonald, Washington County, Pennsylvania.

Protests against the granting of this charter were filed by Rev. J. W. English, G. S. Campbell and T. J. Miller, protesting against the granting of this charter for the reason that the applicants for the charter intend to erect the building in which the business of the proposed corporation is to be conducted on a lot in the borough of McDonald, near the residence portion of said borough, and alleging that the erection of the proposed brewery by the applicants for the charter, who are non-residents of the borough, will injuriously affect the value of the property in its vicinity, annoy property owners living near by, and lower the moral tone of the community.

A petition, signed by a large number of residents of McDonald and vicinity, was also filed as a protest against the granting of this charter, which petition set forth that the erection of the proposed brewery will be a menace and a temptation to the youth of the borough, and a continual nuisance to the fifty or more persons who have no other outlet to church, schools, railroad station and post office than by way of the proposed site for said brewery.

The application for the charter has been passed upon by the State Government charged with the duty of examining applications for charters and found to be in due form. The only question arising under the protests filed in this case is as to the propriety, from a moral point of view, of incorporating a brewing company to transact its business in McDonald borough.

For a number of years the corporation laws of Pennsylvania have authorized the incorporation of companies for the purpose of manufacturing and brewing malt liquors. Whatever opinions may be held as to the propriety and morality of manufacturing or selling malt

liquors, the manufacture of the same is a lawful business under the laws of this Commonwealth. The proposed company, if chartered to manufacture and brew malt liquors, must apply to the proper court for a license before it is permitted to sell its product. Whether or not it is advisable or proper, from a moral standpoint, to permit the formation of corporations for the purpose of manufacturing and brewing malt liquors, is a Legislative question and not one for the Executive Department of the Commonwealth to determine. The Legislature having authorized the formation of corporations for the purpose stated in this application, and the application being in proper form, letters patent should be issued on said application. Whether the proposed corporation shall be licensed to sell the product of its brewery is a judicial question to be passed upon by the proper court. Notwithstanding the protest filed in this case, I advise you to approve the application and direct that letters patent issue according to law.

Very truly yours,

M. HAMPTON TODD,
Attorney General.

IN RE THE MERCHANTS' FINANCE COMPANY—CORPORATIONS—CHARTERS—DEALING IN COMMERCIAL PAPER AND ACCOUNTS—BANKING BUSINESS—ACTS OF APRIL 29, 1874, AND JULY 9, 1901.

The general language of the act of July 9, 1901, P. L. 624, providing for "the incorporation of companies for the transaction of any lawful business not otherwise specifically provided for," is not to be construed to include the conduct of any business for the incorporation of which the legislature has otherwise specifically provided.

An application for a charter under the act of April 29, 1874, P. L. 81, and the amendment of July 9, 1901, P. L. 624, for the purpose of holding and dealing in commercial paper, accounts and other evidences of indebtedness, is substantially a declaration of an intention to engage in some of the main branches of the business of banking, and such application must be refused because the legislature has otherwise specifically provided for the incorporation of banking institutions.

Office of the Attorney General,
Harrisburg, Pa., Sept. 11, 1907.

In re Application for a Charter of The Mechants' Finance Co.

Honorable Edwin S. Stuart, Governor of the Commonwealth:

Sir: The certificate in the above case states the purpose of said corporation to be the "purchase, holding, pledging, selling or otherwise disposing of accounts and bills receivable, commercial paper, promissory notes, and other evidences of indebtedness."

The purpose stated is substantially a declaration of an intention to engage in some of the main branches of the business of banking, as provided for under the several Acts of Assembly governing the

incorporation of banks and banking institutions, and therefore the application for such incorporation should be under the provision of said Acts. The certificate in this instance purports to be an application for incorporation under the provisions of the Act entitled "An Act to provide for the incorporation and regulation of certain corporations," approved the twenty-ninth day of April, A. D., 1874, and the several supplements thereto. There is no head under this act of Assembly and its supplements authorizing such incorporation save and except only the provision in the amendatory Act of 9th of July, 1901 (P. L. 624), which provides, inter alia, for the incorporation of "companies for the transaction of any lawful business not otherwise specifically provided for by Act of Assembly." It is manifest that the last clause of this sentence excludes the incorporation, under this Act, of any company whose incorporation is specifically provided for by any other Act of Assembly. While the purpose stated in the pending application is undoubtedly for a lawful business, yet it is a lawful business provided for by another Act of Assembly, which contains provisions for legislative and other control specially applicable to the business of banking, thereby setting such corporations apart in a separate class.

It is of the utmost importance that the general language of the amendatory Act of 1901 shall not be construed to include the conduct of any business for the incorporation and control of which the Legislature has otherwise specifically provided.

For these reasons and the additional ones stated in the very able opinion of your Corporation Clerk, Mr. John F. Whitworth, I am of opinion that the application in the above case should be refused, and that no amendment can be made to said certificate which would justify the incorporation of a company for the purposes stated therein under the provisions of the Act of 29th April, 1874, and its supplements.

Respectfully yours,

M. HAMPTON TODD,
Attorney General.

IRWIN-HERMINIE ELECTRIC STREET RAILWAY COMPANY.

The protest to the charter of the above named company raises questions of facts which should not be decided by the Attorney General and the charter should issue.

Office of the Attorney General,
Harrisburg, Pa., Jan. 22, 1908.

Honorable Edwin S. Stuart, Governor of the Commonwealth:

Sir: In the matter of the application of the Irwin-Herminie Electric Street Railway Company for Letters Patent, against the granting of which protests have been filed by the Pittsburg & Westmore-

land Railway Company, the Pittsburg, McKeesport & Westmoreland Railway Company, and the Manor Valley Railway Company, upon the ground of conflict with charter routes, a hearing was granted by this Department to the parties in interest and their counsel.

From the contentions of the parties in interest developed at this hearing, and from the affidavits filed by the respective parties in support of these contentions, it is apparent that there are certain questions of fact in dispute between the applicants and the protestants which must be settled by a tribunal empowered to take testimony and decide disputed questions of fact, before the principles of law can be applied in this contest.

This Department cannot decide questions of fact arising in a contest of this nature, and I therefore join in the recommendation of Hon. John F. Whitworth, Corporation Clerk, to the effect that the application of the Irwin-Herminie Electric Street Railway Company be approved and Letters Patent issued to it, as such action will place the applicants and protestants in proper position to have the disputed questions of fact and law now arising judicially disposed of by the proper courts.

Very truly yours,

J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

KENNETT GAS AND ELECTRIC COMPANY.

Where an application for a charter for a gas company in a territory occupied by an existing company, having an exclusive charter, does not make out a prima facie case that there are substantial questions of fact and law affecting the exclusiveness of the existing company, the application should be refused.

In re Application for the Incorporation of the Kennett Gas & Electric Company.

Office of the Attorney General,
Harrisburg, Pa., Feb. 6, 1908.

Honorable Edwin S. Stuart, Governor of the Commonwealth:

Sir: The application in the above case was for an incorporation under the Act of April 29, 1874, and its supplements, for the purpose of manufacturing and supplying gas for light in the territory comprised of the boroughs of Avondale, Kennett and West Grove, and the townships of Londongrove, Kennett and New Garden, Chester County. The application is protested against by the Chester County Light & Fuel Company, which has been heretofore incorporated and performing the obligations of its charter by supplying gas for lighting purposes to all of the above territory excepting New Garden Township.

The Act of April 29, 1874, was amended by the Act of June 2, 1887 (P. L. 310), which amendment provides:

> "The right to have and enjoy the franchise and privileges of such corporation for the manufacture of gas, for light only, shall be an exclusive one, within the district or locality covered by its charter; and no other company shall be incorporated for the manufacture of gas to supply light only to the public until the said corporation shall have, from its earnings, realized and divided among its stockholders, during five years, a dividend equal to eight per centum upon its capital stock."

The applicant company contended, at a hearing held before John F. Whitworth, Esq., Corporation Clerk, that there were disputed questions of fact and law involved in the right of the Chester County Light & Fuel Company to continue in the exercise of its exclusive privilege within the territory included in its charter, but, while it did so contend, it produced no evidence of a material fact being in dispute or of a substantial question of law being in controversy.

It is not enough for an applicant for a charter to allege that there are substantial questions of fact and law involved to justify the incorporation of a company to occupy the same territory. A prima facie case of such substantial dispute should be made out, and in this case such prima facie case was not made out. Therefore the application should be refused.

The Act of Assembly above quoted clearly provides that, where a corporation, already incorporated, is complying with its corporate obligations and has not earned the dividends as provided for in the Act, its privilege shall be an exclusive one, and no other company ought to be incorporated which would have it in its power to harass and annoy it by invading its territory. While it is true that such an application could be approved and the courts would restrain the new company from exercising its franchise within the territory of the prior incorporated company, yet that is no sufficient reason for incorporating a company in conflict with the previous exclusive grant.

I am therefore of opinion that the application in this case should be refused, unless the company amends the description of the territory within which it is to exercise its franchise, by excluding all of the territory except New Garden Township, and if it does so amend its application, I then recommend that it be approved and letters patent issue in due course.

Very respectfully,

M. HAMPTON TODD,
Attorney General.

TIDIOUTE AND WARREN OIL COMPANY.

The Tidioute and Warren Oil Company was organized in good faith prior to the adoption of the Constitution, and letters patent should be issued to it in accordance with the act of Assembly, providing for its incorporation.

Office of the Attorney General,
Harrisburg, Pa., April 2, 1908.

In re Application of the Tidioute & Warren Oil Company for Letters Patent.

Honorable Edwin S. Stuart, Governor of the Commonwealth:

Sir: Having examined the application made to you for the issuance of letters patent to the Tidioute & Warren Oil Company; the affidavit of Robert Taggart, showing the organization of the company and the prosecution of business thereunder down until 1880; the holding of title to real estate and the payment of taxes continuously since July, 1868, to date; the resumption of business in 1889 and its continued prosecution since; together with a certified copy of the minutes of July 2nd, 1867, organizing said company, I am of opinion that this company was duly organized in good faith prior to the adoption of the Constitution, and that letters patent should be duly issued to the company in accordance with the provisions of the Act of Assembly incorporating the same.

Herewith please find Mr. Taggart's affidavit, copy of the minutes and certificate for letters patent, which should be filed with the papers in this matter.

Respectfully yours,

M. HAMPTON TODD,
Attorney General.

OPINIONS TO THE SECRETARY OF THE COMMONWEALTH.

OPINIONS TO THE SECRETARY OF THE COMMONWEALTH.

PRIMARY NOTICES—UNIFORM PRIMARIES ACT.

The spring primary was to be held the first Saturday of June. The ninth Saturday preceding that day in 1907 was March 30. Since the said March 30, the Governor appointed three judges of the Court of Common Pleas No. 4 of Allegheny county, to serve until the first Monday of January, 1908, and Hon. Craig Biddle, since that date, resigned as judge of Common Pleas No. 1, of Philadelphia, making four judges to be elected at the November election. It was impossible strictly to comply with the provisions of the uniform primaries act. Held, that the Secretary of the Commonwealth should notify the county commissioners of the counties in question to amend the notices being published in the newspapers so as to include notice that the candidates for the above judicial offices were to be nominated at the ensuing primary.

The essential thing is that the names of the offices for which nominations are to be made shall be published for three weeks by the county commissioners in at least two newspapers.

Office of the Attorney General,
Harrisburg, Pa., April 19, 1907.

Honorable Robert McAfee, Secretary of the Commonwealth:

Sir: Your inquiry of April 17th, 1907, as to the duty of your Department with reference to sending notices to County Commissioners of Philadelphia and Allegheny Counties, in which county of Philadelphia a Judge is to be nominated at the Spring Primary of 1907, to fill the vacancy caused by the resignation of Hon. Craig Biddle of Court No. 1, and in which county of Allegheny three Judges are to be nominated at said primary, to fill the vacancies occasioned by the terms of the recent Act of Assembly creating Court of Common Pleas No. 4, has been duly received.

The Uniform Primaries Act of 17th February, 1906, provides in the 3rd Section thereof that on or before the ninth Saturday preceding the Spring Primary, the Secretary of the Commonwealth shall send to the County Commissioners in each county a written notice setting forth the number of Congressmen and officers of the Commonwealth not nominated by State conventions to be elected or voted for therein, at the next succeeding general election.

The Spring Primary is to be held the first Saturday of June. The ninth Saturday preceding that day this year was March 30th. Since the said 30th of March the Governor has appointed three judges of

the Court of Common Pleas No. 4 of Allegheny County, to serve until the first Monday of January, 1908, and Hon. Craig Biddle, since that date, resigned as Judge of the Court of Common Pleas No. 1 of the County of Philadelphia. There are four judges to be elected in these counties at the ensuing general election in November.

It is impossible for you to comply strictly with the terms of said Uniform Primaries Act. It is also provided by the third section of said Act that upon receipt of such notices, and beginning with one week thereafter, such County Commissioners shall publish the names of all offices for which nominations are to be made, or candidates for the party offices to be elected, within the county, at the ensuing Primary, at least once each week for three successive weeks, in two newspapers of general circulation published within the county wherever such course is possible. In view of the fact that the word "wherever" is used rather than the word "whenever," the phrase "wherever such course is possible" should probably be construed to apply to the publication in two newspapers of general circulation, rather than to the time of publication.

The essential thing, however, is that the names of the offices for which nominations are to be made shall be published for three weeks by the County Commissioners in at least two newspapers. A Judge is an "officer of the Commonwealth not nominated by State Conventions," under the General Ballot Law of 1897, which provides that the certificates of nomination for State offices, "including those of Judges, Senators and Representatives, shall be filed with the Secretary of the Commonwealth."

There are no negative words in the Uniform Primaries Act prohibiting the Secretary of the Commonwealth from certifying, or the County Commissioners from publishing, at a later date than the ninth Saturday preceding the Spring primary, the names of the offices for which nominations are to be made.

The only thing that can be done under the circumstances is for you to notify the County Commissioners of the counties in question, to amend the notices now being published in the newspapers of their respective counties so as to include notice that the candidates for the judicial offices above mentioned are to be nominated at the ensuing primary. The drafts of such notices to the County Commissioners, which you have submitted, are in proper form and such notices should be sent as soon as possible to the Commissioners of the counties affected.

Very truly yours,

J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

THE PHILADELPHIA COMPANY FOR GUARANTEEING MORTGAGES.

CORPORATIONS—CHARTERS—PURPOSE AND POWERS—GUARANTEEING MORTGAGES—ACTS OF APRIL 27, 1874, AND JULY 9, 1901.

In an application for a charter, the powers desired should not be stated under the guise of a statement of purpose; the applicants must state the purpose and the law will define the powers of the corporation.

Under the Act of July 9, 1901, P. L. 624, amending the act of April 27, 1874, section 2, paragraph xix, P. L. 73, a charter may be granted for the purpose of "buying, selling, collecting and guaranteeing payment of ground rents, mortgages and other real estate securities."

Office of the Attorney General,

Harrisburg, Pa., May 18, 1907.

Honorable Robert McAfee, Secretary of the Commonwealth:

Sir: The application for the incorporation of The Philadelphia Company for Guaranteeing Mortgages certifies that it is formed for the purpose of "making contracts of every description relating to mortgage notes and bonds, to mortgages and other liens upon real estate in Pennsylvania, and in ground rents, including agreements of loan, pledge, sale, guarantee and collection, and the issuance of certificates and obligations thereby secured." You have asked my opinion whether or not a corporation can be created for the purposes above enumerated.

The difficulty with reference to this application for a charter arises from the fact that the applicants have inadvertently failed to bear in mind the distinction between the *purpose* for which a corporation is formed and the *powers* that may be exercised by a corporation after its incorporation. The purpose for which a corporation is formed is one thing; what it has power to do after incorporation is something entirely distinct. Under paragraph XIX of section 2 of the Corporation Act of April 27, 1874, P. L. 73, a corporation may be formed for the purpose of "the insurance of owners of real estate, mortgages and others interested in real estate from loss by reason of defective titles, liens and encumbrances."

By Section 29 of the same act, companies incorporated for the purpose of "the insurance of owners of real estate, mortgages and others interested in real estate," etc., are given the power and right "to make insurances of every kind pertaining to or connected with titles to real estate," and "to make, execute and perfect such and so many contracts, agreements, policies and other instruments as may be required therefor."

By the supplement of the Act of May 9, 1889, P. L. 159, the powers of such companies are greatly enlarged, enabling them, inter alia, to insure titles to real estate, to hold property in trust, to insure

fidelity in persons holding places of trust, to act as assignees, agents, trustees, executors, administrators, etc. The Act of 1889, however, in no way amends the purpose for which such corporations are formed.

On the other hand, the Act of July 9, 1901, P. L. 624, amends the purposes for which corporations may be formed, under paragraph XIX, of the 2nd section of the Act of April 27, 1874, P. L. 73, by providing that corporations may be formed "for the transaction of any lawful business not otherwise specifically provided for by act of assembly, provided, however, that no corporation shall be chartered under this amendment with the authority to transact more than one kind of business, which must be set forth in the charter."

This Act of 1901 does not disclose any intention to amend in any way the powers of corporations. The Act of 1889 is an amendment of a section of the Act of 1874 relating to the powers of certain corporations. The Act of 1901 is an amendment to a paragraph of a section of the Act of 1874 relating to the purposes for which corporations may be formed. Each of these Acts of 1889 and 1901 has its particular and specific function, and one should not be confused with the other.

The defect in the application for the charter in question lies in the fact that the second paragraph of the certificate for incorporation contains practically a statement of the powers which the applicants desire the proposed corporation to exercise, rather than a statement of the purpose for which it is formed. Applicants for a charter cannot specify the powers they desire the corporation to exercise under the guise of a statement of purpose. The applicants must state the purpose and the law will define the powers of the corporation. The purpose of this corporation is really stated in the letter of counsel, written in support of the application for incorporation, wherein he states it to be the "selling, collecting and guaranteeing payment of ground rents, mortgages and other real estate securities." I think the word "buying" should probably be inserted before the word "selling," so that, if the purpose is expressed to be that of "buying, selling, collecting and guaranteeing payment of ground rents, mortgages and other real estate securities," the corporation will have power to make such contracts as are within the sphere of its functions. Because a company incorporated for the purpose of "buying, selling, collecting and guaranteeing mortgages," etc., would without doubt incidentally have some of the powers expressly conferred by the Act of 1889 upon title insurance companies is no objection, in my opinion, to the granting of a charter. Many different corporations formed for different purposes have similar or identical powers along certain lines.

In view of the fact that there is no act of assembly specifically providing for the formation of corporations for the purpose of "buying, selling, collecting and guaranteeing payments of ground rents, mortgages and other real estate securities" in Pennsylvania, which seems to be an entirely lawful business, there is no reason why a charter cannot be legally granted forming a corporation for such purpose under the amendatory Act of July 9, 1901, P. L. 624.

I am, therefore, of opinion that the Governor should withhold his approval of the present application, and that no letters-patent be granted thereon until the application has been corrected in such a way as to state the purpose for which the corporation is to be formed, and if the application should be amended so as to state the purpose substantially in the manner above indicated, I am of opinion that the application should be approved and letters-patent granted thereon.

Very respectfully,
M. HAMPTON TODD,
Attorney General.

NOTARY PUBLIC.

Notaries public may be removed by the Governor. The practice is to give a notary charged with misconduct a hearing after full notice, and the proceedings are in the nature of a rule upon the accused notary to show cause why he should not be removed from office and his commission revoked.

Office of the Attorney General,
Harrisburg, Pa., July 10, 1907.

Honorable Robert McAfee, Secretary of the Commonwealth:

Sir: I am in receipt of the letter addressed to you by Bernard Gilpin, Esq., Solicitor for the State Board of Undertakers, under date of June 26th, 1907, and referred by you to me for advice. In this letter it is stated that in several cases the State Board of Undertakers has learned that notaries public, in taking the affidavits of vouchers for applicants for license to practice undertaking, have certified that said vouchers personally appeared before said notaries public and were duly sworn when, as a matter of fact, said vouchers did not personally appear before said notaries public.

Attached to said letter is an affidavit made by Hugh A. Conahan, formerly of Hazleton, Luzerne Co., Pa., setting forth in substance that he, the said Hugh A. Conahan, made application in June, 1905, to the State Board of Undertakers of Pennsylvania for a license to practice undertaking, upon which application license No.

1278 was issued; that said application was signed by Daniel A. Campbell and Philip J. Boyle, both of Hazleton, Luzerne County, Pennsylvania, as his vouchers; that one Mateo Gerod, a notary public of Hazleton, Luzerne county, Pa., was the officer who certified in his official capacity that the applicant and his said vouchers personally appeared before him, as a notary public, and made the necessary affidavits to said application; that the said notary public signed his name and affixed his official seal to said application without administering any oath to the said applicant and signed his name as notary public and affixed his official seal to what purported to be the affidavit of the said Daniel A. Campbell and Philip J. Boyle, vouchers as aforesaid, who neither appeared before the said notary public, nor were sworn by him. No copy of the said application accompanies the papers in this case, and I am therefore unadvised as to the exact terms of the alleged affidavits, but the affidavit substantialy charges the said Mateo Gerod with official misconduct in his office of notary public.

It seems clear that notaries public who are appointed and commissioned by the Governor of the Commonwealth may be removed at the pleasure of the power by which they have been appointed. It would seem unfair, however, to remove a notary public who is charged with having misbehaved himself in his office, without affording such officer an opportunity to be heard in his own behalf. This question was passed upon by Attorney General McCormick, in an opinion dated Jan. 23, 1895, and also by Attorney General Carson, in an opinion dated Feb. 24, 1904. Both of these officers held, in said opinions, that the commission of a notary public charged with official misconduct should not be revoked by the Governor merely upon ex parte statements, but only after hearing, on a day fixed, of which the accused notary should have full notice, and recommended that the proceedings should be in the nature of a rule upon the accused notary public to show cause why he should not be removed from office and his commission revoked. In the case in hand I advise that the Secretary of the State Board of Undertakers, if it is deemed advisable so to do, should lodge with the Governor a formal complaint against the said Mateo Gerod, with the request that he be removed from office and his commission revoked.

If sufficient facts be alleged to warrant action upon the part of the Governor a rule to show cause can then be issued and a hearing had upon the complaint.

Very truly yours,

J. E. B. CUNNINGHAM,

Assistant Deputy Attorney General.

CORRUPT PRACTICE ACT—ELECTION LAW—CANDIDATES AT PRIMARY ELECTION—FILING ACCOUNT OF RECEIPTS AND DISBURSEMENTS—ACT OF MARCH 5, 1906.

Each candidate at a primary election, caucus or convention, whether nominated or not, is required by the act of March 5, 1906, P. L. 78, to file, within fifteen days after the election, with the proper officers, a sworn account of all moneys exceeding $50 received and expended by him for election expenses, and there is no legal authority for making such disbursements through a committee or by its treasurer.

Office of the Attorney General,
Harrisburg, Pa., April 22, 1908.

Hon. Robert McAfee, Secretary of the Commonwealth.

Sir: I have before me your letter of to-day, stating that you have received numerous inquiries as to the proper interpretation of the Corrupt Practice Act, as applying to primary elections, and submitting the following questions for my official decision:

1. Must each candidate for nomination at any primary election, caucus or convention, whether nominated or not, file with the proper officer a full, true and detailed account of all moneys contributed, received or disbursed by him for election expenses within fifteen days?

2. Can any candidate for nomination at a primary election appoint a committee, which can in turn choose a treasurer, through whom all expenses and disbursements can be made, and the filing of whose account within thirty days will relieve the candidate himself from filing such an account?

The language of Sections 5 and 6 of the Act of March 8th, 1906, (P. L. 79), covers both these questions so clearly that there can be no mistaking their terms, and I have the honor to answer your questions as follows:

1. Every candidate for nomination at any primary election, caucus or convention shall, within fifteen days after the same is held, if the amount received or expended by him exceeds the sum of fifty dollars, file with the proper officers a full, true and detailed account, subscribed and sworn to by him, setting forth each and every sum of money contributed, received or disbursed by him for election expenses.

2. The Act under discussion in no wise recognizes committees or treasurers of committees in primary election matters, they being recognized only in general elections. There is, therefore, no warrant or authority of law for the disbursement of money through a committee or by its treasurer so far as primary elections are concerned, but each candidate must be responsible for all disbursements made in his behalf and include them in his account. Moneys furnished by the candidate to a committee or the treasurer of a com-

mittee, to be disbursed in the interest of the candidate, are moneys disbursed by such candidate, and as such must be included in his account.

Very truly yours,

M. HAMPTON TODD,
Attorney General.

IN RE MERGER OF ELECTRIC RAILWAYS—CORPORATIONS—ELECTRIC RAILWAYS—MERGER—TAXES—ACTS OF MARCH 24, 1865, AND MAY 29, 1901.

The consolidation and merger of electric railway companies, whose lines are wholly within and partly within and partly without the State, are governed by the act of March 24, 1865, P. L. 49, which does not require the filing of a certificate from the Auditor-General of reports having been filed and all taxes having been paid, required by the act of May 29, 1901, P. L. 349, which is limited in its operation to corporations for profit incorporated under the act of April 29, 1874.

Office of the Attorney General,
Harrisburg, Pa., May 25, 1908.

In re Merger and Consolidation of the Oxford, West Grove and Avondale Street Railway Company, into the West Chester, Kennett and Wilmington Electric Railway Company.

Hon. Robert McAfee, Secretary of the Commonwealth.

Sir: The Oxford, West Grove and Avondale Street Railway Company is a corporation with lines entirely in Pennsylvania. The West Chester, Kennett and Wilmington Electric Railway Company is a corporation with lines partly in Pennsylvania and partly in Delaware. The Act of May 16, 1861, (P. L. 702), provides for the consolidation and merger of railroad companies having their lines wholly within the State of Pennsylvania, and the Act of 24th of March, 1865, (P. L. 49), supplementary to the Act regulating railway companies, approved the 19th of February, 1849, provides for the merger and consolidation of railroads whose lines are either wholly within or partly within and partly without the State, and these Acts wereheld to apply to street railways in the case of Hestonville, etc., R. R. Co. v. Philadelphia, 89 Pa., St., 210. The act of May 29, 1901 (P. L. 349), entitled "An Act supplementary to an act, entitled 'An Act to provide for the incorporation and regulation of certain corporations,' approved the twenty-ninth day of April, one thousand eight hundred and seventy-four, providing for the merger and consolidation of certain corporations," requires a certificate from the Auditor General of reports having been filed and all taxes having been paid, and that, on the filing of such certificates, letters patent shall issue thereon as a prerequisite to such consolidation and merger.

Counsel for the above entitled merging companies contend that the supplementary Act of 1901, does not provide for the consolidation and merger of street railways, but must be restricted in its operation to the consolidation and merger of corporations which are created under the provisions of the Act of 29th of April 1874, and they further contend that, inasmuch as neither the Act of May 16, 1861, nor the Act of March 24, 1865, supra, requires applications for merger to be accompanied by a certificate from the Auditor General of reports having been filed and all taxes having been paid, or the issuance of letters patent, or the approval by the Governor, therefore all that is required to be done in connection with such merger to render the same operative, is the filing of the agreement or a copy thereof, in the Office of the Secretary of the Commonwealth.

I am of opinion that the consolidation of the street railway companies in this case is not controlled or authorized by the terms of the Act of May 29, 1901, above cited; that that Act is limited in its operation to corporations for profit, incorporated under the provisions of the Act of 29th of April, 1874, which does not provide for the incorporation of either railroads or street railways. They are incorporated under a separate series of Acts of Assembly.

I am further of opinion that the consolidation and merger in this case is provided for and governed by the requirements of the Act of Assembly of March 24, 1865, which provides, in Section 2, among other things as follows:

> "And the agreement so adopted, or a certified copy thereof, shall be filed in the office of the Secretary of the Commonwealth, and shall from thence be deemed and taken to be the agreement and act of consolidation of the said companies * * * * * *
>
> "Section 3. Upon the making and perfecting the agreement and act of consolidation, as provided in the preceding section, and filing with the same, or a copy, with the Secretary of the Commonwealth, as aforesaid, the several corporations, parties thereto, shall be deemed and taken to be one corporation, by the name provided in said agreement and act, possessing within this Commonwealth all the rights, privileges and franchises, and subject to all the restrictions, disabilities and duties, of each of said corporations, so consolidated."

There is nothing in the above quoted language, or in any other provision of the said Act of Assembly which requires the filing of the certificate from the Auditor General of reports having been filed and all taxes having been paid, nor for the approval by the Governor of said consolidation, or the issuance of letters patent thereon.

I am therefore of opinion that, upon the presentation to you of the agreement of merger, or a certified copy thereof, which shall

show on its face compliance with the provisions of said Act of Assembly in reference to merger, it is your duty to file the same of record.

I therefore advise you in this case to file of record the agreement of merger, as it is presented, without the approval of the Governor, and that you are not required to issue letters patent thereon.

Very truly yours,

M. HAMPTON TODD,
Attorney General.

NOMINATION PAPERS.

Vacancy in office of Representative in the General Assembly where a party entitled to nominate candidates as a political party at the primaries fails to make a nomination for the office of Representative in the General Assembly at a regular primary election, there is not a vacancy, which may thereafter be filled in accordance with the party rules.

Office of the Attorney General,
Harrisburg, Pa., September 30, 1908.

Honorable Robert McAfee, Secretary of the Commonwealth:
Harrisburg, Pennsylvania.

Sir: This Department is in receipt of your communication of September 28, 1908, stating that you are in receipt of a certain nomination paper, purporting to nominate Jacob D. Utech, as a candidate of the Prohibition party for Representative in the General Assembly, for the Sixth Legislative District of the County of Allegheny, to be voted for at the ensuing election in November, which paper is in proper form, bears the requisite number of signatures, is properly verified, and has been received within the limit of time allowed for filing nomination papers for said election.

You further state, in said communication, that an examination of the election returns of the last general election discloses that the Prohibition party then polled in said legislative district a sufficient number of votes to entitle it to nominate candidates as a political party at the primary election held in April of this year.

You further state that the regular primary election was held in said district on April 11, 1908, but that the said Prohibition party did not then nominate a candidate for the office of Representative in the General Assembly.

It is also stated in your communication that all of the provisions of the Uniform Primaries Act of 17th February, 1906, (P. L. 36), with regard to notices, advertisements, &c., were complied with by your Department and by the County Commissioners of Allegheny County prior to the holding of said primary election.

Under these facts you ask to be advised whether, by reason of the failure or neglect of the said Prohibition party to nominate a candidate for said office at said primary election, such a vacancy now exists in said office of Representative in the General Assembly as may be filled under Section 12 of said Uniform Primaries Act, which provides that

> "Vacancies happening or existing after the date of the primary may be filled in accordance with the party rules, as is now or hereafter may be provided by law."

(the provisions of law now existing for filling vacancies being found in Section 11 of the Act of 10th June, 1893, P. L. 419, providing for the filling of vacancies in case of the death or withdrawal of a regularly nominated candidate); and also whether your Department is authorized to accept for filing the said nomination paper of the said Jacob D. Utech, and to certify his name to the County Commissioners of Allegheny County, to the end that the same may be printed upon the official ballots for the fall election.

Your inquiry involves a consideration of existing legislative provisions relative to the nomination of candidates to the office of Rep-representative in the General Assembly. Prior to the passage of the said Uniform Primaries Act nominations to office were made by nomination certificates and nomination papers. Any combination of electors with sufficient coherence and organization to have acted together for a common purpose, and sufficient strength to have polled two per centum of the highest vote at the next preceding election, constituted a political party, and had the right to put nominations on the ballot by nomination certificates, (Independence Party Nominations, 208 Pa., 108), and a combination which is less than a party could secure a place for its nominees on the official ballot only by filing nomination papers. (Citizens Party Nominations, 21 Pa., C.C., 417).

The Uniform Primaries Act, however, is an enactment to systematize, regulate and put under control of positive law party nominations for public office. Its first requirement is uniformity throughout the state. Commonwealth, ex rel., vs. Blankenburg, 218 Pa., 339.

With reference to the nomination of candidates for the office of Representative, the material provisions of the Act are as follows: In Section 2 it is provided that candidates for all offices to be filled at the general election, with the exception of those nominated by National or State conventions, shall be nominated at the Spring Primaries, and that no candidates for the public offices specified in said Act shall be nominated in any other manner than as set forth therein, "Provided that nothing herein contained shall prevent the

nomination of candidates for borough or township offices, or other offices not herein specifically enumerated in the manner provided by existing laws; or any association of electors not constituting a party from nominating candidates by nomination papers as is provided by existing laws." The office of Representative is specifically enumerated in Section 5 of said Act, under the appellation of "Member of the State House of Representatives," and, as already stated, the Prohibition party is not within the proviso above quoted. The office in question is a state office and is so designated in Section 3 of the Act of 9th July, 1897, (P. L. 223).

By the 3rd section of the Uniform Primaries Act it is made the duty of the Secretary of the Commonwealth to send to the County Commissioners in each county a written notice on or before the 9th Saturday preceding the Spring primaries, setting forth, inter alia, the number of officers of the Commonwealth, not nominated by State conventions, to be elected at the next succeeding general election, and by the same section it is made the duty of the said Commissioners to publish the names of all offices for which nominations are to be made within the county at the ensuing primaries at least once each week for three successive weeks in two newspapers.

By section 5 of said Uniform Primaries Act it is provided in substance, inter alia, that the names of candidates for the office of Representative shall be printed upon the official ballot of a designated party upon the filing of a petition with the Secretary of the Commonwealth at least four weeks prior to the primary, signed by fifty qualified electors of the district.

Section 6 provides that the Secretary of the Commonwealth, immediately after the filing of said petition, shall forward the name of such candidate to the County Commissioners of the proper county, who are charged with the preparation and distribution of official ballots for the primary election, and with the computation and canvassing of the returns thereof.

By section 11 of said Act the County Commissioners are required to make a proper certification of the votes cast for state offices to the Secretary of the Commonwealth.

Section 12 provides that the candidates who receive a plurality of votes of any party at a primary shall be the candidates of the party, and that their names shall be printed by the proper officers upon the official ballot to be used at the ensuing election; and by section 1 of the Act of 29th April, 1903, (P. L. 338), it is provided that the Secretary of the Commonwealth at least fourteen days previous to the day of any election of state officers shall transmit to the County Commissioners and the Sheriff in each county in which such election is to be held, duplicate official lists, stating the names, etc., of all candidates duly nominated for such election.

The above is an outline of the method by which the Prohibition party in the district in question was required to nominate its candidate for the said office, but it neglected and failed to make such nomination, and no effort whatever seems to have been made to comply with the Uniform Primaries Act.

You state in your communication that the persons interested in the filing of the nomination papers referred to evidently rely for their right so to do upon the provisions contained in the last paragraph of the 12th section of the Uniform Primaries Act, reading as follows:

> "Vacancies happening or existing after the date of the primary may be filled in accordance with the party rules, as is now or hereafter may be provided by law."

Clearly no vacancy has happened after the date of the primary, but it is contended that there is a vacancy "existing after the date of the primary." The logical result of holding that under the above facts a vacancy exists within the meaning of Section 12 in the Prohibition party for the office of Representative would be the abrogation of the entire Uniform Primaries Act, for if no nominations were made under the Act by any political party, the same kind of vacancies would exist in each political party, for all the offices to which the nominations should have been made at a specified primary.

The words "vacancies existing after the date of the primary" may be given a reasonable construction and a definite meaning which will be in harmony with the purpose of the Act. For instance, it appeared in the case of Commonwealth ex rel. vs. Blankenburg, supra, that in the year 1907 the Spring primary was held on June 1st, and that the ninth Saturday preceding was March 30th. Prior to the latter date the Secretary of the Commonwealth notified the County Commissioners of Philadelphia, inter alia, that two judges of the Court of Common Pleas No. 1, were to be nominated at the ensuing primary. Subsequently an additional vacancy occurred in said Court by reason of the resignation of one of the judges thereof. Upon this state of facts the Supreme Court held that the third vacancy occurred too late for the nomination to be made under the provisions of the Uniform Primaries Act, and that this vacancy necessarily fell under the alternative provisions of Section 12. This is an illustration of a vacancy that existed, but did not happen, after the date of the primary.

Under the former system of making nominations, it was held (Commonwealth vs. Reeder, 18, Pa., C. C., 315), that the Secretary of the Comonwealth must receive and file every certificate of nomination and every nomination paper which is regular on its face, leaving the persons alleging any defect in the same to their remedy by filing objections in the proper Court.

I am of the opinion, however, that there is now no authority in law authorizing you to receive the nomination paper of the said Jacob D. Utech, or to certify his name to the County Commissioners and Sheriff as a candidate duly nominated for the ensuing election.

Yours respectfully,

J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

PHILADELPHIA COMPANY FOR GUARANTEEING MORTGAGES.

The guarantee contracts issued by the Philadelphia Company for Guaranteeing Mortgages are not debts of the corporation within the meaning of clause 6 of section 39 of the act of 28th April, 1874 (P. L. 73), and the issuing of such contracts is not an increase of indebtedness requiring compliance with the act of February 9, 1901 (P. L. 3).

Office of the Attorney General,
Harrisburg, Pa., Oct. 1st, 1908.

Hon. Lewis E. Beitler, Deputy Secretary of the Commonwealth, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of July 1st, 1908, asking to be advised whether, in the opinion of this Department, the guarantees issued by the Philadelphia Company for Guaranteeing Mortgages are debts which said company owes, within the meaning of clause 6 of Section 39 of the Act of 29th April, 1874 (P. L. 73), and whether the issuing of said guarantees from time to time constitutes such an increase of the indebtedness of said company as to require proceedings under the Act of February 9, 1901, (P. L. 3), in order that the same may be legally effected. I also acknowledge receipt of a copy of the form of guarantee issued by the company in question.

The Philadelphia Company for Guaranteeing Mortgages was incorporated in May, 1907, under the Act of July 9, 1901, (P. L. 624), a supplement to the General Corporation Act of 1874. The company was incorporated to engage in the business of "buying, selling, collecting and guaranteeing payment of ground rents, mortgages and other real estate securities."

In pursuance of the purpose of its incorporation the company, among other things, issues guarantees in the following form:

PHILADELPHIA COMPANY FOR GUARANTEEING MORTGAGES.

Land Title Building, Philadelphia.

Guarantee No.

THE PHILADELPHIA COMPANY FOR GUARANTEEING MORTGAGES (herein designated as "this company") in consideration of the premium and terms

of guarantee named below, guarantees to .....
.....and Assigns
Address:
and all subsequent owners and holders of the bond and mortgage described in Schedule A, assignees of this guarantee, who shall give this Company written notice and proof of ownership each and every person and corporation to whom under this clause this guarantee runs, being hereinafter included in the designation "the insured").

First. Payment of interest at the rate of ..... per cent. per annum, from ..... on the bond and mortgage described in Schedule A. The first payment of interest to be made on the ..... day of ..... and thereafter within five days of the time of payment of interest in said bond and mortgage, provided:

Second. Payment of the principal, and of every instalment thereof, as soon as collected, but in any event within twelve months after the same shall have become due under the terms of the said bond and mortgage, or if, with the written consent of the Guarantor, payment be not demanded when due, then within twelve months after it shall have been demanded by the insured, with regular payment meantime of interest at the rate guaranteed.

PREMIUM AND TERMS OF GUARANTEE.

By the acceptance of this guarantee this Company is made irrevocably the agent of the insured, with the exclusive right, but at its own expense, to sue for and receive the proceeds of any policy of title insurance or fire insurance covering the mortgaged premises in favor of the insured, also to collect the principal and to collect the interest as it falls due on the bond and mortgage hereby guaranteed, until the bond and mortgage are paid. All interest which shall be collected by this Company in excess of the guaranteed interest payments, this Company is authorized to retain as its premium for this guarantee.

This guarantee is subject to the conditions annexed hereto.

IN WITNESS WHEREOF, the PHILADELPHIA COMPANY FOR GUARANTEEING MORTGAGES has affixed its Common Seal, attested by two of its officers this..... .... day of ....., 19 .

.....,
President.

.....,
Secretary.

SCHEDULE A.

The bond covered by this guarantee was made by

to

dated , and is marked for identification with the number of this guarantee and the signature of one of the officers of this Company. It was given for the payment of on the day of with interest at the rate of per cent. per annum, payable on the day of and in each year. The mortgage given to secure said bond is similarly identified and was made by

to

dated, and is recorded in the office of the Recorder of Deeds at in Mortgage Book No. page &c.

This Company holds as collateral to said bond and mortgage fire insurance in the sum of $, covering real property described in said mortgages.

The real property covered by this guarantee is described as follows:

The questions arising under your inquiry are whether the contract of guarantee entered into by the corporation in question is a debt, within the meaning of Clause 6 of Section 39 of the Act of 28th, April, 1874, (P. L. 73), which provides that

> "The whole amount of the debts which any such company owes shall not exceed the amount of its capital stock actually paid in, unless such debt be for unpaid purchase money for lands, etc,"

and whether the issuing of these guarantees from time to time constitutes, upon the execution of each contract, such an increase of the indebtedness of said corporation as is within the prohibition of Section 7 of Article XVI of the Constitution, which provides that

> "The stock and indebtedness of corporations shall not be increased except in pursuance of general law nor without the consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law."

The general law now in force relative to increasing the capital stock or indebtedness of corporations is the said Act of February 9, 1901, (P. L. 3), entitled:

> "An Act to provide for increasing the capital stock and indebtedness of corporations."

A method is prescribed in this Act of Assembly for obtaining the consent of stockholders at regular annual meetings or special meet-

ings to an increase of capital stock or indebtedness, and provision is made for filing in the office of the Secretary of the Commonwealth certain certificates with relation to said increase of stock or indebtedness and for the concurrent payment to the State Treasurer of the bonus on the actual increase made in pursuance of the consent given by said stockholders.

You ask to be advised whether the Philadelphia Company for Guaranteeing Mortgages can legally execute contracts, or guarantees, in the above form without complying with the terms of the said Act of 1901, and filing in your office the certificate therein provided for.

Ordinarily, a corporation has no power to enter into a contract of suretyship or guaranty, or otherwise lend its credit to another, unless the power is expressly conferred by its charter, or unless such a contract is reasonably necessary or is in the conduct of its business. The corporation in question was chartered for the purpose, among other things, of "guaranteeing the payment of ground rents, mortgages and other real estate securities." As a necessary incident to the purpose of its incorporation, it has the power to make such contracts as are appropriate and necessary to carry into effect the purpose of its incorporation.

It is not necessary, in the disposition of your inquiry, to determine whether the contract in the form above stated is a contract of suretyship, by which the corporation assumes to perform the mortgage contract if the mortgagor does not, or whether it is strictly speaking a contract of guaranty by which the corporation undertakes that the mortgagor is able to perform the mortgage contract. No matter whether the Philadelphia Company for Guaranteeing Mortgages, by the terms of its contract, assumes a direct liability to the insured for the payment of a mortgage by the mortgagor, or merely assumes liability for the mortgagor's ability to pay, the undertaking of the said company is a conditional, uncertain and contingent liability. Every liability assumed by a corporation is not within the prohibition of the Constitution. For instance, it has been held that the provision of the Constitution do not apply to mortgages executed to creditors in exchange for other securities, or to raise funds for the purpose of paying off incumbrances in order to protect a debt due to the corporation, or to secure debts incurred in the purchase or improvement of the property or in carrying on the ordinary business of the corporation. (Pepper & Lewis' Digest of Decisions, Vol. III, page 4, 909). The question, therefore, narrows itself to the inquiry whether or not the guarantee contract issued by the corporation in question creates a debt due from the corporation within the legal acceptation of that term.

In the Appeal of the City of Erie, 91 P. S., 398, we find the following definition of the term "debt."

> "A debt means a fixed and certain obligation to pay money or some other valuable thing or things either in the present or in the future."

In "Words and Phrases Judicially Defined," Vol. II, page 1,864, the term "debt" is variously defined as follows:

"The word 'debt' includes any sort of obligation to pay money."

"A debt is a legal liability to pay a specific sum of money."

"A debt is a certain sum that is owing from one person to another."

Again, a debt, as defined by the Century Dictionary is that which is due from one person to another, whether money, goods or services.

In "Words and Phrases Judicially Defined," *supra*, at page 1,868, the following definitions are cited:

> "A debt is understood to be an unconditional promise to pay a fixed sum at some specified time, and is quite different from a contract to be performed in the future, dependent upon a condition precedent, which may never be performed and which cannot ripen into a debt until performed."
>
> "To constitute a debt within the attachment laws, the sum must be certainly and at all events payable, but whenever it is uncertain whether anything will ever be demandable by virtue of the contract, it cannot be called a debt."
>
> "Standing alone the word debt is as applicable to a sum of money which has been promised at a future day as to a sum now due and payable. If we wish to distinguish between the two, we say of the former that it is a debt owing and of the latter that it is a debt due. In other words, debts are of two kinds: *solvendum in praesenti* and *solvendum in futuro*. Whether a claim or demand is a debt or not is in no respect determined by reference to the time of payment. A sum of money which is in all events payable is a debt without regard to the fact whether it be payable now or at a future time. A sum payable upon a contingency, however, is not a debt or does not become a debt until the contingency has happened."

Applying these principles to the contracts issued by the Philadelphia Company for Guaranteeing Mortgages, it seems clear that these contracts provide for the payment of a sum of money by the corporation only upon the contingency of the failure of another person to pay a debt primarily owing from such third person. Until the happening of such contingency the obligation of the corporation is not a debt within the legal meaning of that term.

I am therefore of the opinion that the guarantee contracts issued by the Philadelphia Company for Guaranteeing Mortgages are not

debts of that corporation within the meaning of said Act of 1874, and that the issuing of such contracts is not such an increase of the indebtedness of said corporation as to require compliance by it with the provisions of the said Act of 1901, providing a method for increasing the indebtedness of corporations.

Very truly yours,

J. E. B. CUNNINGHAM,

Assistant Deputy Attorney General.

OPINIONS TO THE AUDITOR GENERAL.

OPINIONS TO THE AUDITOR GENERAL.

SELTZER'S ESTATE—COLLATERAL INHERITANCE TAX—ACT APRIL 22, 1905 (P. L. 258).

S. dies, leaving as sole divisee, L, a daughter of the widow by a former husband. Held, that L. is not the child of a former husband or wife, and that collateral inheritance tax should be assessed upon the bequest to L.

Office of the Attorney General,
Harrisburg, Pa., April 4, 1907.

Hon. Sam Matt. Fridy, Deputy Auditor General:

Dear Sir: I have your letter of the 2nd inst., in which you ask me for the proper interpretation to be put upon the words "children of a former husband and wife," as used in the Act of April 22nd, 1905, (P. L. 258), particularly with reference to the Estate of Alfred J. Seltzer, late of Lower Paxton township, Dauphin county, as presented to Auditor General Snyder in letter of March 28th, 1907, from John J. Hargest, Register of Wills.

It appears from this letter that the sole devisee of Mr. Seltzer is Elsie C. Lingle, a daughter of his widow by a former husband, and the Register asks whether or not this estate is liable to the Collateral Inheritance Tax.

Miss Lingle is not within a literal construction of the language of the Act. She is not the child of a former husband or wife. If she were, she would be the decedent's child, and, therefore, as such, the estate would not be subject to Collateral Inheritance Tax; but if the language of the Act be construed from the standpoint of the decedent, then it would mean the child of the widow of Mr. Seltzer by a former husband; and, if so construed, then this Act would exempt the estate going to Miss Lingle under Mr. Seltzer's will from Collateral Inheritance Tax.

I am therefore of opinion, under these circumstances, that the Register of Wills should assess the tax against the estate, and Miss Lingle can then raise the question of her right to exemption under the Act in question, and the true construction of the Act can then be determined by the courts in due course.

Very respectfully yours,
M. HAMPTON TODD,
Attorney General.

PERSONAL PROPERTY TAX.

A mortgage assigned to a bank as collateral security for a loan is not taxable to the bank under the provisions of the act of June 8, 1891 (P. L. 229).

Office of the Attorney General,
Harrisburg, Pa., May 2, 1907.

Hon. Sam Matt Fridy, Deputy Auditor General, Commonwealth of Pennsylvania:

Sir: Your letter of April 12, 1907, enclosing a communication from the Board for the Assessment and Revision of Taxes in the county of Allegheny, and requesting this Department to advise whether or not mortgages assigned to banks and held as collateral for loans are subject to State tax on personal property, has been duly received.

In reply, I have the honor to state as follows:

The Act of June 8, 1891 (P. L. 229), provides in substance as follows:

> "That from and after the passage of this Act all personal property of the classes hereinafter enumerated, owned, held, or possessed by any person...., bank, or corporation whatsoever, formed, erected or incorporated by, under or in pursuance of any laws of this Commonwealth or of the United States . . . . and liable to taxation within this Commonwealth; whether such personal property be owned, held or possessed by such person . . . . bank or corporation in his, her, their, or its own right, or as active trustee, agent, attorney in fact, or in any other capacity for the use, benefit, or advantage of any other person.... is hereby made taxable.... at the rate of four mills on each dollar of the value thereof, etc."

In the paragraph of the section of this Act describing the various classes of taxable securities "all mortgages" are included. I understand the inquiry to relate to a mortgage assigned to a bank as collateral security for the payment of a loan advanced by the bank to a person who is the mortgagee in a mortgage due from a solvent mortgagor. Whether or not the bank to which such mortgage is assigned should return it for taxation and pay the tax of four mills thereon, depends entirely upon whether or not a mortgage held in this way as collateral security is within the meaning of said Act of 1891, supra.

Under that Act banks must return all mortgages held or possessed by them in their own right "or as active trustee, agent, attorney in fact, or in any other capacity, for the use, benefit, or advantage of any other person." This language would seem to apply only to mortgages held by a bank in some fiduciary capacity for the use, benefit

or advantage of another. A mortgage assigned to a bank as collateral security for a loan cannot be said to be held by the bank in a fiduciary capacity for the use or benefit of another, and therefore such mortgage does not seem to be within the provisions of said Act.

Again, the mortgagee in a mortgage such as is described in your inquiry, is the person who is obliged to make return of the same for the purpose of taxation, as the real owner of the security. The bank as assignee of the mortgage as collateral security has only a qualified or conditional title to the same. You are, therefore advised that mortgages such as are described in your inquiry are not within the meaning of the Act of 1891, supra.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

TAX ON WRITS—AMICABLE ACTION OF EJECTMENT—MECHANICS AND MUNICIPAL LIENS.

Under section 3, act of 6th April, 1830 (P. L. 272) writs of certiorari and amicable actions of ejectment are to be taxed fifty cents each.

Mechanics and municipal liens are to be taxed when reduced to judgment, not when filed.

Office of the Attorney General,
Harrisburg, Pa., May 2, 1907.

Hon. Sam Matt Fridy, Deputy Auditor General, Commonwealth of Pennsylvania:

Sir: Your letter of April 18, 1907, enclosing a communication from T. A. Sampson, the auditor appointed by the Court of Common Pleas of Mercer county to audit the books and records of the prothonotary, register of wills, and recorder of deeds in said county for the year 1906, and inquiring whether a tax of fifty cents is to be charged on writs of certiorari and upon amicable actions of ejectment, and further, whether mechanics' and municipal liens are to be taxed when entered, has been duly received. In reply I have the honor to advise as follows:

Section 3 of the Act of 6th April, 1830 (P. L. 272), provides in substance, that the prothonotaries shall demand and receive on every original writ issued out of their courts, except the writ of habeas corpus, and on the entry of every amicable action, the sum of fifty

cents; on every writ of certiorari issued to remove the proceedings of a justice or justices of the peace or aldermen, the sum of fifty cents; on every entry of a judgment by confession or otherwise where suit has not been previously commenced, the sum of fifty cents. This Act expressly provides for a tax of fifty cents on writs of certiorari and every amicable action.

An amicable action of ejectment is included within the terms "every amicable action."

With reference to mechanics' and municipal liens, the law contains no express provision for their taxation when filed. Such liens, when filed, are merely claims; Safe Deposit Co. vs. Iron and Steel Co., 176 Pa., 536.

When they have been reduced to judgments such judgments should be taxed under the provisions of the Act providing for a tax upon "every entry of a judgment by confession or otherwise, where suit has not been previously commenced."

Very truly yours,

J. E. B. CUNNINGHAM,

Assistant Deputy Attorney General.

STATE TAXES PAYABLE BY RECORDERS—STATE TAXES—RECORDERS—TAXES AND FEES COLLECTIBLE—COMMISSIONS, BONDS AND OATHS—COAL AND IRON POLICEMEN—JUSTICES OF THE PEACE—NOTARIES PUBLIC—PROBATE OF WILLS—ISSUANCE OF LETTERS TESTAMENTARY—ACTS OF APRIL 6, 1830, MARCH 15, 1832, APRIL 14, 1840, JUNE 13, 1840, FEBRUARY 27, 1865, AND APRIL 2, 1868.

The failure of a recorder to collect taxes and fees legally due cannot affect his liability to account therefor to the State.

The liability of a recorder for State taxes upon instruments recorded does not necessarily depend upon whether they are required by law to be recorded.

Coal and iron policemen are required by the act of February 27, 1865, P. L. 225, to take and subscribe the oath required by art. viii of the Constitution, a certified copy thereof and of the commission to be recorded in every county in which the policeman acts.

Justices of the peace without statutory requirement, by universal practice, record their commissions.

Where the oath and bond of an officer are printed upon one sheet of paper, but one tax of 50 cents should be collected for both bond and oath, as required by section 4 of the act of April 6, 1830, P. L. 272.

Aldermen and justices of the peace are exempted by the act of June 13, 1840, P. L. 689, from tax for recording the commissions, oaths and bonds. The State tax and register's fees are both payable when a will is probated, and no futher fee is collectible if letters testamentary are also issued. No State tax is collectible for recording a certified copy of a will probated in another county.

Acts of April 6, 1830, P. L. 272, March 15, 1832, P. L. 135, April 14, 1840 P. L.

334, June 13, 1840, P. L. 689, Feb. 27, 1865, P. L. 225, and April 2, 1868, P. L. 3, construed and applied.

Office of the Attorney General,
Harrisburg, Pa., June 20, 1907.

Honorable T. A. Crichton, Deputy Auditor General:

Sir: I am in receipt of your letter of June 10, 1907, relative to the matter of the settlement of the account of the Commonwealth against J. C. Rutter, Jr., ex-register and recorder of Columbia county, for the State tax upon certain instruments. From your letter and the papers accompanying it I understand the facts to be as follows:

In the matter of the accounts of the said J. C. Rutter, Jr., with the Commonwealth, for the years 1900 to 1905, both inclusive, it was deemed advisable by your Department to have a special auditor make a re-audit of the same. This re-audit showed that the said J. C. Rutter, Jr., was indebted to the State in the sum of $4,772.74 for tax on various instruments recorded, probated or issued by him in his official capacity as register and recorder, and collateral inheritance tax collected by him. Upon being informed of this indebtedness the said J. C. Rutter, Jr., remitted to the Commonwealth the sum of $4,313.74, and claimed that the difference in the amount admitted by him and the amount claimed by the Commonwealth, to wit: $459.00, was charged against him by the special auditor as State tax upon certain oaths, bonds, commissions and wills recorded or probated by him, but upon which he collected no State tax.

Upon inquiry being made of this Department as to whether or not the Commonwealth is entitled to collect from the said J. C. Rutter, Jr., the State tax upon these instruments, Hon. Hampton L. Carson, then Attorney General, replied to Hon. William P. Snyder, then Auditor General, under date of September 14, 1906, to the effect that the information then furnished him was not sufficiently specific to enable him to pass upon the question presented and asked for additional information as to the nature and character of the instruments upon which the said J. C. Rutter, Jr., claims that he collected no State tax. The information furnished by the said J. C. Rutter, Jr., in response to this request is not as specific as could be desired. However, by his letter of November 12, 1906, to Hon. William P. Snyder, then Auditor General, it is made to appear that the bonds, oaths and commissions upon which he alleges he did not collect State tax are those of coal and iron policemen, justices of the peace, notaries public, county officers and all others who receive their commissions from the State; and that the wills upon which no State tax was collected were, first, those probated in another county and certified to Columbia county for recording there, and

secondly, those probated in Columbia county upon which no letters testamentary were issued.

There seems to be some confusion in the figures contained in the different papers submitted to me as to the number of the instruments in the different classes specified, but it substantially appears that there were 375 oaths, 138 bonds, and 329 commissions recorded upon which no State tax was collected, and that there were 29 wills probated in Columbia county, upon which no letters testamentary were issued or State tax collected, and 9 certified copies of wills recorded, upon which no State tax was collected.

In my opinion, the liability of the said J. C. Rutter, Jr., to the Commonwealth for the State tax upon these various instruments does not necessarily depend upon whether or not they are such instruments as are required by law to be recorded, but it will be of assistance in disposing of this question to inquire briefly as to the provisions of the law with reference to the recording of the several classes of instruments mentioned.

The third section of the Act of 27th February, 1865 (P. L. 225), provides in substance that every coal and iron policeman, before entering upon the duties of his office, shall take and subscribe the oath required by the 8th Article of the Constitution, which oath, after being duly recorded, shall be filed in the office of the Secretary of State and a certified copy of such oath shall be recorded with the Commission in every county through or into which the railroad for which such policeman is appointed, may run, and in which it is intended the said policeman shall act. There does not seem to be any express statute requiring the commissions of justices of the peace to be recorded, but in the case of Bennet vs. Paine, 7 Watts 334, it is held that it is the universal practice to record these commissions and that a copy of the commission certified by the recorder of deeds is competent evidence of the magisterial character of the person so commissioned.

With reference to notaries public, it is provided by Section 3rd of the Act of 14th April, 1840 (P. L. 334), that the commission of every notary then in office, or thereafter appointed, who shall neglect for the space of time therein designated, to give bond and cause the same and his commission and oath to be recorded shall be null and void.

On account of the lack of specific information furnished by the said J. C. Rutter, Jr., it is impracticable to attempt to investigate the provisions of law relative to the recording of all the commissions, oaths of offices, and bonds recorded by him. It is proper to note, however, that the said J. C. Rutter, Jr., claims that in most cases the oath and bond were printed on one sheet of paper and recorded as one paper. The duty of the said J. C. Rutter, Jr., with

reference to the collection of the State tax upon the instruments in question is defined and regulated by the following provisions of law. The Act of 6th April, 1830 (P. L. 272) is entitled "An Act for the levy and collection of taxes upon proceedings in courts and in the offices of register and recorder, and for other purposes." The first section of this Act provides that the officers mentioned therein are thereby authorized to demand and receive in addition to the fees heretofore required by law certain sums for and on account of the Commonwealth. Section 4 of this Act provides:

> "That the several Recorders of Deeds shall demand and receive for every deed, and for every mortgage or other instrument in writing offered to be recorded, fifty cents."

Section 5 provides:

> "That the several Registers of Wills shall demand and receive for the probate of a will and letters testamentary thereon, the sum of fifty cents, and for granting letters of administration, the sum of fifty cents."

In the Act of 15th March, 1832 (P. L. 135), entitled "An act relating to 'registers and registers' courts,'" the following provision is made with reference to State tax:

> "On the probate of any will, and the granting of letters testamentary thereon, also on the granting of any letters of administration every Register shall demand and receive for the use of the Commonwealth in each case, the sum of fifty cents."

Again, in the Act of 2nd April, 1868 (P. L. 3), entitled "An Act to ascertain and appoint the fees to be received by the several officers of this Commonwealth,' it is provided in section 7 under the head of "Fees of Registers of Wills" as follows:

> "Register to demand and to receive for the use of the Commonwealth on every probate of a will, and letters testamentary thereon, fifty cents. On every letter of administration granted, fifty cents."

It therefore appears that in the exercise of his office of recorder it was the duty of the said J. C. Rutter, Jr., to demand and receive for the use of the Commonwealth the sum of fifty cents on every deed and on every mortgage *or other instrument in writing* offered to, be recorded. The oaths, bonds, and commissions in question were instruments in writing. They were offered for record and were recorded. The recorder had the right to demand from the persons

offering these instruments in writing for record, the sum of fifty cents upon each instrument. It was his duty, under the law, to demand and receive this tax for the Commonwealth. If he failed to collect it from the parties offering the instruments in writing for record, that fact cannot affect his liability to account for the tax in question to the Commonwealth. The recorder may be as generous as he sees proper with reference to the collection of his own fees, but he cannot be generous at the expense of the Commonwealth. If it is true, as alleged by the said J. C. Rutter, Jr., that in many cases the oath and bond of an officer were both printed on one sheet of paper, that sheet of paper, no matter what it contained, would be the "instrument in writing," and but one tax of fifty cents should be collected for both bond and oath, if they were contained in the one instrument.

With reference to the bonds, commissions and oaths of justices of the peace, the Act of 13th June, 1840 (P. L. 689), must be taken into consideration. Section 5 of that Act provides as follows:

> "No State tax shall hereafter be charged on account of recording the commission, oath, bond, or other paper connected with the election, and appointment of aldermen and Justices of the Peace, within this Commonwealth."

You are therefore advised with reference to the instruments recorded by the said J. C. Rutter, Jr., by virtue of his office of recorder of deeds, that he is liable to the Commonwealth for the State tax of fifty cents on each oath, bond, and commission offered as a separate instrument in writing for record, and recorded by him, except the oaths, bonds, and commissions of aldermen and justices of the peace, upon which no State tax is collectible.

With reference to the wills upon which the said J. C. Rutter, Jr., alleges he collected no State tax, it is to be noted that it was his duty, exercising his office of register of wills, to demand and receive for the use of the Commonwealth on the probate of any will and the granting of letters testamentary thereon, the sum of fifty cents. The position taken by the said J. C. Rutter, Jr., that he was not bound to collect the State tax of fifty cents on wills probated, but upon which no letters testamentary were issued, does not seem to be tenable.

It frequently occurs that wills of persons dying testate in the county are probated, but no letters testamentary issued thereon, for different reasons. Where the decedent had no personal estate there may be no necessity for letters testamentary. The two acts of probating a will and granting letters testamentary thereon, are separate and distinct services rendered by the register, but for the purpose of fixing his fees and for the purpose of providing for the State

tax these two acts are combined and a single fee, and a single tax provided for. It is evidently the intent of the law that a separate fee and a separate tax cannot be collected upon each of these two acts. The important thing is the probating of the will. The granting of letters testamentary is incidental thereto. It would seem to follow that when a will is probated the register's fee and the State tax are both payable. If letters testamentary are also issued, no further fee nor tax is collectible. Where a will, however, has been probated in one county and it is necessary or desirable to record a certified copy thereof in another county, I am of the opinion that no State tax is collectible for recording such certified copy. The State tax is collectible in the county where the will was originally probated. The officer of the county in which the certified copy is recorded performs that service as register and not as recorder of deeds. Such copy is, therefore, not an instrument in writing recorded by the recorder of deeds, within the meaning of Section 4 of the Act of 1830, supra.

You are therefore advised that with reference to the wills probated in Columbia county, the said J. C. Rutter, Jr., is liable for the State tax thereon whether letters testamentary were granted on said wills or not; but with reference to the certified copies of wills probated elsewhere in the Commonwealth and recorded in Columbia county, he is not liable to the Commonwealth for the State tax.

Very respectfully yours,

M. HAMPTON TODD,

Attorney General.

MERCANTILE TAXES.

The act of April 25, 1907, equalizing taxation of restaurants, eating houses and cafes, the act of May 25, 1907, imposing license tax on keepers of shooting galleries, shuffle board rooms, etc., and the act of May 7, 1907, imposing license tax on all stock brokers, bill brokers, etc., should be put in effect during tax year of 1908. Their enforcement in 1907 is impossible.

Office of the Attorney General,
Harrisburg, Pa., July 9, 1907.

Hon. T. A. Crichton, Deputy Auditor General, Harrisburg, Pa.:

Sir: Your communication of June 12th enclosing inquiries addressed to you from the President of the Board of Mercantile Appraisers of Philadelphia, the treasurer of Lancaster county, and the treasurer of Delaware county, has been duly recived.

The substantial question raised by your communication and referred to in said inquiries, relates to the time at which the three

Acts of Assembly hereinafter mentioned—all of which are connected with the mercantile tax system of the Commonwealth—become operative. These Acts of Assembly are as follows:

1st. Act No. 93, approved April 25, 1907, entitled "An Act to equalized taxation of restaurants, eating-houses, and cafes."

2nd. Act No. 190, approved May 25, 1907, entitled "An Act to provide revenue by imposing a license-tax on the keepers of all shooting-galleries, shuffle-board-rooms, billiard or pool-rooms for purposes of profit, or any other places in which any game is played on a table with the use of balls and cues; and bowling alleys, ninepin-alleys, tenpin-alleys, or other alleys or places in which any game is played with the use of balls or pins, or other objects; providing for the collection of said tax, and imposing certain duties upon mercantile appraisers and county treasurers."

3rd. Act No. 139, approved May 7, 1907, entitled "An Act to provide revenue by imposing a license-tax on all stock brokers, bill brokers, note brokers, exchange brokers, merchandise brokers, factors or commission merchants, real estate brokers and agents, and pawnbrokers, whether persons, firms, limited partnerships, or corporations; providing for the collection of said tax, and imposing certain duties on county treasurers and mercantile appraisers."

It is contended by some of the citizens of the Commonwealth affected by the terms of the above mentioned Acts of Assembly, that the taxes therein provided for are to be assessed and paid under the provisions of these acts of Assembly for the present mercantile tax year of 1907. The material inquiry, therefore, arising, is whether or not these acts are operative in the matter of the assessment and collection of mercantile taxes for the mercantile tax year beginning May 1, 1907.

A brief discussion of each of the acts, in the order in which they are mentioned above, will be conducive to clearness. Prior to the approval of said Act No. 93, eating-houses, restaurants, etc., were licensed and taxed under the provisions of sections 20, 21, 22 and 23 of the Act of 10th April, 1849 (P. L. 570) entitled "An Act to create a sinking fund and to provide for the gradual and certain extinguishment of the debt of the Commonwealth."

Under the provisions of that Act, eating-houses were classified into eight classes and the amount of tax assessed in proportion to the amount of business transacted. The said Act No. 93, approved April 25, 1907, provides for the payment of an annual mercantile license tax of two dollars and one mill additional on each dollar of the whole volume, gross, of the business transacted annually. Section 2 of Act No. 93 provides that "the enforcement of the provisions of this Act shall be under and in accordance with the laws of this Commonwealth now in force, relating to the levy and collection of

mercantile license and tax." It therefore becomes material to investigate the laws now in force relating to the levy and collection of mercantile taxes. The Act of April 20, 1887 (P. L. 60), provides for the appointment of the appraiser of mercantile and other licenses and for the publication of the list of names and classification of each person subject to a tax. The general system of assessing and collecting mercantile license taxes, however, is provided for in the Act of 2nd May, 1899 (P. L. 184) entitled "An Act to provide revenue by imposing a mercantile license tax on venders of or dealers in goods, wares, and merchandise, and providing for the collection of said tax:" By this Act it is provided, for the purpose of carrying into effect its provisions, that the appointment of mercantile appraisers shall be made annually on or before the 30th day of December of each year, by the county commissioners, except in cities of the first class, in which cities the Auditor General of the State and the treasurer of the city, are authorized and required to appoint five suitable citizens, all of whom shall not be of the same political party, and whose term of office shall be three years. The act provides that it shall be the duty of the Auditor General to prepare and have printed proper blanks, which blanks are to be distributed by the respective mercantile appraisers for the purpose of securing from the persons subject to the payment of a tax the necessary data for the settlement of an account against such taxable by the County Treasurer.

By Section 9 of said Act of 1899, it is made the duty of every mercantile appraiser on or before the 1st day of May in each year, to certify to the County Treasurer a correct list of all taxables, their classification, and the amount of license due from each taxable. This list is to be kept by the County Treasurer for his guidance in hearing appeals, and in collecting the taxes. After appeals have been heard, and exonerations made, the corrected list is to be certified by the County Treasurer to the Auditor General on or before the 1st day of July of each year. By section 7 of said Act, it is made the duty of every city or county treasurer to sue for the recovery of all licenses duly returned to him by the mercantile appraiser, if not paid on or before the 1st day of July in each year, within ten days after that date. By the Act of 14th June, 1901 (P. L. 565), the time for bringing suit for delinquent mercantile taxes, is extended from ten days after the 1st of July to thirty days after that date.

The blanks prepared by the Auditor General as above mentioned, are under the provisions of the said Act of 1899, to be forwarded by mail by the mercantile appraiser to the taxables at least ten days prior to the dates upon which he makes personal visits to the places of business of the taxables. After mailing such blanks the mercantile appraiser must personally visit the store, or other place of business of each taxable. It is therefore apparent that under the Act of 1899

the mercantile appraiser must be appointed on or before the 30th day of December of each year, and between the date of his appointment and the first day of May in the suceeding year, must mail the blanks specified in the Act to the taxables, secure from them the necessary data for the settlement of accounts against them, make personal visits to the places of business of taxables, publish the list, where such publication is provided for by law, and place in the hands of the County Treasurer on or before the said 1st day of May a correct list of taxables and the amount due from each taxable. The said Act No. 93 was not approved until the 25th day of April, 1907. It is to be enforced in accordance with the mercantile license and tax laws of the Commonwealth.

Prior to the date of its approval, the mercantile appraisers of the respective counties of the Commonwealth must have sent out the above mentioned blanks, made their personal visits, and published their lists containing assessments against restaurant keepers, etc., under the provisions of said Act of 1849. It is impossible for the mercantile appraisers and County Treasurers to make new assessments under the said new Act No. 93, in accordance with the provisions of the said Act of 1899, between the date of the approval of the new Act and the 1st day of May, 1907. It follows, therefore, that the new Act No. 93 cannot become operative until the assessments are made for the year 1908.

Coming now to Act No. 190, approved the 25th day of May, 1907, it is to be noted that this Act not only changes the amount of the tax upon billiard and pool tables, and ninepin-alleys and tenpin-alleys, from thirty dollars for the first table or alley, and ten dollars for each additional table or alley—the rate under existing legislation—to twenty dollars for the first table or alley, and ten dollars for each additional table or alley, but also enlarges the list of articles and games subject to tax, including under its terms shooting-galleries, shuffle-boards and other games played with the use of balls or pins. It is provided by section 3 of this Act that it shall be the duty of every mercantile appraiser, in each of the counties of the Commonwealth, to ascertain and assess each and every keeper of shooting-galleries, etc., in the manner provided by law for the assessment of mercantile license taxes. By Section 4 it is made the duty of such appraiser to certify to the County Treasurer a correct list of all persons, firms or corporations assessed in the county in which he is appointed, which list, after appeals have been taken and exonerations made, shall be certified by the County Treasurer to the Auditor General and State Treasurer, on or before the first day of January in each and every year. It is clear that the license tax provided for in this Act is to be assessed in the manner provided by law for the assessment of mercantile license taxes. As this Act was not approved until the

25th day of May, 1907, it is absolutely impossible for mercantile appraisers and County Treasurers to make assessments, under the provisions of this new Act, for the year 1907. It follows that assessments cannot be made under this Act until the regular time for making assessments in the year 1908.

With reference to Act No. 139, approved the 7th day of May, 1907, an examination of its provisions shows that the classification of brokers subject to a tax is enlarged, and the methods of assessing the tax is changed from the present method of 3 per cent. upon their annual receipts from commissions, discounts, etc., to a method based upon a classification of the brokers, subject to tax, according to the amount of business transacted. This Act was not approved until the 7th day of May, 1907, and contains, under its provisions, a system of securing data and assessing the tax provided for in harmony with the system provided for by the above mentioned mercantile tax Act of 1899.

The list of persons assessed must be certified to the County Treasurer by the mercantile appraiser or Board of Mercantile Appraisers, on or before the 1st day of May in each year. It is manifest, therefore that assessments cannot be made under the provisions of this Act for the year 1907. Each of the last two mentioned Acts, to wit: Act No. 190 and Act No. 139, contain provisions indicating an intent upon the part of the Legislature to avoid interference with cases pending, assessments made and licenses due at the time of the approval of the respective Acts. The repealing clause in Act No. 190 is as follows: "All Acts or parts of Acts inconsistent herewith are hereby repealed, except as to pending cases or licenses due thereunder," and the repealing clause of Act No. 139 is as follows: "All Acts or portions of Acts inconsistent herewith be and the same are hereby repealed except as to pending cases and assessments made thereunder."

Mercantile license tax assessments are made prior to the 1st day of May each year. The license taxes are due when the lists are placed in the hands of the respective county treasurers, to wit: on or before the 1st day of May each year. The lists are placed in the hands of the County Treasurers for their guidance in hearing the appeals and collecting said license taxes; but no matter what the legislative intent may have been as to the time at which the acts in question should become operative, it is clear that assessments cannot be made under their provisions for the year 1907.

You are therefore advised that the assessments already made for the year 1907, under the law as it existed prior to the approval of the acts in question, against the taxables affected thereby, are the only assessments upon which mercantile license taxes can be paid by, or collected from, taxables this year.

Assessments for the year 1908 should be made under the provisions of the new acts of assembly above specified which at that time can become fully operative without conflicting with the general mercantile license tax law.

I return herewith all papers submitted to me.

Very truly yours,

J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

GENERAL APPROPRIATION ACT

Under Section 1 of the General Appropriation Act of 1907 (P. L. 952) bills incurred prior to the beginning of the fiscal year should be paid from the amounts appropriated for their purpose, and the appropriation is not limited to the deficiency items specifically mentioned in the Act.

Office of the Attorney General,
Harrisburg, Pa., Oct. 30, 1907.

T. A. Crichton, Esq., Deputy Auditor General:

Sir: Your letter of the 12th inst., in which you call my attention to the language of Section 1 of the General Appropriation Act of 1907 (P. L. 752), and in which you ask my opinion whether the language there used includes any other bills of the respective departments of the State Government than the deficiency items specifically mentioned in the act, was duly received.

The language of the section to which you refer is as follows:

> "That the following sums, or so much thereof as may be necessary be and the same are hereby specifically appropriated to the several objects hereinafter named, for the two fiscal years commencing on the first day of June, one thousand nine hundred and seven, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending May thirty-first, one thousand nine hundred and seven, to be paid out of any moneys in the Treasury not otherwise appropriated."

In my opinion, this section is to be construed with the same effect as if it were re-written in connection with the appropriations made to each department, and, thus construed, its meaning is plain. Take, for example, the appropriations to the State Library, wherein, after providing for the salaries of the respective officials and employes, it further provides for the purchase of law and miscellaneous books, parliamentary papers and incidental expenses. Contracts for such

purposes are made from time to time, as opportunity may occur, and are paid for when the accounts are presented. It may, and no doubt frequently does happen, that a purchase is made or an expense incurred prior to the end of the fiscal period, and the account therefor not presented for payment until after the new fiscal year has begun. To cover such a condition the Act says that the amount appropriated may be expended for the purposes named during the two fiscal years beginning June first, 1807, "and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending May thirty-first one thousand nine hundred and seven;" that is, for bills incurred for the purposes named prior to the beginning of the fiscal year. The same rule applies to all the other departments of the State Government.

Very respectfully yours,
M. HAMPTON TODD,
Attorney General.

PRIMARY ELECTION EXPENSES

The expenses of conducting the uniform primary election under the act of Feb. 17, 1906, P. L. 41, held prior to June 1, 1907, can be paid out of the appropriation of $1,159,248, made by the act of June 13, 1907, P. L. 596.

The provisions of the primary election law of 1906 are a pledge to the respective counties that they shall be reimbursed the expenses of conducting such elections.

While legislation is usually to be construed prospectively, yet the language of the appropriation act of 1907 sufficiently indicates the intention of the legislature to repay the counties the moneys they had already expended to carry out the provisions of the uniform primaries act of 1906.

Office of the Attorney General,
Harrisburg, Pa., Dec. 12, 1907.

T. A. Crichton, Esq., Deputy Auditor General, Harrisburg, Pa.:

Sir: In reply to your inquiry as to whether or not the expenses incident to conducting the uniform primaries, under the provisions of the Act of February 17, 1906, (P. L. 41), held prior to June 1st, 1907, can be paid out of the appropriation of $1,159,248.00, made by the Act of June 13, 1907, (P. L. 596), I beg to say I am of opinion that they can be so paid.

The Act of 1906 makes no specific appropriation of any moneys for such purpose. It does provide, however, that the county commissioners shall send itemized statements of such expenses, accompanied by receipted voucher, to the Auditor General, who, if he finds the same correct, is thereupon required to "draw a warrant on the State Treasurer, for the proper county, for the amount so approved, which

shall be paid by the State Treasurer out of money in the State Treasury not otherwise appropriated."

The provisions of this Act are a pledge by the State to the respective counties that they shall be reimbursed the expenses of conducting such elections. This was followed by the Act of June 13, 1907, referred to, the language of which is:

> "That the sum of one million one hundred and fifty-nine thousand two hundred and forty-eight dollars ($1,19,248.00), or so much thereof as may be necessary, be and the same is hereby specifically appropriated for the purpose of the payment of expenses of holding Uniform Primaries."

There is nothing in the language of this Act which limits the appropriation to payment of the expenses of future primaries, or indicates that such was the intention of the Legislature. To so interpret the language would subject the several counties of the State to a gross injustice. While legislation is usually to be construed prospectively, nevertheless I am of opinion that the language of this Act sufficiently indicates the intention of the Legislature to repay the counties the moneys which they had already expended to carry out the provisions of the Uniform Primaries Act of 1906, and I therefore advise you, after the receipt of the statements and vouchers, as required by the provisions of the Act, and a proper audit of the same by you, to pay to the respective counties the amount of such expenses.

Very truly yours,

M. HAMPTON TODD,
Attorney General.

JUDICIAL SALARIES—ADDITIONAL COMPENSATION—SOLE JUDGE IN DISTRICT—COMMISSION OF ADDITIONAL JUDGE—ACT OF APRIL 14, 1903.

The additional compensation provided by the Act of April 14, 1903, P. L. 175, so long as a judge shall be the sole judge in certain districts specified in the act, is payable only so long as the condition exists, and upon an additional judge being commissioned in such district the payment of the additional compensation ceases. This provision does not diminish the salary, but merely provides that the additional compensation shall be paid only when the extra work is being done.

Office of the Attorney General,
Harrisburg, Pa., April 3, 1908.

Hon. Robert K. Young, Auditor General, Harrisburg, Pa.:

Sir: Your predecessor in office, under date of April 9, 1907, wrote to me, enclosing letter of William I. Schaffer, Esq., of April 4, 1907,

as attorney for Hon. Isaac Johnson, President Judge of the 32nd Judicial District, wherein he contends that Judge Johnson is entitled to be compensated, under the Act of April 14, 1903, at the annual salary of $7,000.00, and asking for the opinion of this Department as to the correctness of that contention.

Under date of May 2, 1907, I wrote to Auditor General Snyder, acknowledging receipt of his letter of April 9, 1907, and stated therein that I understand that he had settled the salary of Judge Johnson at the rate of $6,000.00 a year after his colleague, the Hon. William B. Broomal, was appointed Associate Law Judge of that district, and I advised him that, in my opinion, his construction of the law was correct, and I promised to write an opinion, confirmatory of this, to be handed to you. Recently I have received a letter from Mr. Schaffer, under date of March 28, 1908, requesting me to write you a more formal opinion.

The facts in connection with the above inquiry are that the Hon. Isaac Johnson was commissioned as President Judge of the 32nd Judicial District of the Commonwealth on the 3rd day of December, 1900. The said district has a population of more than 90,000 and less than 500,000. Under the provisions of the Act approved the 28th day of February, 1907, (P. L. 4), entitled "An act to provide for an additional law judge of the several courts of the thirty-second Judicial District," Hon. William B. Broomall was commissioned, on the 7th day of March, 1907, such additional law judge, to serve until the first Monday of January, 1908. He took the oath of office on the 16th day of March, 1907. He has since been duly elected by the qualified voters of the district, and has been commissioned as such Additional Law Judge for the period of ten years from the first Monday of January, 1908.

The Auditor General settled the salaries of the President and Additional Law Judge of said District on the basis of $7,000.00 a year to Judge Johnson from March 1 to March 16th, 1907, and since that date on the basis of $6,000.00 a year. The Act of 28th of February, 1907, supra. provides that such Additional Law Judge shall receive the compensation provided by law for judges learned in the law as if said office had been established at the time of and subject to the provisions of an Act entitled "An Act to fix the salaries of Judges of the Supreme Court, the Judges of the Superior Court, the Judges of the Courts of Common Pleas, and Judges of the Orphans Court," approved the 14th day of April, 1903 (P. L. 175). This Act provides, in Section 4, as follows:

> "That from and after the first day of January, one thousand nine hundred and four (1904), the judges of the Court of Common Pleas, learned in the law, in all

> the judicial districts of this Commonwealth, except as hereinbefore provided, shall receive the following compensation:
>
> "In judicial districts having a population of 90,000 and less than 500,000, the annual salary of the judges of the Court of Common Pleas, learned in the law, shall be six thousand dollars ($6,000); and in said judicial districts having a population of 90,000 and less than 500,000, where there is only one judge, he shall receive $1,000 additional; and in other judicial districts, having less than 90,000, the annual salary of the judges of the Court of Common Pleas, learned in the law, shall be five thousand dollars ($5,000); but the judges, learned in the law, of the Court of Common Pleas of Dauphin County, shall each receive fifteen hundred dollars ($1,500) additional for trying the Commonwealth's civil cases."

Counsel for Hon. Isaac Johnson contends, first that the salary of a member of the judiciary cannot be diminished during his term of office, and, second, that the action of the Auditor General in making the settlement above referred to is in effect a diminution of the salary of his client during his term of office.

In the recent case of Commonwealth ex rel v. Mathues, 210 P. S. 372. it was decided that the above mentioned Salary Act of 1903 applies to all judges in commission at the time of approval of the Act and not merely to those thereafter to be commissioned. It also decided that the provision of Article III, Section 13, of the Constitution, that "No law shall extend the term of any public officer, or increase or diminish his salary or emoluments, after his election or appointment," has no application to the judiciary and cannot be read into the Judiciary Article, which refers to a separate and co-ordinate branch of the government.

Having passed upon the question then before it, as to whether or not salaries of judges then in commission could be increased by deciding that the constitutional provision relative to increasing or diminishing salaries of officers after their election or appointment had no application to the judiciary, the Supreme Court expressed no opinion on the converse of the proposition, viz: whether or not salaries could be diminished during the term of office of a member of the judiciary. That question was not before the court. In the opinion of the Court below, however, the following language is found:

> "It is not essential to the question before the Court to decide as to the right of the Legislature to diminish the salary of a Judge during the term for which he may have been elected, and we do not make any decision on that point at this time, but we state most emphatically that it is our belief that the Legislature have no right

> to diminish the salary of a Judge during the term for which he may have been elected, and that this protection to the judiciary is not, in any sense, dependent upon Section 13 of Article III of the present Constitution of the State. The case of Commonwealth vs. Mann, 5 W. & S., 403, establishes this point to our mind, beyond a doubt. It is perfectly true that that case was decided under the old Constitution of 1838, which contained in the judiciary section the words 'an adequate compensation to be fixed by law, which shall not be diminished during their continuance of office' and that the phrase 'shall not be diminished during their continuance in office' was stricken from the present Constitution and is not to be found therein, but nevertheless any one who reads that case carefully will see that Judge Rogers did not found his decision exclusively upon that phrase in the old Constitution, but founded it on fundamental constitutional principles, underlying the entire structure of our constitutional government."

The question to be determined, therefore, is whether the settlement made by the Auditor General is in reality a diminishing of the salary of Judge Johnson. He is a judge in a judicial district having more than 90,000 population and less than 500,000. When he was commissioned in 1900 the Salary Act of 1883 was in force. That act provided that, except in the counties of Philadelphia and Allegheny, the judges of the Courts of Common Pleas should receive $4,000 each, except the president Judge of the 12th Judicial District, who should receive $1,000 additional for trying the Commonwealth's civil cases, and provided that in all districts having a population of over 90,000, and having but one judge, the salary should be $5,000 per annum. Under the Act of 1903, supra. Judge Johnson's salary was increased to $6,000, and when in such a district there is only one judge, such judge is to receive $1,000 additional, and it was under this clause that Judge Johnson was paid $7,000 so long as he remained the sole judge of the 32nd Judicial District.

While there is a difference in the language used in these salary acts yet they mean substantially the same thing, viz: that in a judicial district having a population of between 90,000 and 500,000, the salaries of Judges of the Court of Common Pleas, learned in the law, shall, under the Act of 1883, be $4,000, and under the Act of 1903, $5,000, provided, however, that where there is but one judge in such districts he shall receive $1,000 additional as a compensation for the performance of the additional labor entailed upon him by reason of the fact that he is the sole judge in a large county. The provision for the additional compensation is in effect a proviso.

> "A proviso is something ingrafted upon a preceding enactment, and is legitimately used for the purpose of taking special cases out of the general enactments and providing especially for them."

"A proviso in a statute is a clause which defeats its operation conditionally, and differs from an exception, which exempts something absolutely from the operation of the statute by express words in the enacting clause."

"An exception takes out of the statute something that otherwise would be part of the subject matter of it. A proviso avoids them by way of defeasance or excuse."

"An exception is frequently put in the form of a proviso, and not infrequently what is in form a proviso is in addition an enacting clause and enlarges what precedes."

Words and Phrases Judicially Defined,
Vol. 6, page 5756 et seq.

While it has been held that the acceptance of a commission by a judge does not create a contract on the part of the judge to serve for the full term of his commission at the salary fixed by law at the date of his commission, yet in this particular case it is not to be overlooked that when Judge Johnson, as the only Judge of the 32nd Judicial District, accepted his commission in December, 1900, he knew, or is presumed to have known, that the salaries then fixed under the Act of 1883 for each of the Judges of the Courts of Common Pleas throughout the Commonwealth of Pennsylvania, except in the counties of Philadelphia, Allegheny and Dauphin, was $4,000 per annum, with the proviso that in a district having a population exceeding 90,000 the judge of such district, if there is but one thereof, should receive additional compensation to the extent of $1,000. After the Act of 1903 went into effect, and he accepted the increased salary provided by that Act, he did so knowing that the compensation fixed by the legislature for Common Pleas Judge in a judicial district having a population of between 90,000 and 500,000, was $6,000, subject to the condition that if there is but one judge to do all of the work in a judicial district of this size, he should receive an additional compensation of $1,000 for additional work.

The additional compensation provided for under these Acts of Assembly, in my opinion, is payable only so long as the conditions upon which its payment is based exist. Since the reason for the payment of additional compensation ceases by reason of the creation of the office of Additional Law Judge in such district, the payment of the additional compensation also ceases. The reason for the payment no longer existing, the payment itself ceases.

But waiving all questions of the acceptance of the commission with the condition impliedly attached thereto, to the effect that the additional compensation should be paid only so long as Judge Johnson remained the sole judge in his district, I am of opinion that the fundamental legislative enactment relative to judicial salaries in districts such as the one in question, is that the salaries of the judges therein

shall be $6,000 per annum. This is the amount fixed by the legislature in obedience to the mandate of the Constitution that judges shall "receive for their services an adequate compensation which shall be fixed by law and paid by the State."

Recognizing the fact that in certain districts such as the county of Dauphin, and in districts having between 90,000 and 500,000 population, where but one judge is provided for, such judges have extra work, the legislature had provided additional compensation for such extra work. Up until the creation of the office of Additional Law Judge in his district, Judge Johnson was entitled to additional compensation for extra work. It follows, then, that, as soon as the extra work ceases by the creation of the office of Additional Law Judge, the additional compensation ceases with it.

The settlement made by the Auditor General does not diminish Judge Johnson's salary during his term of office. His salary is $6,000 per annum, and it is provided that if he does extra work he shall receive an additional $1,000 for the performance of the same. He no longer performs the extra work for which the additional compensation was provided, and he is, therefore, entitled to receive but the salary of $6,000 from the date Judge Broomall took the oath of office, viz: March 16, 1907.

This disposition of the matter is in haromny with the decision in Commonwealth ex rel v. Mathues, supra, to the effect that an Act of Assembly relating to the salaries of judges will not be construed so as to give judges upon the same bench, engaged in the performance of exactly the same judicial functions, different compensation.

I therefore advise you that settlement of the salaries of both Judge Johnson, as president Judge, and Judge Broomall, as Associate Law Judge, of the 32nd Judicial District, should be made on the basis of $6,000 per annum.

Very respectfully,
M. HAMPTON TODD,
Attorney General.

STATE HOSPITAL FOR TREATMENT OF CRIMINAL INSANE.

So much of the appropriation for the erection of a State Hospital for the Criminal Insane as was unexpended on May 31, 1907, did not then lapse, but was available for use thereafter.

Office of the Attorney General,
Harrisburg, Pa., June 15, 1908.

Hon. T. A. Crichton, Deputy Auditor General, Harrisburg, Pa.:

Sir: I have before me your letter of February 19th, 1908. You call my attention therein to the Act of May 11, 1905 (P. L. 400), creating

a Commission to select a site and erect a State Hospital for the treatment and care of the criminal insane, and making an appropriation therefor, and you ask my opinion whether so much of said appropriation as was not used prior to May 31, 1907, has lapsed to the Treasury or is still available for the purposes named in the Act.

The language of the Act, out of which this question arises, will be found in Sections 6 and 7 as follows:

> "Section 6. To enable the said commissioners to purchase suitable land for a site for said hospital, the sum of ten thousand dollars, or so much thereof as may be necessary, is hereby specifically appropriated; to be drawn from the treasury as the same may be required, on warrants drawn by the Auditor General in the usual manner, vouchers or statements to be furnished before any warrant is issued; Provided, That so much of said appropriation of ten thousand dollars, hereby made, as may not be necessary for the purchase of said land, shall revert to and be applied to the fund hereinafter appropriated for the erection of buildings for said hospital.
>
> "Section 7. To enable the commissioners to commence the erection of said buildings, the sum of one hundred and fifty thousand dollars, or so much thereof as may be necessary, is hereby specifically appropriated, to be drawn from the Treasury as the same may be required, on warrants drawn by the Auditor General in the usual manner."

I understand the facts to be that, after the organization of the Commission, they proceeded to the selection of an appropriate site, which occupied considerable time. The choice of the Commission finally fell upon a tract of 625 acres of desirable arable land located on the Pocono plateau on the eastern slope of the Moosic Mountains in Wayne county. This land was owned by the Delaware & Hudson Railway Company, and was conveyed by it to the State for a nominal consideration of $5.00. Subsequently Mr. J. C. M. Shirk, of Philadelphia, was selected as Architect for the Commission. There being in the State no institution of a similar nature for guidance, the Commission and the Architect made several trips to the few existing similar institutions in other States of the Union to study their facilities and consult their officials in order that they might have their experience to assist them in designing and constructing the buildings to be erected under the appropriation. The Architect thereupon prepared plans for said buildings, which have been approved by the State Committee on Lunacy and the State Board of Public Charities, and are believed to embrace the most advanced thought upon this very important subject.

So much time was consumed in the preliminary work of the Commission that no contract has been made for the erection of the build-

ings. The unexpended balance of the appropriation made under the Act of May 11, 1905, supra, on May 31, 1907, amounts to upwards of $125,000.

The question for determination, therefore, is: Did the specific appropriation, made in this case to enable the Commissioners to commence the erection of said buildings, lapse into the Treasury on May 31, 1907, the expiration of the fiscal period of appropriations made in the session of the Legislature of 1905? There is nothing in the language of the Act, making the appropriation, which places any limit on the time within which it must be expended. Nevertheless a specific appropriation may not remain indefinitely unexpended, but must be expended within a reasonable time for the accomplishment of the purpose for which it was made. In this case there is nothing that shows unreasonable delay on the part of the Commission. The appropriation is made "to enable the Commissioners to commence the erection of said building." This language is evidence of a legislative intent that the appropriation would be followed by such other appropriations as should be necessary for the completion of the requisite buildings contemplated by the purpose of the Act of Assembly creating the Commission.

To carry out this purpose why should not the money appropriated therefor be so expended? What good reason can be urged for its lapsing into the Treasury of the State and thereby further delay the commencement of the buildings until another Legislature shall make the appropriation over again? The work having been commenced, it should be duly prosecuted, and the next Legislature will no doubt take into consideration the unexpended amount of the previous appropriation in making further appropriations to continue and complete the buildings begun and partly constructed and paid for out of previous appropriations. No great public work, which requires more than two years to be completed, can be successfully prosecuted in any other way.

There is a wide distinction between an appropriation made by each Legislature in succession for the maintenance of a penal institution after being built and an appropriation made for the erection of the buildings of such institution. The appropriation for maintenance comes within the provisions of the Act of Assembly of March 16th, 1899 (P. L. 8), which provides that unexpended balances of such appropriations "shall revert to the State Treasury at the close of the two fiscal years for which it is made." It is probable that the purpose of this last mentioned Act was to compel the speedy settlement with the Auditor General of the accounts of the several institutions set forth in the Act, but, whether this be so or not, the language of the Act shows that it was unexpended balances of appropriations for maintenance of such institutions that reverted to the Treasury at the close of the two fiscal years for which they were made.

It is also not to be overlooked that the language of this last mentioned Act is limited to appropriations which are made for "two fiscal years." As heretofore noted, there is nothing in the Act creating the Commission which limits in any way the time within which the appropriation in question is to be expended.

I am therefore of opinion that, under the language of the Act making the appropriation and in view of the facts above recited, the unexpended balance of said appropriation on May 31, 1907, did not lapse or revert to the State Treasury, but the same remains and is available for the purpose for which it was specifically appropriated.

Very truly yours,

M. HAMPTON TODD,
Attorney General.

SCHOOL DISTRICT BONDS.

Acts of 29th April, 1844 (P. L. 486) and April 30th, 1864 (P. L. 219).

The treasurers of the various school districts should make return of the bonds issued by them direct to the Auditor General for taxation.

Such bonds should not be returned by individuals to the local assessors.

Office of the Attorney General,
Harrisburg, Pa., Dec. 17, 1908.

Hon. T. A. Crichton, Deputy Auditor General, Harrisburg, Pa.:

Sir: I have before me your letter of recent date enclosing certain correspondence and memoranda, and asking for an official opinion as to the proper method for the return for taxation of bonds issued by the school districts of the Commonwealth.

It appears, from your letter, that it has been the practice of the Auditor General's Department to require the individual holders of school district bonds to return such securities to the local assessors for taxation and in cases where the payment of the tax is assumed by the district the practice has been to require the district officers to return the amount of bonds owned by residents of Pennsylvania to the local assessors for such taxation, and to pay the tax due thereon. The question is now raised whether, under the Act of the 29th of April, A. D. 1844, (P. L. 486), and the Act of 30th of April, 1864, (P. L. 219), these bonds should not be returned by the treasurers of the various school districts issuing them directly to the Auditor General, and the tax deducted and paid into the State Treasury in the same manner as county and other municipal bonds are now returned for taxation, and you desire an official opinion from this Department upon this point.

Section 32 of the Act of 1844 provides that "all public loans * * * * * * except those issued by the Commonwealth" * * * "shall be valued and assessed and subject to taxation." This language is applicable in this connection only as showing that under this law all public loans were considered together as a specific class for taxation. The language of Section 4 of the Act of 1864, above referred to, however, is specifically in point "that the treasurer of each county and city, the burgess or other chief officer of each incorporated district or borough of this Commonwealth, within ninety days after the passage of this Act shall make return under oath or affirmation to the Auditor General, of the amount of scrip, bonds or certificates of indebtedness outstanding by said county, city, district, borough, or incorporation * * * as the same existed on the first day of January, one thousand eight hundred and sixty-four, and of each succeeding year thereafter, together with the rates of interest thereon for each of those periods," in order that taxes might be assessed and collected for State purposes on such indebtedness.

The question is whether or not this language is broad enough to include school districts; if it is, then clearly the bonds of such districts must be returned to the Auditor General and not to the local assessors, and the tax must be deducted and paid to the State Treasurer by the school districts instead of being assessed against the individual holders of the bonds. For the settlement of this question it is not necessary to analyze or define the legal status of the various civil sub-divisions of the Commonwealth, nor is it necessary to discuss and determine whether or not a school district is technically a municipality.

The several school districts within this Commonwealth were created bodies corporate by the 18th Section of the Act of 8th of May, 1854 (P. L. 620), which defines their corporate duties and powers, and the 22nd Section of the same Act confers upon said school districts the corporate power to issue bonds. It is therefore only reasonable for us to assume that the Legislature of 1864, ten years after the creation of these districts, took cognizance of their existence and indebtedness, and that the word "district" used in the above quoted language of the 4th Section of the Act of 1864 was meant to apply to school districts.

This conclusion is logical and is warranted by the fair interpretation of the acts of Assembly, and if put into practice will harmonize and make more perfect the system for the assessment and collection of taxes. Under the present method the Auditor General has no knowledge of the amount of bonds issued by the various school districts of the State now outstanding and owned by residents of the Commonwealth and many of them may thus escape from bearing their proper burden of taxation.

I am therefore of opinion and advise you that the present method should no longer be followed, but that your Department should issue directions to the treasurers of the various school districts to make return of the bonds issued by them direct to the Auditor General, together with such other information as that official may require, and that such bonds shall no longer be returned by the individual owners to the local assessors for taxation.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

OPINIONS TO THE STATE TREASURER.

OPINIONS TO THE STATE TREASURER.

REYNOLDSVILLE DISTILLING COMPANY.

The Reynoldsville Distilling Company was a corporation organized under the laws of Pennsylvania to manufacture and sell whiskey, etc., and operated in the township of Winslow, Jefferson county. Oct. 9, 1905, it paid to the county treasurer $1,000, the license fee for a new distillery for the first year under the act of July 30, 1897. No sales were made the first year, nor were any sales made of its product up to this time, 1907. However, the manufacture was carried on, and the company became desirous of selling its product within the state in original packages of a capacity of not less than forty gallons. The company applied to the local court for a distiller's license under the act of June 9, 1891, but was refused; the Superior Court, on appeal, affirmed the lower court. Oct. 18, 1907, the company tendered the state treasurer its certified check for $500, requesting a state liquor license under the act of June 20, 1893, to sell within the state original packages of not less than forty gallons. The company made an affidavit that the product of the company for the year preceding the affidavit (Oct. 12, 1907) was four hundred and thirty-five barrels; that the distillery was not in operation and would not be for several weeks. The production from October, 1905, to October, 1906, was four hundred and two and one half barrels, making a total of eight hundred and thirty-seven barrels since the payment of the said $1,000.

Held, that there is no authority in law for the state treasurer to issue to such company any kind of a state liquor license authorizing such company to sell the product of its distillery within this commonwealth in original packages of a capacity of not less than forty gallons, but that the company might avail itself of the privileges and immunities conferred by the said act of 1893 by payment to the proper officer of the fees fixed and regulated by the said revenue act of July 30, 1897.

Office of the Attorney General,
Harrisburg, Pa., November 7, 1907.

Hon. William H. Berry, State Treasurer, Harrisburg, Pa.:

Sir: I am in receipt of your inquiry asking to be advised by this Department as to the action to be taken by you in the matter of the tender to you, by the Reynoldsville Distilling Company, of its certified check for $500.00 with the request that you, in your official capacity as State Treasurer, issue to it a State Liquor License under the Act of June 20, 1893, (P. L. 474) authorizing it, as a distiller of spirituous liquors, to sell at its distillery situate in Winslow township, Jefferson county, Pennsylvania, spirituous liquors of its own manufacture within this Commonwealth in their original packages

of a capacity of not less than forty (40) gallons. I understand the facts in connection with this tender and request to be as follows:

The Reynoldsville Distilling Company is a corporation duly organized and existing under the laws of this Commonwealth for the purpose of buying, selling, manufacturing, and distilling spirits, whiskeys, brandies, and other spirituous liquors, operating in the township of Winslow, Jefferson county, Pennsylvania. On the 9th day of October, 1905, the said Reynoldsville Distilling Company paid to the county treasurer of Jefferson county the sum of $1,000.00 being the amount of license fee fixed by the Act of July 30, 1897 (P. L. 464), as the license fee for a new distillery for the first year, and obtained from said county treasurer his receipt therefor. The said Reynoldsville Distilling Company made no sales of its product during said year by reason of the fact that its product had not sufficiently aged to be marketable, nor has the said Reynoldsville Distilling Company, up to the present time, made any sales of its product. The manufacture of spirituous liquors has been carried on down to the present time and the said company is now desirous of making sales of its product within this Commonwealth in original packages of a capacity of not less than forty (40) gallons. The said Reynoldsville Distilling Company, on the 20th day of December, 1906, made application to the court of quarter sessions of Jefferson county for a distiller's license under the provisions of the Act of 9th June, 1891 (P. L. 257), but said court on January 28, 1907, refused to grant said license to said distilling company, from which action of the court of quarter sessions an appeal was taken by said company to the Superior Court of Pennsylvania. On the day of October, 1907, the said Superior Court affirmed the refusal of said license by the court below. On the 18th day of October, 1907, the said Reynoldsville Distilling Company tendered to you as State Treasurer its said certified check for $500.00 requesting the license above mentioned, which said certified check is accompanied by an affidavit made by the president of said Reynoldsville Distilling Company, setting forth the fact of the incorporation of said company, the payment of $1,000.00 on the said 9th day of October, 1905, to the county treasurer of Jefferson county, and further setting forth "that the product of the said distilling company owned by the said Reynoldsville Distilling Company during the year immediately preceding the date of this affidavit (October 12, 1907) was 435 barrels, and that the said distillery is not now in operation, nor will it be in operation for several weeks from the date hereof." It is also stated in a letter from counsel for the said company that its production between October, 1905 and October, 1906 was 402½ barrels, making a total of 837½ barrels produced since the date of payment of said $1,000.00.

Under this state of facts three questions arise:

First. Is there any authority in law for you to issue to the said Reynoldsville Distilling Company a receipt for a distiller's license tax or a State liquor license authorizing said company to sell the product of its distillery within this Commonwealth in original packages of a capacity of not less than forty (40) gallons, for a period of one year from the date of said receipt or license as requested by said company?

Second. If the said Reynoldsville Distilling Company desires to avail itself of the privileges of the Act of June 20, 1893 (P. L. 474), should the tax therein mentioned be paid directly to you as State Treasurer, or to the treasurer of Jefferson county, to be paid by him into the State Treasury, and

Third. How shall the amount of said tax be ascertained?

At the outstart, it is to be observed that the thing requested by the Reynoldsville Distilling Company in exchange for its check is practically a license authorizing it to sell spirituous liquors of its own manufacture within this Commonwealth in their original packages of a capacity of not less than forty (40) gallons. It is also to be observed that as a general proposition brewers and distillers are licensed to sell their product by the court of quarter sessions of the proper county, under the Act of June 9, 1891 (P. L. 257), as modified in so far as the license fees are concerned by the Act of July 30, 1897 (P. L. 464); but there is a method prescribed by the Act of June 21, 1897, (P. L. 176), and the said Act of July 30, 1897 (P. L. 464), by which any brewer of malt or brewed liquors within this Commonwealth may obtain the privilege of selling malt or brewed liquors manufactured at his or its brewery, to dealers licensed by the court, in packages of not less than twelve pint bottles or in casks of not less than one-eighth barrel, under what may be termed a State Brewers' License, authorized, by the said Act of July 30, 1897, to be issued by the State Treasurer, and the question arising under the first proposition involved in your inquiry is whether there is not authority in law for the issuing by you of a similar State license authorizing a distiller or distilling company to sell his or its product within this Commonwealth in original packages of a capacity of not less than forty (40) gallons.

It is clear that what may be termed a "qualified brewers' license," or a "State Brewer's License" may be obtained from the State Treasurer without application to the court of quarter sessions of the proper county, and the Reynoldsville Distilling Company now seeks to obtain what may be termed a "qualified or State distiller's license." The chief distinction between a license granted by the court of quarter sessions to a brewer and the qualified brewer's license obtained from the State Treasurer is that, under the latter, sales can only be made to dealers licensed by the court; and if a qualified dis-

tillers' license now exists, the distinction will be that under a distiller's license granted by the court of quarter sessions, the distiller may sell spirituous liquors in quantities not less than one gallon; but under the qualified license, sales can be made within the Commonwealth only in original packages of a capacity of not less than forty (40) gallons. The right, on the part of distillers to make sales of their product within the Commonwealth in original packages of not less than forty (40) gallons, without a license, upon payment of a certain fee, was conferred by the terms of the Act of June 20, 1893 (P. L. 474). The question now arising is whether or not, upon a construction of all the legislation relative to this matter, you, as State Treasurer, have authority to issue a license to distillers as well as to brewers, and a brief review of the legislation applicable is therefore necessary.

As above stated, brewers and distillers, as a rule, are licensed by the court of quarter sessions under the Act of June 9, 1891 (P. L. 257); that Act is entitled:

> "An Act to restrain and regulate the sale of vinous and spiritous, malt or brewed liquors or any admixture thereof by wholesale."

The first section of the Act fixed the license fees to be paid by wholesale dealers, brewers, distillers, rectifiers, compounders, storekeepers, and agents, having stores or offices within this Commonwealth, dealing in intoxicating liquors either spirituous, vinous, malt or brewed; and these fees were classified with reference to the location of the brewery, distillery, or place of business. Different fees were fixed, depending upon whether the brewery or distillery was located in a city, a borough, or a township. This first section, fixing the amount of the license fees, was repealed by the Act of July 30, 1897 (P. L. 464), hereinafter referred to. The remainder of the Act, providing that licenses may be granted only by the court of quarter sessions of the proper county for one year from a date fixed by rule or standing order of said court, and that the same shall be granted only upon petition containing the matters therein specified, etc., remains in force.

The second section of this Act of 1891 prescribes the quantities in which the different kinds of liquors may be sold, and prohibits distillers from selling spirituous liquors in less quantities than one gallon, and brewers from selling less than twelve pint bottles of brewed or malt liquors.

The next Act in order of time is the said Act of June 20, 1893 (P. L. 474) entitled:

> "An Act authorizing distillers of spiritous or vinous liquors to sell such liquors of their own manufacture in original packages of not less than forty (40) gallons, without being required to take out a license as is now required by existing laws."

The first section of this Act provides in substance that from and after its passage it shall be lawful for distillers of spirituous and vinous liquors within this Commonwealth "to sell or dispose of spirituous or vinous liquors of their own manufacture within this Commonwealth in their original packages of a capacity of not less than forty (40) gallons, without obtaining a license therefor, as required by existing law."

The first section contains a proviso that if distillers shall sell liquors not manufactured by themselves within this Commonwealth, or in any other than in original packages or in less quantities than forty (40) gallons, such distillers shall be subject to all the penalties provided by existing laws for the sale of liquors without a license.

Section 2 of this Act provides that such distillers shall pay, in addition to the taxes they are now subject to by existing law, into the Treasury of the Commonwealth for the use of the Commonwealth of Pennsylvania, the annual sum of $1,000.00 where such distillery is situated in a city, and the sum of $200.00 where such distillery is situated in a borough, and the sum of $100.00 where such distillery is situated in a township.

By Section 3 of this Act all laws or parts of laws inconsistent therewith are repealed.

This Act of 1893 was construed by Attorney General Hensel in an opinion to the State Treasurer, under date of February 27, 1894, reported in 14 Pa. C. C. 599, in which opinion it was held that the Act was intended to permit distillers to make sales in the manner therein provided without being required to apply to the courts for a license, and that the fees provided for in the Act should be paid to the county treasurer of the proper county and a receipt obtained from him. Following this practice a number of distillers for instance, A. Guckenheimer & Brothers, and The Large Distilling Company, have, from year to year, paid to the county treasurer of Allegheny county, certain fees for the purpose of entitling them to exercise the privileges conferred by the said Act of 1893. It is to be observed, however, that there is no provision in said Act of 1893 directing any person to issue a license for the purpose of authorizing distillers to make sales under the terms of that Act. Indeed, the whole purpose of the Act is to confer upon distillers the privilege of selling their product in the manner therein specified without obtaining a license. The condition upon which the privileges and immunities conferred under the Act are to be exercised, is the payment of certain sums into the Treasury of the Commonwealth for the use of the Commonwealth.

Next in order comes the Act of June 21, 1897 (P. L. 176), entitled:

> "An Act providing that the manufacturers, who shall pay a certain sum, annually, into the Treasury of the

> Commonwealth, shall sell only malt or brewed liquors of their own manufacture to dealers only who have been licensed by the Court."

By the first section of this Act it is substantially provided that upon paying into the State Treasury for the use of the Commonwealth the sum of $1,000.00 annually, brewers may sell their product in packages of not less than twelve pint bottles or in casks of not less than one-eighth barrel, to liquor dealers licensed by the court, and upon payment of said sum into the State Treasury annually, the State Treasurer shall issue a certificate thereof which shall be framed and exposed to view in said brewery.

A plain distinction exists between this Act of 1897 and the said Act of 1893. Under the Act of 1897 there can be no doubt that the fees therein provided for shall be paid directly to the State Treasurer and upon payment of said sum into the State Treasury "the State Treasurer shall issue a certificate thereof, which shall be framed and exposed to view in the said brewery." Since the approval of this Act of 1897 it has been the uniform practice for a brewer, desiring to exercise the privileges conferred by that Act, to pay the proper fee to the State Treasurer and receive from him a certificate licensing the brewer to sell malt or brewed liquors manufactured at his brewery for a period of one year, provided that he shall during said term observe and keep all the laws of this Commonwealth relating to the sale of liquors and provided that he shall sell and deliver malt or brewed liquors only to liquor dealers licensed by the court and in packages of not less than twelve pint bottles or in casks of not less than one-eighth barrel. This certificate or license is issued only after an application for the same has been filed, verified by affidavit and setting forth, inter alia, that license for said brewery has not been refused by any court within one year past. It is to be observed that the distillers' Act of 1893 contains no such provision as is found in the brewers' Act relative to the prohibition of sales under the Act within one year after a license has been refused by the court; for, by the second section of the brewers' Act it is provided that where any court shall have refused a license for any particular brewery, the sale of said liquors at said brewery shall not be permitted under that Act until the expiration of one year after the date of the application for the license which has been so refused.

The remaining Act of Assembly requiring construction is the Act of July 30, 1897 (P. L. 464), entitled:

> "An Act to provide revenue and regulate the sale of malt, brewed, vinous and spiritous liquors or any admixture thereof, by requiring and authorizing licenses to be taken out by brewers, distillers, wholesalers, bottlers, rectifiers, compounders, storekeepers and agents,

having a store, office or place of business within this Commonwealth, prescribing the amount of license fees to be paid in such cases and by imposing an additional license fee on retail dealers in intoxicating liquors."

The Act is a revenue Act and deals chiefly with the amount of license fees. By section four of this Act section one of the above mentioned Act of June 9, 1891 (P. L. 257), and all other acts or parts of acts, general or special, inconsistent with this Act of 1897, are repealed. It is clear that one of the main purposes of this Act of 1897 is to change the amount of the license fees to be paid by wholesalers, brewers, and distillers, obtaining their licenses from the Courts of Quarter Sessions under the said Act of 1891, and to impose an additional license fee upon retail dealers in intoxicating liquors.

As above pointed out, license fees of brewers and distillers under the Act of 1891 were classified according to the location of the brewery or distillery. By the Act now under consideration, the fees are classified in proportion to the annual production of said breweries and distilleries. By the first section of the Act of 1897 it is provided, inter alia, that "each distiller, the annual production of whose distillery in the proceeding year was more than 400 barrels and less than 500 barrels, shall be required to pay an annual license fee of $500.00" and that "all new distilleries and breweries established and located in any part of the Commonwealth shall pay a license fee of $1,000.00 for the first year." How does this Act of 1897 affect the Act of June 20, 1893, supra? By the fifth section of this Act of 1897 it is provided "that so much of the second section of an Act entitled "An Act authorizing distillers of spirituous or vinous liquors to sell such liquors of their own manufacture in original packages of not less than forty (40) gallons without being required to take out a license as is now required by existing laws approved the 20th day of June, Anno Domini one thousand eight hundred and ninety-three, as conflicts herewith be and the same are hereby repealed." Here is a specific repeal of only so much of the second section of the Act of 1893 as conflicts with the Act of 1897.

The second section of the Act of 1893 is the section inter alia, classifying the fees in accordance with the location of the distillery. The portion of the second section of the Act of 1893 fixing fees is in conflict with the terms and the purpose of the Act of 1897. It would therefore seem that it was the legislative intent to repeal only so much of the Act of 1893 as relates to the classification of fees. Of course, if the Act of 1893 is inconsistent with the Act of 1897, viewed as a whole, it should be held that the Act of 1893 has been superceded by the Act of 1897, but if the two Acts can be construed as together forming a general system, both should be permitted to stand.

This revenue Act of 1897 contains no provision expressly authoriz-

ing the State Treasurer to issue any kind of a license to distillers, but it does preserve the above mentioned qualified license issued to brewers by the State Treasurer.

The Act providing for such qualified brewers' license, as above pointed out, was approved at the same session of the Legislature, but upon an earlier date. That the Legislature did not intend to in any way affect the qualified brewer's license Act by the Act now under consideration, clearly appears from the latter part of the first section of this revenue Act of 1897, in which it is provided that the revenue Act of 1897 shall not be construed so as to in any manner repeal the Act providing that the manufactures who shall pay a certain sum annually into the Treasury of the Commonwealth shall sell only malt or brewed liquors of their own manufacture to licensed dealers, except that the amount to be paid to the State Treasurer shall not be less than the amount required to be paid under the brewers' classification according to amount of product, as provided for in the revenue Act.

It is further provided in section one of the revenue Act of 1897, that hereafter any brewer of malt or brewed liquors within this Commonwealth, upon paying into the State Treasury for the use of the Commonwealth the sum of $1,000.00 annually, shall be licensed by the State Treasurer to sell and deliver, but only to liquor dealers licensed by the Courts, the malt or brewed liquors manufactured at said brewery in packages of not less than twelve pint bottles or in casks of not less than one-eighth barrel. I am therefore of the opinion that there is no authority in law for you as State Treasurer to issue to the said Reynoldsville Distilling Company any kind of a State liquor license authorizing said company to sell the product of its distillery within this Commonwealth in original packages of a capacity of not less than forty (40) gallons, as requested by said company, but that said company may avail itself of the privileges and immunities conferred by the said Act of 1893 by payment to the proper officer of the fees fixed and regulated by the said revenue Act of July 30, 1897.

Coming now to the second inquiry above stated relating to the proper officer to whom payment should be made for the purpose of securing the privileges of the said Act of 1893, it is to be noted that under the said Act of 1891 authorizing the granting of licenses to brewers and distillers by the Court of Quarter Sessions, it was provided that the license fees should "be paid into the State Treasury for the use of the Commonwealth," but under section seven of that Act it is also provided that persons granted licenses must pay to the city or county treasurer within a limited time the amount of the license fees. Provision is made by law requiring city and county treasurers to pay over to the State Treasurer the liquor license fees

received by them within a specified time. The said Act of 1893 provided in its second section that the distillers desiring to make sales under that Act should pay "into the Treasury of the Commonwealth for the use of the Commonwealth of Pennsylvania" the license fees originally fixed by that Act. As above stated, Attorney General Hensel construed the Act of 1893 to mean that the fees thereunder should be paid in the first instance to the treasurer of the proper county. Under this construction the method of making payment was kept in harmony with the method under the Act of 1897. Inasmuch as the Courts usually grant brewers and distillers licenses, it is provided by the said revenue Act of 1897 that "all of the license fees hereinbefore fixed and regulated shall be collected by the treasurer of the proper county for the use of the Commonwealth except as hereinbefore provided, and shall be paid by the county treasurer to the State Treasurer for said use, etc." The words "except as hereinbefore provided" refer especially to the payment of the annual license fee by brewers for the said qualified brewers license. It would seem, therefore, that the only fees accruing to the Commonwealth from the sale of liquors which should be paid directly to the State Treasurer, are the fees for the said qualified brewer's licenses, and I am, therefore, of the opinion that a distiller desiring to exercise the rights conferred by the said Act of 1893 should pay the fees required for the exercise of such rights to the county treasurer of the county in which the distillery is located and obtain from him a receipt for the fees so paid.

Coming now to the third inquiry with reference to the proper method of ascertaining the amount of money to be paid by a distiller in order to secure the benefits and privileges of the said Act of 1893, we find that the fees for distillers are based upon the classification made by the Act of 1897, which classification in turn is based upon the annual production of the distillery in question for the "preceding year."

In an opinion by Deputy Attorney General Reeder to Hon. B. J. Haywood, then State Treasurer, under date of February 10, 1898, reported in Pennsylvania District Reports 7, page 146, it is held that the words "the preceding year" should be construed to mean the year preceding the date of the payment. The said Reynoldsville Distilling Company, as above stated, paid to the county treasurer of Jefferson county on the 9th day of October, 1905, the sum of $1,000.00 being the license fee fixed by the Act of 1897 for a new distillery for the first year. This would pay the fees under the provisions of the Act of 1897 up until the 9th of October, 1906. Whether said distillery made any sales or not is immaterial. Accompanying the tender of its certified check for $500.00 is an affidavit that the product of said distillery during the year immediately preceding the date

of this affidavit was 435 barrels, and, as above stated, the product of the distillery from October, 1905 to October, 1906, was 402½ barrels, making a total production of 837½ barrels from October, 1905 to October, 1907. If the distillery in question had been making sales under a license granted by the Court of Quarter Sessions, and assuming for the purpose of illustration, that the license year under such license would begin in October, it would have been obliged to pay under the revenue Act of 1897, the license fee of $1,000.00 for the privilege of selling its product from October, 1905, to October, 1906, and in October, 1906 it would have been obliged to pay a fee of $500.00 for the privilege of selling its product from October, 1906, to October, 1907, and would now be obliged to pay a fee of $500.00 for selling its product for one year from October, 1907, or $2,000.00 in all up to the present time. It now seeks to avail itself of the privilege of selling without a license, under the Act of 1893, by the payment of only $500.00 in addition to its first payment of $1,000.00. This does not seem to be equitable, but the amount of the fee the company in question should pay to the county treasurer of Jefferson county is to be determined by the provisions of the revenue Act of 1897. Distillers' fees are paid for the privilege of selling the product of the distillery either under a license granted by the Court of Quarter Sessions, or without license under the said Act of 1893. Under our liquor laws the Reynoldsville Distilling Company can manufacture, but it cannot sell its product without the payment of the proper fees. Under the said Act of 1897 the product by which the amount of the fee is to be measured, is the production of the distillery in the preceding year, and I am therefore constrained to hold that inasmuch as the production of the distillery in question "during the preceding year" was only 435 barrels, the fee to be paid to the treasurer of Jefferson county should be fixed at $500.00.

You are, therefore, advised, in conclusion, that you should return to the said Reynoldsville Distilling Company its certified check of $500.00, with the statement that you have no authority under the law to issue the license requested, and that if the said distilling company proposes to sell its product within this Commonwealth in original packages of a capacity of not less than forty (40) gallons the only interest the Commonwealth has in such proposition is that said company shall pay annually in addition to the taxes it is now subject to by existing laws, to the treasurer of Jefferson county, the fees provided by the Act of July 30, 1897 (P. L. 464), said fees to be fixed by the amount of the production of said distillery for the year immediately preceding the date of payment to said county treasurer.

Very truly yours,

M. HAMPTON TODD,

Attorney General.

STATE DEPOSITS.

The bond of the Duquesne National Bank for $100,000 justifies a State deposit of $50,000.

When individual sureties are given to a bond for State deposits they should qualify for three times the deposit, no one person to qualify for more than one fourth of the total amount required but this does not refer to the amount of the bond which should be double the deposit.

Office of the Attorney General,
Harrisburg, Pa., June 4, 1908.

Hon. John O. Sheatz, State Treasurer, Harrisburg, Pa.:

Sir: I have your letter of the 1st inst., in which you ask my opinion as to whether you are permitted, under the provisions of the Act of February 17, 1906 (P. L .46), to deposit in the Duquesne National Bank of Pittsburg, $50,000 of State moneys, that bank having filed with the State Treasurer a bond in the penal sum of $100,000, conditioned for the payment of $50,000.00, together with interest, costs and attorney's commissions, which bond is accompanied by the covenant of the American Surety Company of New York, as surety thereon, wherein it agrees to be responsible to the Commonwealth of Pennsylvania for a deposit in said bank not exceeding $50,000.00, together with interest, costs and attorney's commissions.

You will observe that the obligation of the bank, under the condition of the bond and the obligation of the surety company under its covenant, are for one and the same thing; that is, for a deposit with the bank not exceeding $50,000.00, together with interest, costs and attorney's commissions. In short, the penal bond for $100,000.00 and the suretyship covenant accompanying the same for $50,000.00 provide for the recovery by the Commonwealth of exactly the same amount of money.

I am of opinion, therefore, that the bond of the Duquesne National Bank, together with the accompanying covenant of the American Surety Company of New York, to which you have called my attention, justify you in increasing the deposits of State moneys in that bank to $50,000.00.

I also note your inquiry in reference to the Colonial Trust Company of Pittsburg, where you hold a bond with individual sureties in the penal sum of $600,000.00 to secure a deposit of $300,000.00 of State moneys. You say that the statement of the sureties, which accompanies said bond, shows that in the aggregate they are worth several millions of dollars, and upon these facts you ask my opinion as to whether, under the said Act of February 17, 1906, *supra*, such bond should not be for three times the amount of the deposit.

The 6th Section of this Act defines the requirements of such sureties in the following language:

> "That whenever individual sureties are presented for approval, they shall qualify in an aggregate, over and above their individual liabilities, to three times the amount of the deposit; no one person to qualify for more than one-fourth of the total amount required."

This language does not govern the amount of the bond, nor is it applicable thereto. The amount of the bond is fixed by the requirements of the fifth section of the Act. "To qualify to three times the amount of the deposit" means that the sureties in this case should be worth, "Over and above their individual liabilities," three times the amount of the deposit, or $900,000.00, and no one person can "qualify for more than one-fourth of the total amount required." That is, in reckoning the worth in money of the respective sureties in this instance, no one of them should be counted as being worth more than $225,000.00. And if on this basis the statements show that the aggregate the sureties are worth exceeds $900,000.00, you have individuals properly qualified to become sureties on the bond in double the amount of the deposit.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

STATE HIGHWAYS.

The money collected by the State Treasurer from counties, townships and boroughs under the provisions of the Act of May 1st, 1905 (P. L. 318) should be placed by him to the credit of the general construction fund of the State Highway Department and be available for payment of warrants drawn against it by the State Highway Commissioner.

Office of the Attorney General,
Harrisburg, Pa., November 23, 1908.

Hon. John O. Sheatz, State Treasurer:

Sir: I am in receipt of your letter of yesterday asking for an official opinion upon a question which has been raised by the State Highway Commissioner, with your Department.

The 18th Section of the Act of Assembly of the first day of May, A. D. 1905, P. L. 318, provides that "the total expense of the highway improvement or maintenance, under the provisions of this Act, shall be paid by the State Treasurer." It further provides that twelve and one-half per cent. of the cost shall be paid by the proper county, and that twelve and one-half per cent. shall be paid by the township or borough wherein the said improvement is made, to the State Treasurer. If the county and township or borough, both or either fail to pay their proportionate share of such improvement, to the

State Treasurer, within thirty days after the State Highway Commissioner has certified the account to that official, he is authorized by law to charge the respective amounts against any funds of the said county which may be in, or which may thereafter come into the State Treasury.

You state in your letter that a large amount of money has been collected by you and your predecessor in office under the authority above recited, and you desire to be advised whether or not this amount can be properly and legally paid out in the further construction of highways in the different counties of the Commonwealth. Upon that precise question the 18th Section of the Act of May 1st, 1905, contains the following language:

> "The amounts paid under this Act to the State Treasurer by counties, townships and boroughs, shall be placed by him to the credit of the fund for road construction."

Prior to the passage of the Act of 1905 the improvements made by the State Highway Department were paid for as provided by law in a different manner. The State, county, township or borough each paid its proportionate share directly to the contractors; this plan was found, however, to work very badly. It often happened that after the applications for road improvements had been received and contracts entered into by the State, that new local officials would be elected who were not in harmony with the policy of their predecessors, and who would refuse to pay the amount agreed upon. This involved the Highway Department in much confusion, and the Legislature in order to overcome this difficulty passed the Act of May 1, 1905, which provides in the section above discussed, that the entire amount shall be first paid by the State Treasurer, upon the warrant of the State Highway Commissioner, and that then the local authorities shall pay their respective proportions directly to the State Treasurer, and their failure to do so, within thirty days after the account had been certified to the State Treasurer, gives that official the legal right and power to charge the amount so withheld against any funds of the county which might at that time be, or that might thereafter come into his hands.

It is clear that this twenty-five per cent. of the cost is ultimately to be paid by the county and township, and should be considered merely an advance payment by the State Treasurer, and when this amount is collected and returned to the Treasury it must be credited by him to the general fund available for highway improvement throughout the Commonwealth.

I am therefore of the opinion and advise you that all amounts so collected as shown by the books in your office, should be placed to

the credit of the general construction fund of the State Highway Department and be made available for the payment of warrants drawn against it by the State Highway Commissioner.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

SALARY OF SENATOR GEORGE A. VARE.

Where the warrant for the salary of a State Senator is endorsed by the President Tempore "This warrant is signed by the President Pro Tempore of the Senate with notice to the State Treasurer that the payee named therein, Hon. George A. Vare, was not in attendance at any meeting of the Senate at the Legislative Session of 1907," it is the duty of the State Treasurer to refuse to pay the warrant, leaving the parties claiming the same their legal remedy, so that the matter can be determined by the Courts.

Office of the Attorney General,
Harrisburg, Pa., December 9, 1908.

Hon. John O. Sheatz, State Treasurer, Harrisburg:

Sir: This Department is in receipt of your communication of December 1, 1908, stating that a salary warrant has been presented to you for payment, which said warrant is drawn to the order of Hon. George A. Vare, formerly a member of the Senate of Pennsylvania, but which warrant contains the following endorsement immediately preceding the signature of the President pro tempore of the Senate:

> "This warrant is signed by the President pro tempore of the Senate with notice to the State Treasurer that the payee named therein, Hon. George A. Vare, was not in attendance at any meeting of the Senate at the Legislative session of 1907."

You now ask to be advised by this Department as to the proper action to be taken by you in connection with this warrant.

Under the Constitution of 1776, the remuneration of members of the General Assembly is described as "wages;" under the Constitutions of 1790 and 1838, it is described as "compensation," and under the present Constitution as "salary." In so far as your inquiry is concerned, there is practically no distinction in the meaning of these words. They all mean a sum of money periodically paid for services rendered. If there is any distinction in their popular sense it is to be found only in the application of them to what may be popularly considered more or less honorable services.

The present Constitution provides that:

> "The members of the General Assembly shall receive such salary and mileage for regular and special sessions as shall be fixed by law."

and by the Act of May 11, 1874 (P. L. 129), it is provided:

> "That the compensation of members of the General Assembly shall be one thousand dollars for each regular and each adjourned annual session not exceeding one hundred days, and ten dollars per diem for time necessarily spent after the expiration of the one hundred days. * * * * Provided, that when any member shall absent himself without leave he shall not be entitled to any compensation during such absence."

This Act of 1874 was amended by the Act of July 7, 1885 (P. L. 264), by which latter Act it is provided:

> "That the compensation of members of the General Assembly shall be fifteen hundred dollars for each regular biennial session, and mileage to and from their homes, at the rate of twenty cents per mile, to be computed by the ordinary mail route, between their homes and the Capital of the State, and five hundred dollars and mileage, as aforesaid, for each special or extraordinary session."

It is to be noted that the amendment omits the above quoted proviso to the effect that when any member absents himself without leave he shall not be entitled to compensation during such absence.

The terms of the notice to you from the President pro tempore of the Senate would seem to indicate, however, that the absence referred to was not temporary, but continued during the entire session. It is not stated, however, whether the absence of the Senator in question was with or without leave.

Ordinarily, when a salary warrant for a member of the General Assembly is presented to you for payment, duly certified and signed, you would be justified in assuming that the person therein named is an officer, not only de facto, but also de jure, that he had rendered the services incumbent upon him, and is therefore entitled to the remuneration fixed by law. In the present case, however, this presumption is rebutted, in so far as the rendition of services is concerned, by the endorsement placed upon the warrant.

Keeping in mind the fact that the term "public office" embraces the ideas of tenure, duration, emoluments and duties, which ideas or elements cannot be separated and each considered abstractly; that a public office is intended for the public good and not for the particular gain of the incumbent, and that the relation between a public officer and the government itself does not rest upon the theory of contract, but arises from the rendition of services, it becomes ap-

parent that a serious question is raised in this instance as to whether you can legally honor and pay this warrant. The endorsement placed thereon raises questions both of fact and of law. Neither your Department nor this Department has any means for the proper investigation and disposition of questions of fact.

In a controversy of this kind the parties interested should be afforded an opportunity to be heard on the facts in a proper tribunal. It may also be a serious legal question whether the remedy for non-attendance of members of the General Assembly is not rather by proceedings to compel attendance than by declining to pay members who have absented themselves from the sessions of the Legislature.

It is the duty of this Department, however, to advise you as to the departmental action you should take.

I am therefore of opinion that, under the circumstances of this case, you should refuse to pay this warrant, leaving the parties contending for the payment thereof to their remedy to compel such payment by mandamus or such other proceeding as they may select, in the course of which proceeding the facts and law applicable thereto can be judicially determined and the rights of the Commonwealth and of all parties interested can be properly ascertained and protected.

Very truly yours,

M. HAMPTON TODD,

Attorney General.

OPINIONS TO THE INSURANCE COMMISSIONER.

OPINIONS TO THE INSURANCE COMMISSIONER.

INSURANCE UPON THE CAPITOL.

Where the Commonwealth of Pennsylvania desires a larger line of Insurance than the home insurance companies or foreign companies authorized to do business in this State are willing to carry, it is not necessary for the Insurance Commissioner to issue a license allowing the State to place additional insurance with foreign companies. The State has that right inherent in itself.

To protect the insurance companies, the Insurance Commissioner is advised to issue the license provided by the Act of April 26, 1887 (P. L. 62) to the Board of Public Grounds & Buildings, who need not make an affidavit, but may establish the need of the insurance by other evidence.

Office of the Attorney General,
Harrisburg, Pa., February 6, 1907.

Hon. David Martin, Insurance Commissioner, Harrisburg, Pa.:

Dear Sir: I have your letter of the 4th inst., in which you ask whether you should grant a license under the Act of April 26, 1887 (P. L. 62), for the writing of the insurance upon the Capitol by unlicensed companies, and if so, who are the parties to make the affidavits required by the law. You enclose a letter of Billington, Hutchinson & Company, which contains the information that insurance companies regularly authorized to do business in this State have placed $3,500,000 of insurance on the Capitol but that it has been impossible to obtain the full amount of $4,000,000 of insurance by such companies. The letter requests that authority be granted to place the excess of insurance in unlicensed companies.

The Act of April 26, 1887, makes it a misdemeanor for any insurance company not of this State to do buisness in Pennsylvania, without authority agreeably to the provisions of the Act, but it contains the proviso that in the event of a larger line of insurance being required on any risk than that which the home companies and insurance companies, or associations not of this State but authorized to do business within this State, shall be willing to carry, that then the person or corporation desiring such insurance shall file a sworn statement to that effect with the Insurance Commissioner and there

upon the said Insurance Commissioner being first satisfied of the truth thereof, shall issue a license to the person or corporation making such application.

In this case the person or corporation desiring a larger line of insurance is the Commonwealth of Pennsylvania. It is, not necessary for you to issue a license allowing the Commonwealth of Pennsylvania to place additional insurance with foreign companies. The Commonwealth has that right inherent to herself, and any license you might issue to her would not enhance her powers.

But for the protection of the insurance companies with whom it is desired to place the insurance I advise you that if you are satisfied of the truth of the statement that a larger line of insurance is required upon this risk than that which the home companies, and insurance companies, or associations not of this State but authorized to do business within this State, are willing to carry, you should issue a license to the Board of Public Grounds and Buildings authorizing them to place the insurance with the foreign companies. I further advise you that it is not necessary that you should have an affidavit from the Board of Public Grounds and Buildings to this effect, and you may proceed without such affidavit, but this fact should be established to your satisfaction by other evidence. The sole purpose of such a license is to prevent the possible arrest of agents or officers of the foreign insurance companies with whom the Commonwealth may deal and to protect such companies from the impositions of the penalties provided by law.

Very truly yours,

M. HAMPTON TODD,
Attorney General.

PHILADELPHIA LIFE INSURANCE CO.

An analysis of the act of May 7, 1889, P. L. 116, as amended by the act of July 2, 1895, P. L. 430, shows that its general purpose is to prevent any life insurance company doing business in Pennsylvania from making or permitting any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life, or making any contract of insurance or agreement as to such contract other than as plainly expressed in the policy, or offering certain inducements to prospective insurants.

The Philadelphia Life Insurance Company offered to proposed insurants an option to purchase, at the rate of $40 per share, two shares of stock in said company for each $1,000 of insurance taken. The option was not specified in the policy contract, but was a separate and distinct agreement. Held, that the proposition to give such option was a valuable consideration or inducement to insurance, and constituted such a violation of the terms of the act of 1889 as amended by the act of 1895 as to justify the institution of proceedings under said acts for a judicial determination of the question.

A valuable consideration means something of actual value, capable, in the estimation of the law, of pecuniary measurement. The right to purchase shares of stock at a specified figure is something capable of pecuniary measurement.

Office of the Attorney General,
Harrisburg, Pa., November 20, 1907.

Honorable David Martin, Insurance Commissioner, Harrisburg:

Sir: I have your letter of November 8th, asking whether in the opinion of this Department, the facts therein stated with reference to the offering of certain stock options by the Philadelphia Life Insurance Company and its agents constitute a violation of the Act of Assembly of May 7, 1889 (P. L. 116), as amended by the Act of July 2, 1895 (P. L. 430). From your communication I understand the facts to be as follows:

The Philadelphia Mutual Life Insurance Company was organized October 4, 1905, to transact the business of life insurance on the mutual assessment plan. The plan adopted by this company in the transaction of its business was to give to each policyholder an option to purchase three shares of the capital stock of a joint stock life insurance company (to be incorporated as soon as sufficient stock had had been subscribed to enable the proposed company to obtain a charter) for each $1,000 of insurance purchased. The price fixed in the first options given was $12.50 per share, on a par value of $10.00 per share. The options to purchase at this price were given until the first $100,000 of the capital of the proposed company had been subscribed; the options for the second $100,000 of capital being given to purchase at $15.00 per share; and the options for the third $100,000 of capital to purchase at $20.00 per share.

On April 17, 1906, the Philadelphia Life Insurance Company was chartered to transact a life insurance business on the level premium or legal reserve plan, with a paid up capital of $300,000. The policyholders of the said Philadelphia Mutual Life Insurance Company were transferred to the said Philadelphia Life Insurance Company, and the stock thereof issued to the policyholders holding the options previously acquired with their policies of insurance.

On August 17, 1906, the said Philadelphia Life Insurance Company filed an application for an increase of capital to $1,000,000, the stockholders, as of record at that time, waiving their right to subscribe to their allotment of the increase. Options to purchase this new stock were and are now being offered to persons solicited to become applicants for insurance, at from $25.00 to $40.00 per share.

The present plan of operation of the said company is to offer to proposed insurants an option to purchase, at the rate of $40.00 per share, two shares of said stock, in said company, for each $1,000

of insurance taken. Some of these options are to be exercised within six months, others within a year, and some within a longer time. These options are not specified in the policy contract of insurance, or made a part thereof, but seem to be separate and distinct agreements.

The offer of the stock option is made by the company in the following printed terms:

> "Stock option. An option for the purchase of shares of the capital stock of the company at $40 per share (par value $10) is extended to all persons who take insurance in the company, based upon the ratio of two shares to every $1,000 of insurance purchased, the conditions thereof being contained in the option forwarded with the policy."

The substantial question arising upon your inquiry is this: Has the insurance company in question, and its agents, by offering, under the circumstances above stated, to prospective insurants, the said options to purchase stock in the company, violated the provisions of the said Act of 1889, as amended by the said Act of 1895?

The Act in question is entitled:

> "An Act to amend an act, entitled, 'An act to prevent any life insurance company, or agent thereof, doing business in Pennsylvania, from making or permitting any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life, in the amount or payment of premiums or rates charged for policies of life or endowment insurance and providing a penalty for violation thereof,' approved the seventh day of May, Anno Domini one thousand eight hundred and eighty-nine, extending its provisions so as to include insurants and enlarging the penalty for the violation thereof."

An analysis of the Act shows that its general purpose is to prevent any life insurance company doing business in Pennsylvania from making or permitting any distinction or discrimination in favor of individuals between insurants of the same class and equal expectation of life, or making any contract of insurance or agreements as to such contract other than as plainly expressed in the policy, or offering certain inducements to prospective insurants.

To this end it is provided in detail, that it shall be unlawful for any insurance company doing business in Pennsylvania.

> First. To make or permit any distiction or discrimination in favor of individuals between insurants of the same class and equal expectation of life in

(a) The amount or payment of premiums or rates charged for policies; or

(b) The dividends or other benefits payable thereon; or

(c) Any other terms or conditions of the contracts it makes;

Second. To make any contract of insurance or agreement as to such contract other than as plainly expressed in the policy; and

Third. To pay or allow or offer to pay or allow, as inducements to insurance

(a) Any rebate of premium; or

(b) Any special favor or advantage in the dividends or other benefits to accrue on policies; or

(c) Any valuable consideration or inducement whatever not specified in the policy contract of insurance.

Under the facts above set forth, the inquiry is confined to subdivision "c" of the third paragraph of the above analysis, and resolves itself into this proposition:

Is the extension of the stock options above mentioned, to persons solicited by the agents of the company to purchase insurance therein, the offering to such persons of a valuable consideration or inducement to insurance not specified in the policy contract of insurance?

That the option agreement, securing to persons who may become policyholders in the company the right to purchase two shares of the capital stock of the company, at a stipulated price, for every $1,000 of insurance purchased, is not specified in the policy, is found as a fact. The only question remaining is, whether the proposition to give such options is a valuable consideration or inducement to insurance. It is a reasonable presumption that the options are offered to persons solicited to take out policies of insurance for the purpose of inducing such persons to take policies in this company rather than in some other company.

A valuable consideration means something of actual value, capable, in the estimation of the law, of pecuniary measurement.

The right to purchase the shares of stock at a specified figure is something capable of pecuniary measurement, and offering such stock option would therefore seem to be the offering of a valuable consideration as an inducement to take out a policy of insurance in this particular company, which valuable consideration or inducement is not specified in the policy itself.

The original Act of 1889 was held by our Supreme Court, in the case of Commonwealth vs. Morningstar, 144 Pa., 103, to be constitutional. Its general purpose is commendable, and you are advised that the facts stated in your communication seem to show a violation of the terms of the Act by the company in question with sufficient

clearness to justify the institution of proceedings under the Act, to the end that a judicial determination of the questions involved may be obtained.

Very truly yours,

(Signed.) M. HAMPTON TODD,
Attorney General.

LIFE INSURANCE COMPANIES.

The sample policies shown the Attorney General issued by the Philadelphia Life Insurance Company and the Girard Mutual Life Insurance Company containing a stock option comply with the law.

Office of the Attorney General,
Harrisburg, Pa., December 4, 1907.

Hon. David Martin, Commissioner of Insurance:

Sir: Your letter of the 3rd inst., enclosing a sample policy of the Philadelphia Life Insurance Company, and also a sample policy of the Girard Mutual Life Insurance Company of Philadelphia, received and I note that you inquire whether the giving of the right to purchase shares of capital stock, as the privilege is expressed in these respective policies, is a violation of the Act of Assembly of May 7, 1889 (P. L. 116), as amended by the Act of Assembly of July 2, 1895 (P. L. 430).

In the opinion of this Department of November 20, 1907, construing this Act, you were advised that the right to so subscribe was a valuable consideration or inducement which must be specified in the policy contract of insurance, and the issuance of a policy not expressing this privilege clearly would be in violation of the above cited Acts of Assembly.

In the sample policy of the Philadelphia Life Insurance Company the privilege is stated as follows:

"STOCK OPTION.

"An option for the purchase of shares of the capital stock of the Company at forty dollars per share (par value ten dollars) is extended to all persons who take insurance in the Company, based upon the ratio of two shares to every one thousand dollars of insurance purchased, the conditions thereof being contained in the option forwarded with the policy."

In the sample policy of the Girard Mutual Life Insurance Company of Philadelphia the privilege is stated in the following language:

"STOCK PRIVILEGE.

"The insured under this policy shall have the right to purchase ..... shares of the capital stock of the Company, to be organized under the name of The Girard Life Insurance Company, which company is to take over this policy and assume all the obligations thereunder. This right to purchase the said stock shall be subject to the Company's rules and regulations governing the sale of the same."

I think the language expressing the grant of this privilege in each of said contracts is a sufficient compliance with the law, and I therefore advise you that policies of life insurance, expressed substantially in either form, will not violate the provisions of the Acts of Assembly above cited, and that the companies are clearly within their right under the law in issuing such policies.

Very truly yours,

M. HAMPTON TODD,
Attorney General.

THE LONDON LLOYDS.

The Insurance Commissioner is advised to investigate fully the allegation that the London Lloyds is insuring in this State without authority of law and to communicate any evidence he may secure to the Attorney General.

Office of the Attorney General,
Harrisburg, Pa., April 22, 1908.

Hon. David Martin, Insurance Commissioner, Harrisburg, Pa.:

Sir: I have before me your letter of recent date in which you state that an association known as the London Lloyds are issuing policies of insurance in this State without authority of law to do business therein, and ask for an official opinion as to your legal authority to take action to prevent the issue of such contracts and punish the persons guilty of representing this association and placing their policies.

You submit with your letter various communications bearing upon the subject, none of which furnishes any proof that this association has any agents in this State, or have issued any contracts within its borders. On the contrary, the evidence before me goes to prove that any policies issued by this association and held in this State were issued in London, under an agreement between the insured and the association.

Under the law it is your duty to prosecute this investigation intelligently and thoroughly, and if you are able to secure any evidence

that this association is transacting business in this State and will communicate that evidence to this Department, the matter will be taken up and the association and any of its agents guilty of illegal practices will be properly prosecuted.

Very truly yours,
FREDERIC W. FLEITZ,
Deputy Attorney General.

ABRAHAM LINCOLN MUTUAL LIFE INSURANCE COMPANY.

A mutual life insurance company has no power or authority under the laws of Pennsylvania to issue contracts of endowment insurance.

Office of the Attorney General,
Harrisburg, Pa., December 8, 1908.

Hon. David Martin, Insurance Commissioner, Harrisburg:

Sir: I am in receipt of your communication enclosing the form of policy now being issued by the Abraham Lincoln Mutual Life Insurance Company of Philadelphia, the communication to you from its counsel, and the typewritten provisions for a proposed endowment policy.

You ask to be advised, first, whether this mutual life insurance company, or any mutual life insurance company incorporated under the laws of this Commonwealth, has power to issue an endowment policy of insurance, and also whether the language used in clause C of section 8 in said policy constitutes a substantial compliance with the requirements of section 37 of the Insurance Act of May 1, 1876 (P. L. 53).

As I understand the facts in connection with your first inquiry, the Abraham Lincoln Mutual Life Insurance Company was incorporated under the said Act of 1876 for the purpose of making contracts of "insurance upon the lives of individuals on the mutual plan by assessments upon surviving members."

The general objects for which the company was incorporated are:

> "To make insurance upon the mutual principle upon the lives of individuals and every insurance appertaining thereto or connected therewith, and to grant and purchase annuities."

Having been incorporated under the said Act of 1876 for the above purposes and objects, said Abraham Lincoln Mutual Life Insurance Company now proposes to issue a policy containing the following provision:

> "Provided, however that should ....., the insured hereunder, be living on the ..... day of ....., 190...., and should this contract be then in full force and effect (he or she) shall receive in cash the amount of this policy less any indebtedness hereunder to the Company, subject to all the conditions and privileges set forth at length on the following pages, which are hereby accepted by the insured and made part hereof, as fully as if they were recited at length over the signatures hereto attached."

Your inquiry to be advised whether you, as Insurance Commissioner, can approve the issuing of a policy by the said company containing the above provision, raises the question whether a mutual life insurance company can be permitted, under the insurance laws of this Commonwealth, to issue an endowment policy. It is essential to define the distinction between mutual and endowment insurance.

> "A mutual insurance company is one in which the members contribute either cash or assessable premium notes, or both, as the plan of transacting business may provide, to a common fund out of which each is entitled to indemnity in case of loss."
>
> Words and Phrases Judicially Defined,
> Vol. 5, page 4,650.

Or again:

> "A mutual insurance company is simply a company whose fund for the payment of losses consists not of capital subscribed or furnished by outside parties, but of premiums mutually contributed by the parties insured."
>
> Idem.

Or again:

> "A mutual insurance company is one in which the life of every member is insured by reason of his membership and compliance with the requirements of its constitution and by-laws, which establish a benefit fund by means of payments made by parties joining the order before being received into membership, and assessments levied upon them upon death of a member, should the fund at the time be insufficient to pay the death benefit; from which, on the satisfactory evidence of the death of a beneficial member of the order who has complied with all its lawful requirements, a sum is paid, not exceeding a certain amount, to the family, orphans, or dependents, as the member directs; thus insuring the life of each member immediately upon his entering the order and making him one of the insurers of the lives of his fellow members to the amount required to be paid by him under the provisions of the by-laws."
>
> Idem.

On the other hand:

> "An endowment policy of life insurance is one payable at a certain time, at all events, or sooner, if the party should die sooner; and the premiums on which are all to be paid within a certain limited time."
>
> Carr vs. Hamilton, 129 U. S., 252.
>
> "A form of insurance known as endowment insurance is a contract to pay a certain sum to the insured if he lives a certain length of time, or if he dies before that time, to some other person indicated."
>
> Words and Phrases Judicially Defined, Vol. 3, page 2390.
>
> "An endowment policy is an insurance into which enters the element of life. In one respect it is a contract payable in the event of the continuance of life; in another, in the event of death before the period specified."
> Idem.

In Cook on Insurance, Section 107, it is said:

> "Sometimes the contract to pay on the death of the insured is conjoined with a contract to pay on the expiration of a fixed period should he live so long. Such a contract is called a contract of endowment insurance, though so far as concerns the contract to pay on the expiration of a fixed period it is not, strictly speaking, a contract of life insurance at all."

Having indicated the distinctions between mutual and endowment insurance, reference must next be made to the said insurance act of 1876, for the purpose of ascertaining whether this legislation contemplates the issuing of endowment policies by mutual life insurance companies. By paragraph 2 of section 1 of the said Act it is provided that an insurance company may be incorporated "to make insurance, either upon the stock or mutual principle, upon the lives of individuals, and every insurance appertaining thereto or connected therewith, and to grant and purchase annuities." As above pointed out, the company in question was incorporated to make insurance upon the mutual principle, as distinguished from the stock principle, upon the lives of individuals.

By Section 34 of this act it is provided that:

> "Companies incorporated under this act must be organized upon the joint stock or the mutual plan, and the power to insure upon both plans shall not exist in the same corporation, except temporarily, as provided in the preceding section of this act."

This section received judicial construction in the case of Schimpf & Son vs. Lehigh Valley Mutual Life Insurance Company, 86 Pa 373. In the course of the opinion of the Supreme Court in this case

the distinction between a stock policy and a mutual policy is pointed out. With reference to this distinction it is said by the Supreme Court:

> "They are essentially different. The payment of a cash premium does not decide the character of the policy as to whether it is mutual or stock. A mutual company may insure for either note or cash, so may a stock company. The distinction between them rests upon different principles. A stock policy is issued solely upon the credit of the capital stock of the company to one who may be an entire stranger to the corporation, who acquires no right of membership by reason of his policy; no right to participate in its profits and who subjects himself to no liability by reason of its losses. In such case it can make no difference whether the premium is paid in cash or by note; that is a private matter between the insurer and the insured, which concerns no one but the parties to the contract. Mutual companies, on the other hand, are somewhat of the nature of a partnership; the insured becomes a member of the corporation by virtue of his policy; is entitled to a share of the profits and is responsible for the losses to the extent of his premium paid or agreed to be paid. * * * * The true principle of mutual insurance is the payment by each of the insured of a certain sum of money towards a common fund, which fund is to be held for the protection of each person so contributing."

Having now pointed out the distinction between mutual and endowment insurance and the distinction between the stock or joint stock plan of insurance, as contrasted with the mutual plan, it remains to examine the provisions of the said Act of 1876 governing the organization and operation of companies incorporated to make insurance upon the lives of individuals upon the mutual principle. Section 37 of the said Act of 1876 provides in part as follows :

> "Companies insuring lives on the plan of assessments upon surviving members may be organized in the same manner as provided in this act for the organization of mutual fire insurance companies, and the provisions of the act to which this is a supplement shall not apply to said companies heretofore organized if their business is transacted in accordance with the provisions of their respective charters, whether with or without capital stock, guarantee capital, or accumulated reserve in lieu of capital stock. * * * * Provided also, that no part of such assessment upon surviving members shall be applied to any other purpose than the payment of death losses, unless the amount intended for other purposes is specially stated in the notice of such assessment, and the object or objects for which it is intended."

The company in question was organized for the purpose of insuring lives on the plan of assessments upon surviving members, and is therefore clearly within the provisions of section 37 of said Act of 1876. Can such companies enter into contracts to pay the insured a fixed and certain sum of money if he lives a certain length of time, or if he dies before that time to pay the said sum to some other person indicated? There is, of course, no difficulty about such companies issuing a contract to pay a certain sum to the indicated beneficiary upon the death of the insured. The difficulty arises with reference to the power to enter into a contract to pay a fixed sum to the insured, provided he lives a certain length of time. In the case of Wagner vs. The Keystone Mutual Benefit Association, 8 Pa. Dist. Rep. page 231, a mutual insurance company, incorporated for the purpose of insuring the lives of persons on the plan of assessments upon surviving members, issued policies of endowment insurance. In an action upon a policy of this kind the defence was set up by the company that it had no power to issue policies of endowment insurance. Judge Audenried, before whom the case was tried, held that the company was estopped by the receipt of premiums and assessments from denying its power to make the contract on which it was sued. In the course of the opinion Judge Audenried stated that he entertained no doubt as to the power of the defendant company to issue policies of endowment insurance. This portion of the opinion, however, is dictum, as the real question before the Court was not the power of the defendant company to issue policies of endowment insurance, but whether, having issued such policies and collected premiums and assessments thereon, it could be permitted to defend in an action upon an endowment policy, upon the ground that it had no power to make the contract.

In Walker vs. Giddings, 103 Michigan, 344, under an act authorizing not less than five persons to incorporate to secure to the family or heirs of a member on his death a certain sum of money by assessment on the members, or to secure in the same manner a certain sum weekly or monthly to a member, disabled by sickness or otherwise, it was held that a fraternal beneficial association organized under such act was not authorized to conduct endowment insurance business.

Aside from the question of payment of accident or sick benefits, it is essential to inquire whether our said insurance Act of 1876 authorizes "companies insuring lives on the plan of assessments upon surviving members" to make contracts to pay the insured a certain sum of money provided he lives a certain length of time.

Under section 37 the two classes of persons contemplated are the insured and the surviving members of the company in which he is a member or practically a partner. The only time when it can be properly said that there are surviving members of the company is

at the time of the death of the insured. The act therefore contemplates the death of the insured and not his living a certain number of years as the event, upon the happening of which payment is to be made. If a member live the specified period of years, thereby becoming entitled to receive the sum of money fixed by his policy, how could that sum be raised by assessments upon surviving members? As to him there are no surviving members, until his death.

It is also provided, that no part of the assessment upon surviving members shall be applied to any other purpose than the payment of death losses, unless special notice be given. Here again assessment is to be made upon surviving members and primarily for the purpose of paying death losses.

I am therefore of opinion that the said Abraham Lincoln Mutual Life Insurance Company, incorporated for the purpose of making contracts of insurance upon the lives of individuals, upon the mutual plan, by assessments upon surviving members, has no power or authority, under the laws of this Commonwealth, to issue contracts of endowment insurance.

With reference to your second inquiry, the language of clause C is as follows: "This company is not required by law to maintain a reserve fund under its by-laws." The last proviso of section 37 of said Act of 1876 is as follows:

> "Provided further, that all policies or certificates issued by said companies, shall state that the Company issuing the same is not required by law to maintain the reserve which other life insurance companies are required by the act to which this is a supplement."

In my opinion, the said company, by the use of the language of clause C above quoted, has substantially complied with the proviso referred to.

Very truly yours,

M. HAMPTON TODD,

Attorney General.

OPINIONS TO THE COMMISSIONER OF BANKING.

OPINIONS TO THE COMMISSIONER OF BANKING.

CORPORATIONS—FORFEITURE OF CHARTERS—CORPORATIONS—FORFEITURE FOR NON-USER—POWER OF BANKING DEPARTMENT TO ELIMINATE FROM ITS BOOKS—ACTS OF JUNE 13, 1883, AND MAY 16, 1889.

The Banking Department has no power to eliminate from its books the names of corporations which have failed to organize within two years from the date of their charters, but the remedy to enforce the forfeiture is by quo warranto at the suggestion of the Attorney General, as provided by the Acts of June 13, 1883, P. L. 123, and May 16, 1889, P. L. 241

Office of the Attorney General,
Harrisburg, April 19, 1907.

Honorable John W. Morrison, Deputy Commissioner of Banking,
Commonwealth of Pennsylvania:

Sir: I am in receipt of your letter of April 8th, 1907, inquiring whether or not there is any legislation under which the Banking Department can eliminate from its books a number of Trust Companies which have failed to organize within two years from the date of their charter.

The 5th Section of the Act of 13th June, 1883, (P. L. 123), is as follows:

> "Any corporation of the second class, created under the provisions of the act to which this is a supplement, or any of its supplements, that shall not, within two years from the date of the letters patent, proceed in good faith to organize and to do the things contemplated by its charter, and have paid up at least one-fourth of its capital stock, shall be held and deemed to have forfeited its charter; and the Attorney General shall, on the application of any citizen, take the proper legal steps to forfeit and vacate its said charter, but any corporation now in existence shall have two years from the date of this act to do and perform the things by this section required."

The second section of the Act of 16th May, 1889, (P. L. 241), which is an amendment of Section 11 of the Act of 17th April, 1876, (P. L. 37), provides in substance, that if any company incorporated under this Act or its supplements, shall not proceed in good faith to carry on its work and construct or acquire its necessary buildings, struc-

tures, etc., within the space of two years from the date of its letters-patent, and shall not, within five years thereafter, complete the same, the rights and privileges thereby granted to said corporation shall revert to the Commonwealth. The Act also provides a method for the extension of the time within which the completion of said buildings, structures, etc., must take place.

The above Act of 1883 contemplates action by the Attorney General before the charter is declared forfeited. It was laid down by the Supreme Court in Hinchman vs. Phila. & W. Chester Tpk. Company, 160 Pa., 150, that no charter of a corporation for public purposes can be forfeited, except by the Commonwealth, in a proceeding for that direct purpose. The above Act of June 13, 1883, applies only to corporations formed under the Act of 29th April, 1874, and its suplements.

> "It is now well settled by numerons authorities that it is a tacit condition of a grant of a corporation, that the grantees shall act up to the end or design for which they were incorporated, and hence, through neglect or abuse of the franchises, a corporation may forfeit its charter, as for condition broken, or for a breach of trust."

Eastman on Corporations, Section 80a, and Section 610.

Prior to the enactment of the above Act of 1883, it was held that a corporation might forfeit its charter by non-user, Lumber Company vs. Commonwealth, 100 Pa. 438; and the Act of 1883 seems to be simply declaratory of the law of the land, with the exception that it fixes a definite time at the expiration of which charters may be forfeited for non-user. The proceeding contemplated by the Act of 1883 is quo warranto, to enforce the forfeiture for non-user, instituted upon the suggestion of the Attorney General.

There is no method by which the Banking Department, itself, can eliminate from its books the Trust Companies in question, but the forfeiture of their charters may be enforced by the Attorney General, on the application of any citizen, under the provisions of the above Act of 1883.

J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

PEOPLES BANK OF McKEESPORT.

The Peoples Bank of McKeesport has no lawful authority to borrow money by mortgage for the improvement of its real estate.

Office of the Attorney General,
Harrisburg, Pa., March 21, 1907.

Hon. J. A. Berkey, Commissioner of Banking:

Dear Sir: I am in receipt of your letter of the 15th inst., in which you request an opinion as to whether or not the Peoples Bank of McKeesport can erect a new building and form the Peoples Land Company, for the purpose of mortgaging its bank property, by virtue of the provisions of the Act of May 21, 1901 (P. L. 288).

I am informed that the Peoples Bank of McKeesport was incorporated by special Act of the Legislature, approved March 14, 1873 (P. L. 291), and that said bank accepted the provisions of the new Constitution on January 20, 1899.

The act of 1901, supra, was passed to enable banks to enlarge and improve their real estate, and to lease such portions thereof as are not required for the banking business, and to receive rent for the same, which under then-existing laws they were not authorized to do.

While the said bank has undoubted authority for the improvement of its real estate, I can find no warrant of law for the raising of the money necessary for such improvement by mortgage on its property.

I therefore instruct you that the Peoples Bank of McKeesport has no lawful authority to borrow money by mortgage for the improvement of its real estate.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

TRUST COMPANY EXAMINATION.

A request for a copy of report of an examination of a trust company should be refused.

Office of the Attorney General,
Harrisburg, Pa., March 26, 1907.

Dear Sir: I have your letter enclosing a communication from Hon. W. B. Broomall, in which request is made for a copy of the report of the examination of the Delaware County Trust Company.

I advise you that under the law regulating your Department this request must be refused.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

REPORTS OF BUILDING AND LOAN ASSOCIATIONS.

The Banking Commissioner cannot give to the Committee on Banking of the Legislature in response to a resolution of the House of Representatives requesting same reports of special examinations of building and loan associations.

Office of the Attorney General,
Harrisburg, Pa., March 26, 1907.

Hon. J. A. Berkey, Commissioner of Banking:
Harrisburg, Pa.

Dear Sir: I have your letter enclosing letter of Hon. Frank B. McClain, Speaker of the House of Representatives, and resolution of the House of Representatives, in which you are directed to furnish to the Committee on Banking the reports of the special examinations of several building and loan associations. You ask my advice as to whether, in the event of the resolution passing the House, you may lawfully furnish this information.

I answer that the 16th Section of the Act of 11th of February, 1895 (P. L. 8), expressly forbids the giving out or making known to any person or persons reports of the examinations of such corporations. You should reply to Speaker McClain that you would be unable, under the law, to comply with the direction of the resolution if it should pass the House.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

P. S.—I return herewith letter of the Speaker of the House to you, under date of March 20th, 1907, and the copy of the resolution therein referred to.

SUPERVISION OF BANKING DEPARTMENT.

The Act of June 7, 1907, requiring every person, firm or unincorporated association hereafter engaging in the banking business to report to and be under the supervision of the Banking Department applies to those persons, firms or unincorporated associations who begin the banking business subsequent to the passage of the act.

Office of the Attorney General,
Harrisburg, Pa., July 9, 1907.

Hon. J. A. Berkey, Commissioner of Banking:
Harrisburg, Pa.

Sir: I am in receipt of your communication of June 21st, asking for a construction of the Act of Assembly, approved June 7, 1907, which said Act is as follows:

> "An Act requiring every person, firm or unincorporated association of this Commonwealth, who shall hereafter engage in the banking business within this Commonwealth, to report to, and be under the supervision of, the Commissioner of Banking.
>
> "Section 1. Be it enacted, etc. That every person, firm, or unincorporated association in this Commonwealth, who shall hereafter engage in the banking business within this Commonwealth, and who shall hold themselves open to the public for the purpose of receiving money on deposit, or otherwise, shall report to, and be subject to the supervision of the Commissioner of Banking and to the laws governing his office, at all times."

You ask to be advised as to whether this Act applies only to persons, firms and unincorporated associations beginning business subsequent to the date of its approval, or whether it also applies to all persons, firms and unincorporated associations now engaged in the banking business in this Commonwealth. By its express terms the Act in question applies only to those persons, firms or unincorporated associations who shall hereafter, i. e., after the approval hereof, engage in the banking business within this Commonwealth.

Of course, it may be contended that those persons, firms and unincorporated associations who were engaged in the banking business at and prior to the date of approval and still continue in business, are engaging in the banking business after the date of approval, within the meaning of the Act. Such construction, however, taking the act as a whole, would be a strained construction, and may be obtained only by wresting the words used by the Legislature out of their ordinary significance. The Legislative intent is the criterion by which all acts must be construed. If the Legislature had in-

tended to provide that all persons, firms and unincorporated associations engaged in the banking business at and prior to the date of approval of the act, as well as those engaging therein subsequently, should report to and be subject to the supervision of the Banking Commissioner, that body would probably have made such meaning clear by the use of some apt phrase such as 'now engaged or hereafter engaging in the banking business.' To engage in a business in the ordinary significance of those words, means to embark upon, or undertake the enterprise in question. I am therefore of the opinion that the above Act of Assembly applies only to those persons, firms or unincorporated associations who begin the banking business in this Commonwealth and hold themselves open to the public for the purpose of receiving money on deposit or otherwise, subsequent to the 7th day of June, 1907.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

IN RE BANKING INSTITUTIONS.

Act of May 8, 1907, providing for the creation and maintenance of a reserve fund in all banks, banking institutions, savings banks, etc., interpreted.

Office of the Attorney General,
Harrisburg, Pa., July 17, 1907.

Hon. J. A. Berkey, Commissioner of Banking:
Harrisburg, Pa.

Dear Sir: I am in receipt of your letter of June 10th, and a subsequent communication, asking for an interpretation of the Act of May 8, 1907, entitled

> "An act to provide for the creation and maintenance of a reserve fund in all banks, banking companies, savings banks, savings institutions, companies authorized to execute trusts of any description and to receive deposits of money, which are now or which may hereafter be incorporated under the laws of the Commonwealth, and in all trust companies or other companies receiving deposits of money, which may have been heretofore or which may hereafter be incorporated under Section twenty-nine of the act approved April twenty-ninth, one thousand eight hundred and seventy-four, entitled, 'An act for the creation and regulation of corporations,' and the supplements thereto."

In your communication you specify four features of the act upon which you desire advice:

First, whether two-thirds of the reserve fund provided for by the act in question may be deposited in approved depositories. The general purpose of the act is to compel the banking institutions affected thereby to provide a reserve fund of at least 1 per centum of the aggregate of all their immediate demand liabilities, and 7½ per centum of all their time deposit liabilities. The whole of the 15 per centum reserve fund may, and at least one-third thereof must, consist of cash in hand or clearing-house certificates; one-third, or any part of one-third, thereof may consist of certain bonds, and the balance over and above the part consisting of cash or clearing-house certificates, and the part, not exceeding one-third of the whole, in bonds, shall consist of deposits in approved depositories, subject to call.

With reference to the 7½ per centum reserve fund, not more than one-third shall consist of bonds, and the remainder may consist of cash in hand or clearing-house certificates, or it may consist of moneys on deposit, subject to call, in approved depositories. It is to be noted that there is a slight distinction between the character of the 15 per centum reserve fund and the 7½ per centum reserve fund. In the case of the 15 per centum reserve fund at least one-third must consist of cash or clearing-house certificates; in the case of the 7½ per centum reserve fund, the fund, over and above the amount which may be invested in bonds, may be divided between cash in hand or clearing-house certificates and deposits in approved depositories, in any proportion, or it may consist entirely of either. It is not essential that any part of either reserve fund shall be invested in bonds, and not more than one-third of either of said reserve funds can be invested in bonds. The investment in bonds is permissive, not obligatory, and the amount that may be invested in bonds is limited to one-third of either of said reserve funds.

I reply, therefore, to your first inquiry, that two-thirds of the reserve fund mentioned in Section 3, being the 7½ per centum reserve fund for time deposits, may be deposited subject to call in approved depositories, and the remainder invested in bonds; but with reference to the reserve fund mentioned in section 2, being the 15 per centum reserve fund for immediate demand liabilities, at least one-third of this fund must be in cash or clearing-house certificates, the remaining two-thirds may be deposited subject to call in approved depositories, in case no investments are made in bonds.

With reference to the first part of your second inquiry, whether a bond and mortgage is such security for said reserve as is contemplated by the Act, I reply as follows:

Investments not exceeding one-third of either fund may be made in bonds, which now are, or hereafter may be authorized by law as legal investments for savings banks or savings institutions in Pennsylvania. Under the Act of 20th May, 1889 (P. L. 246), providing for the incorporation and regulation of savings banks and institutions, without capital stock, the trustees of any savings bank may legally invest money deposited therein in bonds and mortgages on unincumbered, improved, real estate, situate in Pennsylvania. I am of opinion, however, that a bond accompanied by a mortgage on real estate to secure its payment is not within the class of bonds contemplated by the act in question. The bonds specified in the act under consideration are to be computed at their par value, and must be the absolute property of the corporation investing therein. In the ordinary acceptation of the words, a bond accompanied by a mortgage does not have par value. It is usually taken in a penal sum, double the amount of the real debt. It may properly be described as a slow asset and in my opinion does not belong to the class of investments contemplated by the said Act of 1907.

With reference to the latter part of your second inquiry specifying various classes of securities, I reply that, in my opinion, not more than one-third of said reserve funds may be invested in the following named classes of bonds:

1st. Bonds of the United States.

2nd. Bonds of the Commonwealth of Pennsylvania.

3rd. Bonds issued in compliance with law by any city, county, or borough of the Commonwealth of Pennsylvania. (These classes of securities are specifically designated by the Act.)

4th. Bonds of every State in the Union that has not within ten years previous to making the investment, defaulted in the payment of any part of either principal or interest of any debt authorized by any Legislature of such State to be contracted.

5th. Bonds of any city, county, town, or village of any State of the United States issued pursuant to the authority of any law of the State.

The 4th and 5th classes of bonds are bonds which are now authorized by law as legal investments for savings banks or savings institutions, under said act of 1899.

However, under the 9th Section of the Act of 11th February, 1895, you are invested, in your official capacity as Commissioner of Banking, with a wide discretion in the matter of determining whether a corporation under your supervision is in an unsound and unsafe condition to do business and whether its manner of conducting its affairs is contrary to the interests of the public. This discretion is not curtailed by the Act now under consideration, and it therefore follows that investments in the bonds above mentioned must be made

subject to your supervisory powers. The propriety of approving an investment in any particular kind of bonds can be considered and passed upon by you as specific cases are presented.

With reference to your third inquiry as to whether or not you, as Banking Commissioner, may confine your approval to depositories which are under your supervision I am of the opinion that under the provisions of the act in question you have a right to exercise a sound discretion in approving depositories, and if you deem it advisable so to do, you may confine your approval to such depositories as are under your supervision. It is essential that the depository, whether it be under your supervision or otherwise, must be approved by you, and as Commissioner of Banking, you are charged with the exercise of a sound discretion in making such approval.

Replying to your fourth inquiry as to what liability you assume in approving depositories in case of the failure of such institution, I am of the opinion that you assume the same official liability in the performance of this duty as that assumed by you in the performance of any other discretionary official duty.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

IN RE BANKING INSTITUTIONS—BANKS—RECEIPTS TO DEPOSITORS —ACT OF JUNE 12, 1907.

Under the Act of June 12, 1907, P. L. 525, requiring banks, trust companies, saving fund societies, building and loan associations, bond and investment companies, and all other corporations under supervision of the Commissioner of Banking to furnish a receipt in full to each depositor or investor for moneys received, such receipts should be furnished at the time the deposits or investments are made.

A loose receipt or a receipt on a duplicate deposit slip can be furnished to a depositor who neglects to bring his pass-book.

Office of the Attorney General,
Harrisburg, Pa., August 23, 1907.

Hon. J. A. Berkey, Commissioner of Banking,
Harrisburg.

Sir: I am in receipt of your letter of August 21, 1907, inquiring when receipts must be furnished depositories and investors, under the provisions of the Act of June 12, 1907, (P. L. 525), entitled:

> "An act requiring banks, trust companies, savings fund societies, building and loan associations, bond and investment companies, provident associations, and all other corporations under supervision of the Commissioner of Banking, to furnish receipt in full to each depositor or investor for moneys received, which shall also be entered in full on books of the company; statement of liabilities to be set out in full in all reports to Commissioner of Banking or other supervisory authorities: statement of all moneys borrowed, to be placed in full as liabilities on books of the company; violation of provisions of this act a misdemeanor, and penalty therefor."

In your communication you state that many of the depositors in banks and trust companies neglect to bring their pass-books with them at the time of making deposits, and you ask to be advised whether the Act will be complied with if such deposits are entered in the pass-books when they are subsequently presented for settlement, or whether a receipt must be given at the time the deposit is received.

The primary purpose of the Act in question is to compel the officers and employes of every bank, trust company, saving fund society, building and loan association, bond and investment company, provident association or company, or any other corporation, now, or which may hereafter be, placed by law under the supervision of the Commissioner of Banking, or which may hereafter be incorporated, whether domestic or foreign, to keep the books of such institutions and make the reports required by law, in such maner as to clearly, truthfully and accurately show their exact financial condition. To this end it is provided that all moneys received by such institutions, whether as deposits, dues or on account of installments, for any trust or investment whatever, shall, until refunded, constitute a liability upon the part of the corporation, and that in all reports furnished to the Commissioner of Banking, the courts of law or other supervisory authorities, the aggregate of such liabilities shall be set out in full.

Other provisions, not directly connected with the matter now under discussion, but directed toward the accomplishment of the main purpose of the Act, are also contained therein.

It is expressly provided in the first section of the Act that every institution affected thereby "shall furnish each depositor or investor with a receipt in full, by pass-book or otherwise, for all moneys received, etc." One of the purposes of these receipts is, of course, to furnish evidence of the existence of the liabilities referred to in the Act, and it seems to be the plain intent of the Act that the receipts in question are to be furnished at the time the deposits or investments are made. The receipts, however, may be furnished "by pass-book or otherwise."

If a depositor neglects to bring his pass-book with him at the time of making a deposit, a loose receipt or a receipt on a duplicate deposit slip can be furnished to the depositor, and the amount of the deposit subsequently entered in his pass-book. It is essential, however, in my opinion, that a receipt of some kind "by pass-book or otherwise" be given at the time the deposit is received.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

BULDING AND LOAN ASSOCIATIONS.

A building and loan association cannot lawfully purchase for investment the bonds of another corporation.

Office of the Attorney General,
Harrisburg, Pa., Dec. 9, 1907.

Hon. J. A. Berkey, Commissioner of Banking:

Sir: Your letter of November 12th, to the Attorney General, has been referred to me for reply. You state therein that an examination made by one of the Examiners of your Department had disclosed the fact that the officials of a certain building and loan association have invested the money of the association in various bonds to the extent of over one hundred thousand dollars, and you ask whether such action on their part is in conformity with the laws governing such corporations.

In the very able and exhaustive opinion, covering generally the whole scope of the power and limitations of building and loan associations, which was rendered to your Department by former Attorney General Carson, under date of January 8, 1906, I find the following language in reference to the legality of investments such as the one under consideration:

> "It is contrary to the purpose for which these associations were organized for them to make permanent investments in any kind of property, although they may take such property as the result of procedure or foreclosure upon bonds or mortgages, or under the authority of the Act of April 29, 1874, in clause 9 of section 37."

I see no reason for departing from the rule as laid down by Attorney General Carson, and therefore advise you that there is no authority in law for such investments on the part of building and loan associations.

Very truly yours,
FREDERICK W. FLEITZ,
Deputy Attorney General.

BUILDING AND LOAN ASSOCIATONS.

BUILDING AND LOAN ASSOCIATIONS—POWER TO MAKE LOANS TO SHAREHOLDERS—ACT OF APRIL 29, 1874.

A building and loan association has no power, under the act of April 29, 1874, P. L. 73, to make a loan to a shareholder in excess of the value of the shares held by him.

Office of the Attorney General,
Harrisburg, Pa., Dec. 9, 1907.

Hon. J. A. Berkey, Commissioner of Banking:

Sir: Your letter of recent date, to this Department, stating that certain building and loan associations are making what they denominate "Special loans" to shareholders, which loans are not based upon the par or market value of the shares held by the borrowers, and asking that you be furnished with an official opinion upon the right of these associations to make such loans, received.

In the Act of April 29, 1874, (P. L. 73), providing for the incorporation of building and loan associations, the following language appears in Clause 1 of Section 37:

"They shall have the power and franchise of loaning or advancing to the stockholders thereof the moneys accumulated from time to time * * *"

Clause 4 of the same section provides as follows:

> "The said officers shall hold stated meetings, at which the money in the treasury, if over the amount fixed by charter as the the full value of a share, shall be offered for loan in open meeting, and the stockholder who shall bid the highest premium for the preference or priority of loan, shall be entitled to receive a loan of not more than the amount fixed by charter as the full value of a share for each share of stock held by such shareholder."

It would be unwise to allow any deviation from this method of making loans, so plainly expressed by the legislature in the Act authorizing the creation of these beneficial associations. To permit a shareholder to secure a loan in excess of the full value of the shares held by him is a violation of the spirit and the letter of the law, and a step in the direction of making loans to persons who are not shareholders at all, thus ignoring and nullifying the very aim and purpose of these associations, which is to make loans to their shareholders.

I am therefore of opinion and advise you that such practice ought

not to be acquiesced in by your Department, and that the associations making such loans be notified that they must cease doing so.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

IN RE BANKING INSTITUTIONS—BANKS—RESERVE FUND—PAPER GIVEN FOR LOANS—ACT OF MAY 8, 1907.

Paper payable on demand, given by a banking institution for borrowed money, is an "immediate demand liability," requiring the protection of a reserve fund of at least 15 per centum thereof required by the Act of May 8, 1907, P. L. 189.

Office of the Attorney General,
Harrisburg, Pa., April 2, 1908.

Hon. J. A. Berkey, Commissioner of Banking, Harrisburg, Pa.:

Sir: I am in receipt of your letter of April 1, 1908, inquiring substantially whether, in computing the aggregate of all the immediate demand liabilities of banking institutions subject to the provisions of the Act of 8th May, 1907, (P. L. 189), entitled:

> "An act to provide for the creation and maintenance of a reserve fund in all banks, banking companies, savings banks, savings institutions, companies authorized to execute trusts of any description and to receive deposits of money, which are now or may hereafter be incorporated under the laws of this Commonwealth, and in all trust companies or other companies receiving deposits of money, which may have been heretofore or which may hereafter be incorporated under section twenty-nine of the act approved April twenty-ninth, one thousand eight hundred and seventy-four, entitled 'An Act for the creation and regulation of corporations,' and the supplements thereto,"

upon which aggregate a reserve fund of at least fifteen per centum is required by Section 2 of said Act, your Department should include paper payable on demand given by such institutions for borrowed money.

Your inquiry requests a construction of certain provisions of the Act in question. By section 2 of the Act it is provided as follows:

> "Every such corporation, receiving deposits of money subject to check or payable on demand, shall, at all times, have on hand a reserve fund of at least fifteen per centum of the aggregate of all its immediate demand liabilities."

In the absence of legislative definition, there might be room for some discussion as to the meaning of the phrase "immediate demand liabilities" as used in the paragraph of Section 2 above quoted, but in Section 4 of the Act the Legislature has defined the phrase as follows:

> "'Immediate demand liabilities' shall include all deposits payable on demand, and all items in the nature of claims payable on demand."

It is clear that one of the purposes of the Act is to provide for a reserve equal to fifteen per cent. of the immediate demand liabilities of the institutions subject to its provision, and I am if the opinion that a liability given for borrowed money payable on demand is an item in the nature of a claim payable on demand, and is a liability that requires the protection of the reserve as fully as such protection is required for deposits subject to check or payable on demand.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

CONTINGENT EXPENSES.

The necessary travelling expenses of the Commissioner and Deputy Commissioner of Banking are properly payable out of the contingent fund of that Department.

Office of the Attorney General,
Harrisburg, Pa., May 16, 1907.

Hon. J. A. Berkey, Banking Commissioner:

Dear Sir: I have your letter of the 15th inst., in which you inquire as to the right of the Commissioner and Deputy Commissioner of Banking to use the Contingent Fund of the Department for the payment of the necessary traveling and other expenses incurred in connection with the business of the Department.

I am of opinion that the necessary traveling expenses of the Commissioner and Deputy Commissioner of Banking in the performance of their public duties are properly payable out of the Contingent Fund appropriated for the respective fiscal years, in the same manner as any other expenses of the Department not covered by express appropriations.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

OPINIONS TO THE SECRETARY OF AGRICULTURE.

OPINIONS TO THE SECRETARY OF AGRICULTURE.

NURSERY STOCK.

The Pomologist of the State Board of Agriculture cannot lawfully bring in the State nursery stock without the certificate of fumigation required by Sect. 4 of the Act of March 31st, 1905, nor can shipping cards be issued by the Secretary of Agriculture to him stating that such stock is to be admitted without fumigation.

Office of the Attorney General,
Harrisburg, Pa., Jan. 30, 1907.

Hon. N. B. Critchfield, Secretary of Agriculture:

Dear Sir: I have your letter of January 30th, in which you ask me if you can grant a permit to the Pomologist of the State Board of Agriculture to bring into the State nursery stock without the certificate of fumigation required by the 4th Section of the Act of 31st of March, 1905, attached thereto, or, in lieu thereof, can you furnish to the Pomologist shipping cards or tags stating that such nursery stock is to be admitted without fumigation into Pennsylvania for the purpose of experimentation.

I am of opinion that the Act of Assembly will not permit nursery stock to be brought into this State without such certificate of fumigation, and I am further of opinion that you are not authorized to issue shipping cards or tags authorizing such nursery stock to be brought into the State of Pennsylvania for experimentation. I suggest that, if you deem it of sufficient importance to have such experimentation made, you have an amendment to the Act of Assembly introduced with a view of authorizing nursery stock to be brought into the State in your discretion on your certificate.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

NURSERY STOCK.

Nursery stock cannot be admitted in this State without the certificate of fumigation.

Office of the Attorney General,
Harrisburg, Pa., Feb. 13, 1907.

Hon. N. B. Critchfield, Secretary of Agriculture:

Sir: I have your letter of the 13th inst., in which you set forth an extract from a letter received by you from Messrs. Hoopes, Brother & Thomas, of West Chester, Pa., wherein they advise you that they have several lots of imported nursery stock arriving in the next few weeks from France and Holland, and asking how they can bring the same into this State without a certificate of inspection and fumigation required by the Act of March 31, 1905; and I note that you ask me what authority, if any, you have in the premises.

Your powers are defined by the Act of Assembly above mentioned, and you cannot permit any violations of its provisions. The Act requires that before any nursery stock can be brought within the territorial limits of the State, it shall be accompanied by the certificate of a State or United States officer that "the trees, vines, shrubs or plants, excepting conifers and herbaceous plants, therein contained, are properly fumigated and appear free from all dangerously destructive insects and diseases." Under this language Messrs. Hoopes, Brother & Thomas must procure the certificate of an inspector appointed by the United States Government or by some State Government showing compliance with the above stated provisions of the statute.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

INFECTED TREES.

The Secretary of Agriculture may destroy infested trees where they may not be treated without endangering other trees nearby.

There is no provision of law for payment of damages for trees so destroyed.

Office of the Attorney General,
March 26, 1907.

Hon. N. B. Critchfield,
Secretary of Agriculture,
Harrisburg, Pa.

Dear Sir: I have your letter of recent date asking whether under the Act of 31st of March, 1905 (P. L. 82), you have the power to destroy infested trees when the agents of your department find that

an attempt to treat the trees would not protect the safety of other trees which are in close proximity, and whether the owner of such trees, in case of their destruction, may collect damages therefor.

I answer that the provision of the Act which authorizes you to enter upon the premises and treat or destroy trees infested with dangerously injurious insects or diseases is enforceable by you. The Legislature has the power to command the destruction of such trees in the exercise of the police power of the State, and for the protection of other trees which are endangered thereby. You are not required by the Act to treat the trees before ordering their destruction. Whether or not the circumstances demand that the trees shall be treated or destroyed is a matter of discretion which rests upon you.

There is no direction in the Statute for the payment of damages to the owners of such dangerously infested trees destroyed by you and without such statutory authority there can be no recovery for the same.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

PUBLIC PRINTING.

The report of the Dairy and Food Commissioner and the report of the State Veterinarian may be printed as bulletins of the Secretary of Agriculture and the contents thereof omitted from the annual report.

Office of the Attorney General,
Harrisburg, Pa., July 18, 1907.

Hon. N. B. Critchfield,
Secretary of Agriculture,
Harrisburg, Pa.

Dear Sir: I am in receipt of your communication of July 15, 1907, in which you state that if there is authority of law for so doing, you desire to publish the annual reports of both the Dairy and Food Commissioner and the State Veterinarian, as bulletins of the Department of Agriculture, and withhold the same from the regular Department report.

As I understand the situation, the reports of the Dairy and Food Commissioner and of the State Veterinarian, officers and agents of the Department of Agriculture, have been heretofore made to you, and by you incorporated in your annual report, published under the authority of the second section of the Act of March 13, 1895, as amended by the amendment of April 22, 1903 (P. L. 252).

You state in your communication that the reports of the Dairy and Food Commissioner and of the State Veterinarian are desired by, and are of special benefit to many inhabitants of the Commonwealth who are not particularly interested in the contents of the agricultural report, and that the most economic way to furnish these reports to persons particularly interested therein, would be to publish them "in pamphlet form" as bulletins of the Department.

In view of the prohibition contained in the 26th section of the Act of February 7, 1905 (P. L. 1), that "no part or parts of any reports of the several heads of departments shall be printed in pamphlet form, nor shall any book be published at the expense of the State, or additional copies of any book be furnished by the contractor or contractors unless by virtue of express authority of law," I am of the opinion that the reports of the Dairy and Food Commissioner and of the State Veterinarian should not be published in the form of pamphlets. The above mentioned section 2 of the Act of 1895 as amended by said Act of 1903, authorizes you, in addition to making your annual report, to publish from time to time such bulletins of information as you may deem useful and advisable, not exceeding 25,000 copies of any one bulletin.

You are invested with a wide discretion as to the contents of your report, and as to the advisability of publishing bulletins from time to time. There is a recognized distinction between pamphlets and bulletins, under the practice in vogue in the Department of Public Printing and Binding. Inasmuch as the contents of the reports in question are ordinarily included in your annual report, such reports can not properly be printed in pamphlet form, but I can see no valid objection to printing the report of the Dairy and Food Commissioner, and the report of the State Veterinarian, as bulletins of your Department, and ommitting the contents of said bulletins from your annual report. By the adoption of this method there will be no such duplication in the printed matter issued by your Department, as is intended to be prohibited by the said Printing Act of 1905, and a large portion of the citizens of the Commonwealth will be supplied with the information of particular interest to them, in convenient form.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

CONDIMENTAL STOCK FOOD.

Where the analysis, which the "International Stock Food Company of Minneapolis, Minn.," furnished the department of agriculture in support of the company's claim that it was a medicine, showed that it was in fact a condimental stock food, the sale of such feed is subject to the restrictions of the Act of May 28, 1907, P. L. 273.

Office of the Attorney General,
Harrisburg, Pa., Jan. 16, 1908.

Hon. N. B. Critchfield, Secretary of Agriculture:

Sir: Your letter of January 9th is before me, in which you ask to be advised whether or not a certain commodity manufactured by The International Stock Food Company, of Minneapolis, Minn., and sold under the name of "The International Stock Food," comes within the terms and is subject to the restrictions imposed by the Act of May 28th, 1907, (P. L. 273), entitled:

> "An Act regulating the sale of wheat-, rye-, corn- and buckwheat-bran and middlings, or any mixture thereof; also of condimental stock and poultry-food, and patented, proprietary, or trade-marked stock and poultry-food, possessing nutritive value combined with medicinal properties, and mixed feeds, including mixtures bearing distinctive names, used for feeding poultry and other domestic animals; and also of concentrated commercial feeding-stuffs; defining concentrated commercial feeding-stuffs; prohibiting their adulteration; providing for the collection of samples, and analysis thereof, by the Department of Agriculture, and the publication of information concerning the same; providing also for the expenses of the enforcement of the law, and fixing penalties for its violation."

This Act is so general in its terms and sweeping in its character that it must be held to apply to all patented, proprietary or trade-marked stock and poultry foods. This is apparent from an inspection of the language of the first and second sections which read as follows:

> "That every lot or parcel of corn- or buckwheat-bran or middlings or any mixture of two or more of those articles, used for feeding domestic animals, sold, offered, or exposed for sale within this State, at any other place than at the mill where manufactured; and that every lot or parcel of concentrated commercial feeding-stuff, as defined in section two of this act, used for feeding domestic animals, including condimental stock and poultry-food, and patented, proprietary or trade-marked stock and poultry-food, possessing nutritive value combined with medicinal properties;

and every lot or parcel of mixed feed including mixtures bearing distinctive names, used for feeding poultry and other domestic animals, sold, offered or exposed for sale within this State, shall have affixed thereto, in a conspicuous place on the outside thereof, a legible and plainly-printed statement, clearly and truly certifying the number of net pounds of feeding stuff contained therein, the name, brand or trade-mark under which the article is sold; the name and address of the manufacturer or importer, and a statement of the minimum percentage crude protein and crude fat and the maximum percentage of crude fiber which it contains; these constituents to be determined by the methods adoped by the Association of Official Agricultural Chemists of the United States; and shall also have affixed thereto, in a conspicuous place on the outside thereof, a plainly-printed statement, truly certifying the names of the several ingredients of which the article is composed. Wheat-bran or wheat-middlings, rye-bran or rye-middlings, or any mixture of wheat-bran and wheat-middlings, or rye-bran or rye-middlings, used for feeding domestic animals, sold, offered, or exposed for sale within this State, at any other place than at the mill where manufactured, shall have a tag or printed statement attached to each package containing the same, guaranteeing the contents of the package to be pure and unadulterated wheat-bran or wheat-middlings, or rye-bran or rye-middlings, or a mixture of two or more of such articles; and also stating the number of net pounds contained therein, the name and address of the manufacturer or importer, and the names of the several ingredients of which the contents of the package are composed. Whenever any wheat-, rye-, corn- or buckwheat-bran or middlings, or any mixture of two or more of these articles, is kept for sale in bulk, at any other place in this State except at the mill where manufactured, or whenever any concentrated commercial feeding-stuff is kept for sale in bulk, stored in bins or otherwise, the dealer or dealers keeping the same for sale shall keep on hand cards of proper size upon which the foregoing statement or statements is or are plainly printed, and if the feeding-stuff is sold at retail, in bulk, or if it is put up in packages belonging to the purchaser, dealer or dealers shall, upon request of the purchaser, furnish him with one of said cards upon which is or are printed the statement or statements described in this section: Provided, That when any manufacturer or purchaser, located within the State of Pennsylvania, of any bran or middlings, or mixture thereof, or of any concentrated commercial feeding-stuff, as defined in section two of this act, shall send samples of the same to the Secretary of Agriculture for analysis, the chemist of the Department shall furnish the analysis, showing the percentage of crude protein,

fat and fibre which it contains, and shall charge a fee of one dollar for each such sample, which analysis shall be made within ten days after the sample is received by the chemist, and all moneys so received shall, from time to time, be covered into the State Treasury.

"The term 'concentrated commercial feeding-stuff,' as used in this act, shall include cottonseed meals, cottonseed feeds, linseed meals, gluten meals, gluten feeds, pea meals, bean meals, peanut meals, cocoanut meals, maize feeds, starch feeds, sugar feeds, dried distillers' grains, dried brewers' grains, malt sprouts, hominy feeds, cerealine feeds, rice meals, dried beet refuse, oat feeds, corn and oat feeds, ground beef or fish scraps, and other animal and vegetable by-products, mixed feeds, other than mixtures of wheat-bran and wheat-middlings and rye-bran and rye-middlings, including mixtures bearing distinctive names, and all other materials of a similar nature used for feeding domestic animals, including poultry, also condimental stock and poultry foods, and patented, proprietary, or trade-marked stock and poultry-foods, possessing nutritive value combined with medicinal properties; but shall not include wheat-bran or wheat-middlings, rye-bran or rye-middlings, or any mixture of two or more of these articles; hays, straws and corn stover, pure grains ground together; nor the unmixed meals made directly from the entire grains of wheat, rye, barley, oats, Indian corn, buckwheat, broom-corn, flaxseed, sugar-cane and sorghum, when all the different parts of such grains remain together and have not been separated, after grinding, by bolt, sieve, or otherwise."

The manufacturer of this particular commodity insists that this law does not apply to his product by reason of facts set forth in his letter, accompanying yours, and which are summed up in the following sentence: "These facts show conclusively that International Stock Food is simply a 'Trade Name' for a high class Tonic, Purifier and Aid to Digestion and Assimilation." In another sentence he uses the following sentence: "I go as far as I can, but I cannot qualify as a 'feed' when International Stock Food is absolutely medicinal and nothing else." If the compound referred to were advertised and sold as a medicine, it would not come under the terms of the Act and would not have to comply with its requirements, but to prevent it to be sold without thus complying with the Act under its present name would be to concur and acquiesce in a fraud upon the purchasing public, as the proprietor himself advertises it as the "International Stock Food," and the analysis which he furnishes to your Department in support of his claim that it is a medicine shows that it is in fact a condimental stock food.

This, in addition to the name under which it is sold, fixes its status, and places it beyond your power to exempt it from the provisions of the statute.

I am therefore of opinion and advise you that, under the statement of facts furnished by the manufacturer himself, you are without discretion in the matter and must insist that he comply with the law, and a failure to do so will render him liable to the penalties prescribed in such cases.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

OPINIONS TO THE FORESTRY COMMISSIONER.

OPINIONS TO THE FORESTRY COMMISSIONER.

CENTRAL PENNSYLVANIA LUMBER COMPANY.

The Central Pennsylvania Lumber Co. offered to lease for a period of three years a right of way across state forestry reservation lands for the purpose of operating a tram railroad thereon for the removal of timber owned by the company on adjoining lands. Held, that the State Forestry Reservation Commission had not the power to grant such right.

There is neither express nor implied legislative authority which would justify the State Forestry Reservation Commission in executing a lease of reservation lands. The length of the term is not a controlling fact.

Office of the Attorney General,
Harrisburg, Pa., November 8, 1907.

Honorable Robert S. Conklin, Commissioner of Forestry, Harrisburg:

Sir: I have your letter of November 7th, 1907, stating that the Central Pennsylvania Lumber Company has made an application to your Department for permission to build a tram railroad down Mudlick Run and across Warrant No. 5,676, in Huston township, Clearfield county, and to operate said road for a period of three years, for the purpose of removing timber which this company owns in adjoining warrants.

I understand from your communication that a portion of said Warrant No. 5676 is owned by the Commonwealth as a part of its State Forestry Reservation System, and that the proposition of the said Lumber Company is in effect an offer to lease, for a period of three years, at a rental to be agreed upon, a right of way across State Forestry Reservation lands, for the purpose of operating a tram railroad thereon for the removal of timber owned by said Lumber Company on adjoining lands, said right of way to occupy about eight and three-quarter ($8\frac{3}{4}$) acres of State Forestry Reservation lands.

I am also in receipt of a blue print showing the proposed route of said tram railroad across said State Forestry Reservation lands.

As I understand your inquiry, it is not proposed to remove any timber from said State Forestry Reservation, but merely to lease a right of way across the same. You ask this Department to advise the Department of Forestry whether the State Forestry Reservation

Commission has power, under existing legislation, to grant such right of way.

In reply, you are respectfully referred to an opinion rendered to you by this Department, under date of August 7, 1907, upon the question of the right of the State Forestry Reservation Commission to lease lands belonging to a State Forestry Reservation, located along one side of a stream, to a private corporation, which proposed to erect a dam across said stream. It was there held that the powers of the State Forestry Reservation Commission created by the Act of 1901,

> "Apart from the purchase of lands, are specified by the terms of the said Act to be 'full power to manage and control all the lands'; also to establish such rules and regulations with reference to the control, management and protection of forestry reservations as in its judgment will conserve the interests of the Commonwealth', also to sell such timber as will advance the welfare of the Commonwealth with reference to reforestation and betterment of State reservations; and 'to make and execute contracts or leases in the name of the Commonwealth for the mining or removal of any valuable minerals that may be found in said forestry reservations."

You were advised in such opinion that there is at present no express legislative authority which would justify the State Forestry Reservation Commission in executing the lease then proposed, and that in the opinion of this Department there is no implied legislative authority to warrant the Commission in executing the same.

The question raised in your present inquiry is practically identical with the one heretofore passed upon by this Department. The only apparent distinction is that in the former case the lease was to be for an indefinite or perpetual period of time, whilst in the present case the term of the lease would be about three years. That fact is not a controlling one in the disposition of the question.

You are therefore advised, in reply to your present inquiry, that, in the opinion of this Department, the State Forestry Reservation Commission has no power to grant to the said Lumber Company the right of way it now seeks.

Very truly yours,

J. E. B. CUNNINGHAM,

Assistant Deputy Attorney General.

PENN'S CREEK WATER POWER COMPANY.

There is neither express nor implied legislative authority which would justify the State Forestry Legislative Commission in executing a lease of lands owned by the Commonwealth to a water power company to build a dam for the purpose of generating electricity, or to grant in any way the right to construct a part of said dam upon the lands of the State Forestry Reservation or to submerge a part of said lands by the erection of a dam.

The State Forestry Reservation Commission has no right to lease a part of the lands of the state to a private corporation for a permanent use not expressly authorized by the terms of the law defining the powers of the commission.

Legislation relative to the powers of the State Forestry Commission reviewed.

Office of the Attorney General,
Harrisburg, August 7, 1907.

Hon. Robert S. Conklin, Commissioner of Forestry:

Sir: I am in receipt of your communication of July 16, 1907, inquiring whether in my opinion the State Forestry Reservation Commission has the legislative authority, under Act of February 25, 1901 (P. L. 11) to lease a portion of the lands owned by the Commonwealth and belonging to one of its State Forestry Reservations to the Penn's Creek Water and Water Power Co., under the circumstances and for the purposes stated in said communication. From your communication and a copy of the draft submitted therewith the following facts are made to appear:

The Penn's Creek Water and Water Power Company is a private corporation and owns or controls the land on the north side of Penn's Creek near Cherry Run Station, Union county, Pennsylvania, It proposes to construct a dam, about one hundred feet in height and 920 feet in width at the top, across said Penn's Creek near said Cherry Run Station for the purpose of securing water power for the generation of electricity. It is further proposed by said corporation to erect, somewhere in the neighborhood, a large electric plant for the transmission of electric power to Lewistown and such other localities as it may be able to supply.

The land on the south side of said Penn's Creek is owned by the Commonwealth and is a part of one of its State Forestry Reservations. The line of the State's holdings on this side of the stream extends to the creek, and the character of the land is described as being mountainous, with a steep declivity running down to the creek. The construction of the proposed dam would back up the water in said Penn's Creek for a distance of about four miles, submerging a part of the land so as aforesaid owned by the State along said stream. The submergence of the State land at the dam would be about 30 rods, gradually decreasing toward the limit of back water, and averaging about 15 rods or a total of 14 acres.

The said Penn's Creek Water and Water Power Company desires to obtain from the said State Forestry Reservation Commission the right to construct one end of the proposed dam upon the land owned by the Commonwealth, and the right to submerge the above described strip of the Commonwealth's land, situate along the south side of said creek, these rights to be granted to said corporation by said Commission in the form of a lease for a period of ninety-nine years, or some similar grant; the said corporation paying to the Commonwealth a suitable compensation in the form of rental for the privileges and rights thus acquired, and reimbursing the Commonwealth for the value of the timber destroyed by the backing up of the water.

You now desire to be advised as to whether or not the State Forestry Reservation Commission has legal authority to make such proposed lease.

A proper disposition of your inquiry requires an investigation of the legislation relative to this subject.

Under the Act of March 30, 1897, (P. L. 11), providing for the acquisition of lands by the Commonwealth for the purpose of establishing State Forestry Reservations, it is provided that "the lands so acquired by the Commonwealth shall be under control and management of the Department of Forestry, and shall become part of the Forestry Reservation System, having in view the preservation of the water supply at the sources of the rivers of the State and for the protection of the people of the Commonwealth and their property from destructive floods."

By the act of February 25, 1901, (P. L. 11), it is provided that a Department of Forestry shall be established, consisting of the Commissioner of Forestry and four other citizens of the Commonwealth, who together shall constitute the State Forestry Reservation Commission. The Commissioner of Forestry and the Forestry Reservation Commission, under said act, are clothed with all the powers theretofore conferred by law respectively upon the Commissioner of Forestry and the Forestry Reservation Commission, so far as the same are consistent with the provisions of the act in question. With the consent of the Governor the Commission has power to purchase any suitable lands in any county of the Commonwealth that, in the judgment of said Commission, the State should possess for forest preservation.

> "Said Commission shall also have full power to manage and control all the lands which it may purchase under the provisions of this Act, as well as those that have heretofore been purchased and which are now owned by the State under existing laws. Said Commission is also empowered to establish such rules and reg-

> ulations with reference to the control, management and protection of Forestry Reservations, and all lands that may be acquired under the provisions of this Act, as in its judgment will conserve to the interests of the Commonwealth; and wherever it shall appear that the welfare of the Commonwealth, with reference to reforestation and the betterment of State reservations will be advanced by selling or disposing of any of the timber on forestry lands, the Commission is hereby empowered to sell such timber on terms most advantageous to the State; and said Commission is hereby empowered to make and execute contracts or leases in the name of the Commonwealth for the mining or removal of any valuable minerals that may be found in said forestry reservation, whenever it shall appear to the satisfaction of the Commission that it would be for the best interest of the State to make such disposition of said minerals, and provided that such contracts or leases shall also be approved by the Governor of the Commonwealth after the proposed said contracts or leases shall have been advertised in at least three newspapers published nearest the reservation designated for one month in advance of said contract or lease, and the contracts or leases shall be awarded to the highest bidder," &c.

The powers, therefore, of the State Forestry Reservation Commission, created by the act of 1901, apart from the purchase of lands, are specified by the terms of the said act to be "full power to manage and control all the lands;" also "to establish such rules and regulations with reference to the control, management and protection of forestry reservations as in its judgment will conserve the interests of the Commonwealth," also to sell such timber as will advance the welfare of the Commonwealth with reference to reforestation and the betterment of States reservations; and "to make and execute contracts or leases in the name of the Commonwealth for the mining or removal of any valuable minerals that may be found in said forestry reservations."

There is no express authority conferred upon the Commission by any legislation to grant water privileges except as hereinafter mentioned. It is argued, however, by counsel for the said Penn's Creek Water and Water Power Company, that the Commission has implied authority under the terms of the said act of 1901 to grant the rights and privileges now sought by said company.

Several opinions have been rendered by this Department construing the act in question. Under date of October 15, 1901, Attorney General Elkin, in replying to an inquiry from the Commissioner of Forestry, asking whether it was within the purview of the power conferred upon the State Forestry Reservation Commission to grant the privilege of using the water on such lands for private purposes, said:

> "The Act of February 25, 1901, (P. L. 11), confers upon the Forestry Reservation Commission very general powers in reference to the management and control of lands purchased by the State for forestry purposes. The Act gives the Commission the right to sell timber, to lease minerals and to make all contracts necessary for these and other purposes. It is true the Act does not expressly confer upon the Commission the right to grant water privileges, and I doubt whether it would be within the power of the Commission to grant any permanent water rights to persons or corporations, but it was the intention of the Legislature, in providing for the purchase of forest lands, to protect and cultivate the forest lands of the State and provide protection for our water supply. There could not be much sense in providing protection for the water supply if the water could not be made use of. Under all the circumstances, it is my opinion that your Commission has a right to control the water supply on forest lands as well as timber and minerals. This power is fairly implied from the provisions of the Act."

It does not appear from the opinion exactly what water rights or privileges were sought in that particular instance, but the inference would be that they were some temporary private privileges, as the Attorney General in his opinion expresses a doubt as to whether it would be within the power of the Commission to grant any permanent water rights to persons or corporations.

Again, in September, 1903, the Commissioner of Forestry applied to Attorney General Carson for an opinion as to the power of the State Forestry Reservation Commission to execute a proposed lease to the Little Juniata Water and Water Power Company. That company was a corporation having its principal office in the city of Philadelphia, and had for its object the use of the waters of the Little Juniata River in the county of Huntingdon for the development of water power for industrial purposes. The Commonwealth owned three or more tracts of land bordering upon or adjacent to the said Little Juniata River as a part of its Forestry Reservations. In order to carry out the object for which the said company was incorporated, it was deemed necessary to dam the said river at a certain point, and thence to carry so much water as was required through a conduit to a point near the town of Petersburg, where the water would be utilized and returned to the river by way of Shaver's Creek. It was proposed that, in consideration of an annual rental of $100.00, payable in advance, the Commonwealth should permanently and perpetually lease to said company a strip of land about 75 feet wide along and over the slope of the tracts of land so as aforesaid owned by the Commonwealth as a part of its Forestry Reservation as and for a right of

way for the construction and maintenance of said conduit for the carrying of water and for the location of the necessary transmission wires proposed to be erected, the right of way being about 10,000 feet in length, with full right of ingress, egress and regress to, over and across said lands on the line of said right of way.

In reply to the inquiry Attorney General Carson said:

> "In my judgment the making of such a contract is wholly beyond the powers of the Forestry Commission. The Commission is entirely without power to grant the use of the waters of the Commonwealth to private corporations, no matter how tempting the proposition of a rental might be.'

After enumerating the specific powers conferred upon the Commission with reference to the establishment of rules and regulations for the control, management and protection of reservations, the sale of timber and the making of contracts or leases for the mining or removal of valuable minerals, the opinion proceeds as follows:

> "Apart from the specific powers which are several times alluded to in the subsequent provisions of the Act, the Department of Forestry is without authority to dispose of the State's property either in whole or in part. The leasing of rights of way or the strips of land along water courses for the purposes of the erection of a dam, or the construction of a conduit, is clearly not within the spirit or the terms of the Act relating to the regulation and control of the forestry reservation, and is not related in any way to the selling of timber or the leasing of mining privileges."

It is argued, however, in support of the present application, that the opinion just cited should not control in this case for the reason that, in the present instance the Commonwealth owns the land on but one side of Penn's Creek, and under the existing state of facts, the Commission has implied authority to execute the proposed lease under the provisions of the act of 1901, giving to said Commission full power to manage and control all the lands belonging to said reservation. It is contended that the opinion quoted fails to give due weight to the words "manage and control" in construing the act in question. This brings us to an inquiry as to the legislative intent indicated by the use of the terms "manage and control," as they are used with reference to State Forestry Reservations.

"To manage" means "to direct or conduct affairs," and "to control" means "to subject to authority, direct, regulate, govern." The same words are used in a subsequent section of the act of 1901 where it is provided, in Section 3, that the Commissioner of Forestry shall be the president and executive officer of the Forestry Reservation

Commission, and also superintendent of the State Forestry Reservations, and shall have "immediate control and management" under the direction of the Forestry Reservation Commission, of all forest lands. The control and management intended by the Legislature seems, therefore, to be simply supervision or superintendence over the land in question, exercised under such rules and regulations as the Commission may establish from time to time, and there is no indication in any of the legislation bearing upon this subject of an intent on the part of the Legislature to authorize the Commission to make any grant of the lands of the State for any purposes other than those specifically set forth in the act of 1901.

To manage and control, in this sense of the words is a very different thing from granting permanent privileges with reference to the occupation of the lands of the State by private persons or corporations.

This construction of the act is strengthened by the fact that whenever it has been proposed to grant the use of lands belonging to the State Forestry Reservations or of the waters flowing thereon for any permanent purpose, direct legislative authority has been secured. For instance, when it was deemed advisable to give street railway companies the privilege of constructing, maintaining and operating their lines of railway over, along and upon public highways within or bordering on forest reservations owned by the Commonwealth, the act of April 15, 1903, (P. L. 200) was passed for the express purpose of authorizing such grants. Again when it was deemed advisable and advantageous to give to boroughs and other municipalities the privilege of impounding water on forest reservations owned by the Commonwealth, and of constructing, maintaining and operating lines of pipes over and through the same for the purpose of conveying water therefrom, the act of April 14, 1905 (P. L. 156) was passed for the purpose of authorizing such grants by the State Forestry Reservation Commission.

The fact that the Commonwealth owns the land on but one side of Penn's Creek does not affect the legal proposition involved in the present inquiry, nor is it material whether the rights desired are described as water rights or by some other term. The substantial proposition involved is the right of the Commission to lease a part of the lands of the State to a private corporation for a permanent use not expressly authorized by the terms of the law defining the powers of said Commission.

It is practically admitted that there is at present no express legislative authority which would justify the State Forestry Reservation Commission in executing the proposed lease and I am of the opinion that there is no implied legislative authority which would justify the Commission in executing the same, or in granting to

the said Penn's Creek Water and Water Power Company in any way the right to construct a part of said dam upon the lands belonging to the State Forestry Reservation or to submerge a part of said lands by the erection of the proposed dam.

Very truly yours,

J. E. B. CUNNINGHAM,

Assistant Deputy Attorney General.

OPINIONS TO THE FACTORY INSPECTOR.

OPINIONS TO THE FACTORY INSPECTOR.

EMPLOYMENT CERTIFICATE.

Sections 5 and 6 of the child labor act of 1905, being unconstitutional, can be stricken out without necessarily affecting Section 2, which provides that no child under fourteen years of age shall be employed in any establishment; fourteen years is accordingly the age limit.

The act of May 29, 1901, P. L. 322, is now in force as modified by the constitutional provisions of the act of 1905.

Child labor legislation with decisions thereon reviewed; and form of employment affidavit or certificate approved.

Office of the Attorney General,
Harrisburg, Pa., July 30, 1907.

Capt. John C. Delaney, Chief Factory Inspector, Harrisburg, Pa.:

Sir: I am in receipt of your letter of June 24th, enclosing two forms; first, form of "Employment Certificate" designated as "Form 6, original," prepared in accordance with the provisions of the act of May 2, 1905 (P. L. 352); second, form of "Employment Affidavit" designated as "New Form 6," prepared by your Department to meet the situation existing subsequent to the decisions of the Superior Court of Pennsylvania in the case of Collett vs. Scott, 30 Super. Ct. 430, and of the Court of Quarter Sessions of Philadelphia County, in the case of Commonwealth vs. Hoopes, 15 D. R. 894.

You state in your communication that by reason of these decisions you have abandoned the use of the form first above referred to, viz: "Form 6, original," and have adopted the use of the second form referred to, viz: "New form 6." You ask to be advised by this Department as to whether said "New Form 6" meets the requirements of law, the enforcement of which is one of the duties of your Department.

The blank submitted for consideration and designated as "New Form 6," is as follows:

"New Form 6

It is unlawful to issue the following for a child under fourteen years of age.

PENNSYLVANIA.

EMPLOYMENT AFFIDAVIT.

for

.....
(Name of child.)

Personally appeared before me ....., of
(Name of affiant.)
No. .....street, ...
(Residence.)

affirmed affirms
who being duly sworn swears that ..he is the .....
(Relation to child.)
of..... who is .....years of age and was
(Name of child.)
born on the .....day of .....in the year
189..., in .....
(Place of birth.)

Sworn or affirmed and subscribed before me this .....
day of .....190....

.....
.....
(Name of person attesting.)
.....
(Signature of affiant.)
.....
(Official title.)
.....
(Signature of child.)
.....
(Address.)

N. B. Properly executed by a person authorized to administer oaths, the above is a legal warrant for the employment of the child named therein in any establishment in the State of Pennsylvania, as per Act of Assembly approved May 29, 1901, as changed by the Act of May 2, 1905, which reads: "It shall be unlawful to employ any child between the ages of fourteen and sixteen years without there is first provided and placed on file an affidavit made by the parent or guardian stating the age, date and place of birth of said child. If said child have no parent or guardian, then such affidavit shall be made by the child, which affidavit shall be kept on file by the employer, and shall be returned to the child when employment ceases."

Sections 5 and 6 of the Act of May 2, 1905, authorizing public school teachers to issue employment certificates, are not in force, the courts having declared them to be unconstitutional.
June, 1907.

J. C. DELANEY,
Chief Factory Inspector,
Harrisburg, Pa."

*Erase "sworn" and "swears" if the affiant affirms, and vice versa.

A proper reply to your inquiry requires a somewhat detailed investigation of the provisions of the law relative to the employment of children in so far as that subject is connected with, or related to, the duties imposed upon you as Chief Factory Inspector of the Commonwealth.

By the act of Assembly of May 29, 1901 (P. L. 322), an act passed for the purpose, inter alia, of regulating the employment of children, it is enacted in the second section thereof that "No child under thirteen years of age shall be employed in any factory, manufacturing or mercantile industry, laundry, workshop, renovating works, or printing office within this State." Section three of this act provides in substance that it shall be unlawful for any such establishment to hire or employ any child between the age of thirteen and sixteen years, unless there is first provided and placed on file an affidavit stating the age, date and place of birth of said child. By section four of said act it is provided that

> "All persons authorized to administer oaths must examine all children as to their ability to read and write the English language. After a careful examination, if a child is found unable to read and write the English language, or has not attended school as required by law, or is under thirteen years of age, it will be unlawful to issue a certificate; and in no case shall the officer who executes certificates charge more than twenty-five cents for administering the oath and issuing the certificate."

This act of 1901 was followed by the act of 2nd May 1905 (P. L. 352). The act of 1905 is also an act regulating, inter alia, the employment of children, in all kinds of industrial establishments. By the first section of the act the term "establishment" is defined to mean any place within this Commonwealth other than where domestic, coal mining, or farm labor is employed; where men, women, or children are engaged and paid a salary or wages by any person, firm, or corporation; and where such men, women, or children are employes in the general acceptance of the term.

Section 2 of the act of 1905 provides that "No child under fourteen years of age shall be employed in any establishment." By

section five of the act of 1905 it is made unlawful for the superintendent, lessee, or other person in charge of any establishment, to employ any child between the age of fourteen and sixteen years, unless there is first provided and placed on file in the office of the establishment an Employment Certificate in the form provided by the Chief Factory Inspector, which certificate shall be uniform throughout the State. This certificate, under the terms of said section, may be issued by the Factory Inspector, or certain school superintendents and principals. By section six of the said act of 1905 it is prescribed that the said Employment Certificate shall state the name, age, date and place of birth, and description (including color of eyes, hair and complexion) of said child; its residence and the residence of its parents guardian or custodian; the ability of said child to read and write simple sentences in the English language, and that it has complied with the educational laws of the Commonwealth and is physically able to perform the work to be required of it. It is provided in said section six that before any certificate of employment is issued the person authorized to issue the same shall first demand and obtain certain specified evidence of the age, date and place of birth of the child, corroborated by transcripts of certain records. Where such transcripts of certain records prescribed by said section cannot be obtained, it is provided that there may be substituted therefor a statement signed by the principal teacher of the last school which the child attended, certifying that the child has received instruction in reading, spelling, writing, English grammar and geography, is familiar with the fundamental operations of arithmetic, and has completed the course of study in the common schools prescribed for the first five years or a course of study in other schools equivalent thereto.

By the 25th section of this act the Chief Factory Inspector is required to prepare the form of the Employment Certificate, blanks, orders, notices, etc., required by the act. This act is commonly known as the "Child Labor Act," and upon the same day upon which it was approved there was also approved an act commonly known as the "Anthracite Coal Act." By the Anthracite Coal Act the employment of children in or about any anthracite coal mine or colliery is regulated, and by sections five and six of this act somewhat similar provisions are enacted relative to the employment certificates of children seeking employment in or about such mines or collieries.

As I understand the situation, the forms for the employment certificates required by the Child Labor Act were prepared by you and used until the decision of the Superior Court in the case of Collett vs. Scott, 30 Super Ct. 430. By that decision, handed down March 12, 1906, it was held that the fifth and sixth sections of the

Anthracite Coal Act violated the provisions of the 14th amendment of the Federal Constitution in that the said act made "a discrimination between minors of the same sex and age, the same mental and physical ability, the same experience in this avocation, and the same educational qualifications, permitting members of one class to obtain employment certificates, without which no minor can be employed at all, upon much easier terms than are required by members of the other class." I also find that on April 11, 1906, you were advised by Hon. Hampton L. Carson, then Attorney General, that, in his opinion, sections five and six of the Child Labor Act were also unconstitutional upon the ground that they made a like discrimination between the minors affected thereby.

You state in your said communication that subsequent to this opinion you discontinued the use of the forms of Employment Certificates prepared and issued under the provisions of the Child Labor Act, and prepared the form of Employment Affidavit now under consideration. In the case of Commonwealth vs. Hoopes, 15 D. R. 894, Judge Staake pointed out the distinction made by the fifth and sixth sections of the Child Labor Act between minors of the same sex and age, and held that sections five and six of said Child Labor Act are in conflict with the first section of the 14th amendment of the Federal Constitution, and must therefore be declared unconstitutional.

No legislation was enacted at the legislative session of 1907 affecting the power or duties of your department with reference to the employment of children, but certain amendments were enacted, by two acts approved May 29, 1907, (P. L. 314 and 321 respectively), to the Compulsory School Attendance Law, making it unlawful for any person, firm or corporation, to employ any child not in attendance at school as provided for by the Compulsory School Attendance Law, providing for certain certificates, and imposing certain duties, and conferring certain powers, on Attendance Officers in connection with this matter. By the amendment to the first section of the Compulsory School Attendance Law, it is provided that the act shall not apply to any child between the ages of fourteen and sixteen who can read and write the English language intelligently and is regularly engaged in any useful employment or service. It seems unnecessary, however, to investigate the provisions of the Compulsory School Attendance Law with reference to the employment of children, as your department does not appear to be charged with any duty under the amendments in question. Confining ourselves, therefore, to the specific inquiry as to the proper form of the blanks to be issued by your department, it becomes necessary to consider the effect of the decisions above referred to with relation to the unconstitutionality of sections five and six of

the Child Labor Act of 1905. The act of 1905 is inconsistent in many of its provisions with the original act of 1901, and, therefore, to that extent repealed the said act of 1901. The act of 1905 raised the age limit, under which children cannot be employed, from thirteen to fourteen years, and provided for the issuing of employment certificates in lieu of the employment affidavit provided for in the act of 1901. The sections providing for the issuing of employment certificates have been declared unconstitutional, but an act is not necessarily void in toto because portions of it are invalid or unconstitutional; for where a section is in purpose and effect a distinct enactment, it may be eliminated altogether without affecting the other sections. The rule is "that where the provisions are so interdependent that one may not operate without the other, or so related in substance and object that it is impossible to suppose that the Legislature would have passed the one without the other, the whole must fall; but if, when the unconstitutional portion is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, it must be sustained."

Am. & Eng. Ency. of Law, Vol. 26, Page 570.

In the decision of the Superior Court in the case of Collett vs. Scott, supra, it is stated "that section 1 of the said Anthracite Coal Act which makes it unlawful to employ any minor under sixteen years inside of any anthracite coal mine, or to employ any minor under fourteen years in any anthracite coal breaker or colliery, or around the outside workings of any antracite coal mine, and section two, which prescribes the remedy for violation of the provisions of section 1, are a valid and constitutional exercise of the police power and are enforceable notwithstanding the invalidity of the other provisions of the Act relative to employment certificates."

The only sections of the Child Labor Act of 1905 which have been declared unconstitutional, are sections five and six, and as these sections can be stricken out without necessarily affecting the provisions of section two, to the effect that no child under fourteen years of age shall be employed in any establishment, it follows that fourteen years remains as the age limit under which no child can be employed in any establishment. An unconstitutional Act, or section of an act, is in legal contemplation as inoperative as though it had never been passed, and we are, therefore, to regard the provisions of the law with reference to the issuing of employment affidavits as they would exist if the unconstitutional fifth and sixth sections of the Child Labor Act of 1905 had never been passed. With the exception, therefore, of the increase in the age limit and the definition of the term "establishment" as contained in the Act of 1905, the Act of 1901,

in so far as its provisions are applicable to the question in hand, is the law of the Commonwealth and the form of employment affidavit submitted must be measured by this standard; in other words, the act of 1901 is now in force as modified by the constitutional provisions of the act of 1905.

In reply to your specific inquiry as to whether or not the form of employment affidavit, submitted with your communication and hereinbefore set forth, is in compliance with the present requirements of law which your Department is required to enforce, permit me to say that the body of the form is, in my opinion, in substantial compliance with these legal requirements; but I cannot approve the first line at the top of the form, nor the matter printed in the shape of a note at the bottom of the form. The words "it is unlawful to issue the following for a child under fourteen years of age" printed at the top of the form are correct so far as they go; but, in my opinion, there should be additional words printed on that part of the form. Section four of the act of 1901, which, since sections five and six of the act of 1905 have been declared unconstitutional, is in full force, except as to the age limit, must be read in connection with section three of the act of 1901. Section three provides for the placing of the employment affidavit on file, and section four provides in substance that all persons authorized to administer oaths in the preparation of the employment affidavits must examine all children as to their ability to read and write the English language. If, after a careful examination, a child is found unable to read and write the English language or has not attended school as required by law, it is just as unlawful to issue the employment affidavit or certificate as it would be to issue the same if the child were under fourteen years of age.

I am, therefore, of the opinion that the following words should be printed at the top of the form:

> "It is unlawful to issue the following for a child under fourteen years of age, or for a child unable to read and write the English language; or who has not attended school as required by law."

I am also of the opinion that the printed matter at the bottom of the form should read as follows:

> "N. B. Properly executed by a person authorized to administer oaths, after examination by such person as to the ability of the child to read and write the English language, the above is a legal warrant for the employment of the child named therein, in any establishment of the State of Pennsylvania, in so far as such employment is regulated by the Acts of Assembly approved May 29, 1901, and May 2, 1905, which, together, contain substantially the following enactment: It shall be un-

lawful for any establishment to hire or employ any child between the ages of fourteen and sixteen years without there is first provided and placed on file an affidavit made by the parent or guardian stating the age, date and place of birth of said child. If said child have no parent or guardian then such affidavit shall be made by the child, which affidavit shall be kept on file by the employer and shall be returned to the child when employment ceases.

Sections five and six of the Act of May 2, 1905, authorizing public school teachers and factory inspectors to issue employment certificates, are not in force, the courts having declared them to be unconstitutional. In no case shall the officer who executes this certificate charge more than twenty-five cents for administering the oath and issuing the certificate."

If the changes herein suggested are made in the "New Form 6," I am of the opinion that said blank form will then be in accordance with such provisions of the law as it is the duty of your Department to enforce.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

IN RE CHILDREN OF ALIENS—CHILDREN OF ALIENS—COMPULSORY SCHOOL ATTENDANCE—FACTORY INSPECTION—ABILITY TO READ AND WRITE ENGLISH—EMPLOYMENT CERTIFICATES—ACTS OF JULY 11, 1901, AND MAY 2, 1905.

The children of aliens are subject to the Act of July 11, 1901, P. L. 658, relating to compulsory school attendance to the same extent as the children of American citizens.

Under the Act of July 11, 1901, P. L. 658, as modified by the constitutional provisions of the Act of May 2, 1905, P. L. 352, an employment certificate cannot be issued to a child unable to read and write the English language.

Office of the Attorney General,
Harrisburg, Pa., April 8, 1908.

Hon J. C. Delaney, Chief Factory Inspector, Harrisburg, Pa.:

Sir: Your inquiry of January 16, 1908, was duly received by this Department. In this inquiry you submit two questions, stated as follows:

First. Are children of aliens subject to the law of Compulsory School Attendance?

Second. Is a foreign-born child fourteen years of age debarred from legal employment because of inability to read and write the English language, even though able to read and write a foreign language?

In reply to the first inquiry you are advised that the compulsory school attendance legislation makes no distinction whatever between the children of aliens and the children of American citizens, except that the Assessors in making up the enrollment provided for by section 4 of the act of 11th July, 1901 (P. L. 658), are required to set out in such enrollment the nationality of the children enrolled, as well as the full name, date of birth, age, sex and residence of such children. The children of aliens are subject to the laws relating to compulsory school attendance to the same extent and in the same manner as the children of American citizens.

Replying to your second inquiry, your attention is respectfully called to an opinion rendered by this Department to your Department, under date of July 30, 1907, relative to the proper form of employment affidavit for children. In that opinion the Act of May 29, 1901 (P. L. 322), and the act of May 2, 1905 (P. L. 352), both of which acts, among other things, regulate the employment of children in this Commonwealth, were construed, and you were advised that the act of 1901 is now in force as modified by the constitutional provisions of the act of 1905. You were also advised in that opinion that fourteen years is now the age limit under which no child can be employed in any establishment, and that section 4 of the act of 1901 is in full force except as to the age limit. Section 4 of the said act of 1901 provides as follows:

> "All persons authorized to administer oaths must examine all children as to their ability to read and write the English language. After a careful examination, if a child is found unable to read and write the English language, or has not attended school as required by law, or is under thirteen years of age, it will be unlawful to issue a certificate; and in no case shall the officer who executes certificates charge more than twenty-five cents for administering the oath and issuing the certificate."

You were further advised in said opinion that if a child is found unable to read and write the English language after a careful examination, or has not attended school as required by law, it is just as unlawful to issue an employment affidavit or certificate for such child as it would be to issue the same if the child were under fourteen years of age.

The law expressly states that it shall be unlawful to issue an employment affidavit or certificate to a child unable to read and write the English language. Whether the child is able to read and write a foreign language is entirely immaterial.

Very truly yours,

J. E. B. CUNNINGHAM,

Assistant Deputy Attorney General.

OPINIONS TO SUPERINTENDENT OF PUBLIC INSTRUCTION.

OPINIONS TO SUPERINTENDENT OF PUBLIC INSTRUCTION.

HIGH SCHOOL INSPECTORS.

The Superintendent of Public Instruction has power to appoint clerks and assign them to duty as High School Inspectors, an item in the General Appropriation Act of 1907 having made an appropriation for such purpose.

Office of the Attorney General,
Harrisburg, Pa., Sept. 17, 1907,

Hon. Nathan C. Schaeffer, Superintendent Public Instruction,
Harrisburg, Penna.

Sir: I have your letter of the 12th inst., in which you call my attention to the item in the General Appropriation Act of 1907, (P. L. 759), making an appropriation for the payment of salaries and expenses of high school inspectors, and asking my opinion as to whether or not you may appoint two additional assistants in your Department, to perform the duties and functions of high school inspectors. I note that you state there is great need of such assistants for the performance of this work.

The said item in the General Appropriation Act, (P. L. 759), is as follows:

> "For the payment of the salaries and expenses of the high school inspectors, two years, the sum of twelve thousand ($12,000) dollars or so much thereof as may be necessary."

The Supreme Court of Pennsylvania, Commonwealth ex rel. vs. Gregg, et. al., 161, Pa., 582, in an opinion by Mr. Justice Mitchell, ruled that an item in the General Appropriation Act of 1893, appropriating a sum for the payment of the salary of a clerk in the office of the Prothonotaries of the Supreme Court is sufficient authority for the employment of such clerk, and the payment of his salary. In discussing this question the Court said:

> "It cannot be assumed that the constitution meant to compel the Legislature even to supervise all the details of the government. That is properly the function of the executive and judicial branches. What work there is to be done, and what clerical force is requisite to do it, is a question of detail as to which must necessarily be left to the head of each department. It is clearly the Legis-

> lative province to keep a general control over the expenditure of the public funds, but this it does so long as no money is paid out without a previous appropriation for that purpose. While it thus holds the purse strings it controls the whole subject as completely as its proper functions under the constitution demand. In passing general appropriation bills the constitution limits them to the "ordinary expenses of the executive, legislative and judicial departments, and some other enumerated matter, and every valid appropriation in this form must appear to be reasonably within the description of 'ordinary expenses,' but it would be sticking in the bark to require a separate bill to be passed every time an additional clerk was to be appointed in a public department. In regard to the particular item under consideration it appears to be intended to pay for part of the regular and ordinary work of the offices named, and therefore to be for their ordinary expenses."

Under the provisions of the act of 1854, you are authorized to employ clerks in your Department to assist you in the performance of your duties. The inspection of High Schools is one of such duties, and you are therefore authorized to employ such clerks as you may deem reasonably necessary for this purpose, provided the Legislature has made the necessary appropriation to pay them. In this instance the Legislature has made the requisite appropriation. The only language in the appropriation that suggests a doubt is that the money is appropriated to pay "High School Inspectors." This language under the opinion of the Supreme Court, cited above, I think is fully complied with by your appointing such clerks as you may deem necessary to render you the requisite assistance, and assign them to the work of High School inspection and pay them their salaries and expenses out of the moneys appropriated by the Legislature for such purpose.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

COUNTY AND CITY SUPERINTENDENTS OF SCHOOLS.

Candidates for election as County and City Superintendents of Schools do not come within the terms of the Act of 5th March, 1906 (P. L. 78.)

Office of the Attorney General,
Harrisburg, Pa., March 16, 1908.

Hon. Nathan C. Schaeffer, Superintendent Public Instruction, Harrisburg, Penna.

Sir: I am in receipt of your letter of the 10th inst. In it you state that the Triennial Conventions of School Directors to elect

county and City Superintendents for the next three years throughout the Commonwealth will meet on the first Tuesday of May next, and you ask to be advised whether the candidates for these offices come within the terms and are subject to the provisions of the act approved the 5th day of March, A. D. 1906, (P. L. 78), entitled:

> "An Act to regulate nomination and election expenses, and to require accounts of nomination and election expenses to be filed, and providing penalties for the violation of this act."

The first section of the act in question defines the terms used therein, and the second paragraph of that section reads as follows:

> "The term 'candidate for election,' as used in this act, shall include all persons whose names are printed as candidates on the official ballots, or on any official sticker, used at any election; and also all persons voted for, for any public office, who shall receive at least ten per cent. of the highest vote received by the successful candidate for such office, but whose names were not printed on the official ballots., * * * * The term 'public office,' as used in this act, shall include every public office to which persons can be elected by vote of the people, under the laws of this Commonwealth."

Inasmuch as County and City Superintendents of Schools are not voted for at any general election, and their names are not printed as candidates on the official ballots, and the office which they hold is not one "to which persons can be elected by vote of the people," they do not come within the terms of the aforesaid act, nor are they in any way subject to its provisions.

Very respectfully,
FREDERIC W. FLEITZ,
Deputy Attorney General.

ELECTION OF COUNTY SUPERINTENDENT.

School Directors in districts established since the first Monday of June, 1907, have the right to vote at the election of County Superintendents on the first Tuesday of May, 1908.

School Directors in a district merged into a city or borough having a borough superintendent by consolidation since the first Monday of June, 1907, whose terms expire June, 1908, have the right to vote for County Superintendent on the first Tuesday of May, 1908.

Office of the Attorney General,
Harrisburg, Pa., April 22, 1908.

Dr. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.:

Sir: I am in receipt of your letter of today, in which you submit two questions, and ask for an official opinion thereon.

First. Have School Directors in school districts established since the first Monday of June, 1907, the right to vote at the election of County Superintendent, on the first Tuesday of May, 1908?

Second. In case a school district is merged into a city or a borough having a borough superintendent, by consolidation, since the first Monday of June, 1907, have the School Directors merged and whose term of office expire at the expiration of the school year ending June, 1908, the right to vote for County Superintendent on the first Tuesday of May, 1908?

I have examined these questions carefully and have been unable to find any decisions of the Courts covering either of them, and I am, therefore, obliged to decide them under the terms of the Acts creating the office of School Director and defining its duties.

The presumption of law is that a public officer elected by the people is entitled to all the privileges of the office held by him during his continuance therein, and that presumption must prevail in the absence of any legislation limiting those powers under particular circumstances.

One of the duties imposed upon a person holding the office of School Director is that every three years he is to meet with his fellow Directors of the County and proceed to elect a County Superintendent to serve for the next three years. If, for any reason, his right to vote in such an election is questioned, the proper place for the determination of that matter is in the Courts, and any candidate for County Superintendent or other interested person who feels that School Directors not entitled to vote have exercised that function, has a full and adequate remedy at law.

For these reasons I have the honor to submit the following answers to your questions:

First: School Directors regularly elected or appointed who have taken the oath of office and organized in districts established since the first Monday of June, 1907, have the right to vote at the election of county superintendents on the first Tuesday of May, 1908.

Second: School Directors in a school district merged into a city or borough having a borough superintendent by consolidation since the first Monday of June, 1907, and whose terms expire at the end of the school year ending June, 1908, have the right to vote for County Superintendent on the first Tuesday of May, 1908.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

OPINIONS TO SECRETARY AND TREASURER OF DENTAL COUNCIL.

DENTAL COUNCIL—REGISTRATION OF DENTIST—REMOVAL TO ANOTHER COUNTY—ACT OF JULY 9, 1897.

A licensed dentist, duly registered under the Act of July 9, 1897, P. L. 206, need not register again on removing his office to another county.

Office of the Attorney General,
Harrisburg, Pa., Jan. 24, 1907.

Hon. Nathan C. Schaeffer, Secretary and Treasurer Dental Council.

Sir: Your letter of the 15th inst., in which you ask me if one registration is sufficient to entitle the person possessing a license to practice dentistry anywhere in Pennsylvania, or whether such licensed dentist should register anew every time he removes his office to another county, has been received.

I am of opinion that, under the act of July 9th, 1897, (P. L. 206), one registration is sufficient, and that it is not necessary for a dentist, who has once complied with the provisions of that act, by exhibiting his license and being registered in the county where he desires to practice dentistry, to again be registered in any other county to which he may see fit to move. The language of the 14th section of this act is very explicit on this subject. It says:

"And one such registry under this act shall be sufficient warrant to practice dentistry in any county of this Commonwealth."

Very truly yours,
M. HAMPTON TODD,
Attorney General.

REGISTRATION OF DENTISTS—DENTISTS—REGISTRATION—TIME OF REGISTRATION—ACTS OF JULY, 9, 1897, AND MAY 7, 1907.

The Acts of July 9, 1897, P. L. 206, and May 7, 1907, P. L. 161, relating to the licensing and registration of dental practitioners, are in pari materia and are to be construed together.

Under the Acts of May 7, 1907, P. L. 161, and July 9, 1897, P. L. 206, the right to register as a dental practitioner is not limited to six months after the passage of the act, but the intent is to provide that any person practicing dentistry at the date of the passage of the act shall, within six months, cause his or her license to be registered, and a person thereafter licensed by the dental council is not legally entitled to enter upon the practice of dentistry until registered.

Office of the Attorney General,
Harrisburg, Pa., April 8, 1908.

Hon. N. C. Schaeffer, Secretary of the Dental Council of Pennsylvania.

Sir: I am in receipt of your inquiry referred to this Department by the Dental Council of Pennsylvania, relative to the registration

by the Prothonotary of Philadelphia County, of the dental license of Arthur P. O'Neill, of 1737 Park Ave., Philadelphia.

I understand the facts to be as follows:

Arthur P. O'Neill was granted a license to practice dentistry in the State of Pennsylvania by the Dental Council on August 5, 1907. On or about November 18, 1907, the said Arthur P. O'Neill exhibited his said license and made application to the Prothonotary of Philadelphia county, to be duly registered by the registration of his said dental license. The Prothonotary of said county declined to register said license, on the ground that such license could not be registered, under existing legislation, after the 7th day of November, 1907, and suggested that the matter be referred to this Department for an opinion. The question for disposition under the above facts is whether the said Arthur P. O'Neill is now entitled to have his said dental license registered by the Prothonotary of the Court of Common Pleas of Philadelphia county, that being the county in which he desires to practice dentistry. The disposition of this inquiry requires consideration of the acts of assembly of July 9, 1897 (P. L. 206), entitled:

> "An Act to establish a Dental Council and a State Board of Dental Examiners, to define the powers and duties of said Dental Council and said State Board of Dental Examiners, to provide for the examination and licensing of practitioners of dentistry, and to further regulate the practice of dentistry."

and the Act of May 7, 1907 (P. L. 161), entitled

> "An Act regulating and defining the powers and duties of the Dental Council and the State Board of Dental Examiners; providing for appointment of examiners; defining qualifications of applicants for examination; condition of granting licenses; regulating and limiting the practice of dentistry; prohibiting practice by, or employment of, unlicensed persons, and providing punishment therefore; and disposition of fees and fines, and fixing the appropriation to the Dental Council."

The said Act of 1897, after reciting in its preamble, inter alia, that it is expedient to assimilate the laws regulating the practicing of dentistry with those now pertaining to the practice of medicine and surgery in this Commonwealth,—provides that from and after the first day of October, one thousand eight hundred and ninety-seven, it shall not be lawful for any person in the State of Pennsylvania to enter upon the practice of dentistry unless he or she has complied with the provisions of the said act and has exhibited to the Prothonotary of the Court of Common Pleas of the county in

which he desires to practice dentistry, a license duly granted to him or her, as provided for in the Act, whereupon he or she shall be entitled, upon the payment of one dollar, to be duly registered in the office of the Prothonotary of the Court of Common Pleas in the said County.

It is further provided that any person violating the provisions of the Act shall be guilty of a misdemeanor, and upon conviction thereof shall be punished as provided therein. Under this Act it was provided that the Dental Council of Pennsylvania should consist of three members, viz.: The Superintendent of Public Instruction, the President of the State Board of Health and Vital Statistics, and the President of the Pennsylvania Dental Society. It was also provided by said Act that from and after the first day of September, 1897, there should be and continue to be a Board of Dental Examiners for the State of Pennsylvania, consisting of six members. Under said Act it became the duty of the Dental Council to supervise the examinations conducted by the State Board of Dental Examiners of all applicants for license to practice dentistry in this Commonwealth, and to issue to applicants returned by the Board of Examiners as having successfully passed the prescribed examination, a license to practice dentistry in the State of Pennsylvania.

Without going into unnecessary detail, it is sufficient to say that the thing prohibited by the said Act of 1897, was entering upon the practice of dentistry after October 1, 1897, without having obtained a license so to do from the Dental Council of the Commonwealth, which license the holder thereof was required to exhibit to the Prothonotary of the county in which he or she desired to practice, to the end that the person holding the same might be duly registered in the office of such Prothonotary. Applicants for a license from the Dental Council, not theretofore authorized to practice dentistry but desiring to enter upon such practice, were required to make proof that they possessed certain qualifications with reference to age and character, and that they had received a diploma conferring the degree of Doctor of Dental Surgery, or other recognized dental degree from a reputable institution.

Upon making satisfactory proof as above stated, the applicant received an order for examination before the State Board of Dental Examiners, and upon successfully passing the examination was entitled to receive from the Dental Council the said license to practice. In the case of applicants examined and licensed by the State Board of Dental Examiners, or State Board of Health, of other states, a license could be issued without examination, provided the Dental Council of Pennsylvania was satisfied that the standard of requirements adopted by the Board of Dental Examiners or State Board of Health of the other states in question was substantially

the same as the standard specified in Pennsylvania. It was further provided in this Act that nothing therein contained should be construed to prohibit the practice of dentistry within this Commonwealth by any practitioner already duly registered in accordance with the laws of this Commonwealth existing prior to the passage of the Act, and that one such registry under the Act should be sufficient warrant to practice dentistry in any county in the Commonwealth.

By the 16th Section of the Act in question, the acts of April 17, 1876, June 20, 1883 and June 10, 1893, regulating the practice of dentistry in this State, were specifically repealed. It was held in Commonwealth vs. Gibson, 21 Pa. C. C. 232, that the said Act of 1897, by reason of the fact that it related only to persons who "enter upon the practice of dentistry" did not apply to persons in established practice at the date of the Act.

Thus stood the law until the approval of the said Act of May 7, 1907 (P. L. 161). This act of 1907 is not drawn as an amendment to the said Act of 1897, but an examination of its terms shows that it refers to the same subject matter as the said Act of 1897, and that the scope and aim of both acts are practically the same. These two statutes being therefore in pari materia are to be construed together, as though they constituted one act, and the legislative intent is to be gathered from a consideration of both acts.

The Act of 1907 increases the membership of the Dental Council from three members to five, by adding thereto the Secretary of Internal Affairs and the Secretary of the State Board of Dental Examiners. In the Act of 1907 the President of the State Board of Health is, of course, described as the Commissioner of Health. Under the Act of 1907 licenses may be granted by the Dental Council to three classes of persons:

First, persons over twenty-one years of age, of good moral character, holding a diploma conferring upon such person the degree of Doctor of Dental Surgery or other established dental degree from a reputable educational institution maintaining a three years course in dentistry, and who have successfully passed the examination of the State Board of Dental Examiners;

Second, upon the recommendation of the Board of Dental Examiners the Dental Council may issue a license to any person furnishing proof that he or she has a license to practice dentistry granted by the Dental Council or other lawfully constituted authority of any other State or country, and,

Third, the Dental Council may also license any applicant who has been in the actual lawful practice of dentistry for not less than ten years upon the recommendation of the Board of Dental Examiners. It is provided that any license issued otherwise than as a result

of a written examination shall state the grounds upon which it is granted.

Certain provisions are contained in the said Act of 1907 as to the time and place of the meetings of the Board of Dental Examiners. Both of the acts in question deal primarily with the granting of licenses to practice dentistry in this Commonwealth by the Dental Council thereof, and with the registration of such licenses. By both acts it is provided that licenses so granted "shall be recorded in a book to be kept in the office of the Dental Council, and the number of the book and page therein containing said record shall be noted upon said license."

The question now raised, arises under Section 5 of the Act of 1907, which section reads as follows:

> "It shall be the duty of every person practicing dentistry within this Commonwealth to display, or cause to be displayed, his or her name, posted in a conspicuous place at or near the entrance to the office or place where he or she is practicing dentistry. Any person practicing dentistry within this Commonwealth, within six months from the passage of this act, shall cause his or her license to be registered in the office of the Prothonotary of the Court of the Common Pleas of the county in which such person shall practice dentistry, unless the same has already been registered in said county. Any person who shall neglect to cause his or her license to be registered as herein provided shall be construed to be practicing dentistry without a license; Provided, this Act shall not affect the right of any person to practice dentistry who is entitled to do so under the provisions of an Act of Assembly in force, or who shall have conducted the actual, lawful practice of dentistry in this Commonwealth for five years continuously preceding the passage of this Act."

This section should be read in connection with Section 8 of the Act, which provides as follows:

> "Any person who shall practice dentistry without being duly licensed or lawfully registered, or who shall practice dentistry, or induce any person to practice dentistry in violation of any of the provisions of this Act, shall be guilty of a misdemeanor," etc.

The Prothonotary of Philadelphia county seems to take the position that the right to register is limited to six months after the passage of the Act, and that registration, therefore, cannot be made after November 7, 1907, or, in other words, that only those persons who enter upon the practice of dentistry within six months from the passage of the Act, are entitled to have their licenses registered in the Prothonotary's office of the county in which

they desire to practice. Upon this ground he declines, until further advised, to register the license of the said Arthur P. O'Neill, which, as I understand the facts, was not exhibited until subsequent to the 7th day of November, 1907, although granted Aug. 5, 1907.

In my opinion this is not a correct construction of the existing legislation upon this subject. As above stated, the Act of 1907 is in pari materia with the Act of 1897 and repeals only such parts of the Act of 1897 as are inconsistent with the provisions of the Act of 1907.

With reference to the practice of dentistry in the Commonwealth of Pennsylvania, the Act of 1907 seems to divide persons legally entitled to engage in such practice into two classes:

First, those having a license issued by the Dental Council, and,

Second, persons entitled to practice under the provisions of an Act of Assembly in force, or who shall have conducted the actual lawful practice of dentistry in this Commonwealth for five years continuously preceding the passage of this Act.

It is provided in the said Act of 1907 that the right of the second class of persons above mentioned to practice dentistry shall not be affected by its provisions.

Dealing then, with the first class of persons, the Act provides in Section 8 that "any person who shall practice dentistry without being licensed or lawfully registered," etc., shall be guilty of a misdemeanor. Not only is practicing without license prohibited but practicing without lawful registration is also prohibited. There seems to be clear legislative intent manifested in the Act of 1907 to prohibit the practice of dentistry by any person in the Commonwealth (except such persons as are within the second class of practitioners above mentioned and therefore not affected by the Act), unless such person has been duly licensed by the Dental Council and lawfully registered by the Prothonotary of the proper county. It is a misdemeanor for any person, except those practitioners included in the class of practitioners not affected by the Act, to practice dentistry without being both licensed and registered, for it is specifically provided in Section 5 that any person who shall neglect to cause his or her license to be registered as herein provided, shall be construed to be practicing dentistry without a license.

Bearing in mind this apparent legislative intent, it is not difficult to construe that portion of Section 5 which reads as follows:

> "Any person practicing dentistry within this Commonwealth, within six months from the passage of this Act, shall cause his or her license to be registered in the office of the Prothonotary of the Court of Common

> Pleas of the county in which such person shall practice dentistry, unless the same has already been registered in said county."

Clearly the phrase "within six months from the passage of this Act" is not to be construed as modifying "practicing dentistry," so as to provide that only those persons entering upon the practice of dentistry within six months after the passage of the Act, are entitled to registration, as suggested by the Prothonotary of Philadelphia county; but is to be construed as modifying "cause his or her license to be registered." A more accurate expression of the legislative intent would be as follows: "Any person practicing dentistry within this Commonwealth shall, within six months after the passage of this Act, cause his or her license to be registered," etc. By this construction the purpose of the Act is fully carried out. Persons engaged in the practice of dentistry at the date of its passage, under a license from the Dental Council, who had neglected to register such license with the Prothonotary of the proper county, were given six months from the passage of the Act within which to register, and any persons who may have neglected to cause his or her license to be registered within that period are to be regarded as practicing without a license. This provision was doubtless intended for the protection of regularly licensed practitioners who had neglected to exhibit their licenses to the Prothonotary and register, as expressly required by the Act of 1897, and were therefore practicing without having placed upon record the best evidence of their right to so practice upon condition that they furnish such evidence with reasonable promptitude.

Bearing in mind that one of the main purposes of the legislation upon this subject is to protect the public from incompetent and unskilled practitioners, and that this end is attained largely by requiring duly qualified practitioners to be registered as such in a public register, under the express terms of the Act of 1897, which provision for registration is not inconsistent with anything found in the Act of 1907, and construing the acts of 1897 and 1907 as statutes constituting one harmonious piece of legislation, it seems clear that the Prothonotary of Philadelphia county should register the license of the said Arthur P. O'Neill, upon payment of the proper fee, and that neither the said Arthur P. O'Neill, nor any other person licensed by the Dental Council, is legally entitled to enter upon the practice of dentistry until such registration has been made.

Very truly yours,

J. E. B. CUNNINGHAM,

Assistant Deputy Attorney General.

OPINIONS TO CHIEF OF DEPARTMENT OF MINES.

OPINIONS TO CHIEF OF DEPARTMENT OF MINES.

COAL MINERS.

Coal Miners in actual practice as used in Sect. 4, Act of June 2nd, 1891 (P. L. 176) means miners actually engaged in the business of mining coal.

March 26, 1907.

Dear Sir: I have your letter of the 21st inst., asking an interpretation of the words "coal miners in actual practice" as contained in Section 4 of the Act of 2nd of June, 1891 (P. L. 176).

I reply that the words "coal miners in actual practice" means miners actually engaged in the business of mining coal.

Very truly yours,

M. HAMPTON TODD,
Attorney General.

Hon. James E. Roderick, Chief of Department of Mines, Harrisburg, Pa.

WITNESS FEES FOR MINE INSPECTORS—MINE INSPECTORS—WITNESS FEES.

Mine inspectors, subpoenaed as witnesses, may collect the usual witness fees and mileage, which they must turn in to the chief of the department of mines, who must transmit the same to the state treasurer.

Office of the Attorney General,
Harrisburg, Pa., April 22, 1908.

Hon. James E. Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: Your letter of recent date to this Department, asking for an opinion as to the right of Mine Inspectors to collect fees and mileage in attending Court when they are regularly subpoenaed as witnesses, received.

I advise you that such fees and mileage can be collected by the Mine Inspectors for such service in amounts equal to that allowed by law for other witnesses for similar services, but, inasmuch as they are

salaried officers of the State, such costs cannot be used by these officials for their own use, but must be turned in by them to you, and by you transmitted to the State Treasury.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

OPINIONS TO THE COMMISSIONER OF HEALTH.

OPINIONS TO THE COMMISSIONER OF HEALTH.

BILLS OF STATE BOARD OF HEALTH.

The bills incurred by the late State Board of Health, approved by its Secretary are payable from any moneys in the hands of the Commissioner of Health available for the purpose.

Office of the Attorney General,

Harrisburg, Pa., March 20, 1907.

Dear Sir: I have your letter asking whether you have the power to pay the bills incurred by the late State Board of Health which have been approved by its Secretary, and which you state seem to be valid obligations of the State.

I answer that Section 14 of the Act of April 27, 1905 (P. L. 316), confers upon you the powers and duties theretofore imposed upon the State Board of Health. Under its provisions you have power to pay from any moneys in your hands available for such purpose, valid bills of the former State Board of Health.

Very truly yours,

M. HAMPTON TODD,

Attorney General.

Hon. Samuel G. Dixon, Commissioner of Health, Harrisburg, Pa.:

DAUPHIN CONSOLIDATED WATER SUPPLY COMPANY.

The Commissioner of Health is advised to grant a permit to this Company to obtain an additional source of supply from the Susquehanna river for the territory embraced by the Enola Water Company.

Office of the Attorney General,
Harrisburg, Pa., March 25, 1908.

Dr. Samuel G. Dixon, Commissioner of Health:

Dear Sir: In your letter of recent date you state that the Dauphin Consolidated Water Supply Company has applied for permission to obtain an additional source of supply from the Susquehanna River for the territory embraced by the charter of the Enola Water Company, and you ask for an official opinion as to whether or not the State should grant this application, provided the water be potable.

The statement of facts which you set forth in your letter involves the legal authority of the Dauphin Consolidated Water Supply Company to supply water to the Enola district, and you very properly express reluctance to grant a permit to any company which is without civil authority to supply water in the district embraced by the application.

I have gone over the matter very carefully, and I am satisfied that the legal question involved can be more properly raised in another way, if it should be deemed best to do so, and your granting permission to take water will not in any way change the legal status of the Dauphin Consolidated Water Supply Company, nor bind the State in any way to a recognition of the rights of that company.

I am therefore of opinion and advise you that it will be entirely proper for you to grant this permit to the Dauphin Consolidated Water Supply Company for an additional source of supply in the Susquehanna River for the territory comprised in the charter of the Enola Water Company.

Very truly yours,
FREDERIC W. FLEITZ,
Deputy Attorney General.

EASTON'S TYPHOID EPIDEMIC.

The Commissioner of Health has the authority under the law to get into communication with the authorities of the city of Easton with a view of devising some plan whereby an epidemic of typhoid fever caused by the city sewage contaminating the water may be checked (the city having defeated a proposition to borrow the money necessary to build an intercepting sewer and sewage disposal works). That course recommended by the Attorney General before proceeding with the radical remedies under the act of 1905, P. L. 260.

Office of the Attorney General,
Harrisburg, Pa., March 25, 1908.

Dr. Samuel G. Dixon, Commissioner of Health:

Dear Sir: Your letter of the 23rd inst. is before me. In it you state that the city of Easton is discharging sewage into the waters of the State, which waters are subsequently used by several large municipalities of the Commonwealth for drinking purposes, and that within a few months there has been an excessively high rate of typhoid fever in some of the municipalities, attributable to the pollution of the Delaware River by the sewage of Easton; and you ask to be advised as to the proper action for you to take in the premises.

It is your duty to assume charge of cases of this kind under the authority of the Act of 22nd of April, 1905 (P. L. 260), entitled:

> "An act to preserve the purity of the waters of the State for the protection of the public health."

Section 4 of said Act reads as follows:

> "No person, corporation, or municipality shall place, or permit to be placed, or discharge or permit to flow into any of the waters of the State any sewage, except as hereinafter provided. But this act shall not apply to waters pumped or flowing from coal mines or tanneries, nor prevent the discharge of sewage from any public sewer system, owned and maintained by a municipality, provided such sewer system was in operation and was discharging sewage into any of the waters of the State at the time of the passage of this act. But this exception shall not permit the discharge of sewage from a sewer system which shall be extended subsequent to the passage of this act.
>
> "For the purpose of this Act, sewage shall be defined as any substance that contains any of the waste products, or excrementatious or other discharges from the bodies of human beings or animals."

From the facts contained in your letter it appears that the city of Easton has been derelict in its duty in this matter. In 1906 the Governor, Attorney General and Commissioner of Health, under authority of Section 5 of the Act in question, approved plans for sewer extensions in that city, providing for the discontinuance of the discharge of sewage into the waters of the Commonwealth within three years, which plans were not, however, adopted by the local authorities. Neither did they avail themselves of the provisions of Section 6 of said Act, which reads as follows:

> "It shall be the duty of the public authorities, having by law charge of the sewer system, of every municipality in the State, from which sewage was being discharged into any of the waters of the State at the time of the passage of this Act, to file with the Commissioner of Health, within four months after the passage of this Act, a report of such sewer system, which shall comprise such facts and information as the Commissioner of Health may require. No sewer system shall be exempt from the provisions of this Act, against the discharge of sewage into the waters of the State, for which a satisfactory report shall not be filed with the Commissioner of Health, in accordance with this section."

I also understand that a proposition to bond the city in a sum sufficient to pay for the construction of an intercepting system and sew-

age disposal works was recently overwhelmingly defeated by the voters of that municipality.

This condition cannot be permitted to continue, and it is your duty, and you have the authority under the laws of the Commonwealth, to get into communication with the authorities of the city of Easton at the earliest possible moment with a view of devising some plan whereby the evil complained of may be corrected, and I advise that course before proceeding with the more radical remedies provided by the Act itself.

Very respectfully,
FREDERIC W. FLEITZ,
Deputy Attorney General.

FINES OF JUSTICE OF THE PEACE.

The fine collected by a Justice of the Peace in a summary conviction under Section 21 of the Act of June 18, 1895 (P. L. 203) as amended by the Act of April 22, 1903 (P. L. 244) should be paid by the magistrate to the treasurer appointed by the supervisors of the township in which the offense was committed.

Office of the Attorney General,
Harrisburg, Pa., November 25, 1908.

Dr. Samuel G. Dixon, Commissioner of Health, Harrisburg:

Sir: Referring to your inquiry submitted to this Department as to the proper disposition to be made of the fine of $5.00 imposed against and paid by Dr. C. C. Conway to J. C. Morris, a Justice of the Peace of one of the townships of Greene county, Pennsylvania, after due proceedings against the said Dr. C. C. Conway for a violation of the Act of June 18, 1895 (P. L. 203), I reply as follows:

As I understand the facts upon which your inquiry is based, the fine in question was imposed after a summary conviction under Section 21 of the said Act of June 18, 1895 (P. L. 203), as amended by the Act of April 22, 1903 (P. L. 244). The act is entitled,

> "An act to provide for the more effectual protection of the public health in the several municipalities of this Commonwealth."

Among other things, it is provided in this act that every physician located or practicing in any of the municipalities of the Commonwealth shall report infectious or contagious diseases to the proper health authorities. Failure, neglect or refusal to comply with any of the provisions of the act subjects the person so offending, upon conviction thereof before any mayor, burgess, alderman, police magis-

trate "or justice of the peace of the municipality in which said offence was committed," to the imposition of a fine of not less than $5.00 nor more than $100.00, which said fine "shall be paid into the treasury of said municipality."

The said defendant, having been convicted, under said act of Assembly, paid the fine of $5.00 imposed to the said magistrate, who is a Justice of the Peace in a township of the second class in which there is no township treasurer.

You ask to be advised as to the proper disposition of the fine now in the hands of said magistrate, which inquiry raises the question of whether a township is a municipality within the meaning of the said Act of 1895, and if so, what is meant by the "treasury" thereof. The act in question, by its express provisions, applies to all the municipalities of the Commonwealth. Townships are civil divisions of the State incorporated by general laws to aid in the administration of government. By law certain powers are conferred upon them; certain duties are prescribed and certain liabilities imposed; and they are therefore frequently termed "quasi corporations." The constitution of our State classifies both townships and school districts as municipalities, and our Supreme Court often characterizes townships as municipalities. Sprague vs. Baldwin, et al., 18 Pa. C. C., 568. Many acts of Assembly might be cited referring to townships as municipal corporations. There is nothing in the above mentioned act of 1895 to indicate that its operation is to be limited in any way to cities and boroughs, and it may be safely concluded that townships are included in the term "municipality" as used therein.

Except in townships of the first class and in those of certain counties, there is no such office as that of Township Treasurer, which fact gives rise to some difficulty in construing the provision of the act directing that the fine shall be paid into the treasury of the municipality in which the offence was committed. A treasury may be properly defined as "A department of government which has control over the collection, management and expenditure of the public revenue." The corporate powers of a township are vested in and exercised by the supervisors thereof, and I am therefore of the opinion that, under a fair construction of the act in question and following what seems to be the general legislative intent expressed therein, the fine to which you refer should be paid by the magistrate to the treasurer appointed by the supervisors of the township in which the offence was committed.

Very truly yours,

J. E. B. CUNNINGHAM,

Assistant Deputy Attorney General.

OPINIONS TO THE STATE HIGHWAY COMMISSIONER.

OPINIONS TO THE STATE HIGHWAY COMMISSIONER.

JACKSON TOWNSHIP ROAD IMPROVEMENT—STATE HIGHWAY COMMISSIONER—AID FOR ROAD IMPROVEMENT—PROTESTS—ACT OF MAY 1, 1905.

A protest against the construction of a state road should be filed in the County Commissioners' office, as provided by section 4, act of May 1, 1905, P. L. 319; when filed with the State Highway Commissioner it is without legal validity, and may be acted upon or ignored by him in the exercise of his administrative discretion.

Office of the Attorney General,
Harrisburg, Pa., Jan. 30, 1907.

Hon. Joseph W. Hunter, State Highway Commissioner, Harrisburg, Pa.:

Dear Sir: I am in receipt of your request for an opinion in the matter of the proposed construction of a State road in Jackson township, Lebanon county. The circumstances of the case which I am asked to determine are as follows:

The Board of Supervisors of said township in March, 1906, petitioned the County Commissioners of Lebanon county, asking them to join in requesting the State Highway Department to extend State aid for road improvement in said township. The County Commissioners refused to join in said petition, whereupon the said Board of Supervisors presented their petition direct to the State Highway Department, under the proviso contained in section nine of the Act of 1905 (P. L. 322). The State Highway Commissioner then advertised for sealed proposals for the construction of the road asked for. On September 24th a protest against the construction of the road in question was filed in the State Highway Department, on the part of certain tax payers of said township. The State Highway Commissioner, in view of the fact that this protest of tax payers was filed in his Department, even though there was no provision of law for such filing, and the time for filing a protest in the County Commissioner's office in accordance with section four of the Act of May 1, 1905 (P. L. 319), had long expired, and being in doubt as to his authority in the premises, requested an official opinion from the Attorney General, instructing him what to do.

I am informed that the State Highway Commissioner has, since the filing of the protest, personal inspection, and by inquiry from

those residing in the neighborhood has satisfied himself of the need for rebuilding the same.

I can find no provision of law for the filing of a protest on the part of tax payers with the State Highway Department. Persons opposed to the reconstruction of the road by the State under section four of the Act of 1905 (P. L. 319) can file a protest in the County Commissioner's office within thirty days after the receipt of any petition for highway improvement. This was neglected, and about six months after the filing of the original petition in the County Commissioner's office a protest was filed, not in the County Commissioner's office, but with the State Highway Commissioner. There is no provision of law whereby the State Highway Commissioner is instructed how to proceed in a case of this kind. It becomes a matter of administrative discretion on his part. He has before him the original petition asking for State aid, and also the protest of the tax payers. He has the advantage of having personally inspected the road in question, and also the information gained by inquiry in the neighborhood from those who ought to be familiar with the local situation.

In view of all the circumstances of this case, I advise you to proceed with the execution of the contract for the construction of the road in question if, in your own judgment and discretion you believe that this is a proper case for State aid. Very truly yours,

M. HAMPTON TODD, Attorney General.

FORT HUNTER ROAD—HIGHWAY COMMISSION—ROAD CONTROLLED BY PRIVATE CORPORATION—ACT OF MAY 1, 1905.

The Act of May 1, 1905, P. L. 319, creating the State Highway Department, does not authorize the improvement of a road at public expense which is managed and controlled by a private corporation.

Office of the Attorney General,
Harrisburg, Pa., Jan. 30, 1907.

Hon. Joseph W. Hunter Highway Commissioner, Harrisburg, Pa.

Sir: I have your letter addressed to my predecessor, Hon. Hampton L. Carson, Attorney General, in which you ask if the proposition submitted by the Fort Hunter Road Commission to the effect that the State shall take possession of the Fort Hunter Road and reconstruct it, the County and Township paying their respective shares of the cost of construction, may be adopted by you and the road be reconstructed thereunder. I have examined the papers which you submitted and find that the Fort Hunter Road is under the control and supervision of a Fort Hunter Road Commission, which gets its

authority from several acts of Assembly. This Commission has issued bonds to a large amount upon this road, which bonds are at present unpaid.

The act of May 1, 1905, (P. L. 318), providing for the establishment of a State Highway Department and for the improvement of public highways, in terms directs the reconstruction of highways upon the proper steps being taken upon the part of the local authorities. It is clear that a road under the control of a Commission appointed by the Legislature, upon which toll may be charged, and upon which there is a large amount of debt outstanding, is not a highway. A highway, as defined by Webster, is a public road; a way open to all passengers. I therefore instruct you that you may not reconstruct the road in question until the road has been freed from debt and the Commission abolished.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

COMPENSATION OF TREASURER.

The Compensation of the Treasurer, Section 6, Act of April 12, 1905, of 2 per centum shall be computed but once and that upon the total sum received or distributed by him.

Office of the Attorney General,
Harrisburg, Pa., March 7, 1907.

Sir: I have your letter of recent date asking my construction of the language contained in section 6 of the act of April 12, 1905, as follows: "The Treasurer shall receive as compensation for his services such amount as the Board of Road Supervisors may prescribe, not exceeding 2 per centum of all moneys received and distributed by him."

You ask if the 2 per centum provided for by this language shall be computed upon all money received, and again upon all money paid out. I answer that the clear meaning of this act is that the 2 per centum shall be computed but once, and that upon the total sum received or distributed.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

Hon. R. D. Beman, Assistant Commissioner of Highways, Harrisburg, Pa.

AUTOMOBILE LICENSES.

The law requires each operator of a motor vehicle to procure a license.

Harrisburg, Pa., April 3, 1907.

Hon. R. D. Beman, Assistant Commissioner of Highways, Harrisburg, Pa.

Sir: Your letter of the 21st inst., referring to this Department a communication from the Township Commissioners of Radnor Town-

ship, Delaware County, relative to automobile licenses for an automobile chemical and hose wagon, has been received.

The law requires that each operator of a motor vehicle shall procure a license from the State Highway Department of this Commonwealth.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

EXPENSES MAKING SURVEYS, PLANS AND SPECIFICATIONS.

It is impossible to advise who should pay the preliminary expenses of making surveys, etc., for a road, the proceedings for the reconstruction of which are subsequently abandoned, unless the full terms of the specific agreements in question in each case are communicated to the Attorney General.

Office of the Attorney General,
Harrisburg, Pa., April 19, 1907.

Hon. R. D. Beman, Assistant Commissioner of Highways, Commonwealth of Pennsylvania.

Sir: Your letter of April 11th, stating that in several instances, applications asking State aid in the construction of highways have been filed by Township Supervisors and County Commissioners, in accordance with which petitions the State Highway Department has made the necessary surveys, prepared plans and specifications, advertised for and received bids, whereupon, the county authorities, or the township authorities, have refused to proceed further in the matter, and inquiring whether or not, in such cases, the county and township can be compelled to pay the whole or any part of the expense thus incurred, has been received.

Under the act of May 1st, 1905, (P. L. 318), providing for the improvement of highways by the State, whenever the county commissioners petition the State Highway Department for the improvement of a highway, the Commissioner shall determine what changes shall be made in said highway; what portion shall be improved and in what manner, and the said Commissioner shall make the necessary surveys, prepare correct plans and make careful, detailed estimates of the expense of the work, which in his opinion should be done, and report the same to the county commissioners, township commissioners or supervisors.

If the county commissioners and township authorities then decide that it is advisable to go on with the work and make the agreements required by the said act, your Department may contract jointly with the county and township to carry out the recommendations of the said Commissioner of Highways; the costs and expense of doing same to be divided, as provided for in said act.

The act directs the payment by the county or township of the costs of the improvement, including the surveys, only upon the contingency that the county and township authorities decide that it is advisable to go on with the work. If they do not so decide, there is no liability upon the part of the county or township for the cost of making the survey, etc. It seems to be the intent of the act that this expense shall be borne by the State, in the event that the county and township authorities decide against improving the road.

After the county and township authorities have gone so far as to make the agreements required by the act, and after the State Highway Commissioner has asked for and received bids upon the contract, if the county and township authorities then abandon the enterprise, whether or not the county or township may be compelled to pay their proportionate shares of the expense incurred up to the time that the enterprise is abandoned, would depend upon the provisions of the respective agreements. It is, of course, impossible for this Department to advise you upon this subject, unless the full terms of the specific agreements in question, in each case, are communicated to this Department.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

UPPER PROVIDENCE TOWNSHIP.

A township which filed a statement substantially complying with the 2nd Section of the Act of 12th April, 1905, (P. L. 142) and within such time as enabled the State Highway Commissioner to secure the appropriation to pay the bonus, should receive the bonus, although the statement was not filed before the 15th day of March in that year.

Office of the Attorney General,
Harrisburg, Pa., April 23, 1907.

Hon. Joseph W. Hunter, State Highway Commissioner, Commonwealth of Pennsylvania.

Sir: Your letter of April 4th, 1907, enclosing letter of J. Whittaker Thompson, Esq., under date of March 28, 1907, relative to the failure of the supervisors of Upper Providence township, in the county of Montgomery, to file within the time specified, the statement required by the 2nd section of the act of 12th April, 1905, (P. L. 142), relative to the change in the system of taxation in said township, from the work to the cash tax system, for working the public roads, and inquiring whether or not the bonus of fifteen per centum of the

amount of the road tax collected in said township should be paid to said Supervisors, in view of the fact that the statement was not filed on or before the 15th day of March, 1907, has been received.

I am also in receipt of a letter from John T. Hyatt, Esq., of Jersey Shore, Pa., relative to the same state of affairs, with reference to porter township, in the county of Lycoming.

The second section of the act of 12th April, 1905, (P. L. 142), after providing, inter alia, for the amount of the tax to be assessed by Township Supervisors, in townships of the second class in this Commonwealth, proceeds as follows:

> "Provided, however, that any township may, by a majority vote of the electors thereof, at the February municipal election, after thirty days' prior notice thereof, change the system of taxation for working the public roads. Such election shall be authorized by the Court of Quarter Sessions upon a petition of at least twenty-five tax payers of said township; and any such township which shall have abolished the work tax, shall annually receive from the State fifteen per centum of the amount of the road tax collected in said township, as shown by a sworn statement of the Board of Township Supervisors, furnished to the State Highway Commissioner on or before the 15th day of March in each year. The said statement shall show the amount of tax assessed, as well as the amount collected. Upon receipt of the sworn statement from the Board of Township Supervisors, it shall be the duty of the State Highway Commissioner, to draw a warrant upon the State Treasury for the payment of the said fifteen per centum, which shall be paid out of any moneys in the Treasury not otherwise appropriated," etc.

Section 10, of said Act, provides:

> "The board of road supervisors of the several townships shall annually, on or before the fifteenth day of March in each and every year, make a report to the State Highway Commissioner, on blanks furnished to them by the State Highway Commissioner, of the whole amount of money raised during the preceding year by taxation for road purposes; specifying in such report the amount expended for maintenance or repairs of roads, for the opening and building of new roads, and for macadamizing or otherwise permanently improving roads, and the number of miles thus made; together with the names and adresses of the chairman and secretary of the board, and such other matters and things as the State Highway Commissioner may require. And it shall be the duty of the State Highway Commissioner, not later than the first day of February of each year, to forward the aforesaid blanks to the several boards

> of supervisors. It shall be the duty of the prothonotary in each county, not later than the first day of April of each year, to certify to the State Highway Commissioner the names of all the supervisors of the respective townships in said county."

From the letters before me, I find, as a fact, that the supervisors of the said townships of Upper Providence, in the county of Montgomery, and Porter, in the county of Lycoming, have failed or neglected to file with you, on or before the 15th day of March, this year, the statement required by the 2nd section of the act of 1905, supra, with reference to the abolition of the work tax, in their respective townships.

The nature of the reply to your inquiry depends upon whether the provisions of the act in question, relative to filing said statement, are mandatory or merely directory.

> "When a statute requires that something be done, or done in a particular manner or form, without expressly declaring what shall be the consequence of non-compliance, the question often arises, what intention is to be attributed by inference to the Legislature."

Endlich, on the Interpretation of Statutes, Section 431.

> "Whether a statute is mandatory or merely directory depends on whether the thing directed to be done is the essence of the thing required, or is mere matter of form. Statutory provisions, on compliance with which certain rights are given, must be construed as mandatory and not merely directory, as the question is one of power or jurisdiction."

P. & L. Dig. of Dec. Vol. 20, page 35,100.

It has often been held that where a statute contains provisions in regard to the time when an act is to be performed but contains no negative words providing that it shall not be performed after that time, such provision is to be considered as merely directory, and may be complied with after the prescribed time. The decisions supporting this principle, usually refer to acts to be performed by a public body or public officers, and are placed upon the ground that to make invalid acts done in neglect of these provisions would work inconvenience or injustice to persons who have no control over those entrusted with the duty, without promoting the essential aims of the Legislature.

The acts requiring Justices to try rioters within a month after the riot; a Judge trying a case without a jury to file his decision;

a referee his report; or a public officer his official bond within a certain time, are illustrations of the acts whose provisions have been held to be merely directory.

> "Where a statute confers a new right, privilege, or immunity, the grant is strictly construed, and the mode prescribed for its acquisition, preservation, enforcement and enjoyment is mandatory."

Lewis' Sutherland Statutory Construction, Vol. 2, 2nd Edition, Sec. 632.

> "Where an Act in relation to certain claims against the state, otherwise not allowable, required them to be presented within a certain time, thereby indeed making a distinction between these and ordinary claims, as to the time of presentment, it was held that, presumptively, the limitation was intended to be material, and consequently that it must be followed."

Endlich on the Interpretation of Statutes, Sec. 431.

The bonus of fifteen per centum provided for by the act of 1905, is, in effect, a new grant to townships, and may become, by the action of the Supervisors of the Townships, a claim against the State. The act aims at the establishment of a regular system of making reports, on the part of Supervisors of Townships of the second class, to the State Highway Commissioner, on or before the fifteenth day of March in each and every year. With reference to the reports provided for by section 10, the legislation provides that these reports shall be made on or before the date specified. The payment of the bonus of fifteen per centum, provided for by the second section of the act, is conditioned upon several things. Such bonus is payable only to those townships in which the work tax has been abolished, and is payable to such townships on condition that a sworn statement of the Board of Township Supervisors, containing certain things specified in said section, be furnished to the State Highway Commissioner. The amount of the bonus is fifteen per centum of the amount of the road tax collected, as shown by said statement, "furnished to the State Highway Commissioner on or before the 15th day of March in each year."

In order that a proper appropriation may be provided for the payment of this bonus to the townships, it is essential that the State Highway Commissioner shall have the reports and statements provided for by the act, in his hands at some definite, designated time.

The payment of this bonus by the State to the Townships complying with the terms of the act of Assembly is a new grant from the

State of a premium to those townships which, in the manner pointed out in the act of Assembly, abolish the work tax and collect the tax in money. It is, of course, essential to correct administration of the fiscal affairs of the State that you, as Commissioner of Highways, should at some definite time have a knowledge of the probable amount of money it will be necessary to appropriate for the purpose of paying these premiums. You obtain this knowlelge only from the certificates filed by the Supervisors.

But, whilst a strict construction of the act in question would justify you in refusing to pay the bonus provided for in said act, unless the statement herein specified is filed with you on or before the fifteenth day of March, each year, on the ground that the filing of said statement is a condition precedent to the payment of the bonus, and that the terms of the act are not merely directory, yet at the same time the full scope of the act of Assembly must be kept in mind and the real legislative intent carried out, if possible.

The general purpose of the legislation is to offer a premium to those townships which, by the actions of their proper officers, abolish the work tax and establish the cash tax system. If this purpose is to be carried into effect, it would be advisable to insist in every case upon compliance with the exact letter of the law.

The one thing essential for your Department, in order that the full purpose of the legislation may be carried out, is that you should know in time to secure the proper appropriation the probable amount of money necessary to pay the bonus to the various townships.

I would therefore advise, that if a township, through its proper officers, filed a statement that substantially complies with the above mentioned section of the act in question, within such time as will enable you to secure the necessary appropriation to provide for the payment of the bonus to that township, then such township should receive its bonus, although the statement has not been filed on or before the 15th day of March in each year. In this way the spirit of the act will be carried out, although the letter of the same has not been strictly fulfilled.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

TOWNSHIPS ABOLISHING WORK TAX.

The Legislature failed to appropriate sufficient moneys to pay the 15 per centum of the road tax collected in various townships.

Held that the amount appropriated should be divided pro rata among those townships which fully complied with the law by filing the necessary statements prior to March 15th.

Office of the Attorney General,
Harrisburg, Pa., July 9, 1907.

Hon. R. D. Beman, Assistant State Highway Commissioner, Harrisburg, Pa.

Sir: I am in receipt of your communication of June 21, 1907, requesting an opinion as to the proper method of distributing the appropriation of $150,000.00 made at the last session of the Legislature for the payment of the fifteen per centum to townships which abolished the work tax in the year 1906. From your letter and the proper records I find the facts in connection with your inquiry to be as follows:

By the second section of the act of 12th of April, 1905 (P. L. 142), it is provided inter alia, that

> "Any township which shall have abolished the work tax shall annually receive from the State fifteen per centum of the amount of the road tax collected in said township, as shown by a sworn statement of the Board of Township Supervisors, furnished to the State Highway Commisioner on or before the fifteenth day of March in each year. The said statement shall show the amount of tax assessed as well as the amount collected. Upon receipt of the sworn statement from the Board of Township Supervisors it shall be the duty of the State Highway Commissioner to draw a warrant upon the State Treasurer for the payment of the said fifteen per centum, which shall be paid out of any money in the Treasury not otherwise appropriated."

On April 4, 1907, the State Highway Commissioner requested an opinion from this Department as to whether the bonus of fifteen per centum of the amount of road tax collected in a township which has abolished the work tax for the year 1906 should be paid to such Supervisors in the event that the statement referred to in said act of 1905 was not filed on or before the 15th day of March, 1907. On the 23rd day of April, 1907, you were advised by this Department, in substance, that a strict construction of the act of 1905 would justify you in refusing to pay the bonus provided for in said act, unless the statement therein specified is filed with you on or before the 15th day of March, on the ground that the filing of said statement is a condition precedent to the payment of the bonus, and that the terms of the act are not merely directory; but that, as the general purpose of the legislation in question is to offer a premium to those townships which abolish the work tax and establish the cash tax system, it might be advisable to waive a strict construction of the act, provided the statement required was filed with you within such time as would enable you to secure the necessary appropriation to provide for the payment of the bonus. The concluding paragraph of the opinion rendered to you at that time is as follows:

> "I would therefore advise, that if a township, through its proper officers, files a statement that substantially complies with the above mentioned section of the Act in question, within such time as will enable you to secure the necessary appropriation to provide for the payment of the bonus to that township, then such township should receive its bonus, although the statement has not been filed on or before the 15th day of March in each year. In this way the spirit of the Act will be carried out, although the letter of the same has not been strictly fulfilled."

The opinion rendered by this Department recognized the fact that it was absolutely essential for your Department to have knowledge of the amount of money required to pay this bonus in time to secure the proper appropriation for that purpose. It now appears that on the 15th day of March, 1907, your Department had received from various townships throughout the Commonwealth proper certificates showing the collection, under the cash tax system of road taxes to the amount of $1,049,650.15, fifteen per centum of which would be $157,447.47. Since the said 15th day of March your Department has received additional certificates aggregating $131,328.94, fifteen per centum of which would be $19,699.34. It therefore clearly appears that, in order to pay the bonus to the townships which have filed their certificates on or before the 15th day of March, the sum of $157,447.47 will be required, and if the townships which have filed the certificates subsequent to said 15th day of March are to receive the bonus, an additional sum of $19,699.34 will be required, making the total sum necessary to pay the bonus on all certificates now in your hands, $177,146.81. These figures were furnished to the Legislature, but the act of 13th of June, 1907, passed for the purpose of making an appropriation for the payment of the said bonus of fifteen per centum, fixes that appropriation at the sum of $150,000. This is an appropriation for a specific purpose.

The act is entitled "An act appropriating one hundred and fifty thousand dollars for the payment of the fifteen per centum to townships which abolished the work tax in the year 1906, in compliance with the provisions of section 2 of the act, approved the twelfth day of April, one thousand nine hundred and five." It is, therefore, apparent that the only fund at your disposal for the payment of the bonus of townships of the Commonwealth which have abolished the work tax system is the fund appropriated by the above act of Assembly, to wit: $150,000.00.

Under these facts you inquire whether you should pay the full fifteen per cent. to the townships whose certificates were filed earliest, taking them in the order of their receipt and stopping when the total fund of $150,000.00 has been exhausted; or whether

you should distribute the entire fund pro rata to the townships whose certificates reached you on or before March 15th, paying no money to those townships whose certificates were received subsequent to that date; or whether the fund should be distributed pro rata among all the townships which have filed certificates irrespective of the date upon which said certificates were filed.

In my opinion, those townships which have filed their certificates on or before the 15th day of March, 1907 have fully complied with the requirements of the said act of 1905, and, if the fund were sufficient, they would be entitled to receive the full fifteen per cent. of the amount of road tax collected in the respective townships. In view, however, of the fact that the fund at your disposal is not sufficient to pay the full fifteen per centum equity requires that it be paid out pro rata to those townships which have fully complied with the law. The townships which failed or neglected to file their certificates on or before the 15th of March are, under the former opinion rendered by this Department, entitled to consideration only on condition that a fund should be provided out of which the bonus could be paid. The Legislature having declined to furnish a fund even adequate to pay the bonus due townships which have fully complied with the law, it necessarily follows that the townships failing to comply with the law are entitled to no consideration.

You are therefore advised to distribute the fund at your disposal pro rata to the townships which have filed their certificates on or before the 15th of March, 1907.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

TOWNSHIP SUPERVISORS.

The Highway Commisioner is advised to communicate to the District Attorney of Schuylkill County the facts as to the alleged election of supervisors in certain townships with request that quo warranto proceedings be commenced.

Office of the Attorney General,
Harrisburg, Pa., July 10, 1907.

Hon. R. D. Beman, Assistant Highway Commissioner, Harrisburg, Pa.

Sir: I am in receipt of your letter of June 26th, 1907, enclosing a sworn statement subscribed to by Augustus N. Brensinger, Supervisor of South Manheim Township, Schuylkill County, to the effect that in a number of second class townships in said county, specifically named therein, supervisors thereof have not been elected

or appointed in accordance with the provisions of the act of 12th April, 1905, (P. L. 142), and that the persons now undertaking to act as supervisors of said townships are not performing the duties and obligations required by said act of Assembly.

I also note the quotation contained in your communication from the opinion rendered under date of December 13, 1905, by Hon. Frederic W. Fleitz, Deputy Attorney General, to the effect that if the voters of any second class township should see fit to ignore the plain and mandatory terms of the said act of 1905 and refuse to elect supervisors in the manner provided for therein, the attention of the proper authorities should be called to the situation in order that legal steps might be taken to compel compliance with the act. This quotation is from an opinion construing the said act of 1905, in which opinion it is held that said act is intended to repeal all local or special laws applying to any second class township in this Commonwealth.

In your said communication you ask this Department to either inaugurate the necessary proceedings to compel compliance with the law or advise you as to the course which should be taken in order to accomplish this purpose. Two questions are raised by your communication and the enclosure above referred to; first, whether the townships in question are second class townships, under the laws of this Commonwealth; and, secondly, what legal procedure should be adopted in order to compel compliance with the said act of 1905. That act provides

> "That in every township of the second class in this Commonwealth the qualified voters shall on the third Tuesday of February one thousand nine hundred and six, elect one person to serve one year, one person to serve two years and one person to serve three years, who shall be styled Road Supervisors; and at each township election thereafter they shall elect one person to serve three years; Provided, That in every township which now has three supervisors or other officers having charge of roads elected under existing laws, no new election under this section shall be required except as the terms of said road officers expire."

In the case of Travis vs. Lehigh Coal and Navigation Company Appellant, an appeal from the Court of Common Pleas of Schuylkill County reported in 33 Pa. Super Ct. 203, Advance Reports of June 14th, 1907, it is held that Blythe Township, one of the townships specified in the affidavit above referred to, is a township of the second class. This case is authority for the proposition that the said Supervisor act of 1905 applies to all townships in a county as

second class townships which have not been established by proceedings under the act of April 28, 1899, (P. L. 104), as of the first class; and in counties where no first class townships have been established it applies to all townships. The first and second paragraphs of the syllabus to this case are as follows:

> "The Act of April 28, 1899, P. L. 104, had the effect or making all townships in Pennsylvania of the second class, except 'those townships having a population of at least three hundred to the square mile, as shown by the United States Census,' after proceedings taken under the act. All townships are prima facie in the second class and remain there until proceedings are taken in pursuance of the act to create them into townships of the first class.
>
> "The Act of April 12, 1905, P. L. 142, applies to all townships in a county as second class townships which have not been established by proceedings under the Act of 1899, as of the first class; and in counties where no first class townships have been established, it applies to all townships."

It is apparent, therefore, under the authority above cited that all townships are prima facie townships of the second class, and remain in that class until the necessary proceedings are taken to place them in the first class. The presumption of the law, therefore, is that the said Supervisor Act of 1905 applies to all of the townships mentioned in said affidavit. Assuming that the facts stated therein, to the effect that the persons now undertaking to serve as supervisors in said townships, have not been elected under the provisions of the said act of 1905, and are not performing the obligations imposed upon supervisors by that act are true, the only question remaining relates to the proper legal procedure. It is provided by section 2 of the act of June 14th 1836, (P. L. 621), that

> "Writs of quo warranto in the form and manner hereinafter provided may also be issued by the several courts of Common Pleas concurrently with the Supreme Court in the following cases, to wit:
>
> 1. In case any person shall usurp, intrude into, or unlawfully hold or exercise any county or township office within the respective county."

The clause above quoted provides for the case of a person not de jure an officer usurping or intruding into or unlawfully holding or exercising such office.

Cleaver et al vs. Commonwealth ex rel 34 Pa. 283.

The writ provided for calls upon a respondent who has not been lawfully elected to an office to show by what authority he exercises such office.

The persons now pretending to act as supervisors of the townships in question are doubtless officers de facto, but if the facts contained in said affidavit are true, they are not officers de jure. Lord Ellenborough defines an officer de facto to be "one who has the reputation of being an officer he assumes to be, and yet is not a good officer in point of law."

Again, in the case of Tripp vs. Scranton Second School District, 6 Luz. L. R. 30, it is said:

> "An officer de facto is one who exercises the duties of an office under color of an appointment or election to that office. He differs on the one hand from the mere usurper of an office who undertakes to act as an officer without any color or right, and on the other hand from an officer de jure, who is in all respects legally appointed and qualified to exercise the office."

The proper method, therefore for testing the legality of the election of the person now claiming to serve as supervisors in the townships in question, is by quo warranto issued out of the Court of Common Pleas of Schuylkill County.

By whom should the suggestion for the writ be filed? It is provided in paragraph 111 of the said second section of the said act of 1836 that "in every such case the writ aforesaid may be issued upon the suggestion of the Attorney General or his Deputy, in the respective county, or any person or persons desiring to prosecute the same." The worls "any person or persons desiring to prosecute the same" have been construed to mean any person who has an interest to be affected. They do not give a private relator the writ in a case of public right involving no individual grievance.

One who occupies a public office without authority of law perpetrates a wrong against the public, whose prerogative it is to fill that office, and if he keeps out of the office one who is entitled to it he also commits a private wrong. Where the public wrong alone is to be redressed, the Attorney General or District Attorney must at his own instance, or at the instance of some one who moves him to act, suggest the issuance of the writ. If the private wrong is to be redressed, then the writ may issue at the instance of that other person. In the first case, judgment of ouster will be entered; but in the second case, before a writ of quo warranto will be issued or before it can be successfully prosecuted to judgment the relator must show that he is entitled to the office.

Commonwealth ex rel vs. Wm. Hough, 22 Pa. C. C. 440.

The question involved here is not one of a private injury but an allegation that certain persons are occupying the public township office of supervisor without authority of law, thereby committing

a wrong against the public. It follows, therefore, that the suggestion for the writ in these cases should be made either by the Attorney General or the District Attorney of Schuylkill County, and I am of the opinion that the District Attorney of Schuylkill County has authority, under the circumstances in these cases, to file the suggestion for the writ. The officers in question are township officers; they are not commissioned by the Governor. As to such officers, the District Attorney of the proper county seems to have authority to file the suggestion for the writ, under the authority of Gilroy vs. Commonwealth ex rel. 105 Pa. 484, which case was a quo warranto, at the instance of the District Attorney of Lackawanna County, to try the right of the defendants to exercise the office of School Director. A portion of the opinion of the Supreme Court is as follows:

> "It is contended, however, that the writ in this case ought to be quashed for the reason that the District Attorney has not the power to file suggestions for a quo warranto, as had the Deputy Attorney General under the Act of June 14, 1836, and that treating the writ as having been issued at the suit of a private person, it ought not to have been allowed but upon a previous rule to show cause. Neither of these positions can be sustained; the first because the Act of May 3, 1850, has, in express terms, vested the District Attorney with all the powers which formerly belonged to the Deputy Attorney General. In the case of Commonwealth v. The Commercial Bank, 4 Ca., 391, the only question relating to the subject in hand, was whether the Act of 1850 did not take away the power of the Attorney General to institute the proceeding in quo warranto. It was held that it did not; but at the same time it was said, that the Act was designed to clothe the District Attorney with an authority independent of that of the Attorney General. In other words, he who occupies the position formerly filled by the deputy, now takes the place of a principal whose powers are measured by those which previously belonged to the deputy."

Commonwealth ex rel vs. Allen, 15 Pa. C. C. 257, a case reported from Schuylkill County, is also authority for the proposition that the District Attorney possessed the power to make the suggestion upon which a writ of quo warranto issued against county officials. In the case, however, of a public officer commissioned by the Governor, it has been held that the District Attorney has no power to issue the writ without authorization by the Attorney General. In so far as the allegation, contained in said affidavit, to the effect that the alleged supervisors are not performing any of the duties and obligations required by said Supervisor Act of 1905, is con-

cerned, it is to be noted that provision is made by the Act of 22nd March 1907 for the removal from office of township officers who refuse or persistently neglect to perform their duties as provided by law. This Act seems to apply only to officers who have been duly elected or appointed and is not intended to afford a method for trying any question relating to the legality of the election or appointment. Under the provisions of this said act of 1907 the Court of Quarter Sessions of the proper County is authorized upon complaint being made by twenty-five citizens, owners of real estate, residing in the district, to issue a rule upon the officer complained of to show cause why his office should not be declared vacant, etc., and after hearing, if the facts so warrant, declare the office vacant and make an appointment to fill the same. By section 2 of the act it is provided that if the complaint shall allege that the public roads and highways of any township are not maintained in accordance with law, the court may in its discretion appoint three suitable persons to examine said highways and report their findings to the court, provided that in all such cases the complainants shall first enter security in such sum as the court may fix, to pay all costs. As above stated, however, this act seems to apply only to duly elected or appointed township officers who refuse or neglect to perform their official duties.

You are therefore advised that the facts connected with the alleged election of supervisors in each of the townships specified should be communicated by your Department to the District Attorney of Schuylkill County with the request that he file suggestions for writs of quo warranto calling upon the present incumbents of the office of supervisor in said townships to show by what authority they claim the right to exercise the functions of the office of supervisor therein.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

EASTBROOK ROAD.

The power of the State Highway Commissioner to bind the state is limited by the terms of the act of 1905. To enter into any agreement with reference to the application of an appropriation not yet made is beyond his power.

Office of the Attorney General,
Harrisburg, Pa., August 8, 1907.

Hon. Joseph W. Hunter, State Highway Commissioner.

Sir: Your letter of July 22nd, 1907, enclosing a copy of a letter from A. W. Gardner, Esq., County Solicitor of Lawrence County, Pennsylvania, containing certain propositions, has been received.

In your communication you state in substance that proceedings were instituted under the act of May 1st, 1905, (P. L. 318) for the improvement of two separate roads situate in the township of Hickory, Lawrence County, Pa., and known and designated respectively as the Harlansburg Road and the Eastbrook Road, by the construction of a section of State highway on each of said roads.

That, in compliance with the expressed desire of the Commissioners of Lawrence County and the supervisors and citizens of Hickory township, to the effect that each of said roads be improved at one and the same time, surveys, plans and specifications were duly made for the section of each road to be improved under said act, proposals were advertised for, bids received and contracts prepared, contemporaneously. That you anticipated, at the time said proceedings were being carried on that an appropriation sufficient to improve both roads would be approved at the session of 1907. That the contract for the Harlansburg Road was awarded to Messrs. Nelson & Buchanan, which contract was duly signed by them and by you, and is now being carried out by said contractors.

With reference to the Eastbrook Road you state that Messrs. Robison & Rhodes were the successful bidders and that a contract was signed by them for the construction of the said section of said Eastbrook Road and submitted to you for your signature, but that the bond required to be filed was not in proper form and was returned by you to said contractors for correction.

At or about this time, you state you were informed that the appropriation for the construction of State highways would probably not be as large as you had hoped for, and as you had not yet signed the said contract with Robison & Rhodes, you held the same without your signature having been attached thereto until the exact amount of the appropriation could be ascertained. You further state that when the exact amount of the appropriation had been ascertained it became apparent that the amount which could be apportioned to Lawrence County would not be sufficient to permit of the proposed improvement on the said Eastbrook Road as the roads already completed and under contract will consume all the money available for Lawrence County to June 1st, 1909. It is further stated in your communication that the said contractors, Robison & Rhodes, without instructions from you and without having said contract signed by you and delivered to them, commenced work on said Eastbrook Road, of which fact you had no knowledge until on or about the first of July, whereupon you immediately notified them to quit work, as your Department was without funds to provide for the construction contemplated by the proposed contract with them.

You further state that said contractors have done work to the value of about $3,000 on said road, and that the County Com-

missioners of Lawrence County and the supervisors of Hickory township, being anxious to have the Eastbrook Road improved have submitted several propositions contained in the said letter of the County Solicitor above referred to. These propositions are as follows:

> 1st. "The County of Lawrence and the township of Hickory, each to pay their proportionate share of the cost as provided by the contract, provided, however, that the State Highway Department agrees in writing to complete the remainder of the said road not finished and paid for by the said county and township, in accordance with the plans and specifications, out of the first available funds the Department may have for the said purpose."
>
> 2nd. "The County of Lawrence under authority of section 9 of the Act of May 1st, 1905, (P. L. 318) and amendments, to pay the 75 per centum of the contract price agreed to be paid by the State, provided, however, that the State Highway Department will agree in writing to refund and pay to the county of Lawrence the amount by it so expended out of the first funds available for said purpose."

You ask to be advised whether your Department can legally enter into an agreement in accordance with the suggestions contained in either of said propositions.

The situation now existing with reference to the Eastbrook Road is unfortunate. Under the act in question every contract authorized to be made by your Department must be made in the name of the Commonwealth "and shall be signed by the State Highway Commissioner and attested by the Chief Clerk of the Department and shall be approved as to form and legality by the Attorney General or Deputy Attorney General of the Commonwealth." Without having a properly executed contract, the contractors in question have apparently in good faith expended a considerable sum of money in the improvement of the Highway in question. On the other hand your power to bind the State is limited by the terms of the said act of 1905. It is expressly provided in section 9 thereof that if the county commissioners and township supervisors decide that it is advisable to go on with the work proposed and make the required agreements "the State Highway Department may, if the funds at its disposal permit of so doing, contract jointly with the county, township or townships in which said highway lies to carry out the recommendations of the State Highway Commissioner."

It appears from the statement of facts contained in your communication that the funds at the disposal of your Department will not permit you to sign the contract. The proposition that the State

Highway Department agree in writing to do certain things does not impress one as being reasonable. In your official capacity as State Highway Commissioner you can only bind the State to perform its part of such contracts as are provided for by the act of Assembly, viz: Contracts to pay to the persons or firms constructing State highways the amount due them for such construction. These contracts can be made only when the funds at the disposal of your Department permit of so doing. You can deal only with funds which are now available. To enter into any agreement with reference to the application of an appropriation not yet made is beyond your power. Whether the next Legislature will make any appropriation for the construction of State highways or in what terms such appropriation may be made are purely matters of conjecture. Under the provisions of the law your power to contract with reference to the construction of State highways in Lawrence County is exhausted. The only remedy I can suggest for the unfortunate situation now existing is that the county of Lawrence and the township of Hickory, under the authority conferred upon them by the 9th section of said act and its amendments, providing "that nothing herein contained shall prevent any county and township from agreeing to appropriate a larger amount for such road improvements than the amount specified in this Act," complete the construction of the road in question, paying for the same out of their own funds in whatever proportion they may agree upon, within the terms of said section; and that you agree to use your best endeavor to have provisions made at the next session of the Legislature for their reimbursement in so far as the State's share of the cost of such construction is concerned, either by a specific appropriation for that purpose or the application of a part of such general appropriation as may be made for road construction, to the payment of the sum thus advanced in behalf of the State by said county and township.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

CRANBERRY TOWNSHIP ROAD.

Under the practice prevailing in the State Highway Department, F. filed a preliminary bond in the sum of $1,000 conditioned to be void, if upon the acceptance of the bid of the obligor and the awarding of a contract to him, he should execute the contract in writing for the construction of the work and file a further bond for the faithful performance of said contract. F. executed the contract in writing and filed the bond, but the surety company on his bond as contractor subsequently withdrew, alleging false representation on the part of F., which caused delay in having the highway in question constructed. Held, that under the facts and circumstances of the case no proceedings should be instituted to collect said $1,000.

Office of the Attorney General,
Harrisburg, Pa., August 15, 1907.

Hon. Joseph W. Hunter, State Highway Commissioner, Harrisburg.

Sir: I am in receipt of your inquiry of July 11th, asking to be advised as to whether proceedings should be instituted to collect from E. Bleakley, the amount of the bond given by him October 18th, 1905, in the sum of $1,000, as surety for J. A. Fredricks. From your communication and the papers submitted therewith, I understand the facts relative to the execution and delivery of the bond in question to be as follows:

Prior to the 18th of October, 1905, the State Highway Department advertised for proposals for the construction of a section of State highway in the township of Cranberry in the county of Venango, Pa., under the provisions of the act of May 1st, 1905. Among the bidders for the construction of said section of State highway was the said J. A. Fredricks of Franklin, Pa., whose bid of $43,239.37 was accepted. Filed with the bid was a bond given by the said J. A. Fredricks, with the said E. Bleakley as surety, to the Commonwealth, in the sum of $1,000, dated October 18, 1905, and conditioned as follows:

> "NOW THE CONDITION OF THIS OBLIGATION IS SUCH, That if the bid of the above bounden J. A. Fredricks shall be accepted by the State Highway Commissioner and the contract for the said work shall be awarded to the said bounden J. A. Fredricks, then the said bounden J. A. Fredricks shall and will execute contract in writing with the said Commonwealth of Pennsylvania for the construction of the said work in accordance with the plans and specifications and shall and will file a further bond for the faithful performance of said contract as required by the said Act. Then shall this obligation be void, otherwise remain in full force and virtue."

The bid of the said J. A. Fredricks having been accepted, a contract in writing was executed by him for the construction of said work, in accordance with the plans and specifications, and an additional bond in a sum equal to the amount of the contract with the Title, Guaranty and Surety Company of Scranton, Pa., as surety, was filed with the State Highway Department. However, before the said contract had been signed by the State Highway Commissioner, the said Title, Guaranty and Surety Company of Scranton, surety as aforesaid, notified the Highway Department that it withdrew from said obligation on the ground that its execution thereof

had been secured by false representations on the part of the said J. A. Fredricks, and that it would no longer be responsible to the State as surety for the said contractor.

The said J. A. Fredricks having been notified of the withdrawal of the said surety company as his surety, agreed to secure another surety, but failing in this, was notified by the State Highway Department on May 25, 1906, that by reason of his failure to furnish an acceptable bond the contract heretofore awarded to him was annulled as of that date, and his said preliminary bond of $1,000 forfeited. A new contract for the construction of said road was subsequently awarded on July 23, 1906, to another contractor, who is now constructing said highway.

The surety on said preliminary bond, the said E. Bleakley, having been notified of the forfeiture thereof, has failed and neglected to pay the amount of said bond. Under these circumstances, you ask to be advised as to the propriety of instituting proceedings looking toward the collection of the amount of said preliminary bond.

There does not seem to be any provision in the act of Assembly under the terms of which said highway is being constructed for the giving of the said preliminary bond of $1,000, the provision of said act relative to the giving of a bond by the contractor being as follows:

> "Every person, firm or corporation on being awarded any contract for the construction or improvement of any highway, under the provisions of this Act, shall furnish a bond acceptable to the State Highway Commissioner, in a sum equal to the contract price of the work, conditioned upon the satisfactory completion of the same," etc.

Under a commendable practice prevailing in the State Highway Department, however, each bidder is required to file a preliminary bond in the sum of $1,000 with his bid, and the inquiry now submitted relates exclusively to the preliminary bond filed by the said J. A. Fredricks. That bond was conditioned to be void, if, upon the acceptance of the bid of the obligor and the awarding of a contract to him he should execute the contract in writing for the construction of the work, in accordance with the plans and specifications, and should file a further bond for the faithful performance of said contract. The said J. A. Fredricks executed the contract in writing and filed the bond for the faithful performance of the same. It is true that the surety company on his bond as contractor subsequently withdrew therefrom, alleging false representation on the part of the said J. A. Fredricks. This action on the part of the surety company occasioned some delay to the State in having the highway in question constructed.

Inasmuch, however, as the peculiar situation arising in this case is not the kind of a contingency the giving of said preliminary bond is intended to guard against, and in view of the fact that the principal in said bond seems to have done what he could to comply with the terms thereof, in my opinion it would be an unwarranted hardship on the surety to attempt to enforce collection from him of the amount of said bond. Cases may frequently arise in which proceedings should be instituted on bonds such as the one in question, but under the peculiar facts and circumstances existing with reference to the situation now presented, I am of the opinion that in this particular case no proceedings should be instituted.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

BUILDING OF PUBLIC ROADS BY STATE AID—PUBLIC ROADS—STATE AID—MAINTENANCE OF IMPROVED HIGHWAYS—ACTS OF MAY 1, 1905, AND JUNE 8, 1907.

Application for state aid by a township or county is not a necessary condition precedent to action by the State Highway Commissioner for the maintenance of improved highways in said township or county and the payment therefor out of the maintenance fund, as authorized by the Act of June 8, 1907, P. L. 505, amending the Act of May 1, 1905, P. L. 318.

Office of the Attorney General,
Harrisburg, Pa., Nov. 2, 1907.

Hon. R. D. Beman, Deputy Highway Commissioner.

Sir: I have your letter of October 3rd, 1907, requesting to be advised by this Department as to whether the State Highway Commissioner can legally repair certain roads and make payment for such repairs from the Maintenance Fund, if said roads are situated in townships which have not applied for maintenance aid.

By section 20 of the act of May 1, 1905, (P. L. 318), as amended by the act of 8th of June, 1907, (P. L. 505) it is provided in substance that all highways, constructed or improved under the provisions of the act, shall be known as "State Highways," which said State Highways shall be kept in repair at the expense of the township in which they are situated, so that they may be maintained at the standard of condition prescribed for highways of their class by the State Highway Department, but the supervisors or commissioners of any township possessing improved highways may ask for and receive State aid for the maintenance of the same, as provided in said act.

To the end that a fund may be provided for the maintenance of State Highways, it was provided by section 22 of the said act of 1905 as follows:

> "Ten per centum of the amount available for highway purposes, under the provisions of this act, shall be set aside for the purpose of maintenance of highways, as hereinafter provided; and shall be apportioned by the State Highway Commissioner among the townships or counties applying for the same, in proportion to the mileage of improved highways made under the provisions of this act, or which have already been made or may hereafter be made at the expense of such townships or counties, and which are of the standard prescribed by the State Highway Department for improved highways."

By section 23 of said act of 1905, as amended by said act of 1907, it is provided, in substance, that, whenever the supervisors or commissioners of any township or county shall desire State aid for the purpose of maintenance of improved highways, whether said highways have been improved under the provisions of the act or otherwise, it shall be the duty of said supervisors or commissioners to file with the State Highway Department, on or before the first day of May in each year, a sworn petition, requesting such State aid and setting forth certain facts specified in said section. Provision is made in said section for State aid for maintenance of highways to an amount not exceeding three-fourths of the annual cost of maintaining highways of the standard of construction prevailing in such townships. The said section contains the following proviso:

> "Provided, That should any township or county that is entitled to receive State aid for the maintenance of roads, reconstructed under contract made by the State or otherwise, neglect to keep such reconstructed roads in proper repair, or expend the money, so apportioned by the State Highway Department, for other purposes than repairing said roads, then it shall be the duty of the State Highway Commissioner to see that the roads are properly maintained and kept in repair, and the money apportioned to said township or county shall be expended under his direction, and the township or county charged with their share of the cost of making said repairs. The township or county share of said repairs shall be certified to the board of township supervisors or commissioners, or county commissioners, and to the State Treasurer, by the State Highway Commissioner, and, upon receipt of said certification, the said board of township supervisors or commissioners, or county commissioners, shall pay to the State Treasurer the amount thus certified, by warrant upon the township or county treasurer.....If the share of the said township or county shall not be paid to the State Treasurer within thirty days after being certified to by the State Highway Commissioner, the amount of

> said share shall be charged by the State Treasurer against any funds—excepting school funds—of said county, township or borough which may be in the hands of the State Treasurer or which may thereafter come into his hands."

There is but little use in constructing State highways unless provision is also made for some compulsory method of keeping them in repair. Every township, in which improved highways of the standard prescribed by the State Highway Department have been constructed, seems to be entitled to receive State aid for maintenance of the same, whether said highways have been improved and reconstructed under the provisions of the above acts or otherwise. For a township to be entitled to receive aid for maintenance of highways is one thing, and for it to apply for such aid is another. A township may be entitled to receive something for which it does not see fit to apply.

Every township in the Commonwealth, in which improved highways have been constructed, either through the assistance of the State or without State aid, provided such highways are of the standard prescribed by the State Highway Department, may do one of three things with reference to the maintenance of said highways. Such township may, in the first place, maintain the highways itself; or, in the second place, it may apply for State aid for such maintenance; or, in the third place, it may neglect to maintain the highways and also neglect to apply for State aid. One of the purposes of the Legislature in amending the said 23rd section of said act of 1905 by the said amendment of 1907 seems to have been to provide for the third contingency above mentioned. By the amendment it is provided in substance that, should any township or county, entitled to receive State aid for the maintenance of its roads, neglect to keep such roads in proper repair, then it shall be the duty of the State Highway Commissioner to see that the roads are properly maintained and kept in repair, and the money apportioned to said township or county shall be expended under his direction, and the township or county charged with its share of the cost of making said repairs. By a fair construction of the terms of the amendment the Commissioner is authorized to act when a township or county neglects to keep its reconstructed roads in proper repair, either by reason of expending the money apportioned for maintenance for other purposes than repairing said roads, or neglecting to expend it at all, or neglecting to apply for State aid.

You are therefore advised that application for State aid by a township or county is not a necessary condition precedent to action

upon the part of the State Highway Commissioner, looking toward the maintenance of improved highways in said township or county.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

PYMATUNING SWAMP.

Funds appropriated by Crawford county for the improvement of highways in that county, either within or without Pymatuning swamp, cannot be treated as a credit on the sum of money to be raised by the citizens of the county before the appropriation provided for in the act of June 13, 1907, P. L. 645 (to drain said swamp), becomes available. The citizens of the county must individually raise the fund.

Office of the Attorney General,
Harrisburg, Pa., November 7, 1907.

Hon. R. D. Beman, Assistant Commissioner of Highways, Harrisburg:

Sir: Your letter of October 26th, 1907, requesting a construction by this Department of the Act of June 13, 1907 (P. L. 645), has been duly received.

The Act referred to is entitled,

> "An Act to appropriate the sum of fifteen thousand dollars or so much thereof as may be required, for the purpose of draining Pymatuning Swamp in Crawford County, and improving the highways therein; authorizing the State Highway Department to make a survey of, and decide upon the best method of draining, said swamp, and to let contracts for making channels for draining same, and to draw money from the State Treasury, appropriated for that purpose, to pay therefor."

By the 3rd section of the act it is provided that no part of the sum hereby appropriated, viz., fifteen thousand dollars, shall become available until the citizens of said county shall have raised a like amount for improvements of the highways.

When this bill reached the Governor for his action, he approved the same in the sum of ten thousand dollars, withholding his approval from the remainder of said appropriation, because of insufficient State revenue. The appropriation therefore actually carried by the bill is $10,000.

You ask to be advised how the "like amount is to be raised." and whether the act means that the "like amount shall be for the improvement of the highways through the swamp alone," or whether funds appropriated by the county for the improvement of highways

in other sections of the county can be considered as a part of the "like amount" to be raised by the citizens of Crawford county. The act does not undertake to prescribe how the money be provided by the citizens of Crawford county is to be raised. Any method deemed advisable by the citizens of Crawford county may therefore be adopted by them. In the preamble of the act in question it is stated in effect that in the construction of the Erie Extension of the Pennsylvania Canal by the Commonwealth through this swamp, dikes and embankments were made which increased the flow of water into said swamp, and make the drainage thereof more difficult and expensive than it would have been had the Commonwealth not constructed said canal. It is further stated that there are many miles of highway running through said swamp, the maintenance of which is now more expensive than the same would be if the swamp were properly drained. The State Highway Department is authorized, after having made a survey of the swamp, to decide upon the best course and method of making channels for draining the same, and improving the highways therein. The only highways referred to or described in the act in question are the highways passing through Pymatuning Swamp.

I am of the opinion that it was the intention of the Legislature to appropriate the sum of money above mentioned for the purpose of assisting in the improvement of the highways in this particular swamp, and that said money was appropriated only on condition that the citizens of Crawford county raise a like amount for the improvement of the highways in the said swamp alone. This act of assembly is intended to provide a special fund and a special method for the improvement of the highways in Pymatuning Swamp, without reference to our general system for the improvement of highways throughout the Commonwealth.

I cannot see that county funds, appropriated by proper action upon the part of the County Commissioners, under our general system for the reconstruction of roads located either within or without the said swamp, have any connection with the "like amount" to be raised by the citizens of the said county. The appropriation by the State is not conditioned upon the appropriation of a "like amount" by the county of Crawford out of county funds, but upon the contribution of a "like amount" by individual citizens of said county.

I am, therefore, of the opinion that funds appropriated by the County of Crawford for the improvement of highways in that county, either within or without Pymatuning Swamp, cannot be treated as a credit upon the sum of money to be raised by the citizens of Crawford county before the appropriation above mentioned becomes available; and that in order to secure the appropriation provided by the

act in question, the citizens of Crawford county must individually raise a fund of $10,000 for the improvement of the highways in Pymatuning Swamp.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

INSPECTORS OF ROADS.

The State Highway Commissioner may properly and lawfully appoint inspectors to supervise the reconstruction of roads and include same in the expenses of the improvement.

Office of the Attorney General,
Harrisburg, Pa., Dec. 9, 1907.

Hon. Joseph W. Hunter, State Highway Commissioner:

Sir: Under date of December 2nd you submitted to the Attorney General, for an official opinion, the question of your right to appoint inspectors on the reconstruction of public roads. You state that, since the creation of your Department, you have been employing men in this capacity in the interest of the State to make sure that the contractors in each case do their work honestly and fairly in accordance with the contract and specifications, and have charged this apparently necessary expense to the cost of each individual road so constructed. It appears that your right to do this has been questioned for the reason that nowhere in the Act of May 1, 1905, (P. L. 318), or in the Act of June 8, 1907, (P. L. 505), is there any specific mention made of inspection or of employing inspectors.

Section 9 of the Act of May 1, 1905, (P. L. 321) contains the following language:

> "The State Highway Department may, if the funds at its disposal permit of so doing, contract jointly with the county and township, or townships, in which said highway lies, to carry out the recommendations of the State Highway Commissioner; the cost of the same, including all the necessary surveys, grading, material, construction, relocation, changes of grade, and expenses in connection with the improvement of said highway, to be borne.....but the work of construction shall be done under the supervision of the State Highway Department the same as any other road reconstructed under the provisions of this Act."

Substantially this same language occurs in the second section of the Act of 8th June, 1907, (P. L. 505).

The point involved in the question which you submit therefore depends upon the construction of the foregoing language, and whether the salary of the inspectors is a legitimate part of the expenses and therefore properly chargeable to the cost of the road.

The general purpose of this legislation is to place the work of the reconstruction of roads under your authority and supervision, and you are given broad powers to enable you to secure proper and adequate returns for the large sums of public money wisely and generously appropriated for this purpose. It will be conceded that some system of daily inspection is absolutely necessary to insure proper work on the part of the contractors, and it is manifestly impossible for you or your small staff of engineers to personally perform this duty upon each of the large number of contracts continually under way in different parts of the State. To be effective it must be done by having an inspector or supervisor constantly on each contract from the time work is begun until it is finished. Anything short of that would not comply with the duty of "supervision" imposed upon you by the act.

The various counties and townships in which roads are reconstructed are as much concerned as is the State in securing properly constructed roads, and it is therefore fair that the cost of the supervision should be included in the "expenses" of the improvement.

For the reasons above stated I am of opinion anl advise you that the course you have been pursuing in this matter is proper and lawful, and that it should be continued.

Very truly yours,
FREDERIC W. FLEITZ,
Deputy Attorney General.

BOND OF CONTRACTOR FOR STATE ROAD.

Where a contractor was notified that he must repair a road which became faulty within six months after its completion and refused to make the repairs, and the surety of his bond was notified of the default, the surety is liable for the amount expended by the Highway Department in making the necessary repairs.

Office of the Attorney General,
Harrisburg, Pa., March 16, 1908.

Hon. Joseph W. Hunter, State Highway Commissioner, Harrisburg, Pa.:

Sir: I have carefully considered your letter of recent date, and the documents therewith, bearing upon the legal liability of the Title Guaranty & Trust Company of Scranton, Pa., to pay the amount of

$780.93 for certain necessary repair work on the contract of J. A. Fredericks for the reconstruction of a road in Cranberry township, Venango county.

Briefly stated, the facts are these:

On the 28th of September, 1904, the contract was let by your Department to one, J. A. Fredericks, for the reconstruction of a road in Cranberry township, Venango county, for $12,109.57, and a bond was given by the contractor for the amount of the contract, with the said Title Guaranty & Trust Company as surety. A clause in the specifications, which were signed by the contractor and made a part of his contract, provides as follows:

> "The contractor is to keep the finished road in repair for the period of six months from its acceptance by the State Highway Commissioner."

The work was done, presumably in a satisfactory manner, the road accepted, and the contractor paid on the 19th of October, 1905. Before the expiration of the six months, however, on April 7, 1906, the contractor was notified to make certain repairs to the stone portion of the road, it having failed to stand the traffic placed upon it, and was informed that the repairs must be made under the supervision and to the satisfaction of your civil engineer, who had been instructed to inspect the work when done. The contractor, Fredericks, delayed in making the repairs, and finally flatly refused to do anything at all. On August 17th, 1906, the Title Guaranty & Trust Company was notified to the effect that the contractor had refused to make the necessary repairs to the road, and that the work would be done at their expense as sureties. Your engineer made a report of the condition of the road, a detailed statement of the approximate cost of the work to be done, and at the request of the Trust Company sent it a copy of the estimate. As the contractor refused to perform this work, it was done under the direction of your engineer and completed April 27th, 1907, at a cost of $780.93.

As I understand the matter, there is no real controversy between your Department and the Trust Company. There is, however, some difference of opinion as to the liability of the Trust Company in this particular case, owing to the length of time which elapsed between the acceptance of the road by your Department and the notification of necessary repairs. This, however, is not a material fact. So long as the damage was done to the road and the contractor was notified before the expiration of the six months that he must make these repairs, the legal requirements are fulfilled, and I am of the opinion and advise you that the liability of the Title Guaranty & Trust Company to your Department for the amount, to wit: $780.93, is unquestionably established by the facts.

The pressure of official duties has prevented a speedier determination of this question, for which I ask your indulgence.

Very respectfully,

FREDERIC W. FLEITZ,
Deputy Attorney General.

CONTRACT FOR STATE ROAD.

The County Commissioners cannot annul a signed contract between the County, the Township, Supervisors of the State and a contractor for the reconstruction of a road after the commencement of work on the road by the contractor.

Office of the Attorney General,
Harrisburg, Pa., April 25, 1908.

Hon. Joseph W. Hunter, State Highway Commissioner, Harrisburg, Pa.:

Dear Sir: I have your letter of today in which you ask for an official opinion upon a peculiar situation which has arisen in connection with the construction of a new State highway in Westmoreland county.

It appears from the papers you enclose that on the 3rd day of April, 1908, acting in your official capacity for the Commonwealth of Pennsylvania, you entered into a contract with The Pitt Construction Company for the improvement of a certain section of highway in Westmoreland county, township of North Huntingdon, being about 21,538 feet long, and extending from the borough line of Irwin to land of A. L. McFarland, thence to Allegheny county line.

The contract is in due form according to the requirements of law, and properly executed by the parties thereto. The preliminary proceedings provided by law were all duly taken prior to the execution of this contract, and this included an agreement between yourself, representing the Commonwealth of Pennsylvania, and D. W. Shupe, W. D. Reamer, and B. C. Shaffer, County Commissioners of Westmoreland county, and A. M. White, H. J. Gongawar and Wm. M. Lauffer, Supervisors of North Huntingdon township, that the said county of Westmoreland and the said township of North Huntingdon "jointly and severally agree to pay each one-eighth of the total expenses of such improvement, to the Commonwealth."

I understand also that the contractor is now upon the ground and beginning the work under this contract. On April 17, 1908, you received a letter from Wm. T. Dom. Jr., County Solicitor of Westmoreland county, in which he states that he has been instructed by the County Commissioners of that county to notify you that they have "passed a resolution annulling the contract let by them for the

construction of a State highway * * * in North Huntinglon township, this county * * * the reason for this action exists in the fact that they have discovered unmistakable proof that back of this proposed road exists only a scheme to benefit some private individuals who have a street railway franchise * * * You will therefore at once cancel said contract, or, if the same has been formally awarded, you will please notify the contractor not to enter on said work."

The only contract which exists between the State of Pennsylvania and the County Commissioners of Westmoreland county is their signed agreement to pay their legal proportion of the expense made necessary by this work. The contract for the performance of the work is between the Commonwealth of Pennsylvania and the Pitt Construction Company, and with this contract the County Commissioners of Westmoreland County have absolutely nothing to do. Before County Commissioners petition the State for the improvement of certain highways in their county, and sign agreements to pay their proportionate share of the expense, it is their duty to investigate the subject sufficiently to know the facts in each case, and a failure to perform this plain duty at the proper time affords no legal grounds for coming in after a contract is let and pleading their own negligence as a reason for its cancellation.

Under all circumstances, I am of opinion and advise you that you would not be justified in attempting to cancel this contract, and it is quite beyond the power of the Board of County Commissioners of Westmoreland county, at this time, and for the reasons stated, to annul the agreement with the State to pay their part of the expense made necessary by this improvement.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

PETITION FOR ORDER ON TOWNSHIP SUPERVISORS

It is proper for the State Highway Commissioner to sign a petition and make the necessary affidavit, asking the Court of Common Pleas of Tioga County to grant an order on the Jackson Township Supervisors to levy a special cash tax for road reconstruction purposes.

Office of the Attorney General,
Harrisburg, Pa., May 18, 1908.

Hon. Joseph W. Hunter, State Highway Commissioner, Harrisburg, Pa.:

Dear Sir: I am in receipt of your letter of recent date enclosing a letter from Messrs. Sherwood & Owlett, Attorneys-at-law, Wellsboro, Pa., enclosing petition and affidavit to the Hon. David Cameron,

President Judge of the Common Pleas of Tioga County, asking the court to grant an order on the Supervisors of Jackson Township, said county, to levy a special cash tax in order to raise a fund out of which to pay the township's share of a road improvement going on in that township, under your supervision.

I have given this matter careful consideration and am of the opinion that it will be perfectly proper for you to sign this petition and make the affidavit required on behalf of the Commonwealth.

In enclose herewith papers accompanying your letter.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

PROTHONOTARIES.

Prothonotaries who refuse to certify the names of the township supervisors as required by Section 10, Act of 12th April, 1905 (P. L. 142) may be compelled to do so by mandamus.

Office of the Attorney General,
Harrisburg, Pa., June 10, 1908.

Hon. R. D. Beman, Deputy Highway Commissioner, Harrisburg, Pa.:

Sir: I am in receipt of your letter of the 3rd inst., stating that the prothonotaries of two counties in this Commonwealth have failed to comply with the requirements of the Act of April 12, 1905 (P. L. 142), and that you are not able to get any replies from them to the several notifications which you have sent them regarding this matter, and asking to be advised officially as to your further action in the premises. The act in question, known as the General Supervisors Law, imposes certain duties with reference to public roads upon township, county and State officers, which, if the provisions are carried out, result in certain townships receiving a sum of money from the State, to be used for the improvement of local highways, under the authority of the township supervisors.

The duty imposed upon prothonotaries is found in Section 10, which reads as follows:

> "The board of road supervisors of the several townships shall annually, on or before the fifteenth day of March in each and every year, make a report to the State Highway Commissioner, on blanks furnished to them by the State Highway Commissioner, of the whole amount of money raised during the preceding year by taxation for road purposes; specifying in such report the amount expended for maintenance or repairs of roads, for opening and building of new roads, and for macadamizing or otherwise permanently improving

roads, and the number of miles thus made; together with the names and addresses of the chairman and secretary of the board, and such other matters and things as the State Highway Commissioner may require. And it shall be the duty of the State Highway Commissioner, not later than the first day of February of each year, to forward the aforesaid blanks to the several boards of supervisors. It shall be the duty of the prothonotary in each county, not later than the first day of April of each year, to certify to the State Highway Commissioner the names of all the supervisors of the respective townships in said county."

I am informed that a fair and reasonable compensation is allowed by your Department to prothonotaries for certifying the names of all the supervisors of the several townships in their respective counties, and as the service is one which inures to the benefit of the localities, and not the State, it is difficult to understand why all of these officials should not cheerfully and promptly comply with the provisions of this section. Furthermore, they have taken an oath to perform all the duties of their offices, and there is no excuse for a violation of this particular duty imposed upon them by the plain, unequivocal language of the law.

The act in question does not impose a penalty for failure or neglect to comply with its provisions, but it is well settled law that a public officer may be compelled by mandamus to perform all and every official duty pertaining to the position which he holds, and I therefore advise you to write to the deliquent prothonotaries named that if they longer persist in disregarding their official oath and the plain law of this Commonwealth, proper legal steps will be taken to compel them to perform their duty.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

MAINTENANCE.

The $150,000 appropriated for maintenance of State Highways, not being sufficient to pay all of the townships three-fourths of the sworn annual cost of maintenance, as directed by law, should be divided pro rata between them, so that each receives its fair share.

Office of the Attorney General,
Harrisburg, Pa., June 22, 1908.

Hon. Joseph W. Hunter, State Highway Commissioner, Harrisburg, Pa.:

Sir: I am in receipt of your letter of recent date asking for an official opinion upon the following question:

Upon what basis shall the maintenance fund provided by law be distributed among the various townships of the State, in which are located highways, improved under the provisions of the law creating your office.

The Act of May 1, 1905 (P. L. 318), establishing a State Highway Department, in Section 22 provides as follows:

> "Ten per centum of the amount available for highway purposes, under the provisions of this act, shall be set aside for the purpose of maintenance of highways, as hereinafter provided; and shall be apportioned by the State Highway Commissioner among the townships or counties, applying for the same, in proportion to the mileage of improved highways made under the provisions of this act, or which have already been made or may hereafter be made at the expense of such townships or counties, and which are of the standard prescribed by the State Highway Department for improved highways."

The Act of June 8, 1907 (P. L. 505), amending the act of 1905, does not amend or in any way change Section 22 above quoted, so that the proportion of the entire amount appropriated for highway purposes available for maintenance, remains the same.

Section 23, Paragraph 3 of the act of 1903 provides:

> "The State Highway Commissioner, if in his judgment the conditions warrant the co-operation of the State in maintaining said highway shall apportion to said township or county its proportion of the total amount available for the maintenance of improved highways, as hereinbefore provided; and the said amount shall be paid to the said supervisors or commissioners by warrant of the State Highway Department; but in no case shall the amount thus given by the State for maintenance be more than one-half the amount which, in the judgment and experience of the State Highway Commissioner, the annual cost of maintaining improved highways of the standard of construction prevailing in such township or county should be, nor more than one-half the sworn, average annual cost of maintenance, as set forth in the petition of the supervisors or commissioners of said township or county."

This was amended and superseded by Section 23, Paragraph 3 of the Act of 1907, which reads as follows:

> "The State Highway Commissioner, if in his judgment the conditions warrant the co-operation of the State in maintaining said highways, shall apportion to said township or county its proportion of the total

amount available for the maintenance of improved highways, as hereinbefore provided; and the same amount shall be paid to the said supervisors or commissioners by warrant of the State Highway Department; but in no case shall the amount thus given by the State for maintenance be more than three-fourths the amount which, in the judgment and experience of the State Highway Commissioner, the annual cost of maintaining improved highways of the standard of construction prevailing in such township or county should be, nor more than three-fourths the sworn average annual cost of maintenance, as set forth in the petition of the supervisors or commissioners of said township or county."

An inspection of these two sections demonstrates the fact that the maximum proportion that the State may bear of the expense of maintenance is changed from one-half to three-fourths by the Act of 1907, but you state in your letter that the maintenance fund available for distribution this year amounts to only $150,000 and that to distribute it fairly and equitably among the various townships of the Commonwealth, for the purpose of repairing the improved roads already built under the supervision of your department, will not permit of a larger amount than 50 per cent. of the estimated cost of improvement. If the distribution is made according to the maximum fixed by the Act of 1907, many of the townships will not receive any money at all, and this would be unfair and would result in the deterioration of the roads which need repairs in such townships.

Giving the language used by the Legislature its full force and effect, I am of the opinion that the distribution of this fund is largely left to your own judgment and that the maximum fixed is not mandatory; that it does not necessarily mean that this amount must be given to the townships by the State, but only fixes the limit beyond which the State cannot go. It is far more important to carry out the spirit of the law and make a distribution which will be equitable and fair to every township in the State entitled to assistance, than to adhere to a strict construction and thereby work injustice to many of the townships.

For these reasons I am of the opinion and advise you that it is your duty to apportion this available fund of $150,000 equitably and fairly on that basis of per centage which will enable all of the townships to receive their portion, rather than to attempt to pay part of them the three-fourths of the sworn annual cost of maintenance, and compel others to do without any State aid in this important matter.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

SWATARA TOWNSHIP HIGHWAY.

The State Highway Commissioner has no authority to award a contract for a road less than one half mile in length.

Office of the Attorney General,
Harrisburg, Pa., July 1, 1908.

Hon. R. D. Beman, Deputy State Highway Commissioner, Harrisburg:

Sir: I am in receipt of your inquiry of June 25th, 1908, asking whether the State Highway Commissioner has authority to reconstruct as a "State Highway" 1,400 feet of a certain highway lying in the township of Swatara, Dauphin county, between the city line of the City of Harrisburg and the borough line of the Borough of Steelton.

I understand the facts in connection with your inquiry to be that the section of highway above referred to is a portion of a highway beginning at the termination of Cameron Street in the city of Harrisburg and extending thence to and through the Borough of Steelton; that the City of Harrisburg is now paving said Cameron Street to the city line, and that the Borough of Steelton has improved the section of said highway lying within the limits of said borough, so that when the paving of Cameron Street to the city line of Harrisburg has been completed there will be 1,400 feet of highway between the city line of Harrisburg and the borough of Steelton remaining unimproved. No portion of the highway in question, either within or without the limits of the borough of Steelton has been reconstructed under contract with the State Highway Department, so that under the facts in this case the 1,400 feet of highway in question could not be considered as an extension of previous work done by the State Highway Department. It is expressly provided in Section 10 of the Act of May 1st, 1905 (P. L. 317), that "no section of highway improved under this act shall be less than one-half mile in length nor shall the improved portion thereof be less than twelve feet in width."

The proposition now before your Department is to award a contract for a section of highway less than one-half mile in length.

I am of the opinion that, by reason of the express provisions of the above cited Act of Assembly, the State Highway Commissioner has no authority to award a contract for the improvement of the above mentioned section of highway.

Respectfully,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

ROAD TAX.

The dollar tax provided for by Section 2 of the Act of April 12, 1905, (P. L. 142) can be assessed only on residents of the township.

Office of the Attorney General,
Harrisburg, Pa., September 9, 1908.

Mr. R. D. Beman, Deputy State Highway Commissioner, Harrisburg, Pennsylvania:

Sir: This Department is in receipt of your communication of July 13, 1908, in which you ask to be advised whether, in the opinion of this Department, that portion of the second Section of the Act of April 12, 1905, (P. L. 142), which provides "that upon every taxable the road supervisors of each township shall assess the sum of one dollar in addition to the millage tax mentioned," authorizes the supervisors of any given township of the second class in this Commonwealth to assess said tax of one dollar against a person who owns property within the township in question, but is a non-resident thereof.

The disposition of your inquiry depends upon the character of the tax, the assessment of which is authorized by the language above quoted. If the tax therein provided for is a poll or capitation tax of a specific sum to be assessed against an individual, such tax cannot be assessed by the supervisors of a township against a non-resident thereof, for a personal tax can be levied only at the place of the individual's residence and the right to levy a poll tax depends upon residence. A poll tax is not a tax on property, but is a specific sum levied upon individuals.

It is suggested in your communication, however, that the word "taxable" as used in the act under consideration should be construed to include anything capable of being taxed, property as well as persons. The word taxable is defined in the Century Dictionary both as an adjective and a noun. As an adjective it means, "Subject or liable to taxation," and as a noun it means, "A person or thing sub ject to taxation; especially a person subject to a poll tax." Standing alone the word "taxable" may mean either a person or a thing subject to taxation, but in order to ascertain the meaning which the Legislature intended should be given to the word as here used we must examine the context.

The said act of 1905, inter alia, authorizes supervisors of townships of the second class to levy and collect road taxes. It is provided in the said second section of this act that the supervisors "shall proceed immediately to levy a road tax which shall not exceed ten mills on each dollar of valuation; this valuation shall be the last adjusted valuation for county purposes, and which shall be furnished to said road supervisors by the commissioners of the proper county. * * *

And provided further that upon every taxable the road supervisors of every township shall assess the sum of one dollar in addition to the millage tax above mentioned." The language above quoted clearly indicates a legislative intent to authorize the assessment of taxes by supervisors against two separate and distinct objects of taxation—first, property, against which a millage tax is to be assessed, and, secondly, taxable individuals, against whom a specific tax of one dollar each is to be assessed.

I am, therefore, of the opinion that the dollar tax above mentioned is not a tax on property but is a tax to be assessed against persons, and that the supervisors of any given township of the second class can assess this tax only against residents of their township. In arriving at this conclusion this Department is in accord with the opinion of Judge Walling in the case of Mill Creek Township vs. Willis, 16 D. R., 312; the opinion of Judge Wanner in the case of Township of Warrington vs. Belt; and the opinion of Judge Taylor in the case of Independence Township vs. Dodd, 17 D. R. 416.

Yours sincerely,

J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

AUTOMOBILE LICENSES.

Automobile licenses cannot be issued in blank, leaving out the names of those to whom issued.

Office of the Attorney General,
Harrisburg, Pa., October 20, 1908.

Hon. Joseph W. Hunter, State Highway Commissioner, Harrisburg, Pa.:

Dear Sir: I am in receipt of your letter of recent date in which you desire an official opinion on the question of your legal authority to issue State automobile licenses in blank to various automobile organizations who desire to pay for them and issue them to persons entitled to receive them from time to time, filling in the names of persons to whom they are issued.

Inasmuch as the act of Assembly covering this question imposes certain restrictions upon the issue of these licenses, and the duty of issuing them to individual applicants is reposed by law in you. I am clear that you would not be justified in delegating this authority to any one else. For this reason I am of the opinion and advise you that you cannot legally comply with the requests of these various automobile clubs and associations.

Very truly yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

OPINIONS TO THE COMMISSIONER OF FISHERIES.

OPINIONS TO THE COMMISSIONER OF FISHERIES.

FISH NETS.

The placing together of two nets, one above the other of the character described in Section 7 of the Act of May 29th, 1901 (P. L. 302) and fishing them in that manner is unlawful.

Such use of dip nets is unlawful.

Office of the Attorney General,
Harrisburg, Pa., March 26, 1907.

Hon. W. E. Meehan, Commissioner of Fisheries.

Sir: I have your letter of the 20th inst., asking whether the placing together of two nets, one above the other, of the character described in section 7 of the act of May 29th, 1901, (P. L. 302), and fishing them in that manner, is a violation of the act.

I am of the opinion that such use of dip nets would be a violation of the act of Assembly and on conviction punishable as such.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

GIGGING FISH.

No part of the prongs, of a gig or spear including the beards or barbs shall project nearer than one half inch to the opposite side.

Office of the Attorney General,
Harrisburg, Pa., June 7, 1907.

Hon. W. E. Meehan, Commissioner of Fisheries, Harrisburg, Pa.

Sir: I have before me your letter of recent date, asking for an official construction of that part of section 1 of an act entitled: "An act to regulate the taking of carp, suckers, mullets, and eels, in the waters of this Commonwealth, by means of gigs or spears; prohibiting the taking of all other fish by such means, and providing penalties for the violation of this act," approved May 1st, 1907, which read as follows:

> "That from and after the passage of this act, it shall be lawful to kill carp, suckers, mullets, and eels in the public waters of this Commonwealth, in which brook and other trout are now established or have been planted by the State, by means of a gig or spear having a space of not less than one-half an inch between the prongs, from May first to October thirty-first, inclusive, in each year; and it shall not be lawful to use such gig or spear at any time of the year, or in any waters of the Commonwealth, for the catching of any species of fish other than carp, suckers, mullets and eels."

You desire to be specifically advised whether the half-inch measurement provided for in the act shall be between the upper tines or prongs or between the projecting beards or barbs which are placed on the lower end of the tines.

The evident intention of the Legislature in adopting the half-inch measurement was to permit the escape of all fish small enough to pass through the half-inch space provided. I am therefore of opinion and advise you that no part of the prongs, including the beards or barbs, shall project nearer than one-half inch to the opposite side. To hold otherwise would be to provide an instrument of destruction practically continuous in its character and from which no fish, no matter what its size, might escape.

Very respectfully yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

OPINIONS TO BOARD OF PUBLIC GROUNDS AND BUILDINGS.

OPINIONS TO BOARD OF PUBLIC GROUNDS AND BUILDINGS.

ELEVATOR POLICIES.

ELEVATOR POLICIES—PUBLIC GROUNDS AND BUILDINGS—STATE LIABILITY FOR ELEVATOR ACCIDENTS.

There is no necessity for the Board of Commissioners of Public Grounds and Buildings to take out an elevator liability policy, as the State cannot be sued except with its consent, and there is no act of assembly authorizing such action to be brought.

Office of the Attorney General,
Harrisburg, Pa., Jan. 25, 1907.

Mr. John E. Stott, Sec. Board of Commissioners of Public Grounds and Buildings.

Dear Sir: Your letter of the 17th inst. enclosing specimen copy of Elevator Liability Policy by the American Casualty Company, received, and in reply to your request asking for my opinion as to the necessity for taking out such a policy covering the operation of the passenger elevators located in the State Capitol, I advise you that there is no occasion to do so, as the State cannot be sued except with its consent, and there is no act of Assembly authorizing such action to be brought.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

PARTIAL PAYMENTS ON BRIDGE CONTRACTS.

The Board of Public Grounds and Buildings cannot make partial payments on bridge contracts as the work progresses.

Office of the Attorney General,
Harrisburg, Pa., Feb. 28, 1907.

Mr. John E. Stott, Sec. Board of Public Grounds and Buildings, Harrisburg, Pa.

Dear Sir: I have your letter of the 21st before me and also acknowledge receipt of your letter of the 28th inst. enclosing contract and specifications upon which you ask my opinion as to whether the Board can make partial payments on account of the contract for the re-building of bridges as the work progresses.

The language of the contract itself is the best answer that I can give you to your question. It says that "The said the Commonwealth of Pennsylvania will pay to the party of the first part, 'the Canton Bridge Company,' upon the completion of said work in accordance with this contract and the delivery thereof to the Commonwealth, in accordance with the several provisions of the acts of Assembly above cited and in the manner in said acts of Assembly provided, the sum of sixty-five thousand five hundred and ninety-four dollars." The 8th section of the act of Assembly approved June 3, 1905, provided that payment shall be made by the Auditor General after the Inspectors have certified that the bridge has been built in conformity with the terms of the contract and specifications and report approved by the court. The act of 1903 does not change these provisions.

I am therefore of the opinion that the Board is not at liberty to make partial payments on account of the work as it progresses, but can pay only when the work has been fully completed and accepted as provided in the contracts and the act of Assembly as above recited.

I return you the contracts and plans and specifications which you sent me in your letter of the 28th inst.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

ACCIDENT CLAIM.

There is no fund to pay damage claim of one who falls upon a curb of the Capitol grounds pavement and breaks an arm.

Harrisburg, Pa., March 7, 1907.

Hon. Samuel B. Rambo, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Dear Sir: Replying to your communication forwarding the letter of Milton M. Lemer, in which a plea is made for relief of Miss Jeanette Ensminger, of Dillsburg, who fell upon a curb of the Capitol ground pavement upon North Street in the city of Harrisburg, and broke her right arm, I beg to advise you that there is no fund at your disposal by which you can make payment of any sum to Miss Ensminger. It does not appear, from the letter of Mr. Lemer, that there is any liability upon the Commonwealth to make reparation for this injury, but if this were the case, you have no authority by any act of Assembly to adjust such a claim.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

MERCANTILE APPRAISERS SUPPLIES.

There is nothing in the act of March 26, 1895, P. L. 22, which authorizes the Department of Public Grounds and Buildings to honor a requisition for office supplies, either directly from the mercantile appraisers of Philadelphia or indirectly through the Auditor General.

The mercantile appraisers of Philadelphia do not come within the description of the respective departments of the State government for which the department of Public Grounds and Buildings is required to obtain and furnish supplies.

Office of the Attorney General,
Harrisburg, Pa., Dec. 18, 1907.

Samuel B. Rambo, Esq. Superintendent of Public Grounds and Buildings.

Sir: I have your letter of the 18th inst. before me, in which you ask whether or not you have authority, under the act of 1895, relative to the Department of Public Grounds and Buildings, and the supplements thereto, to honor a requisition for office supplies made upon you by the Mercantile Appraisers of Philadelphia, and also whether or not you have such authority in case the Auditor General, acting on behalf of such Mercantile Appraisers of Philadelphia, makes the same requisition upon you.

The second section of the act of Assembly, approved the 26th day of March, 1895, (P. L. 22), relative to the Department of Public Grounds and Buildings, provides, among other things, that the Board shall invite "sealed proposals for contracts to furnish all stationery, supplies and fuel used by the Legislature, the several departments, boards and commissions of the State Government, Executive Mansion, and for distributing the laws, journals, department reports and other matter, and for repairing, altering, improving, furnishing or refurnishing, and all other matters or things required for the public grounds and buildings, legislative halls and rooms connected therewith, the rooms of the several departments, boards and commissions, and the Executive Mansion."

The eighth section of said act further provides:

> "Whenever the heads of the departments, the executive officers of the State board and commissions, and the chief clerks aforesaid, shall require any portion of the furniture, stationery or supplies named in their original lists, a requisition therefor shall be made upon the superintendent, who shall cause the articles to be delivered, taking proper receipt therefor."

By reference to the fifth section of said act the "chief clerks aforesaid" are stated to be the chief clerks of the Senate and the House of Representatives.

I am of the opinion that there is nothing in the act of 1895 which authorizes you to honor a requisition for office supplies, either directly from the Mercantile Appraisers of Philadelphia or indirectly through the Auditor General. The Mercantile Appraisers of Philadelphia do not come within the description of the respective departments of the State Government which you are required to obtain for and furnish supplies to.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

RAILROAD TRACKS.

The Board of Public Grounds and Buildings have the right to grant permission to the Jersey Shore and Antes Fort Railroad Company to lay its tracks over the Jersey Shore bridge at the same time the roadway is being constructed.

Office of the Attorney General,
Harrisburg, Pa., April 22, 1908.

H. D. Jones, Secretary, Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa.

Dear Sir: I have your letter of yesterday stating that the Board of Commissioners of Public Grounds and Buildings desire an opinion on their legal right or authority to grant permission to the Jersey Shore & Antes Fort Railroad Company to arrange with the York Bridge Company contractors for the erection of a bridge across the West Branch of the Susquehanna river, near Jersey Shore, which bridge is being built at the expense of the State, for the laying of the tracks of the said railroad company across the said bridge at the same time the floor is laid thereon.

Accompanying your letter is a petition of the Jersey Shore & Antes Fort Railroad Company, setting forth the fact that the corporation had acquired the right from the County of Lycoming to lay its tracks and run its cars over the bridge which was destroyed by the spring flood of 1907, and which the new structure is to replace.

The petition also sets forth that the said company has obtained the consent of the County Commissioners of Lycoming County to lay its tracks and run its cars over the new bridge in the same manner and to the same extent heretofore existing under the former contract with the county. It is further urged, on behalf of the railroad company, that if the said company be allowed to cause its tracks to be laid over and upon said bridge at the time

the roadway is being constructed, a great amount of expense will be saved to the company, and the necessity for tearing up the roadway after the said bridge is completed and turned over to the county—thereby causing great inconvenience to the travelling public—will be obviated.

All of these averments of fact are sworn to by the manager of the railroad company and the County Commissioners of Lycoming County. In addition thereto, there is a letter from the Hon. Oscar E. Thompson, the superintendent, on behalf of the State, in the construction of the bridge, in which he recommends that this permission be granted, providing the railroad company pay the additional expense, if any, made necessary by their work.

In view of all the circumstances surrounding this case, I am of the opinion and advise the Board of Commissioners of Public Grounds and Buildings that they have the legal right and authority to grant this permission, and that such action on their part will serve the best interests of all concerned.

Very truly yours,
FREDERIC W. FLEITZ,
Deputy Attorney General.

OPINIONS TO SUPERINTENDENT OF PUBLIC PRINTING AND BINDING.

OPINIONS TO THE DEPARTMENT OF PUBLIC PRINTING AND AND BINDING.

REPORT OF DEPARTMENT OF MINES.

There is no legislative authority for printing the report of the Department of Mines in two volumes.

Office of the Attorney General,
Harrisburg, Pa., April 19, 1907.

Hon. A. Nevin Pomeroy, Superintendent of Public Printing,
Commonwealth of Pennsylvania.

Sir: Your communication of April 9th, 1907, inquiring whether or not there is any legislative authority for printing the report of the Department of Mines in two volumes, one containing the report of the Anthracite District, and the other the report of the Bituminous District, has been duly received.

This report is printed under paragraph 9 of section 1 of the act of 17th April, 1905, (P. L. 178), entitled, "An act to regulate the publication, binding and distribution of the public documents of this Commonwealth."

Section 1 provides, "that from and after the passage of this act, the printing, binding, distribution and number of the several documents of this Commonwealth shall be as follows, to wit:"

This section is divided into twenty-nine paragraphs, paragraph 9 reading as follows:

> "Eight thousand four hundred copies of the report of the Department of Mines; one thousand for the Senate; two thousand for the House; five thousand for the Department of Mines; fifty for the Governor; fifty for the Secretary of the Commonwealth and three hundred for the State Librarian."

There is no legislative authority in this act expressly authorizing the printing of the report of the Department of Mines in two volumes, one containing the report of the Anthracite District, and the other the report of the Bituminous District. On the contrary, the act evidently contemplates the printing of this report in one volume. There is no more legislative authority for printing it in two volumes than there is for printing it in twenty.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

BULLETINS OF DIVISION OF ZOOLOGY.

The State Printer shall print additional bulletins of the Division of Zoology issued in May, 1907, notwithstanding the appropriation was for the period commencing June 1, 1907.

Office of the Attorney General,
Harrisburg, Pa., July 9, 1907.

Hon. A. Nevin Pomeroy, Superintendent of Public Printing and Binding, Harrisburg, Pa.

Sir: I have examined the question raised in your letter of June 21st, viz: Whether you shall print for the Economic Zoologist additional copies of the periodical bulletin of the Division of Zoology issued in May, 1907, or whether, under the act of May 31st, 1907, you shall print an increased number of those bulletins alone which are issued during the two fiscal years commencing June 1, 1907.

The act of May 31, 1907, recites in its preamble that the maximum number of twenty-five thousand copies of the periodical bulletins published by the Division of Zoology and issued from the Department of Agriculture has proven to be inadequate to meet the demands of the public, and provides in substance that the Department of Agriculture shall be authorized to publish a sufficient number of copies of each of the periodical bulletins of the Division of Zoology which may be and have been issued from said department to meet the demands of the public, provided that the number of copies of any one bulletin shall not exceed fifty thousand.

By section 2 of said act it is provided that provision for the necessary funds for this printing shall be supplied as an item in the public printing fund of the General Appropriation Bill. The General Appropriation Bill, under the appropriation to the Department of Public Printing and Binding, contains this clause: "For the payment of printing, binding, ruling, etc., two years, the sum of four hundred and seventy-five thousand dollars."

In my opinion, the said act of May 31, 1907, clearly provides that a number, sufficient to meet the demands of the public, of copies of each of the periodical bulletins of the Division of Zoology, which may be and have been issued, not exceeding fifty thousand, shall be published. The bulletin in question is one that "has been issued" within the meaning of the said act of 1907, and the Department of Agriculture is authorized to order the printing of additional copies thereof, sufficient for public demands, but not exceeding fifty thousand, including those heretofore printed.

In my opinion, the clause in the General Appropriation Bill above quoted is intended to cover all printing done by you after the first day of June, 1907, whether the matter printed consists of new

publications or of additional copies of former publications. This request seems to have come to you after June 1st, 1907, and is therefore a part of the work of the current year, and the cost of the printing in question is payable from the appropriation contained in the General Appropriation Bill.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

OPINIONS TO THE DAIRY AND FOOD COMMISSIONER.

OPINION TO THE DAIRY AND FOOD COMMISSIONER.

OLEOMARGARINE.

A United States marshal making sale of oleomargarine in his official capacity is not required to take out a license therefor.

Office of the Attorney General,
Harrisburg, Pa., July 2, 1907.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: I am in receipt of your communication of June 26, 1907, asking to be advised whether or not the United States Marshal for the Eastern District of Pennsylvania, who has advertised for sale, on July 11th, 1907, at eleven A. M., at his office in Philadelphia, eighty-nine tubs of uncolored oleomargarine and six boxes of uncolored oleomargarine, should be required to take out a license for the sale of said oleomargarine. In addition to the facts stated in your letter, it appears from the advertisement of said sale, a copy of which has been furnished me, that said Marshal is about to sell said oleomargarine by virtue of a writ of sale issued by the Judges of the District Court of the United States in and for the Eastern District of Pennsylvania.

The act of 29th of May, 1901, (P. L. 327), prohibiting the sale of oleomargarine colored in imitation of yellow butter and regulating the sale of uncolored oleomargarine, by requiring persons, firms and corporations desiring to make sales of uncolored oleomargarine to take out a license therefor, providing in substance that every person, firm or corporation, and every agent of such person, firm or corporation, desiring to manufacture, sell, offer or expose for sale or have in possession with intent to sell, oleomargarine, butterine or any similar substance not made or colored in imitation of yellow butter, shall make application for a license to do so, in such form as shall be prescribed by the Department of Agriculture through its agent the Dairy and Food Commissioner. All licenses granted under this act expire on the 31st day of December of each year, but licenses may be granted to commence on the first day of any month for the remainder of the year, upon the payment of a proportionate part of the annual license fee. Licenses granted under this act may be transferred by the Dairy and Food Commissioner upon application in writing of the persons, firms or corporations holding the same.

The act provides for the issuing of licenses to manufacturers, wholesale dealers, retail dealers and proprietors of hotels, restaurants, dining rooms and boarding houses. Wholesale dealers are defined in the act to be all persons, firms and corporations who shall sell to dealers and persons who shall buy to sell again, and all persons, firms and corporations making sale in quantities of ten pounds and over at any time are considered wholesale dealers. Persons, firms and coporations selling in quantities of less than ten pounds are defined to be retail dealers.

If the United States Marshal in question were to apply for a license for the sale contemplated and advertised by him, it would be difficult to classify his application for a license under any of the classes of licenses provided for by the act. I am of opinion, however, that the United States Marshal is not such a person as, under the said act of 1901, must procure a license in order to sell uncolored oleomargarine. In the proposed sale he is not acting in a personal capacity, but in his official capacity as the United States Marshal for the Eastern District of Pennsylvania, and under the authority of a Federal statute. The property in question is not in his possession with intent to sell the same within the meaning of the said act of 1901, but is property in the custody of the law, whose agent he is. A thing is in the custody of the law when it is shown that it has been and is subjected to the official custody of a judicial executive officer in pursuance of his execution of a legal writ. The sale advertised by the Marshal is not the kind of a sale contemplated by the act of 1901. The sales prohibited under that act are sales made by manufacturers or dealers in their personal capacities. This proposed sale is a judicial sale. In theory at least the proposed sale will be made by the court, the Marshal being merely the officer of the court. A judicial sale is one which is made by a court of competent jurisdiction through its authorized agent. It is a sale advertised to be made under the process of a court having competent authority to order it, by the officer legally appointed and commissioned to sell. Under the laws of this Commonwealth sales of liquor are regulated and restrained by a license system, but it would scarcely be contended that when a sheriff of a county in this Commonwealth, by virtue of an execution issued out of a Court of Common Pleas, has seized and taken into his possession a quantity of liquors as the property of the defendant in the execution, such sheriff must apply to the Court of Quarter Sessions and take out a license in order to conduct a sheriff's sale of such liquors.

I am therefore of opinion that the sale advertised to be made by the said Marshal is not such a sale as is contemplated by the Oleomargarine Act of 1901, and that the United States Marshal

acting in his official capacity, is not such a person as is contemplated by said act, and you are advised that no license is necessary for the sale as aforesaid advertised.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

PURE FOOD PENALTIES.

A defendant against whom judgment has been rendered in proceedings instituted under Section 9 of the pure food act of June 1, 1907, P. L. 386, may, in default of payment of the penalty and costs, and for want of sufficient distress, be imprisoned under an appropriate writ issued by the magistrate before whom the case was tried, until discharged by process of law.

Office of the Attorney General,
Harrisburg, Pa., Dec. 20, 1907.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: I have your letter of Nov. 30th, 1907, asking to be avised by this Department whether, under the terms of section 9 of the Pure Food Act of June 1, 1907, (P. L. 386), a defendant, against whom judgment has been rendered for the penalty therein provided and costs, who has not appealed therefrom, and who is not possessed of property out of which the amount of said judgment can be collected, may be imprisoned in default of payment of said judgment and costs.

The reply to your inquiry depends upon whether an action, brought under said section 9 of said act of 1907, is within the purview of the act of July 12, 1842, (P. L. 339), entitled "An act to abolish imprisonment for debt, and to punish fraudulent debtors." Section 9 of said act of 1907 reads as follows:

> "Any person who shall violate any of the foregoing provisions of this act shall, for each offense, forfeit and pay the sum of sixty dollars, together with the costs of suit; to be recovered as debts are by law recovered, in an action to be instituted, in the name of the Commonwealth, before any alderman, magistrate, or justice of the peace, in the county wherein the offense shall have been committed; and no appeal shall be allowed from any judgment rendered in such case, except upon special allowance of the court of Common Pleas; subject to all the rules and regulations applicable to appeals from actions in summary convictions."

Notwithstanding the peculiar phraseology in the last clause of the above quoted section, to the effect that appeals shall be sub-

ject to all the rules and regulations applicable to appeals from actions in summary convictions, the said section seems to provide substantially for a suit for a penalty before an alderman, magistrate or justice of the peace in the county wherein the offense is committed.

You now ask to be advised whether a defendant, against whom judgment has been rendered by a magistrate, and from whom the amount of the penalty and costs cannot be collected by execution, can be imprisoned in default of payment of the penalty and costs, provided, of course, no appeal has been taken by the defendant from the judgment so rendered.

The first section of said act of 1842, abolishing imprisonment for debt, provides as follows:

> "That from and after the passage of this act no person shall be arrested or imprisoned on any civil process issuing out of any court of this Commonwealth, in any suit or proceeding instituted for the recovery of any money due upon any judgment or decree founded upon contract, or due upon any contract, express or implied, or for the recovery of any damages for the non-performance of any contract, excepting in proceeding as for contempt, to enforce civil remedies, action for fines or penalties, or on promises to marry, on moneys collected by any public officer, or for any misconduct or neglect in office, or in any professional employment, in which cases the remedies shall remain as heretofore: Provided, That this section shall not extend to any person who shall not have resided in this State for twenty days previous to the commencement of a suit against him."

It is further provided in the 23rd section of said act as follows:

> "No execution issued on any judgment rendered by any alderman or justice of the peace, upon any demand arising upon contract, express or implied, shall contain a clause authorizing an arrest or imprisonment of the person against whom the same shall issue, unless it shall be proved by the affidavit of the person in whose favor such execution shall issue, or that of some other person, to the satisfaction of the alderman or justice of the peace, either that such judgment was for the recovery of money collected by any public officer, or for official misconduct."

Whether a defendant in the situation above described can be imprisoned in default of payment of the penalty and costs depends, therefore, upon whether or not such defendant is within the protection of the said act of 1842.

This question has been passed upon by our Supreme Court in the case of Commonwealth ex rel Colbert v. Kerr, 25 Pittsburg Legal

Journal, 367. That case arose under the old Oleomargarine Act of May 21, 1885, (P. L. 22). The third section of said act of 1885 provides as follows:

> "Every person, company, firm or corporate body who shall manufacture, sell or offer or expose for sale, or have in his, her or their possession with intent to sell, any substance, the manufacture and sale of which is prohibited by the first section of this act, shall, for every such offense, forfeit and pay the sum of one hundred dollars, which shall be recoverable with costs by any person suing in the name of the Commonwealth as debts of like amount are by law recoverable; one-half of which sum, when so recovered, shall be paid to the proper county treasurer for the use of the county in which suit is brought, and the other half to the person or persons at whose instance such a suit shall or may be commenced and prosecuted to recovery."

Section 3 of the act of 1885 and section 9 of the act of 1907 provide for practically the same method of inflicting and collecting the respective penalties specified in said acts. Under the act of 1885 every person violating the provisions thereof "shall, for every such offense, forfeit and pay the sum of one hundred dollars, which shall be recoverable with costs by any person suing in the name of the Commonwealth as debts of like amount are by law recoverable," and under the act of 1907 every person violating the provisions thereof "shall, for each offense, forfeit and pay the sum of sixty dollars, together with the costs of suit, to be recovered as debts are by law recovered in an action to be instituted in the name of the Commonwealth before any alderman," &c.

The case of Commonwealth ex rel Colbert v. Kerr, supra, arose under said act of May 21, 1885. Said Colbert, the relator in said proceedings, was so proceeded against before J. M. Courtney, one of the justices of the peace of the county of Allegheny, for a violation of the said act of 1885, that a judgment was rendered against him for the penalty of one hundred dollars therein provided for and costs, and, in default of payment of said penalty and costs, a writ seems to have been issued by the said magistrate, directed to John L. Kerr, one of the constables of the county of Allegheny, directing him to take the said Colbert into custody and commit him to prison. The said George F. Colbert, defendant in the proceedings before the magistrate and relator in the subsequent proceedings, thereupon presented a petition to the Court of Common Pleas No. 2 of Allegheny County, for a writ of habeas corpus, which writ was awarded as prayed for, returnable forthwith, with notice to the said constable. After hearing the said court made the following order:

> "Now, March 26th, 1895, after hearing on petition, return and record, the prisoner, defendant, is remanded to the custody of the officer on the writ on which he was arrested."

The said George F. Colbert thereupon presented a petition to the Supreme Court of Pennsylvania, setting forth, inter alia, that he was unjustly held and detained in custody by the said constable on an execution for one hundred dollars in favor of the Commonwealth; that the judgment upon which execution issued was founded on a suit brought under said act of May 21, 1885; and praying for a writ of habeas corpus. On April 8, 1895, the Supreme Court handed down a per curiam decision, the material portion of which is as follows:

> "But we have examined his petition, and are satisfied that he is not entitled to a writ of habeas corpus. A judgment recovered for a penalty prescribed by law as the punishment for the commission of an act forbidden by a clear statutory provision, is not within the purview of the act to abolish imprisonment for debt. It is not a judgment founded on a contract, but a penal infliction intended to discourage the violations of the law as truly as a fine imposed upon an offender after conviction in the Quarter Sessions."

This decision of the Supreme Court rules the question submitted by you to this Department, and you are therefore advised that a defendant, against whom judgment has been rendered in proceedings instituted under the 9th section of the said act of 1907, may, in default of payment of the penalty and costs, and for want of sufficient distress, be imprisoned under an appropriate writ issued by the magistrate before whom the case was tried, until discharged by due process of law.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

TINTED OLEO.

The Dairy and Food Commission may decline to accept the payment of fines in cases of illegal oleomargarine selling and insist that all defendants be taken into court for trial, so that, upon conviction and in case of further violations, the same persons may be charged with and convicted of a second offense, for which Sec. 7 of the act of 1907 imposes a maximum fine of $1,000 and imprisonment of from six to twelve months.

Office of the Attorney General,
Harrisburg, Pa., March 13, 1908.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: In your letter of the 10th inst. you state that a large number of oleomargarine dealers in the county of Allegheny are purchasing uncolored oleomargarine and coloring it in their cellars, stables and other unsanitary places, and then selling it for creamery butter. You further state that the dealers who are complying with the law, as well as the grocers of that county, are appealing to you to adopt the most drastic measures to break up this illegal practice, and as, under section 11 of the act of May 29, 1901, you are charged with the enforcement of the law, you are anxious to do all in your power to put a stop to these nefarious practices, and have therefore directed your attorneys and agents in that locality to decline to accept the payment of fines and to insist that all defendants, charged with violating the oleomargarine and renovated butter laws, be taken into the courts for trial.

I assume that your reason for this order is to secure convictions so that, in case of further violations by the same parties, they may be apprehended and charged with a second offense under the provisions of section 7 of the act aforesaid, which imposes a penalty of not less than five or more than one thousand dollars, and an imprisonment in the county jail for not less than six months nor more than twelve months.

This procedure has the approval of this Department, and, although Allegheny County has a large criminal list, and its able and efficient District Attorney is a very busy official, I am sure that, if you will call his attention to the importance of these cases and the necessity for prompt action, he will do all in his power to expedite their trial, to the end that these flagrant violations of a wise law may be stopped.

Very respectfully,
FREDERIC W. FLEITZ,
Deputy Attorney General.

REVOCATION OF OLEOMARGARINE LICENSE.

A failure to comply with the requirements of the oleomargarine law by a licensee is a breach of contract and works a forfeiture of the contract and in such case the Dairy and Food Commissioner has authority to and should revoke the license.

Office of the Attorney General,
Harrisburg, Pa., March 25, 1908.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: I have before me your letter of recent date, in which you ask to be advised as to your power and authority to revoke a license granted under the provisions of the act of 29th of May, 1901, (P. L. 327), entitled:

> "An Act to prohibit the manufacture and sale of oleomargarine, butterine, and other similar products, when colored in imitation of yellow butter; to provide for license fees to be paid by manufacturers, wholesale and retail dealers, and by proprietors of hotels, restaurants, dining-rooms and boarding houses; for the manufacture or sale of oleomargarine, butterine, or other similar products, not colored in imitation of yellow butter; and to regulate the manufacture and sale of oleomargarine, butterine, or other similar product, not colored in imitation of yellow butter, and prevent and punish fraud and deception in such manufacture and sale as an imitation butter; and to prescribe penalties and punishment for violations of this act, and the means and the method of procedure for its enforcement, and regulate certain matters of evidence in such procedure."

Accompanying your letter is a communication from Joseph A. McCurdy, Esq., together with the testimony taken in the case of Commonwealth v. Thomas Mulholland before J. F. Beatty, Justice of the Peace, at Greensburg, Pa. It appears from this testimony, and the information contained in your letter and that of Mr. McCurdy, that one, Thomas Mulholland, proprietor of the Jeannette Tea & Coffee Company, at Jeannette, Pa., has been prosecuted by your Department for violating the provisions of the Oleomargarine Law, and that, during the past year, he plead guilty to a second offense, and was sentenced to pay a fine of $500.00 and costs. In December last you issued a license for the sale of oleomargarine to one, Henry H. Hopper, proprietor of the Jeannette Tea & Coffee Company, 624 Clay Avenue, Jeannette, Pa., for the year 1908, said license being Certificate 3300, upon representations that the said Hopper was a resident of this State and the proprietor of the said business. The evidence in the case before Squire Beatty, a copy of which is before me, establishes the following facts:

That Henry H. Hopper is not a resident of the State of Pennsylvania but resides at Cleveland, Ohio; and that he is the brother-in-law of Thomas Mulholland, who formerly had a license for this same establishment at the same place, and because of his convictions could not receive a license to carry on the business any longer. While the license is in the name of Hopper, and there is an attempt made to show that the business is now being conducted by Hopper, yet the facts seem to be fairly proved that Mulholland is in control and management of the business and is recognized by the employes as the owner in authority. It further appears that the Oleomargarine Law has been violated by the manager of the establishment acting under the license to Hopper; and even if it could be proved that Hopper is the responsible party, it is impossible to punish him for any violation of the law for the reason that he is not a resident of this State.

You desire to know whether or not, under this state of facts, there is warrant of law for you to revoke this license.

The statute is silent upon the question of revocation, but the first section provides:

> "That no person, firm or corporation shall, by himself, herself, or themselves, or by his, her of their agent or servant, nor shall any officer, agent, servant or employe of any person, firm or corporation, manufacture, sell, ship, consign, offer for sale, expose for sale, or have in possession with intent to sell oleomargarine..... unless such person, firm or corporation shall have first obtained a license and paid a license fee, as hereinafter provided.....nor unless such person, firm or corporation shall in all other respects comply with and observe the provisions of this act."

It is apparent that the procuring of the license is but one of the restrictions which this act imposes on persons desiring to manufacture or sell oleomargarine in Pennsylvania. The license is granted by the State upon the express condition that the licensee shall comply with the requirements of the law, and a failure to do so is a breach of contract and works forfeiture of the license. By the fair weight of the evidence in the case before me, it is clear that the license was obtained by fraud, as there is no authority by which a license can be issued to a non-resident of the State, and we are justified in reaching the conclusion that this license was obtained for the purpose of permitting Mulholland, an old offender, to continue an illegal business and has been used by him as a cloak for that purpose. It is your duty to carry out the terms and provisions of this law, and its spirit, if not its exact letter, contemplates the revocation of a license if its terms are violated.

I am therefore of opinion and advise you that, for the reasons above stated, it is your duty to revoke this license and that you have authority under the law to do so.

Very respectfully,
FREDERIC W. FLEITZ,
Deputy Attorney General.

MISCELLANEOUS OPINIONS

MISCELLANEOUS OPINIONS.

PUBLIC PRINTING.

The Pennsylvania Free Library Commission is entitled to have its printing done by the Department of Public Printing and Binding.

Office of the Attorney General,
Harrisburg, Pa., Feb. 5, 1908.

Hon. Thomas Lynch Montgomery, State Librarian, Harrisburg, Pa.

Sir: Your letter of recent date to the Attorney General, asking for an opinion as to whether the Pennsylvania Free Library Commission is entitled, under the law, to have its necessary printing done by the Superintendent of Public Printing, has been referred to me.

Prior to 1905 commissions were not recognized under the laws governing the Department of Public Printing and Binding, and the power to order printing done was confined to "the Executive or any of the departments of the government." The Legislature of 1905 passed a general bill on the subject, in section 10 of which appears the following language:

> "That it shall be the duty of the said Superintendent to receive orders for all blanks, blank books, and miscellaneous printing that may be needed by the Legislature.....or any commission created by act of Assembly not otherwise provided for" and "in case any order or orders received from the heads of departments or of commissions shall appear to the Superintendent .....as unnecessary or unreasonable, he shall refer it or them to the Governor for approval or disapproval."

Inasmuch as the Pennsylvania Free Library Commission was established by the Legislature in 1899 (See Pamphlet Laws 1899) and the power to appoint the Commission was placed in the Governor, it comes squarely within the above quoted language of the printing act of 1905, and I am, therefore, of opinion and advise you that this Commission is entitled to have its printing done by the Department of Public Printing and Binding.

Very truly yours,
FREDERIC W. FLEITZ,
Deputy Attorney General.

SCHOOL BONDS—STATE DEPOSITS—ACT OF FEB. 17, 1906.

School bonds are not municipal bonds within the Act of Feb. 17, 1906, P. L. 47, and are not proper securities for deposits of State funds.

Office of the Attorney General,
Harrisburg, Pa., October 30, 1907.

Mr. C. W. Myers, Clerk to Board of Revenue Commissioners, Harrisburg, Pa.

Sir: I beg to acknowledge receipt of your letter of October 9th, 1907, setting forth a copy of a resolution of the Board of Revenue Commissioners as follows:

> "That the Clerk of the Board be instructed to write the Attorney General for an official opinion as to whether school bonds are municipal bonds within the meaning and purview of the 7th Section of the Act approved February 17th, 1906, (P. L. 47), and can be approved by the Board of Revenue Commissioners and the Banking Commissioner as proper securities to secure deposits of State funds."

The 7th section of the act of February 17th, 1906, is as follows:

> "That in lieu of the surety bonds of surety companies, or of individuals, as aforesaid, the deposit of State moneys may be secured by the deposit with the State Treasurer of United States, municipal or county bonds, to be approved by the Revenue Commissioners and the Banking Commissioner, or a majority of them, in an amount, measured by their actual market value, equal to the amount of deposit so secured and twenty per centum besides. Said bonds to be accompanied by proper assignments or power of attorney to transfer the same, and said trust deposit of securities to be maintained, on request, at the amount aforesaid, in case of any depreciation in the value thereof."

School districts are not strictly municipal corporations. They have neither a common seal nor legislative powers. Wharton v. School Directors, 42 P. S., 358; Com. v. Beamish, 81 P. S., 389; Colvin v. Beaver, 94 P. S., 388; Erie School District v. Fuess, 98 P. S., 600. The word "municipal," as used in the 7th section of the act of 1906, has no qualifiying words of any kind attached to it, and therefore must be construed as referring to the bonds of a municipal corporation with the fullest and broadest powers of a municipality and not to a subdivision with such limited powers as a school district.

I am therefore of opinion that the bonds of school districts are

not municipal bonds within the meaning and purview of the act of Assembly in question, so as to authorize them to be deposited with the State Treasurer as security for the deposit of State moneys.

Very respectfully yours,

M. HAMPTON TODD,
Attorney General.

Form of bond to secure State Deposits approved.

Office of the Attorney General,
Harrisburg, Pa., March 13, 1908.

C. W. Myers, Esq., Clerk to Board of Revenue Commissioners, Harrisburg, Pa.

Sir: I am in receipt of your letter of the 12th inst., enclosing two forms of bond, marked Exhibit "A" and "B," together with your request for an official opinion upon the amended form of bond marked "Exhibit B" to secure deposits of State funds by corporate sureties.

The amendment to the form now in use reads as follows:

> "Provided, however, that no such judgment shall be entered against said surety until the expiration of sixty days from the date of notice by the said State Treasurer to the said surety of default hereunder; but nothing herein shall prevent the said Commonwealth of Pennsylvania from instituting any action or suit at law, or in equity forthwith, upon default in any of the terms and conditions of this obligation."

After careful consideration I am of the opinion, and so advise you, that the proposed amendment is proper and legal, and that the State will be placed in no worse position by reason of its adoption. On the other hand, the surety companies are protected against entry of judgment without notice, which, in some instances, might work grave hardship and disaster.

You are therefore advised that the new form is approved by this Department and may be put into use by your Board forthwith.

Very respectfully yours,

FREDERIC W. FLEITZ,
Deputy Attorney General.

BOARD OF REVENUE COMMISSIONERS.

The Board is advised there is no authority of law to enter into a proposed agreement with the Commissioners of York County as to personal property tax.

Office of the Attorney General,
Harrisburg, Pa., Dec. 17, 1907.

C. W. Myers, Esq., Clerk to the Board of Revenue Commissioners.

Sir: I have your letter of the 11th inst. before me, transmitting the following resolution of the Board of Revenue Commissioners; passed on the 10th inst:

> "Resolved, That the Clerk be instructed to submit to tht Attorney General for his official opinion, the petition of Glenn, Van Der Veer & Company, of the City of Indianapolis, State of Indiana, by F. P. Van Der Veer, a member of the said firm, relative to omitted personal property represented by foreign securities, and inquire whether the Board of Revenue Commissioners has authority under the Revenue Acts and the Act of May 24, 1879, (P. L. 126), to enter into an arrangement with the Commissioners of York County to the effect that upon such sums as are collected through them, and upon which their commissions are paid, the said County in an amended return might claim credit for the amount thus paid, and the supplemental precept when issued may be for the amount actually collected, less the per centum paid for expenses; so that the Commonwealth would proportionally bear its share of the costs of said collection upon the moneys retained in the State Treasury, and that the matter be considered after eliminating entirely the amount of per centum compensation which might hereafter be agreed upon between the County Commissioners of York County and the Glenn, Van Der Veer & Company."

I am of the opinion that there is nothing in the act of May 24, 1878, (P. L. 126), nor in the Revenue Acts, authorizing the Board of Revenue Commissioners to enter into an arrangement or agreement with the County Commissioners of York or any other county such as is proposed in the petition of the Glenn, Van Der Veer Company, which accompanied your letter and which I return to you herewith.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

PUBLIC PRINTING.

The Economic Zoologist can have printed 25,000 copies of the bulletin The Serpents of Pennsylvania, but no more.

Office of the Attorney General,
Harrisburg, Pa., Feb. 8, 1907.

Prof. H. A. Surface, Economic Zoologist, Department of Agriculture, Harrisburg, Pa.

Sir: Your letter of the 16th inst. requesting instructions with regard to the re-publication of the Bulletin, "The Serpents of Pennsylvania," has been received.

In reply thereto I beg to call your attention to an opinion by Attorney General Carson, directed to the Secretary of Agriculture, under date of January 5, 1906, which directly covers your inquiry. The original opinion should be on file in the Department of Agriculture and is readily accessible to you. In this opinion Attorney General Carson held that: "The legal limit of the number of copies of Bulletins of information published by your Department (i. e. Department of Agriculture) cannot exceed 25,000." He reviews the acts of March 13, 1895, (P. L. 18), and April 22, 1903, (P. L. 253), relating to the publication of Bulletins by the Department of Agriculture, and in conclusion sums up the whole matter in this statement: "Nor can I find any authority in the Statute for the publication by your Department of a second edition of any Bulletin nor any authority for a revised edition."

I therefore advise and instruct you that if you have not already exceeded the maximum limit of 25,000 copies in the former publication of the Bulletin referred to, you have authority to reprint additional copies, provided that you do not exceed that limit. If 25,000 copies have already been printed there is no authority in law for reprinting additional copies or for the issue of a second edition, or a revised edition of the said Bulletin.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

STATE PHARMACEUTICAL EXAMINING BOARD.

The Board cannot issue certificates to so called hospital pharmacists.

Office of the Attorney General,
Harrisburg, Pa., September 11, 1908.

Charles T. George, Esq., Sec. of State Pharmaceutical Examining Board of Pennsylvania, Harrisburg, Pa.

Sir: This Department is in receipt of your inquiry of September 3, 1908, in which you ask to be advised whether the State Pharmaceutical Examining Board has authority under existing legislation to issue certificates in the following form:

"This is to certify that.....
of ..... County of .....State of Pennsylvania, having had four years' practical experience in compounding and dispensing medicines and compounding physician's prescriptions in a hospital and having passed a satisfactory examination before this Board, is hereby declared a

HOSPITAL PHARMACIST

And granted this certificate, which entitles the holder to have charge of a hospital dispensary. This certificate does not permit the holder to conduct or carry on the retail drug and apothecary business either as proprietor or manager thereof, or to act as a qualified assistant."

In reply, permit me to say that an examination of the act of twenty-fourth May, 1887, (P. L. 189), being the act establishing the "State Pharmaceutical Examining Board," and regulating the practice of pharmacy in this Commonwealth, and of the various amendments thereto, shows that the scope of this legislation in so far as it applies to the present inquiry is to provide for the registration of two classes of persons engaged in the practice of pharmacy, viz; those who conduct and carry on the retail drug or apothecary business, and those who act as qualified assistants in the carrying on of said business, and to provide for the issuing, after due examination, of appropriate certificates to the said two classes of persons, denominating the certificates issued to the first mentioned class of persons as proprietor's or manager's certificates, and those issued to the second mentioned class of persons as qualified assistants' certificates.

The fifth section of the said act of 1887, as amended by the act of March twenty-fourth, 1905, (P. L. 53), provides, inter alia, that all persons applying for examination for certificates entitling the holders thereof to conduct and carry on the retail drug or apothecary business must produce satisfactory evidence of having had not less

than four year's practical experience in the business of retailing, compounding or dispensing of drugs, chemicals or poisons, and of compounding physicians' prescriptions, and of being a graduate of some reputable and properly chartered college of pharmacy; and those applying for examiantion for certificates as qualified assistants therein must produce evidence of having had not less than two years' experience in said business.

Under this legislation the applicant for a certificate to conduct and carry on the retail drug business, either as a proprietor or a manager thereof, must have at least two qualifications. Such applicant must have had not less than four years' practical experience in the business of retailing, compounding or dispensing drugs, etc., and of compounding physicians' prescriptions, and must be a graduate of some reputable and properly chartered college of pharmacy. The applicant for a qualified assistant's certificate need not be a graduate of a college of pharmacy, but must have had not less than two years' experience "in said business." Under a fair construction of the language of this section the business herein referred to is the business of retailing, compounding or dispensing drugs, etc., and compounding of physician's prescriptions in a retail drug store, and not the business of compounding and dispensing medicines and compounding physicians' perscriptions in a hospital.

It is expressly stated in the form of certificate submitted with your inquiry, and above quoted, that this certificate will neither authorize the holder to conduct or carry on the retail drug and apothecary business as proprietor or manager thereof nor to act as a qualified assistant in the carrying on of such business. The only purpose the proposed certificate could serve would be to authorize the holder thereof to compound and dispense medicines and compound physicians' prescriptions in a hospital, and to have charge of a hospital dispensary. I am of the opinion that the State Pharmaceutical Examining Board has no authority, under the law, to issue a certificate of this kind. The Board can issue but two kinds of certificates, namely—certificates authorizing their holders to conduct and carry on the retail drug business as a proprietor or manager thereof, and certificates authorizing the holders thereof to act as qualified assistants in the carrying on of such retail drug business. Neither of these certificates can be issued to a preson who has not had practical experience in said retail drug business, but the language of the certificate in question would indicate that it is proposed to issue the same to persons who have had no practical experience in the retail drug business. Although not a controlling element in the disposition of your inquiry, it is to be observed that it is proposed to issue the certificate in question to applicants who are not graduates of a college of pharmacy, such graduation being

one of the qualifications required of applicants for a proprietor's or manager's certificate.

Aside from the question of whether the practical experience contemplated by the said act of 1887, as amended, must be acquired in the retail drug business, as distinguished from practical experience in compounding and dispensing medicines and compounding physicians' prescriptions in a hospital, and aside from the matter of graduation from a college of pharmacy, I am of the opinion that the certificate cannot be legally issued by your Board, because there is no legislative authority for issuing any kind of a certificate to persons who propose to act as hospital pharmacists, and do not propose to engage in the retail drug business either as proprietors or managers, or qualified assistants. Such persons are not within either of the two classes of persons to whom the State Pharmaceutical Examining Board is authorized to issue certificates.

Yours sincerely,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

STATE PHARMACISTS.

A holder of a Pharmacist certificate granted under the Act of April 4th 1872 (P. L. 905) cannot do an apothecary business in this State unless he complies with the provisions of the Act of May 24, 1887 (P. L. 189) and supplement.

Office of the Attorney General,
Harrisburg, Pa., October 2, 1908.

Mr. W. L. Cliffe, Secretary State Pharmaceutical Examining Board,
Kensington Avenue and Somerset St., Philadelphia, Pa.

Sir: In the matter of your communication, asking to be advised by this Department whether a pharmacist, who is the holder of a certificate granted under the act of April 4th, 1872, (P. L. 905), entitled "An act to regulate the practice of pharmacy and the sale of poisons, and to prevent adulteration in drugs and medicinal preparations in the city of Philadelphia," and is at present the proprietor and manager of a pharmacy in the city of Philadelphia, but who has not been registered under the provisions of the act of May 24, 1887, (P. L. 189), entitled "An act to regulate the practice of pharmacy and the sale of poisons, and to prevent adulteration in drugs and medicinal preparations in the State of Pennsylvania," and the supplemental act of May 4, 1889, (P. L. 80), extending the time for such registration, is at present conducting his pharmacy

business according to law, and whether, under the above facts, such person is entitled to act as manager of a pharmacy outside the limits of Philadelphia, I reply as follows:

In the opinion of this Department, the holder of a certificate under the said act of 1872, which was confined in its operation to the city of Philadelphia, must, notwithstanding the fact that he holds such certificate, comply with the said act of 1887, supplemented by the said act of 1889, by being registered thereunder. It was evidently the intention of the Legislature, in passing the said act of 1887, to compel all persons then conducting the business of retail apothecaries to register as such apothecaries. There is no indication that the holders of certificates in the city of Philadelphia, granted under the act of 1872, were to be exempt from the provisions of the said act of 1887. It is clear that the certificate granted under the act of 1872 does not authorize the holder thereof to act as manager of a pharmacy outside the limits of Philadelphia, and in the opinion of this Department the holder of a certificate granted under the said act of 1872 is not authorized to conduct the business of a retail apothecary in this Commonwealth, either within or without the city of Philadelphia, unless he has also complied with the provisions of the said general Act of 1887.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

STATE RAILROAD COMMISSION.

Members of the commission, their officers, agents and experts may be reimbursed by the State for all moneys expended by them in the discharge of official duty, but this does not include travel from their homes to Harrisburg and return, nor expense incurred while at Harrisburg.

Harrisburg, Pa., October 21, 1908.
Office of the Attorney General,

Harry S. Calvert, Esq., Secretary State Railroad Commission, Harrisburg.

Sir: I have before me your letter of recent date, in which you ask for an official opinion upon the right of an officer of the State Railroad Commission to include in his official expense to be paid by the State, the item of mileage from his home to Harrisburg and from Harrisburg to his home.

That portion of the 23rd section of the act of 31st May, 1907, (P. L. 337), creating your Commission, and defining its powers and duties, which bears upon this matter, reads as follows:

> "In the discharge of their official duties the Commissioners shall have reimbursed to them the necessary actual travelling expenses and disbursements of themselves, their officers, clerks and experts."

So that the question resolves itself into whether or not the travel above mentioned is "in the discharge of official duties." Practically the same question was passed upon by Deputy Attorney General Fleitz, in an opinion to the Auditor General dated April 8, 1902, in which he held that a judge was not entitled to mileage for travelling from his place of residence to the county seat to perform his duties. Later it was held, in an opinion given by Attorney General Carson to the Auditor General, under date of July 20, 1906, that "expenses actually and necessarily incurred in the discharge of his official duties," did not include hotel expenses in the city of Harrisburg. Attorney General Carson states the principle as follows:

> "The law does not furnish a residence in Harrisburg or anywhere else to the officer. His acceptance of the position implies his presence at the State Capitol at his own expense, and the only expense which can fairly be considered chargeable is that incurred by him when absent from the Capitol in the discharge of official duty."

You will observe that the phraseology in the law creating your Commission and the one last above cited is substantially the same, and there appears no good reason for reversing these decisions in the present case.

I am therefore of the opinion and advise you that while the members of the Commission, their officers, agents and experts, are entitled to receive from the State reimbursement for all money expended by them in the discharge of their official duties, that this does not cover the item of expense incurred by them in their travel from their homes to Harrisburg and return, nor that incurred while here.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

GAME COMMISSION.

The secretary of the game commission has authority, under the appropriation act of 1907, in cases which appeal to his judgment and discretion, to employ local counsel to protect his game protectors and assist in the prosecution of flagrant violations of the law; but this should be done in a conservative, economical, and careful manner, and satisfactory proof presented to the Auditor General with the vouchers to satisfy that official that the expenditure was necessary.

Office of the Attorney General,
Harrisburg, Pa., Jan. 16, 1908.

Dr. Joseph Kalbfus, Secretary of the Game Commission, Harrisburg, Pa.

Sir: I am in receipt of your letter of recent date, addressed to the Attorney General, relative to the right of your Department to employ counsel in the prosecution of violators of the game laws, and to defend your deputy game protectors in actions arising out of the discharge of their official duties. You state that prior to the meeting of the Legislature of 1907 under the laws in force at that time you were possessed of a contingent fund arising from the collection of fines and penalties against violators of the game laws, which, under an option of this Department, you were accorded the right to use in such manner as you saw fit, for the betterment of game conditions, and that out of this fund you were in the habit of paying counsel fees for the purpose above mentioned, and that in no year did the amount so expended exceed $1,000.00.

The Legislature of 1907 in its wisdom saw fit to pass laws generally abolishing the retention of fees and penalties by the various departments and requiring that the same be paid into the State Treasury and making specific appropriations for the payment of the expenses of the various departments of the State Government. The wisdom of this change is obvious, and the only question involved in your inquiry is whether this language used by the Legislature in making the appropriation to your Department is broad enough to include the item of counsel fees for the purposes named.

> "For the payment of travelling and other necessary expenses of these ten game protectors, and for the payment of services rendered or expenses incurred by either Deputy Game Protector, or a Special Deputy Game Protector, under the specific and written order or the Chief Game Protector, and incidental office expenses, two years, the sum of twenty-four thousand dollars ($24,000.00)."

If authority exists anywhere for the employment and payment of counsel in connection with the work of your Department, it must

be found in the language above quoted, and in the fact that before the appropriation can be paid there must be the "presentation of duly certified vouchers of the expenditure of money previously drawn, and the satisfactory proof to the Auditor General that the expenditure is necessary for the enforcement of the laws of the Commonwealth relative to the protection of game, of song and of insectivorous birds."

On account of the antagonistic public sentiment in certain remote sections of the State against the enforcement of the laws on this subject, it is no doubt necessary from time to time for your Department to employ local counsel in extraordinary cases where otherwise there would occur a miscarriage of justice.

It may also be necessary, if the work of your Department is to be uninterrupted, that the game protectors shall themselves be protected against malicious and unjust prosecutions. For this reason I am of the opinion and advise you that you have the authority, in cases which appeal to your judgment and discretion, to employ local counsel to protect your game protectors and assist in the prosecution of flagrant violations of the law; but this should be done in a conservative, economical and careful manner, and satisfactory proof presented to the Auditor General with the vouchers to satisfy that official that the expenditure was necessary for the enforcement of the laws relative to the protection of game, of song and of insectivorous birds.

Very respectfully yours,
FREDERIC W. FLEITZ,
Deputy Attorney General.

STATE POLICE EXPENSES.

A member of the State Police cannot collect for his own use costs of making arrests.

Costs may be collected by the State Police in amounts equal to the costs allowed by law for constables in similar services, and should be turned into the state treasury.

There is no warrant of law for using the costs so collected in defraying the expenses of making arrests, but all such expenses should be met from the fund specifically appropriated for that purpose.

Office of the Attorney General,
Harrisburg, Pa., Jan. 28, 1907.

Hon. John C. Groome, Superintendent of State Police, Harrisburg, Penna.

Sir: I reply to your letter of Dec. 31, 1906, to my predecessor, Hon. Hampton L. Carson, in which you ask whether members of

the State Police Force are not entitled to constable's fees under any circumstances; and I also reply to the letter of Mr. J. Cheston Morris, Jr., Deputy Supt. of State Police, in which he asks if a member of the State Police may collect the costs of making arrests and turn them in to the Department of State Police for use in defraying the expenses of the Department.

I concur in the opinion of former Attorney General Carson, of December 28, 1906, that a member of the State Police may not collect for his own use costs of making arrests.

I advise you that costs may be collected by the State Police in amounts equal to the costs allowed by law for constables in similar services, and that the costs so collected should be transmitted to you, and by you turned in to the State Treasury. There is no warrant of law for you to use the costs so collected in defraying the expenses of making arrests, but all such expenses should be met from the fund specifically appropriated for that purpose.

Very respectfully yours,

M. HAMPTON TODD,

Attorney General.

STATE POLICE FORCE—COSTS IN CRIMINAL CASES—SERVING WARRANT—RIGHT OF COMMONWEALTH TO COLLECT FROM COUNTY—ACTS OF JULY 14, 1897, AND MAY 2, 1905.

Members of the state police force may not collect costs, in criminal cases in which they render services, for their own personal use, but they may collect such costs for the use of the Commonwealth in amounts equal to the costs allowed to constables for similar services, which costs when so collected are to be transmitted to the Superintendent of the State Police and by him turned into the state treasury.

Acts of July 14, 1897, P. L. 266, and May 2, 1905, P. L. 361, construed.

Office of the Attorney General,
Harrisburg, Pa., July 5, 1907.

Hon. John C. Groome, Superintendent State Police, Harrisburg, Pa.

Sir: I am in receipt of your letter of July 2, 1907, enclosing letter addressed to you by George H. Troutman, Esq., of Wilkes-Barre, under date of June 28, 1907; a copy of the terms of a case stated proposed to be filed in the Court of Common Pleas of Luzerne County; also a second letter addressed to you by the said George H. Troutman, Esq., under date of July 2, 1907, and asking to be advised by this Department as to the proper action to be taken by you upon the facts stated in said communications. From the papers before me I find the facts to be substantially as follows:

On the day of one John F. Walsh, a member of the State Police Force of Pennsylvania, as created by the act of 2nd May, 1905, (P. L. 361), served a warrant issued for the arrest of one Andrew Gulick, upon a criminal charge of assult and battery committed in the County of Luzerne, upon the said defendant, the legal costs for executing which said warrant, if the same had been served by a constable, amount to $1.24. The said case of Commonwealth vs. Gulick was so proceeded with in the Court of Quarter Sessions of Luzerne County, that the traverse jury rendered a verdict of not guilty and directed the County (of Luzerne) to pay the costs. The said amount of $1.24 for executing the warrant as aforesaid, was duly taxed as part of the costs in said case. The Controller of Luzerne County declined to approve the payment to the said John F. Walsh, of said costs, amounting to $1.24, upon the ground that the said John F. Walsh is prohibited from receiving said costs by the terms of the act of Assembly of 14th July, 1897, (P. L. 266). The question thus arising was referred by the Superior officer of the said John F. Walsh to your attorney at Wilkes-Barre, the said George H. Troutman, Esq., and it has been arranged by your said attorney and the County Solicitor of said County of Luzerne, to obtain a judicial determination of the question through the medium of a case stated in the Court of Common Pleas of said County, a copy of the proposed case stated being submitted along with your communication to this Department. Before filing the proposed case stated, your said attorney has submitted to you the question of the advisability of proceeding with the same, calling your attention in his letter of July 2, 1907, to an opinion rendered by former Attorney General Carson, which, in the opinion of your said attorney, creates a doubt as to the advisability of proceeding with the said case stated.

Different phases of the main question now presented for consideration have been submitted to this Department at different times, and opinions have been rendered on the particular phases so presented. The first opinion is that of former Attorney General Carson, under date of December 28, 1906. All that is really decided or intended to be decided in that opinion, is that a member of the State Police Force may not collect for his own use the costs of making arrests. The material paragraph containing the conclusion of the opinion is in the following words:

> "It is clear to me that it was the intention of the Legislature when it placed the members of the State Police Force upon a regular salary—a salary which is adequate—that this compensation should be in lieu of all fees and emoluments to which a local constable performing the same service would be entitled."

Under date of January 28, 1907, in replying to a communication received from you under date of December 31, 1906, addressed to my predecessor, the said Hon. Hampton L. Carson, in which you ask whether members of the State Police Force are not entitled to constable's fees under any circumstances, and also replying at the same time to a letter addressed to me by J. C. Morris, Jr., Deputy Superintendent of Police, asking if a member of the State Police may collect the costs of making arrests and turn them into the Department of State Police for use in defraying the expenses of the Department, I replied as follows:

> "I concur in the opinion of former Attorney General Carson, of December 28, 1906, that a member of the State Police may not collect for his own use costs of making arrests.
>
> I advise you that costs may be collected by the State Police in amounts equal to the costs allowed by law for constables in similar services, and that the costs so collected should be transmitted to you, and by you turned into the State Treasury. There is no warrant of law for you to use the costs so collected in defraying the expenses of making arrests, but all such expenses should be met from the fund specifically appropriated for that purpose."

The position of this Department, therefore, upon the main question involved, is as follows:

Members of the State Police Force may not collect costs in the criminal cases in which they render services as members of said Police Force for their own personal use, but costs may be collected by the members of said State Police Force for the use of the Commonwealth in amounts equal to the costs allowed by law to constables for similar services, which costs when collected by said members of State Police Force are to be transmitted to you as Superintendent thereof and by you turned in to the State Treasury. This position is based upon what this Department considers to be a fair construction of the said act of 2nd May, 1905, (P. L. 361), taken in connection with the said act of 14th July, 1897, (P. L. 266). The said act of 1905 is entitled

> "An Act creating the Department of State Police; providing for the appointment of a Superintendent thereof, together with the officers and men who shall constitute the force; defining their powers and duties, and making an appropriation for the expenses connected therewith."

Section 3 of this act fixes the salary to be paid the various members of the State Police Force, and section 5 provides that

the members of said force shall have the powers and prerogatives conferred by law upon members of the police force of cities of the first class, or upon constables of the Commonwealth.

The said act of 1897 is entitled:

> "An Act to regulate the remuneration of policemen and constables employed as policemen throughout the Commonwealth of Pennsylvania, and prohibiting them from charging or accepting any fee or other compensation, in addition to their salary, except as public rewards and mileage for travelling expenses."

Section 1 of this Act provides that

> "From and after the passage of this Act all municipalities or corporations employing policemen within the Commonwealth of Pennsylvania shall pay to all such policemen a fixed or stipulated salary; and that hereafter it shall not be lawful for any such policemen to charge or accept any fee or other compensation in addition to his salary for any service rendered or performed by him of any kind or nature whatsoever pertaining to his office or duties as a policeman except public rewards and the legal mileage allowed for travelling expenses."

This act has received judicial construction in several cases. In the case of Weaver vs. Schuylkill County, 17 Super Ct. 327, Justice Orlady says

> "A policeman is a minor municipal officer and the duration of his term, compensation, and duties are defined and limited by the appointing power. The general sweeping provisions of the Act of 1897 repealing all inconsistent acts were intended to prevent the exaction of double compensation for services rendered ....."

In the course of the opinion in this case it is clearly indicated that the abuse intended to be remedied by the act of 1897 is that of demanding in the name of the law double compensation for single service.

In Davis vs. Schuylkill County 27 Pa. C. C. 177, it is held that a salaried police officer is entitled to witness fees where he appears in answer to a subpoena. In such case he is not rendering service pertaining to his office or duties as policeman, and does not come under the prohibition contained in the act of 1897.

Again, in the case of Commonwealth ex rel vs. Jones 14 D. R. 350, it is held that under the said act of 1897 a borough chief of police who makes an arrest within his own borough is entitled to

extra compensation for serving the subpoena for the preliminary hearing, and serving the Commonwealth's subpoenas for the grand and petit juries. He is not, however, entitled to compensation for executing the warrant of arrest, or for mileage in serving it. The former services are not within his official duties; the latter are.

In taking the position that members of the State Police Force are not entitled to collect costs for services rendered in criminal cases for their own personal use, it is not to be understood that this Department admits that the said act of 1897 applies to the members of the State Police Force. On the contrary, I am of opinion that said act of 1897 does not apply to or affect the members of said State Police Force. While it is stated in the title that this is an act to regulate the remuneration of policemen and constables employed as policemen throughout the Commonwealth, yet it is provided in the first section of the act that all municipalities or corporations employing policemen shall pay them a fixed and stipulated salary and that it shall not be lawful for any policeman to charge or accept any fee or other compensation in addition to his salary for services rendered or performed by him of any kind or nature whatsoever pertaining to his office or duties as a policeman, except, etc. The act by its express terms is confined in its operation to policemen employed by municipalities or corporations and it is only such policemen who are prohibited from charging the fees mentioned. The members of the State Police Force are not employed by any municipality or corporation. The position of this Department that the members of the State Police Force cannot collect costs or fees for their own personal use, rests, not upon the prohibition of the act of 1897, but rather upon the proposition that being officers of the State, entitled to receive a specified adequate salary from the State, all fees and costs collected by them in their official capacities belong, under the laws of this Commonwealth, to the Commonwealth herself. But, going a step further, it does not follow that a county liable for the payment of the costs of prosecution in a criminal case is not bound to pay the costs accruing upon the warrant issued for the arrest of the defendant merely because the defendant was arrested by even a municipal police officer. Such officer is not entitled to double compensation for arresting the defendant, i. e., one compensation in the form of salary from the municipality employing him, and another compensation in the form of costs from the county liable for the costs of prosecution. Such officer is prohibited by the act of 1897 from charging or accepting such costs for his own use, but there is no reason why the municipality employing and paying a salary to the officer who rendered the service in question should not be entitled to receive from the county for whose benefit said service was rendered,

the legal costs payable for such service. In the case in hand, a criminal prosecution has been terminated by a verdict of a traverse jury finding the defendant not guilty and directing the county to pay the costs. Under this finding there can be no question but that the county is liable for all the costs of prosecution accruing in the case. The costs of serving the warrant of arrest upon the defendant are clearly a part of the costs of prosecution. If that warrant had been served by a policeman of the city of Wilkes-Barre, it is clear that, under the act of 1897, such policeman could not collect for his own use from the county of Luzerne the costs of serving the warrant, because he, under the terms of said act, must receive a stipulated salary from the city, but the city of Wilkes-Barre which pays such stipulated salary to such policeman should be entitled to receive from the County of Luzerne the costs so earned by him while in its employ.

Under the facts in this case the arrest of the defendant was made by a member of the State Police Force employed by and receiving a stipulated salary from the Commonwealth of Pennsylvania. As the agent of the Commonwealth, the member of the State Police Force having rendered services, the compensation for which is, under the law, a part of the costs of prosecution in the case in question, and the verdict of the jury having fixed the liability of the County of Luzerne for the payment of these costs, it follows that the member of the State Police Force, whether within the terms of the act of 1897 or not, is not entitled to receive these costs for his own personal use, but is entitled to receive them for the use of the Commonwealth.

You are therefore advised that a proper case should be stated between John F. Walsh for the use of the Commonwealth of Pennsylvania vs. the County of Luzerne. I cannot approve the form of the case stated submitted along with your inquiry, for several reasons. As above indicated, the real issue is between the Commonwealth and the County, and not between the officer personally and the County. The case stated does not aver when or by whom the warrant was issued, or that the costs were duly taxed. It should not be alleged in the case stated that the costs in question are due to Walsh for said services, but that they are due to him for the use of the Commonwealth. The question involved in the case stated is not whether, as a member of the State Police Force and under pay by the State, Walsh is personally entitled to receive the pay of a constable for the service rendered, but whether Walsh, as the agent and employe of the Commonwealth, is entitled to receive the costs in question for the use of the Commonwealth. The right to either party to appeal from the judgment of the Court of Common Pleas upon the case stated to an Appellate Court should be reserved by the terms thereof. If a case stated along the lines indicated

can be agreed upon and presented for the determination of the court, I advise that you proceed in this manner to secure a judicial determination of the question now in dispute.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

STATE POLICE.

The Department of State Police is not entitled to recover from the District Attorney of any county the weapons taken by state policemen from prisoners.

Office of the Attorney General,
Harrisburg, Pa., March 13, 1908.

Capt. John C. Groome, Superintendent Department of State Police,
Harrisburg, Pa.

Sir: I have your letter of recent date, in which you ask for an official opinion upon the following question: Is your Department entitled to recover from the District Attorney of any county weapons taken from prisoners by State policemen and turned over to the said District Attorney for his use in court during the trial of the prisoners?

The law creating your Department contains no provisions dealing with this subject, and there being no express authority making you or your Department the custodian of such weapons, you have no claim to them. So far as property of this kind is concerned, a State policeman making an arrest stands in the same relation as any other policeman or constable, and must turn over to the proper authorities all weapons and other things of value together with the prisoner. The subsequent disposition of them is controlled by an order of the court.

I therefore advise you that you are not entitled to the return of these weapons, and they may be safely left in the hands of the District Attorney.

I return herewith the correspondence submitted.

Very respectfully yours,
FREDERIC W. FLEITZ,
Deputy Attorney General.

ELECTRIC STREET RAILWAYS—STREET RAILWAYS—REPORTS TO SECRETARY OF INTERNAL AFFFAIRS—STATIONS DEFINED—ACT OF MAY 1, 1907.

Electric street railways are within the requirement of the Act of May 1, 1907, P. L. Act No. 113, that corporations operating steam or electric railways report to the Secretary of Internal Affairs the number of miles operated and the number of miles between stations.

The word "station," as applied to an electric street railway, includes not only such stations as may be established for the receipt and discharge of freight and passengers, but also those points on the line of the railway after passing which an additional fare is charged to passengers.

Office of the Attorney General,
Harrisburg, Pa., June 5, 1907.

James H. Craig, Esq., Superintendent of Bureau of Railways, Harrisburg, Pa.

Sir: I have your letter of the 4th inst., in which you ask whether, under the act of Assembly entitled "An act to require corporations owning, leasing, or operating steam or electric railways, and engaged in the business of carrying freight or passengers, within this State, to report to the Secretary of Internal Affairs the number of statute miles of lines so operated; and providing a penalty for failure so to report, and for making an incorrect report," approved May 1, 1907.

1st. Electric street railways are included in said act; and

2d. What constitutes a station along the line of electric street railways, stopping, as they do, at the street corners in the cities, boroughs, etc.

I answer your first question in the affirmative.

The answer to your second question is not so clear, owing to the somewhat vague language of the act of Assembly, but, in view of the fact that one of the purposes of the act is to ascertain the mileage between stations, I am of opinion that the word "station" in the act, as applied to an electric street railway, includes not only such stations as may be established for the receipt and discharge of freight and passengers, but also those points on the lines of railways after passing which an additional fare is charged to passengers.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

GETTYSBURG BATTLEFIELD MEMORIAL COMMISSION.

The commission empowered "to select a suitable site," etc., does not have power to select a site upon land to which it cannot secure title.

Office of the Attorney General,
Harrisburg, Pa., October 22, 1908.

George P. Morgan, Esq., Secretary Gettysburg Battlefield Memorial Commission, 32 N. Front St., Philadelphia, Pa.

Sir: I have your letter of the 18th inst., in which you state that you would like my opinion on the following proposition:

> "We find that the memorial to the Pennsylvania soldiers, if erected on the battlefield of Gettysburg, would have to be erected on ground owned by the National Government, and, after the monument is finished and in place, it will not only be on ground owned and controlled by the United States Government, but will pass into the possession of the same. There is no ground purchasable which we could secure for the State of Pennsylvania upon which any fighting took place, and we desire to know whether we would be justified in erecting the memorial on property belonging to the United States Government, knowing that the control and keep of the memorial will pass from our own State to the National Government."

The Commission was created by act of Assembly approved the 13th of June, 1907, (P. L. 635), and in the first section thereof it is provided as follows:

> "They shall select a suitable site on the Gettysburg Battlefield for the erection of a monument, or such other memorial structure as the Commission shall determine, to commemorate the services of the soldiers of Pennsylvania in that battle. They shall have authority to select and decide upon the design for the said monument or memorial structure, and the material out of which it shall be constructed, and shall have full power to make contracts for its construction."

The question you ask requires the determination of what is meant by the words "select a suitable site." If you could select a suitable site and acquire title to it, such selection and acquisition would be well within your powers, but I understand from your letter that this cannot be done because the only suitable sites are upon land that belongs to the National Government.

There is no language in the act of Assembly that would authorize you to make a donation of the memorial to the United States Government, and an erection of it on lands owned by the National

Government would result in making such a donation. I therefore advise you that you do not have power, under the act as worded, to select a site for the memorial on land to which you cannot acquire title.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

INCOMPATIBLE OFFICES.

The Constitution makes it unlawful for a member of the Legislature to be appointed to any civil office in this Commonwealth during the term for which he was elected.

Office of the Attorney General,
Harrisburg, Pa., March 28, 1907.

Hon. Thomas O'Shell, House of Representatives, Harrisburg, Pa.

Sir: Answering your letter of March 28th I beg to advise you that Article 2, Section 6, of the Constitution, makes it unlawful for a member of the Legislature to be appointed to any civil office under this Commonwealth during the time for which he shall have been elected.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

DECEDENTS ESTATES.

Illegitimate children cannot inherit any part of their father's estate.

Office of the Attorney General,
Harrisburg, Pa., March 13, 1908.

Hon. B. J. Price, Acting Auditor, Treasury Department, Washington, D. C.

Sir: Your letter of recent date, to this Department, has been referred to me. In it you state that there is a claim on file in your office for the arrears of pay due a sailor of the United States Navy at the time of his death, prior to which time he was a resident of Pennsylvania, and that your office desires to distribute the amount under the laws of this State.

You further state that he was unmarried and is survived by his mother, and that he was the father of three children born to a

woman not his wife, but who had a legal husband living; and you ask to be advised whether, under the laws of this Commonwealth, these children would be entitled to any part of the amount due him from the Government, or whether the whole amount would descend to his mother.

In reply I beg to advise you that, under the intestate laws of this Commonwealth, illegitimate children cannot inherit any part of their father's estate, and that, therefore, the entire amount of the arrears of pay due the sailor in question should be paid by your Department to his mother.

Very respectfully yours,
FREDERIC W. FLEITZ,
Deputy Attorney General.

VALLEY FORGE PARK COMMISSION.

The act of assembly creating the Valley Forge Park Commission, contains no express authority by which it can grant permission to a railroad company to tunnel under the state property.

Such grants of power must be expressly given or arise by necessary implication from the powers expressly given. There can be no doubtful grant of power. To doubt is to withhold.

Office of the Attorney General,
Harrisburg, Pa., Feb. 1, 1907.

Mr. A. H. Bowen, Secretary Valley Forge Park Commission, Philadelphia, Pa.

Sir: I have your letter of January 16th, in reference to the application of the Valley Forge Railroad Company to your Commission for permission to tunnel under the State property at Valley Forge, and I note that you desire my opinion as to whether the Commission can grant or refuse their request.

I have read with care the brief submitted by Mr. J. Whitaker Thompson as counsel for the Valley Forge Railroad Company, and I am of opinion that the Commission has no authority to grant this request. The act of Assembly and the supplements thereto, under which the Commission was created, contain no express authority to grant such request, and neither is it necessary for the purposes of the Commission that it should have such authority. Such grants of power must be expressly given or arise by necessary implication from the powers expressly given. There can be no doubtful grant of power. To doubt is to withhold. Neither is it necessary, as above stated, to the existence of the Commission or the execution of the purposes for which it was created, that it should have the power

to grant the right to trolley roads to occupy, either above or below the surface, any portion of the park property. It might be convenient for the Commission to have such power, but it is not necessary that it should have it.

I further desire to call attention to the fact that the word "Improvement," as used in the various acts in reference to the Commission, is used in connection with the expenditure of moneys appropriated by the State, and is not used in designation of the powers of the Commission, except as limited to the use of the moneys so appropriated.

I therefore advise you to decline the request of the Valley Forge Railroad Company to tunnel under Valley Forge Park.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

DANVILLE ASYLUM.

Where the act of assembly itself (1907, relating to Danville asylum) expressly defines the term "maintenance" as used therein to mean "absolutely necessary repairs to the present buildings," the building of an extension to a railroad siding located on the grounds of the hospital cannot be included in the term "maintenance."

Office of the Attorney General,
Harrisburg, Pa., July 25, 1907.

Howard Lyon, Esq., President Board of Trustees, State Hospital for the Insane at Danville, Danville, Pa.

Sir: I am in receipt of your letter of July 20th, 1907, requesting an opinion on the question of whether or not the Trustees of the State Hospital for the Insane at Danville would be justified in building an extension to the railroad siding, now upon the grounds of said Hospital, for the purpose of conveying coal to the power house, and pay for the same out of the appropriation for maintenance.

As I understand the situation, the appropriation to your Board of Trustees for said Hospital is contained in the act of May 1, 1907, (P. L. 128), entitled "An act making an appropriation to the Trustees of the State Hospital for the Insane at Danville, Pennsylvania." By this act the sum of $429,300.00 or so much thereof as may be necessary, is appropriated to said Hospital for the two fiscal years beginning June 1, 1907, for certain purposes specifically set forth in said act. Without enumerating these purposes, it is sufficient to say that they do not contemplate or provide for an extension to the said railroad.

The appropriation for the care, treatment and maintenance of the indigent insane of the Commonwealth is contained in the act of May 2, 1907, (P. L. 155). By this act the sum of $2,500,000.00 or so much thereof as may be necessary, is specifically appropriated for the care and treatment of the indigent insane, as prescribed by the acts of Assembly relating thereto. The word "maintenance" has been given a liberal interpretation by this Department in various opinions heretofore rendered, but it is expressly provided in the first section of said act of May 2, 1907, "that the words 'care, treatment and maintenance,' used in this act shall be construed to mean medical and surgical treatment, and nursing, food and clothing, and absolutely necessary repairs to the present buildings." It is clear, therefore, that but little latitude is permitted in the construction to be placed upon the word "maintenance," for the act itself expressly defines the meaning of the term as used therein. It can scarcely be contended that the building of an extension to a railroad siding, located upon the grounds of a hospital, is the making of "absolutely necessary repairs to the present buildings."

Again, it is provided by the third section of the act "that no payment shall be made on account of the care and treatment of the insane until the Secretary of the Board of Charities shall have certified to the Auditor General, under oath, that the quarterly report of the cost of such care and treatment contains no charge except for maintenance, as construed by this act." In view of the construction placed by the act upon the term "maintenance," I am of the opinion that the Board of Trustees would not be justified in paying for the construction of the extension of the railroad siding in question out of the appropriation made for maintenance.

Very truly yours,

J. E. B. CUNNINGHAM,

Assistant Deputy Attorney General.

ARMORY APPROPRIATIONS.

It is contrary to the policy of the Commonwealth that appropriations shall be kept open indefinitely, and the moneys considered set apart for an unlimited period. Prompt and diligent action on the part of those entrusted with the expenditure of appropriations is contemplated by the acts of assembly.

Any unexpended balance of the appropriation of $250,000 made by the act of May 11, 1905, remaining on June 1, 1907, lapsed into the general fund in the state treasury, and is no longer available for expenditure for any purpose by the armory board.

Although no time may be fixed by the act making the appropriation within

which it must be expended or contracts made for its expenditure, the appropriation will be deemed to have lapsed into the state treasury at the end of the two fiscal years succeeding the making of the appropriation.

Office of the Attorney General,
Harrisburg, Pa., July 18, 1907.

Benjamin W. Demming, Esq., Secretary Armory Board, Harrisburg, Pa.

Sir: I am in receipt of your communication of July 16th, 1907, stating that at a meeting of the Armory Board of the State of Pennsylvania, held June 27, 1907, the following action was taken:

> "Col. Albert J. Logan moved that the Secretary be instructed to request from the Attorney General an opinion as to the status of the two appropriations, and whether or not the sum of $25,000.00 could be allotted from the first appropriation of May 11, 1905, for a single-company armory under the amendment approved April 15, 1907, which was agreed to."

The ascertainment of the status of the two appropriations required an investigation of the legislation relative thereto. The Armory Board of the State of Pennsylvania was created by the act of May 11, 1905, (P. L. 442). The general purpose of the act is to provide for the erection, management and care of armories, throughout the Commonwealth, for the use of the National Guard of Pennsylvania. The Board is empowered and directed to erect or provide, anywhere within the limits of the Commonwealth, upon such terms and conditions as shall be decided upon by the Board as most advantageous to the Commonwealth, armories for the use of the National Guard of Pennsylvania. By section 8 of the act it is provided as follows:

> "The maximum amount to be expended for a company of infantry shall be twenty thousand dollars; for a battery of artillery or a troop of cavalry, thirty thousand dollars, which shall include the purchase of the ground necessary where such ground is not donated, and which shall be exclusive of any gift or donation made to or for the benefit of any particular armory."

Section 11 of the act provides that:

> "For the purpose of carrying into effect the provisions of the aforesaid Act, the sum of two hundred and fifty thousand dollars is hereby specifically appropriated out of any moneys in the Treasury not otherwise appropriated, which shall be paid by the State

> Treasurer upon the warrant of the Auditor General upon properly authorized voucher of the aforesaid Board."

The said eighth section of said act of 1905 was amended by the act of April 15, 1907, so as to read as follows:

> "The maximum amount to be expended for a company of infantry shall be twenty-five thousand dollars; for a battery of artillery or a troop of cavalry, thirty-five thousand dollars; which shall include the purchase of the necessary ground, where such ground is not donated, and which shall be exclusive of any gift or donation made to or for the benefit of any particular armory."

The sole effect of the amendment is to increase the maximum amount which may be expended for the erection of armories from $20,000 to $25,000 for a company of infantry, and from $30,000 to $35,000 for a battery of artillery or a troop of cavalry. The legislative thought upon the subject seems to have been that it had been demonstrated by experience that the amounts originally fixed were inadequate, and that it had become necessary to increase the maximum amounts to be expended. In view of the fact that, by the said amendment of 1907, the expenditure of increased amounts in the erection of armories had been authorized, the Legislature of 1907 evidently deemed it necessary to make an increased appropriation for the erection, management and care of armories throughout the Commonwealth, and accordingly passed an act approved June 13, 1907, which provides as follows:

> "That the sum of four hundred thousand dollars is hereby specifically appropriated out of any money in the Treasury not otherwise appropriated, for the purpose of providing, erecting, managing and caring for armories for the use of the National Guard of Pennsylvania * * * Provided that the maximum amount to be expended from this appropriation for the providing or erection of an armory for a company of infantry shall be twenty-five thousand dollars; for the providing or erection of an armory for a battery of artillery or troop of cavalry shall be thirty-five thousand dollars, which shall include the purchase of the necessary ground, where such ground is not donated, and which shall be exclusive of any gift or donation made to or for the benefit of any particular armory, and provided, further, That the Armory Board of the State of Pennsylvania may expend from this appropriation such sums as may be necessary to properly acquire and complete armories that have been erected or are

> in course of erection under the supervision of said Armory Board, the aggregate expenditure not in any case to exceed the maximum named in this Act."

This appropriation is evidently intended to meet the said amendment of 15th of April, 1907, and the second proviso would indicate that the Legislature, at the time the appropriation was made, had in mind the fact that certain armories were probably in course of erection or had not yet been entirely completed and turned over to the use of the Guard; that it would be advisable and advantageous to expend upon such armories a sum equal in the aggregate to the amount authorized to be expended upon armories, subsequently erected or provided. In order to meet this situation it is expressly provided that the Board may expend, out of the appropriation of $400,000, such sums as may be necessary to properly acquire and complete armories that have been erected or are in course of erection, not exceeding, however, in the aggregate the maximum amount named in the act.

I assume that on June 1, 1907, there was an unexpended balance remaining out of the appropriation of $250,000 made by the said act of 1905, as you state in your communication that the information required by the Board is whether or not any unexpended balance of the appropriation of May 11, 1905, can be used under the amendment of 1907, and applied to armories now erected or to be erected under that act, so that the allotment to a single armory may be $25,000 or $35,000 as the case may be.

As a particular instance you state that the armory at Easton, erected under the provisions of the act of 1905, has already cost in the neighborhood of $20,000 but some additions are desirable, and it is the wish of the Board, if the law will permit, to use an additional $5,000 from the appropriation of May 11, 1905, to improve and enlarge the armory.

This inquiry raises the question of whether any unexpended balance of the appropriation of $250,000, made by the act of 1905, remaining on June 1, 1907, has lapsed to the State; or still remains available for expenditure by the Armory Board.

> "An appropriation, in the constitutional and legislative sense, is an act by which a named sum of money has been set apart in the Treasury and devoted to the payment of a particular claim or demand."

Opinion of Attorney General Kirkpatrick, dated April 17, 1889.

The act of 1905 does not expressly provide that the appropriation therein made shall be expended within any definite time. However, it is contrary to the policy of the Commonwealth that appropria-

tions shall be kept open indefinitely, and the moneys considered as set apart for an unlimited period. Prompt and diligent action on the part of those entrusted with the expenditure of appropriations is contemplated by the acts of Assembly.

> "The Acts of Assembly making appropriations for the erection of buildings contemplate prompt and diligent action on the part of those entrusted with the expenditure of the appropriations; such appropriations should not be held to be valid for an indefinite period."

Opinion of Attorney General Hensel, under date of May 23, 1893.

By the act of 15th May, 1903, the Legislature made an appropriation for the purpose of purchasing ground and erecting monuments on the Vicksburg Battlefield. On December 29, 1904, Attorney General Carson rendered an opinion to the Chairman of the Vicksburg Battlefield Commission, holding that it would be necessary for the Commission to purchase the ground and award the contracts for the erection of the monuments before the ensuing meeting of the General Assembly in January, 1905, in order to prevent the merging of the appropriation. In the course of the opinion Attorney General Carson said:

> "I have no hesitation in declaring that such unexpended balance of the amount appropriated by the Legislature, under the Act of May 15, 1903, will merge into the General Fund in the State Treasury on June 1, 1905."

No time was fixed in said act of 1903 within which the ground should be purchased and monuments erected. The precedents, therefore, seem to hold that, although no time may be fixed by the act making the appropriation within which it must be expended or contracts made for its expenditure, the appropriation will be deemed to have lapsed into the State Treasury at the end of the two fiscal years succeeding the making of the appropriation.

I am therefore of the opinion that any unexpended balance of the appropriation of $250,000, made by the act of 1905, remaining on June 1, 1907, lapsed into the general fund in the State Treasury, and is no longer available for expenditure for any purpose by the Armory Board. This conclusion in this particular case is strengthened by the terms of the said appropriation act of June 13, 1907. The appropriation made by that act seems to be intended to supply and take the place of the appropriation made by the act of 1905, and the second proviso, above quoted, seems to be intended to meet such situations as that now confronting the Board with

reference to the Easton Armory. If, in the opinion of the Board, an additional expenditure is necessary to properly acquire and complete the armories that have been erected or are in course of erection, the Board is expressly authorized to make such expenditure, not exceeding in the aggregate the maximum amount fixed by the amendment of 1907, out of the appropriation of $400,000.

I am therefore of the opinion that all expenditures made after the 1st of June, 1907, the beginning of the present fiscal year, must be made out of the appropriation of $400,000, provided for by the said act of June 13, 1907.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

STATE HOSPITAL FOR THE INSANE AT NORRISTOWN, PA.

Where the amount appropriated for the purchase of boilers is not sufficient the excess of cost cannot be charged as maintenance, but may be charged to the amount appropriated for the "furnishing with all necessary equipment."

Office of the Attorney General.
Harrisburg, Pa., July 10, 1907.

Montgomery Evans, Esq., Norristown, Pa.

Sir: Your letter of June 29th, 1907, addressed to the Attorney General, at the request of the Board of Trustees of the State Hospital for the Insane at Norristown, Pa., has been referred to me.

As I understand it, the question raised in your communication is whether said Trustees are authorized under existing legislation to contract for two Heine Boilers at a cost of $9,530.00, and charge the excess, viz; $3,530.00 to either the maintenance fund, or the fund appropriated for new buildings. The legislation governing this matter is as follows:

Under the act of 4th April, 1907, entitled "An act making an appropriation to the Trustees of the State Hospital for the Insane for the Southeastern District of Pennsylvania located at Norristown," the sum of $416,000.00 or so much thereof as may be necessary, is specifically appropriated to said Trustees for the two fiscal years commencing June 1, 1907, for inter alia the following purposes:

> "For the purpose of purchasing and installing two additional steam boilers with the necessary equipment, the sum of six thousand dollars, or so much thereof as may be necessary."

> "For the erection, completion, and furnishing with all necessary equipment, two ward buildings, the sum of one hundred thousand dollars, or so much thereof as may be necessary."

The maintenance fund is provided for by the Act of May 2, 1907, which appropriates the sum of two million five hundred thousand dollars, or so much thereof as may be necessary for the care and treatment of the indigent insane. It is provided in said act that the words "care, treatment and maintenance" used therein shall be construed to mean medical and surgical treatment and nursing, food and clothing, and absolutely necessary repairs to the present build ings. It is also provided by said act that no payment shall be made on account of the care and treatment of the insane until the Secretary of the Board of Charities shall have certified to the Auditor General, under oath, that the quarterly report of the cost of such care and treatment contains no charge except for maintenance as construed by this act.

The situation, therefore, seems to be this: A specific appropriation of six thousand dollars has been made for the purpose of purchasing and installing two additional steam boilers. In the opinion of the Board of Trustees, it will require $9,530.00 to purchase and install boilers of the style and capacity the said trustees deem advisable. The trustees desire to be advised, first, as to whether or not, in the opinion of this Department, the excess of $3,530.00 can be charged to the maintenance fund. It seems clear that the Legislature considered the appropriation of $6,000.00 adequate for the purpose specified, and therefore made a specific appropriation of that sum of money.

The word "maintenance" has been liberally construed by this Department in various opinions relative to matters connected with the different hospitals and asylums located in the Commonwealth, but in this instance the act providing the maintenance fund by its terms places its own construction upon the words "care, treatment and maintenance" and restricts the meaning of "maintenance," in this regard, to "absolutely necessary repairs to the present buildings."

I am of the opinion that under the construction prescribed by the act in question, and the facts stated in your letter, the trustees would not be authorized to charge the excess specified to the maintenance fund, especially in view of the certificate to be made by the Secretary of the Board of Charities above referred to.

In the second place, the trustees desire to be advised as to whether or not they would be authorized in charging the proposed excess to the fund of $100,000.00 appropriated for the erection, completion and furnishing with all necessary equipment, of two new ward build-

ings. In view of the fact that to equip a building means to provide it with whatever is needed for efficient service, I am of the opinion that the furnishing of said buildings with adequate heating facilities is necessarily included under the terms of the appropriation. If, therefore, the heating system can be so arranged as to legitimately charge the proposed excess to the erection, completion, etc., of the new buildings, such excess can be charged against the fund provided for that purpose.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

PENNSYLVANIA'S GETTYSBURG MEMORIAL.

The act of June 13, 1907, P. L. 635, is not unconstitutional by reason of the fact that the title refers to soldiers, sailors, and marines, whilst the enacting clause refers only to soldiers.

The fact that the title of an act is broader and more comprehensive than the act itself does not necessarily affect the validity of the statute.

The title can never control the plain and unambiguous meaning of the language of the statute, nor be used to extend or restrict its positive provisions. It is rather an aid or guide to the construction of the statute.

Office of the Attorney General,
Harrisburg, Pa., November 7, 1907.

Hon. D. McM. Gregg, President of the Gettysburg Battlefield Memorial Commission, Reading, Pennsylvania:

Sir: I have your letter of October 28th, 1907, calling the attention of this Department to the manner in which the phraseology used in the enacting clause of the act of June 13, 1907, (P. L. 635), differs from that employed in the title of the act and requesting an opinion from this Department as to the validity of the act, and also, as to the purpose for which the monument or memorial structure therein mentioned is to be erected.

The act in question is entitled,

> "An Act making an appropriation for the erection of a monument or memorial structure on the Battlefield of Gettysburg, in memory of the volunteer soldiers, sailors and marines from Pennsylvania, who participated in the late Civil War, one thousand eight hundred and sixty-one to one thousand eight hundred and sixty-five."

It is provided, inter alia, by the first section of the act, that the Gettysburg Memorial Commission "shall select a suitable site on the Gettysburg battlefield for the erection of a monument, or such

other memorial structure as the Commission shall determine, to commemorate the services of the soldiers of Pennsylvania in that battle." In the title of the act it is stated that the monument or memorial structure is to be erected "in memory of the volunteer soldiers, sailors and marines from Pennsylvania, who participated in the late Civil War."

By the enacting clause it is provided that the monument or memorial structure is to be erected "to commemorate the services of the soldiers of Pennsylvania in that battle."

To erect a memorial structure in memory of certain persons is substantially the same thing as erecting such structure in commemoration of their deeds. The apparent difference between the title and the enacting clause pointed out in your letter is as follows:

In the title of the act it is provided that the memorial structure shall be erected in memory of "the volunteer soldiers, sailors and marines from Pennsylvania," whilst the first section of the act provides that it shall be erected to commemorate the services of "the soldiers of Pennsylvania." No mention is made in the first section of "sailors and marines."

The fact that the title of an act is broader and more comprehensive than the act itself does not necessarily affect the validity of the statute.

> "The object of the constitution being to give notice by the title of the subject matter of the legislation so as to direct inquiry into the body of the Act, it follows that a title which comprehends the subject affected by the Act and more is within the provision."

Commonwealth vs. Cooper, 12 D. R., 199.

I am therefore of the opinion that the act in question is not unconstitutional by reason of the fact that the title refers to soldiers, sailors and marines, whilst the enacting clause refers only to soldiers.

The second branch of your inquiry relates to the construction of the act under consideration. The title to an act is a necessary part of the same and an important guide to its proper construction. The title, of course, can never control the plain and unambiguous meaning of the language of the statute, nor be used to extend or restrain its postive provisions. The title is to be used rather as an aid or a guide to the construction of the statute.

Applying these principles, I am of the opinion that it was the intention of the Legislature to appropriate the sum of money mentioned in the act referred to for the purpose of erecting a monument or memorial structure on the Battlefield of Gettysburg

in memory of and to commemorate the services of the volunteer soldiers, sailors and marines from Pennsylvania, who participated in the late Civil War.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

STATE HOSPITAL FOR THE INSANE, AT NORRISTOWN, PA.

No part of the appropriation of $2,500,000 for the indigent insane made in 1907 for the two fiscal years commencing June 1st, 1907, can be used to make up a deficiency occurring during the quarter ending May 31, 1907.

Office of the Attorney General,
Harrisburg, Pa., August 15, 1907.

Mr. John L. West, Steward—Executive Committee, State Hospital for the Insane, Norristown, Pa.

Sir: Your letter of July 19th relative to the declination of the Auditor General to issue a warrant for the amount of the quarterly statement of the State Hospital for the Insane at Norristown, Pa., for the quarter ending May 31, 1907, and amounting to $61,501.53, has been duly received.

In your communication you state that the quarterly statement was sent to the Auditor General on June 22, 1907, and that under date of June 24th, you received a letter from the Auditor General, acknowledging the receipt of the said statement, but declining to enclose a warrant in payment of the same, for the reason that the appropriation of 1905 was not large enough to cover the amount and that a grave legal question existed as to the right of the Auditor General to pay the amount of said statement from the appropriation of 1907, and requesting you to take the matter up with the Attorney General.

You also state that under date of July 19th, you received a second communication from the Auditor General, stating that the appropriation made during the session of 1905 for the maintenance of the indigent insane has been exhausted, etc.

You further state, in your communication, that the pay roll aggregating over $15,000 must be met on August 9, 1907, and the quarterly statement for the quarter ending August 31, 1907, will not be sent to the Auditor General's Department until September 1, 1907.

You ask to be advised how you are to meet the deficiency existing for the quarter ending May 31st, 1907, and whether the same can

be taken out of the appropriation of 1907. I understand your inquiry with reference to the pay roll to refer to the wages of attendants, nurses, etc., earned since June 1st, 1907.

The situation with reference to the pay roll is not a difficult matter to arrange. Distribution of the appropriation made by the Legislature for the maintenance of the indigent insane is made quarterly by the Auditor General, upon quarterly reports filed by the respective institutions. The pay rolls should, therefore, be so arranged as to fall due quarterly.

The situation, however, with reference to the deficiency for the quarter ending May 31, 1907, is extremely unfortunate. Inquiry at the Department of the Auditor General develops the fact that prior to the receipt of the quarterly report of your institution, the appropriation of $2,000,000 made by the Legislature of 1905 for the maintenance of the indigent insane throughout the Commonwealth, for the two fiscal years commencing June 1st, 1905, had been exhausted. The quarterly reports of several other similar institutions were likewise received after said appropriation had been exhausted. This appropriation was applied to the payment of the quarterly reports of the institutions entitled to receive payment therefrom in the order in which said reports were received, for the quarter ending May 31st, 1907, until the entire fund was exhausted.

At the legislative session of 1907, no deficiency appropriation for the maintenance of the indigent insane was made, but by the act of May 2, 1907, (P. L. 155), the sum of $2,500,000 was specifically appropriated for the care and treatment of the indigent insane of the Commonwealth.

Replying to your inquiry as to whether or not the said deficiency for your institution for the quarter ending May 31st, 1907, can be paid out of the said appropriation of $2,500,000, made at the legislative session of 1907, permit me to say that the said act expressly provides that said appropriation is made "for two fiscal years commencing June first, one thousand nine hundred and seven." It therefore follows that no part of the appropriation of 1907 can be expended for the maintenance and care of the indigent insane during any period of time except that specifically designated by the appropriating act, viz: During the two fiscal years commencing June 1st, 1907.

I am therefore of the opinion that no part of the cost of the maintenance and care of the indigent insane for the quarter ending May 31st, 1907, can be legally paid out of the appropriation of 1907. The only remedy for the deplorable situation existing at your hospital for the insane and the several similar institutions, with reference to the deficiency existing for the quarter ending May 31st,

1907, is a deficiency appropriation by the Legislature at its session to be held in 1909. Under existing legislation this Department cannot advise the Auditor General, as requested in your communication, to pay the deficiency in question out of the appropriation of 1907. That appropriation is specifically made for the two fiscal years beginning June 1st, 1907, and no part thereof can be legally applied to the payment of expenses incurred in the maintenance and care of the indigent insane for any period of time except during the two fiscal years designated by the act.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

JUVENILE LAW. HUNTINGDON REFORMATORY.

A male person, between the ages of fifteen and sixteen years, not known to have been previously sentenced to a state prison in this or any other state or country, cannot be legally received and detained at the Pennsylvania Industrial Reformatory, upon a commitment issued by the juvenile department of a court of quarter sessions, charging him with having violated a parole extended to him by said court.

The juvenile department of the court of quarter sessions under the act of April 23, 1903, P. L. 274, deals only with persons under the age of sixteen, and the Pennsylvania Industrial Reformatory can receive only males between the ages of fifteen and twenty-five years.

Office of the Attorney General,
Harrisburg, Pa., Dec. 5, 1907.

Lyman D. Gilbert, Esq., President Board of Managers, Pennsylvania Industrial Reformatory, Harrisburg, Pa.

Sir: I have your letter of November 8th, stating that there is at present under confinement in the Pennsylvania Industrial Reformatory located at Huntingdon, Pa., a young man by the name of George Seibert, committed to said institution by the Juvenile Department of the Court of Quarter Sessions of Allegheny County, Pa., at its June Sessions, 1907, upon the charge of "Violating Parole," which said order of commitment was made Sept. 27, 1907, and is in the following form:

COPY OF COMMITMENT.

Juvenile Department.

In the Court of Quarter Sessions of Allegheny County, of June Sessions, 1907.
Commonwealth of Pennsylvania
vs.
Geo. Seibert

a child 15 years of age.
Charge Violating parole.
Petition
of
Certificate
Parent

ORDER

Sept. 27, 1907, the Court commit the above-named minor to the care of Huntingdon Reformatory, Huntingdon, Pa.

It is further ordered that the above-named parent contribute and pay said guardian the sum of ..... dollars per week.

Co. to pay cost of transportation.

WILLIAM DODDS,
Clerk.

(Seal.)

I understand from your communication that the Board of Managers of said Reformatory now asks, through you as President thereof, to be advised whether, in the opinion of this Department, legal authority exists for the reception by said Board of Managers of the said George Seibert upon said commitment, and for his detention thereunder, in said institution. As I understand the facts, the proposition of law arising under your inquiry, is this: Can a male person between the ages of fifteen and sixteen years, not known to have been previously sentenced to a State prison in this or any other State or county, be legally received and detained at the Pennsylvania Industrial Reformatory, upon a commitment issued by the Juvenile Department of a Court of Quarter Sessions, charging him with having violated a parole extended to him by said Court?

Admitting that the Juvenile Department of the Court of Quarter Sessions is a court exercising criminal jurisdiction, it does not follow that such court has authority to commit male persons coming within its jurisdiction to the Pennsylvania Industrial Reformatory. The Juvenile Department of the Court of Quarter Sessions of Allegheny County operates under the act of April 23, 1903, (P. L. 274), entitled:

"An Act defining the powers of the several courts of Quarter Sessions of the peace within this Commonwealth, with reference to the care, treatment and control of dependent, neglected, incorrigible, and delinquent children under the age of sixteen years, and providing for the means in which such power may be exercised."

Under the act, as was said by the Superior Court in Commonwealth vs. Fisher 27 Pa. Super Ct. 175, "No new Court is created, and the ancient Court of Quarter Sessions, which is older than all the constitutions of Pennsylvania, is given thereby, not greater, but different powers from those previously exercised." This Court deals only with persons under the age of sixteen years, and the Pennsylvania Industrial Reformatory can receive only males between the ages of fifteen and twenty-five years.

In Commonwealth vs. Fisher, supra, it is said that the object of the Juvenile Court legislation is to save, not to punish; to rescue, not to imprison; to subject to wise care, treatment and control, rather than to incarcerate in penitentiaries and jails. Without going into detail, it is sufficient to say that the Juvenile Court legislation deals with dependent, neglected, incorrigible and delinquent children under the age of sixteen years. The words "dependent," "neglected," "incorrigible," and "delinquent" are defined by the act, and it is provided that the words "delinquent child" shall mean any child, including an incorrigible child, who may be charged with a violation of any law of this Commonwealth, or the ordinance of any city, borough, or township.

When the circumstances of the case warrant it, and the efforts at reformation, through placing the child in the care of probation officers, etc., have failed, the Juvenile Court is authorized to commit a delinquent child to a "reformatory institution" or "a suitable institution for the care of delinquent children" but nowhere is express authority found in the act for the commitment of any child to the Pennsylvania Industrial Reformatory at Huntingdon.

Turning, therefore, to the legislation under which the Huntingdon Reformatory was built, and under which it is now operated and controlled, we find in that legislation a description of the persons who may legally be received and detained as inmates of the institution. By the act of June 12, 1878, (P. L. 179), entitled "An act to create a middle penitentiary district in this State, and to provide for the erection of a State penitentiary for the same," provision was made for the erection of a penitentiary capable of holding two hundred and fifty prisoners, on the plan of solitary confinement of convicts, for the middle penitentiary district of Pennsylvania. By

the act of June 8, 1881, (P. L. 63), which is a supplement to the said act of 1878, it was provided that a State industrial reformatory should be constructed and erected on the property of the State, located in the County of Huntingdon, which had been purchased by the State for the purpose of a penitentiary, under the provisions of the said act of 1878. By this act of 1881 a Board of Building Commissioners, consisting of seven persons, was provided for, which Board, upon the completion of said reformatory, was authorized to turn over the property to a Board of Managers consisting of five persons, to be appointed by the Governor, which said Board of Managers was authorized to manage and direct the business thereof, and make all needful regulations therefor.

By section 8 of the said act of 1881 it was provided

> "That the said board of managers shall receive and take into said reformatory all male criminals, between the ages of fifteen and twenty-five and not known to have been previously sentenced to a penitentiary or state prison in this or any other state, who shall be legally sentenced to said reformatory, on conviction of any criminal offense in any court having jurisdiction thereof; and any such court may, in its discretion, sentence to said reformatory any such male person, convicted of a crime punishable by the laws of the state by imprisonment in the penitentiary, between the ages of fifteen and twenty-five as aforesaid; the discipline, to be observed in said reformatory, shall be such as is best calculated to promote and encourage the reformation of the prisoners therein confined, and the board of managers shall have power to use such means of reformation, consistent with the improvement of those confined therein, as they may deem expedient."

Under this provision the Board of Managers was authorized to receive all male criminals, of the age specified, convicted for the first time of any criminal offense in any court having jurisdiction thereof.

Next in order comes the act of April 28, 1887, (P. L. 63), entitled "An act in relation to the imprisonment, government and release of convicts in the Pennsylvania Industrial Reformatory at Huntingdon." By section 4 of this act it is provided as follows:

> "Any court in this Commonwealth, exercising criminal jurisdiction, may sentence to the said reformatory any male criminal, between the ages of fifteen and twenty-five years and not known to have been previously sentenced to a State prison in this or any other state or country, upon the conviction in such court of such male person of a crime punishable under existing

> laws in a state prison. And the said board of managers shall receive and take into said reformatory all male prisoners of the class aforesaid, who shall be legally sentenced on conviction as aforesaid; and all existing laws requiring the courts of this Commonwealth to sentence to the state prison male prisoners convicted of any criminal offense between the ages of fifteen and twenty-five years, and not known to have been previously sentenced to a state prison in this Commonwealth, or any other state or country, shall be applicable to the said reformatory, so far as to enable courts to sentence the class of prisoners so last defined to said reformatory and not to a state prison."

Under this section there are at least two prerequisites to the reception by the Board of Managers of a person as an inmate of the reformatory; first, such person must be a male criminal between the ages of fifteen and twenty-five years, and not known to have been previously sentenced to a State prison in this or any other State or county; and, second, such person must have been convicted in a court exercising criminal jurisdiction of a crime punishable under existing laws in a State prison.

This provision modifies the above quoted section 8 of the act of 1881, and permits the reception at the reformatory of only such persons as have been convicted of a crime punishable under existing laws in a State prison. The words "punishable under existing laws in a State prison" have a recognized and definite meaning, under the criminal laws of this Commonwealth. Our penal statutes direct, in some cases, "simple imprisonment;" and in others, "separate or solitary confinement at labor." The distinction between these penalties is pointed out in Commonwealth vs. Fetterman 26 Pa. Super Ct. page 570, in the following language:

> "As to the place of confinement, in some instances the county jail is specifically fixed by the statute prescribing the punishment; in others, the penitentiary, or the state prison. As a general direction, section 74 of the code of penal procedure of March 31, 1860, (P. L. 427), provides that, 'Whenever any person shall be sentenced to imprisonment at labor by separate or solitary confinement, for any period not less than one year, the imprisonment and labor shall be had and performed in the State Penitentiary for the proper district; Provided, That nothing in this section contained shall prevent such person from being sentenced to imprisonment at labor by separate or solitary confinement, in the county prisons now or hereafter authorized by law to receive convicts of a like description.' And section 75 of the same Act provides that 'No person shall be sentenced to imprisonment at labor, by separate or soli-

> tary confinement, for a period of time less than one year, except in the counties where, in the opinion of the court pronouncing the sentence, suitable prisons have been erected for such confinement and labor; and all persons sentenced to simply imprisonment for any period of time shall be confined in the county jail where the conviction shall take place; Provided, That in the counties where suitable prisons for separate or solitary confinement at labor do not exist, and the sentence shall be less than one year, simple imprisonment shall be substituted in all cases for the separate or solitary confinement at labor required by the act to consolidate, revise and amend the penal laws of this Commonwealth.' Summarizing the sections quoted, which govern the question here, when the penalty is simple imprisonment, for whatever period, the place of confinement is the county jail. When the penalty is imprisonment at labor, by separate or solitary confinement, and the sentence is for one year or more, the place is either the penitentiary or a suitable county prison; when the sentence is for less than a year, the place is a suitable county prison, or, in the absence of such prison, simple imprisonment in the county jail is to be substituted. Thus "imprisonment" or "simple imprisonment" means confinement in the county jail; "imprisonment at labor, by separate or solitary confinement" means imprisonment in the penitentiary or in a suitable county prison."

The words "State prison" as used in the said act of 1887 relating to the government of the reformatory in question are synonomous with the word "penitentiary," and it seems clear that the general purpose running through the legislation, providing for the establishment, control and management of that institution, is to provide a place where young male criminals convicted of first offenses of such high grade that their punishment would, under existing laws, be imprisonment in a penitentiary, may be confined with the aim and purpose of preventing them from becoming hardened criminals and of subjecting them, while in custody, to such remedial and preventative treatment, training and instruction as may make them reputable citizens.

It does not appear from the commitment of George Seibert whether he was a dependent, a neglected, an incorrigible, or a delinquent child over which the Juvenile Court exercised its jurisdiction; but, assuming that he was a delinquent child, namely, one who had violated a law of the Commonwealth, yet it does not appear that he has been convicted of any crime punishable under existing laws in a State prison. We have seen that conviction of a crime punishable under existing laws in a State prison is a necessary prerequisite to the reception and detention of any person as an inmate of the institution in question.

The only charge specified in the commitment is "Violating parole." Whatever that may mean, it is not a statement that he has been convicted of a crime punishable under existing laws in a State prison. It follows that he is not within the class of persons who may legally be received and detained in the Pennsylvania Industrial Reformatory, and, in my opinion, his commitment thereto, as well as his detention therein, are both without authority of law.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

GAME COMMISSION.

The Board of Game Commissioners has no power to increase the salaries of its officers to be paid from the appropriation made by the General Appropriation Act of 1907.

Office of the Attorney General,
Harrisburg, Pa., July 17, 1907.

Hon. James H. Worden, President Board of Game Commissioners,
Harrisburg, Pa.

Sir: Your communication of July 13, 1907, written in pursuance of the action taken at a meeting of the Game Commission, held July 5, 1907, has been received.

You state that at said meeting the following motion was adopted, to wit:

> "That the president of the Game Commission be requested to consult the Attorney General and get an opinion from him whether the Game Commission, under the Act creating the Game Commission, etc., has the power to fix the salaries of its officers and if the Attorney General decides it has, then the salary of the Secretary shall be $3,000, the Assistant Secretary $1,500, and the traveling Protector, $1,200, per year."

An examination of the entire communication discloses that the specific inquiry intended to be submitted is not whether the Game Commission has the general power to fix the salaries of its officers, but whether it now has power to increase the salaries of the officers indicated, in view of the provisions of the General Appropriation Act with relation to the Board of Game Commissioners. The Board of Game Commissioners was created by the act of 25th June, 1895, (P. L. 273). By the terms of this statute it is provided that no Commissioner, Protector or other officer authorized by the act shall claim or receive any compensation for his services or for expenses

incurred in the discharge of his duties. By section 3 of said act of 1895 it is provided that the Board of Game Commissioners shall have power and authority to appoint ten competent men who shall be known as Game Protectors, and to designate one of such Protectors as Chief Protector. It is further provided by said section that the Chief Game Protector shall be Secretary to the Board of Game Commissioners.

The act of 21st May, 1901, (P. L. 266), however, is a supplement to the act creating the Game Commission and, inter alia, provides that the Game Protectors appointed by virtue of the provisions of said act of 1895, shall receive salary or pay per day, as may be agreed upon by the Commission, with expenses not to exceed $2.00 per day outside of traveling expenses, said expense account to be itemized and presented under oath; provided that the combined account of the Game Commission shall not exceed the amount set apart by law to their use.

It is further provided by the act of 11th April, 1903, (P. L. 163), that the Board of Game Commissioners shall have the power and authority to appoint one competent man in each and every county of the Commonwealth, to be called and designated a Deputy Game Protector, who shall have the same power and perform the same duties as the present Game Protectors authorized by law now have and perform, and receive the same compensation that constables now receive for similar services. It is therefore clear that the above mentioned Game Protectors are the only officers of the Board entitled to compensation for their services; and, from the provisions of the General Appropriation Act of 1907, I infer that the Board, prior to asking for an appropriation to meet the salaries and expenses of said Game Protectors, (acting under the authority of the said act of 1901, providing that the Game Protectors shall receive salary or pay per day as may be agreed upon by the Game Commissioner, etc.), fixed the salary of the Chief Game Protector at $2,000 per year, the salary of the Assistant Chief Game Protector at $900 per year, the salary of one Game Protector, designated a Traveling Protector, at $1,000 per year, and the salaries of the seven other Game Protectors at the rate of $50.00 per month.

The General Appropriation Act of 1907 providing for the expenses of the administration of the State Government for the two fiscal years commencing June 1, 1907, makes the following appropriation to the Board of Game Commissioners:

> "For the payment of the salary of the chief game protector, who is Secretary of said Board, two years, the sum of four thousand dollars ($4,000.00).
>
> "For the payment of the salary of the assistant chief game protector, who is also a stenographer, two years,

the sum of one thousand eight hundred dollars ($1,800.00).

"For the payment of the salary of one game protector, termed a traveling protector, two years, the sum of two thousand dollars, ($2,000.00).

"For the payment of the salaries of the seven additional game protectors, at the rate of fifty dollars per month, two years, the sum of eight thousand four hundred dollars ($8,400.00).

"For the payment of traveling and other necessary expenses of these ten game protectors and for the payment of services rendered or expenses incurred by either deputy game protector or a special deputy game protector, under the specific and written order of the chief game protector, and incidental office expenses, two years, the sum of twenty-four thousand dollars ($24,000.00).

"The appropriation to be paid quarterly, to the president of the Board of Game Commissioners, upon the presentation of duly certified vouchers of the expenditure of money previously drawn, and satisfactory proof to the Auditor General that the expenditure is necessary for the enforcement of the laws of the Commonwealth relative to the protection of game, of song and of insectivorous birds."

You now ask whether you can increase the salary of the Chief Game Protector, who is also Secretary of the Board, from $2,000.00, the amount provided for in the above appropriation, to $3,000.00 per year; the salary of the Assistant Chief Game Protector from $900.00, the amount provided in the above appropriation, to $1,500.00 per year, and the salary of the traveling Protector from $1,000.00, the amount provided for in the above appropriation, to $1,200.00 per year, and pay the difference between the salaries fixed by the appropriation and the increased salaries out of the $24,000.00 provided for in the 5th paragraph of said appropriation. The appropriation of $24,000.00 is specifically made the payment of traveling and other necessary expenses of the ten game protectors and for the payment of services rendered or expenses incurred by the Deputy Game Protectors provided for by said act of 1903, or by special Deputy Game Protectors under the specific and written order of the Chief Game Protector, and incidental office expenses.

There is a clear distinction between traveling and other necessary expenses and salaries. The said act of 1901, providing a compensation for the game protectors, provides that they shall receive "salary or pay per day," and also "expenses not to exceed $2.00 per day outside of traveling expenses." Specific appropriations are made for the payment of the salaries of these game protectors, and the $24,000.00 item is just as specifically appropriated for the payment of the traveling and other necessary expenses of the various game

protectors provided for by law, and the payment of incidental office expenses. It would be idle to contend that the salary of game protectors could be included under the words "incidental office expenses," as used in the said 5th paragraph of the appropriation. Your Board would have no more right to apply any part of the $24,000.00, provided for in said 5th paragraph, to the payment of salaries, than it would have to apply a part of the specific appropriations for salaries contained in the first four paragraphs of the appropriation, to the payment of traveling and other necessary expenses of the game protectors or the payment of incidental office expenses.

You are therefore advised, in reply to your inquiry, that under existing legislation and the provisions of the appropriation made to the Board of Game Commissioners, that Board has no power or authority to increase the salaries of the officers in question, as proposed in the motion of July 5th, 1907 above quoted.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

BOARD OF COMMISSIONERS OF NAVIGATION.

The Board of Port Wardens were authorized to adopt a resolution to the effect that all matters relating to apprentices shall be regulated by the Board of Port Wardens and that no pilot shall take an apprentice without written permission of the Board. This resolution is now in force, modified by the limitation of the number of apprentices at any one time to five.

The Board is not required to record the indenture of any apprentice who shall be decided by the Board to be unfit, either morally, intellectually or physically to become a pilot.

No pilot can take an apprentice without first having obtained the written permission of the Board.

Office of the Attorney General,
Harrisburg, Pa., June 4, 1908.

George F. Sproule, Esq., Secretary Board of Commissioners of Navigation, Bourse Building, Philadelphia, Pa.

Sir: In further reply to your letters of the 22nd ult. and of the 2nd inst., in which you ask for my opinion as to the right of the Commissioners of Navigation, under the act of Assembly, approved June 8, 1907, (P. L. 469), to decline to record any indentures of apprentices who should be decided by the Board to be either morally, intellectually or physically unfit to become pilots. I understand that there are no apprentices now serving to become pilots in the Delaware Bay and River, and that you have five applications for

boys to have their indentures, as such apprentices, recorded, and whose names have been suggested by duly licensed pilots.

In the sixth section of the act of Assembly, approved May 11, 1889, (P. L. 188), it is enacted:

> "No other person shall receive a license as a first-class pilot till the number of first-class pilots be reduced to less than forty, so that the whole number of first-class, licensed pilots, shall not exceed forty. The whole number of second-class, licensed pilots, shall not exceed ten at any one time, and the number of apprentices at any one time shall not exceed five."

Section 3 of the act of Assembly approved June 8, 1907, (P. L. 469), amends section 18 of the act of March 29, 1803, (P. L. 542), so that the same reads as follows:

> "No license shall be granted to any person to act as a pilot in the bay and river Delaware unless he has served a regular apprenticeship of six years on board a pilot-boat, and unless he has reached the age of twenty-one. All indentures of apprentices to pilots shall be recorded in the office of the president of the Board of Commissioners of Navigation aforesaid; nor shall any license be granted until the person applying shall have given bond, with one sufficient surety, to the said president, in any sum not exceeding five hundred dollars nor less than three hundred dollars, conditioned for the true and faithful performance of the duties and services required by this Act, and that they will not be aiding or assisting in defrauding the revenue of the United States, and that they will deliver up the license to them granted when required by the Board of Commissioners of Navigation in pursuance of the provisions of this Act."

Section 4 of the act of March 29, 1803, (P. L. 543), is amended by the act of 1907, supra, to read as follows:

> "The Board of Commissioners of Navigation for the river Delaware and its navigable tributaries shall have full power and authority, under the limitations hereinafter prescribed, to grant licenses to persons to act as pilots in the bay and river Delaware and to make rules for their government while employed in that service .....and to make, ordain and publish such rules and regulations, and with such penalties aforesaid, as they shall deem fitting and proper."

This language is also found in section 4 of the act of March 29, 1803, as aforesaid.

You further advise me that the Board of Port Wardens, acting under the authority of the act of 1803, on May 26th, 1882, passed a resolution as follows:

> "All matters in relation to apprentices, as to their number, age and qualifications, shall be regulated by the Board of Port Wardens, and no pilot shall take an apprentice without having first obtained the written permission of the Board."

I am of opinion:

1. That, under the above quoted legislation, the Board of Port Wardens were authorized to adopt the resolution above set forth, and that the same remains in force under their successors in office, the Board of Commissioners of Navigation, modified, however, by the provisions of the act of Assembly, approved May 11, 1889, supra, which limits the number of apprentices at any one time to five.

2. That you are not required to record the indenture of any apprentice who shall be decided by the Board to be unfit, either morally, intellectually or physically, to become a pilot, and that no pilot can take an apprentice without having first obtained the written permission of the Board, as provided for in the above quoted resolution.

Very truly yours,
M. HAMPTON TODD,
Attorney General.

COMMISSION TO REVISE BITUMINOUS MINE LAWS.

The commission has power to consider and recommend the revision of all the laws pertaining to the mining of bituminous coal.

Harrisburg, Pa., June 24, 1908.
Office of the Attorney General,

George W. Schluederberg, Esq., Secretary Commission to Revise Bituminous Mine Laws of Pennsylvania.

Sir: I have before me your letter of recent date in which you state that the Commission for the Revision of the Bituminous Mine Laws of Pennsylvania, appointed by the Governor in accordance with and under the authority of the resolution of May 13, A. D. 1907, is desirous of securing an official opinion from the Department as to whether its duties are limited to the revision of the act of May 15, 1903, or whether they cover all acts applying to and concerning the mining of bituminous coal.

The language of the resolution as it appears on page 832 of the Pamphlet Laws of 1907 authorizes the Governor "to appoint a

commission to revise the present bituminous mine laws of Pennsylvania," and nowhere within its terms is found any other limitation of the power and duty of the Commission.

I am, therefore, of the opinion and advise you that the Commission has full and ample authority to consider and recommend the revision of all the laws now on the Statute books appertaining to the mining of bituminous coal within the Commonwealth.

Very truly yours,
FREDERIC W. FLEITZ,
Deputy Attorney General.

STATE BOARD OF UNDERTAKERS.

The Board is advised to make criminal information against members of a partnership, not licensed undertakers, who hold themselves out as undertakers but have an assistant who is licensed and who may prepare the bodies for burial.

The Board must exercise a discretion in passing upon each applicant for a license but cannot require as an unqualified condition precedent that the experience of the applicant shall have been acquired during the two years immediately preceding the application.

Office of the Attorney General,
Harrisburg, Pa., September 3, 1908.

Charles W. Naulty, Esq., Secretary, State Board of Undertakers.
Corner 3rd and Pine Streets, Philadelphia, Pa.

Sir: I am in receipt of your communications of August 28th and August 31st, 1908, respectively, in which you ask this Department to advise the State Board of Undertakers as to the proper action to be taken by that Board upon the following matters:

1st, with reference to the complaint lodged with the State Board of Undertakers against T. J. Huffman and Son, in which it is alleged that Mr. Huffman and his son are engaged in the business of undertaking without having been duly licensed and registered; and

2nd, with reference to the application of James R. Foltz, of Dunbar, Pa., for examination before your Board.

Concerning your first inquiry, I understand the facts to be as follows:

T. J. Huffman and Son were formerly members of a corporation under the name of the Waynesburg Furniture and Undertaking Company, the business of which said corporation has been purchased by the said T. J. Huffman and Son, who are now conducting the same as a co-partnership. Mr. Huffman and his son advertise themselves as being engaged in the "Furniture and Undertaking"

business. Neither member of the firm has been licensed nor registered by your Board. Neither Mr. Huffman nor his son actually prepare bodies for burial, but have in their employ a salaried employe, one A. Furman Hoge, who is a licensed undertaker.

You ask whether under these facts Mr. Huffman and his son are violating the act of June 7, 1895, (P. L. 167), as amended by the act of 24th April, 1905, (P. L. 299).

The act of 1895 is entitled,

> "An Act to provide for the better protection of life and health by diminishing the danger from infectious and contagious diseases through the creation of a State Board of Undertakers in cities of the first, second and third classes, with systematic examinations, registration and licenses for all entering the business of burying the dead, and penalties for violation of the provisions thereof."

Sections 5 and 6 of the act of 1895 have been amended by the said act of 1905. By section 6, as amended, it is provided, inter alia, that

> "Before any person, persons or corporation shall hereafter engage in the business of undertaking or the care, preparation, disposition and the burial of the bodies of deceased persons, in their own name and on their own account, in this Commonwealth, * * * such person or persons * * * shall apply to said Board for a license to practice the same."

By section 7 of the act of 1895 it is provided that

> "Any person, persons, corporation or member thereof who shall practice or hold himself, herself, themselves or itself out as practicing the business of undertaking or the care, preparation, disposition, and burial of the bodies of deceased persons without having complied with the provisions of sections five and six of this act, shall be guilty of a misdemeanor * * * Provided that nothing contained in this act shall be construed to apply to bona fide employes of a duly licensed or registered undertaker, or to persons engaged simply as layers out or shrouders of the dead, or to the employes of any cemetery whose duties or business extends no further."

Your present inquiry does not involve any question relative to the manner in which corporations can be licensed to engage in the undertaking business, as, under the facts stated, the business referred to is now being conducted by T. J. Huffman & Son as a co-

partnership. The Legislature, in passing and amending the act in question seems to have had in mind two classes of persons whose occupations would bring them under the jurisdiction of the State Board of Undertakers, viz:

1st, all persons who "engage in the business of undertaking or the care, preparation, disposition and burial of the bodies of deceased persons, in their own name and on their own account;" and

2nd, the "bona fide employes of a duly licensed or registered undertaker."

It was evidently the Legislative intent that all persons engaging in the business of undertaking, or the care, preparation, disposition and burial of the bodies of deceased persons, in their own name and on their own account, and who practice or hold themselves out as practicing the business of undertaking, should be required to obtain a license so to do from the State Board of Undertakers, and should be duly registered with said Board. These are the persons charged with the responsibility of conducting the business of undertaking in a manner that will best protect the public health, and these are the persons whom the public has a right to hold to a strict accountability. As such persons are responsible for the acts of their employes performed within the scope of their employment, and as no one can obtain a license until he or she has had practical experience the bona fide employes of a licensed undertaker are not required to be licensed or registered.

As I understand the facts upon which your inquiry is based, Mr. Huffman and his son are advertising to the public that they are engaged in the business of undertaking in their own name and on their own account. Prima facie this would seem to be a violation of the law. I am not prepared to say that it would be a good defence for Mr. Huffman and his son to show that they have in their employ a licensed undertaker. The question, however, is one for judicial determination in the court of Quarter Sessions of Greene County, by a trial upon a charge of misdemeanor, at which trial all the facts can be determined and the law judicially construed. It is the province of this Department, however, to advise your Board as to its action, and under the facts stated in your communication I am of the opinion that your Board should cause an information to be made before a magistrate of the proper county, charging both members of said firm, under the 7th section of the said act of 1895, with a misdemeanor, to the end that the important question arising under the said complaint may be determined in the proper tribunal.

With reference to your second inquiry, I understand the facts to be as follows:

James R. Foltz of Dunbar, Pa., is an applicant for examination before your Board. Prior to the year 1903 he was in the employ

of his father for two years, his father being at that time engaged in the business of undertaking. Sometime during the year 1903 Mr. Foltz, Sr. disposed of his business; the applicant, James R. Foltz, sought other employment and has not been employed in the undertaking business since the said year 1903.

You state that your Board construes the 6th section of the said act of 1895 as amended by the act of 1905, to mean that an applicant for license must have had continuous practical experience in the business of undertaking for at least two years immediately preceding his application for license. Under the 2nd section of the said act of 1895 your Board is authorized to "adopt such regulations for the transaction of the business of the Board and the management of its affairs as they may deem expedient," but this provision, of course, does not authorize the Board to make rules in violation of the provisions of the act.

Under the 6th section of the act as originally passed, the applicant was required to show upon examination that he or she is of good moral character, possessed of skill and knowledge of the business of undertaking and has a reasonable knowledge of sanitation, preservation of the dead, disinfecting the bodies of deceased persons, and the apartment, clothing and body in case of death from infection or contagious diseases.

By the act of 1905 the applicant is required to satisfy the Board of all these things and in addition thereto that he or she "has had practical experience in the business of undertaking, for two years continuously, with an undertaker or undertakers."

The original act required only certain skill and knowledge. The act as amended requires not only certain skill and knowledge but a certain amount of practical experience. The act does not provide that this practical experience must have been acquired during the two years immediately preceding the application for examination. The only thing specifically required by the act is that practical experience shall have been an uninterrupted experience of two years.

I am of the opinion that an applicant is not necessarily disqualified for examination simply because the practical experience of the applicant has not been obtained during the two years immediately preceding the application for examination. The essential thing is that the applicant shall have had the requisite amount of continuous practical experience. The time during which the experience has been acquired may be a material factor to be taken into consideration by your Board in determining whether a license should be issued to the applicant. The more remote the time at which the experience was acquired the less valuable that experience will be, in view of the rapid progress being in matters of this kind. Your Board is vested with certain judicial functions in determining

whether a license shall be issued to any applicant, and has a right to take into consideration the length of time which may have elapsed since the practical experience of the applicant has been acquired. It would seem unjust to refuse a license to an applicant otherwise duly qualified merely because the applicant has not been employed in the undertaking business for a period of six months preceding the application. On the other hand, if the applicant has not been engaged in the undertaking business for a period of five or six years, his practical experience could hardly be said to be the kind contemplated by the act of Assembly.

I am of the opinion, therefore, that your Board must exercise a sound discretion in passing upon each application for license, taking into consideration the facts in each individual case, but that you cannot require as an unqualified condition precedent to issuing a license that the practical experience required of the applicant shall have been obtained during the two years immediately preceding the application.

Very truly yours,
J. E. B. CUNNINGHAM,
Assistant Deputy Attorney General.

APPENDIX.

SCHEDULE A.

FORMAL HEARINGS BEFORE THE ATTORNEY GENERAL.

Penn-Mary Coal Company,	Application under Act of June 9, 1891 (P. L. 256).	Refused.
Punxsutawney Water Company,	Quo warranto,	Refused.
Estate of Edward M. Paxson, deceased,	Application under Act of April 26, 1855 (P. L. 331).	Allowed.
Pennsylvania Railroad Company,	Quo warranto,	Petition and answer filed, pending.
Potter Gas Company	Quo warranto,	Refused.
Philadelphia Company,	Quo warranto,	Refused.
Independent Brewing Company of Pittsburg,	Quo warranto,	Proceedings discontinued.
Manufacturers Light and Heat Company,	Quo warranto,	Application withdrawn.
Central Coal and Coke Company of Pittsburg,	In equity,	Use of name of Com'th allowed.
Edwin C. Price,	In equity,	Use of name of Com'th refused.
Michael Liebel, Jr., Mayor of Erie,	Proceedings under Act of March 5, 1906 (P. L. 81),	Suggestion for Quo warranto allowed.
Union Paper Mill Company,	Quo warranto,	Refused.
New York and Pittsburg Air Line Railroad Company,	Quo warranto,	Proceedings abandoned.
New York and Pittsburg Air Line Railroad Company,	Application under act of May 7, 1887 (P. L. 94).	Proceedings abandoned.
Venango Water Company,	Quo warranto,	Proceedings discontinued.
Elias Abrams, Philadelphia,	Mandamus	Application refused.
Anti-Cruelty Societies, Allegheny County,	Quo warranto,	Heard. Pending.
Donora Brewing Company,	Quo warranto,	Allowed.
Gettysburg Transit Company,	Quo warranto,	Heard. Pending.
Rocky Glen Water Company,	Quo warranto,	Refused.
Supervisors of Adams Township, Butler County,	Mandamus	Use of name of Com'th allowed.
Provident Beneficial Association of Philadelphia,	Quo warranto,	Allowed.
Sunbury and Northumberland Electric Railway Company,	Quo warranto,	Allowed.
T. H. Hanratty, et al., Defendants,	In equity,	Use of name of Com'th allowed.
Estate of Caroline A. Stephens, deceased,	Proceedings under Act of April 26, 1855 and May 23, 1895.	Petition allowed.
Estate of Louisa I. Cromwell, deceased,	Proceedings under Act of April 26, 1855 and May 23, 1895.	Petition allowed.
A. B. Baxter & Company, Incorporated,	Quo warranto,	Heard. Further action postponed.
Tipton Water Company and Pennsylvania Railroad Company (Fuoss Application),	Quo warranto,	Heard. Pending.
Tipton Water Company and Pennsylvania Railroad Company (Burley Heater Company Application),	Quo warranto,	Heard. Pending.
Tipton Water Company and Pennsylvania Railroad Company (Bland Application)	Quo warranto,	Heard. Pending.

SCHEDULE B.

INSURANCE COMPANY AND BANK CHARTERS APPROVED.

INSURANCE COMPANY CHARTERS.	
Abraham Lincoln Mutual Life Insurance Company, Philadelphia,	June 13, 1907.
Atlantic Casualty Co., Philadelphia,	Oct. 9, 1907.
American Mutual Life Assurance Company, Philadelphia,	April 16, 1908.
Allegheny Mutual Life Insurance Company, Pittsburg,	Oct. 20, 1908.
Business Men's Mutual Fire Insurance Company, Towanda,	March 1, 1907.
Business Men's Mutual Life Insurance Company, Lansdale,	May 14, 1907.
Commonwealth Mutual Fire Insurance Company, Harrisburg,	May 8, 1907.
Cosmopolitan Industrial Insurance Company, Philadelphia,	May 3, 1907.
Crown Mutual Fire Insurance Company, Somerset,	May 14, 1907.
Corry Mutual Fire Insurance Company, Corry,	June 29, 1908.
Fairmount Mutual Fire Insurance Company, Philadelphia,	Dec. 23, 1908.
Federal Health and Accident Company, Philadelphia,	Sept. 4, 1907.
German American Industrial Insurance Company, Philadelphia,	March 28, 1907.
German Commercial Accident Company, Philadelphia,	April 19, 1907.
Graphic Arts Mutual Fire Insurance Company, Philadelphia,	May 3, 1907.
Guarantee Mutual Life Insurance Company Philadelphia,	July 2, 1908.
Globe Mutual Fire Insurance Company, Berlin,	Sept. 8, 1908.
Integrity Mutual Fire Insurance Company, Philadelphia,	April 16, 1908.
Lincoln Industrial Insurance Company, Chester,	May 3, 1907.
Oriental Mutual Fire Insurance Company Johnstown,	Aug. 8, 1907.
Policyholders Mutual Life Insurance Company, Philadelphia,	May 17, 1907.
Pittsburg Lumbermens Mutual Fire Insurance Company, Pittsburg,	Jan. 28, 1907.
Paxton Mutual Fire Insurance Company, Philadelphia,	Jan. 22, 1908.
Pennsylvania Mutual Live Stock Insurance Company, Erie,	April 30, 1908.
Peoples Mutual Fire Insurance Company, Philadelphia,	June 9, 1908.
Pittsburg Casualty Company, Pittsburg,	June 29, 1908.
Republic Insurance Company of America, Philadelphia,	June 25, 1907.
Reliable Mutual Fire Insurance Company, Philadelphia,	Dec. 3, 1907.
Scandia Mutual Fire Insurance Company, Grassflat,	December 10, 1908.
Scranton Fire Insurance Company of Scranton,	December 30, 1908.
Southern States Mutual Fire Insurance Company, Philadelphia,	April 24, 1907.
Scranton Mutual Life Insurance Company, Scranton,	August 19, 1907.
Standing Stone Farmers Mutual Fire Insurance Company, Huntingdon,	June 29, 1908.
Scranton Life Insurance Company, Scranton,	October 31, 1908.
Textile Mutual Fire Insurance Company, Schuylkill Haven,	May 17, 1907.
Triumph Mutual Fire Insurance Company, Beaver,	July 23, 1907.
Union Casualty Insurance Company, Philadelphia,	November 7, 1907.
Union National Accident Company, Philadelphia,	March 4, 1908.
Union Casualty Insurance Company, Philadelphia,	November 18, 1908.
William Penn Fire Insurance Company, Pottsville,	April 16, 1908.
York County Mutual Live Stock Insurance Company, Springet,	January 4, 1907.

SCHEDULE B—Continued.

BANK CHARTERS.	
Merchants Bank, McKeesport,	Feb. 8, 1907.
Farmers and Mechanics Bank, Honesdale,	Feb. 26, 1907.
Providence Bank, Scranton,	May 23, 1907.
The Sixth Street Bank, Harrisburg,	April 4, 1907.
Glass City Union Deposit Bank, Jeannette,	May 8, 1907.
The Peoples Savings Bank of Philadelphia,	September 19, 1907.
Duryea Deposit and Discount Bank, Duryea,	January 22, 1908.
The American Bank, Philadelphia,	April 7, 1908.
The State Bank, New Philadelphia,	July 1, 1908.
Dime Deposit Bank, Wilkes-Barre,	July 2, 1908.
The Farmers and Miners Bank of Marianna,	September 8, 1908.
Citizens State Bank, Pittsburg,	October 13, 1908.
West Side Bank, West Pittston,	December 9, 1908.
Farmers and Miners Bank of Marianna,	December 16, 1908.

SCHEDULE C.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1907.

Name.	Amount.	Remarks.
Stonega Coke and Coal Company,	$83 33	Bonus. Paid.
Stonega Coke and Coal Company,..	65 97	C. S. 1902. Paid.
Stonega Coke and Coal Company,..	125 00	C. S. 1903. Paid.
Stonega Coke and Coal Company,..	125 00	C. S. 1904. Paid.
New York Central and Hudson River Railroad Company.	2,338 00	L. T. 1885 to 1890. Pending.
New York Central and Hudson River Railroad Company.	14,875 00	L. T. 1901 to 1905. Pending.
New York Central and Hudson River Railroad Company.	19,850 00	L. T. 1891 to 1900. Pending.
Bell Telephone Company of Philadelphia.	9,644 50	Bonus. Verdict for Def't.
Shawmut Commercial Company, ..	166 67	Bonus. Pending.
Jutte and Foley Company, ...	145 00	C. S. 1903. Pending.
Central Railroad of New Jersey, ..	2,338 00	L. T. 1885 to 1890. Pending.
Central Railroad of New Jersey, ..	19,850 00	L. T. 1891 to 1900. Pending.
Central Railroad of New Jersey, ..	14,875 00	L. T. 1901 to 1905. Pending
Cedar Rapids Refrigerator Express Company.	60 00	C. S. 1891 to 1906. Paid.
United States Leather Company, ..	3,500 00	C. S. 1893 to 1906. Paid.
Millville Manufacturing Company,	11 00	C. S. 1892 to 1902. Paid.
Millville Manufacturing Company,	27 00	C. S. 1865 to 1891. Paid.
Millville Manufacturing Company,	66	Bonus. Paid.
Mays Landing Water and Power Company.	66	Bonus. Paid.
Mays Landing Water and Power Company.	11 00	C. S. 1892 to 1902. Paid.
Mays Landing Water and Power Company.	19 00	C. S. 1873 to 1891. Paid.
Erie Railroad Company, ...	7,875 00	C. S. 1906. Paid.
Gandy Belting Company, ...	25 25	Bonus. Pending.
Gandy Belting Company, ...	293 24	C. S. 1897 to 1906. Pending.
American Ice Company (New Jersey).	2,500 00	C. S. 1906. Paid.
Westinghouse Air Brake Company,	41,641 80	C. S. 1906. Paid.
American Dredging Company, ...	10,000 00	C. S. 1906. Paid.
Sharon Land Company, ...	35 00	C. S. 1906. Paid.
Erie Land and Improvement Company.	25 00	C. S. 1906. Paid.
Cranberry Improvement Company,	2,200 00	C. S. 1906. Paid.
Carnegie Land Company, ...	450 00	C. S. 1906. Paid.
Philadelphia Brewing Company, ..	4,732 14	C. S. 1906. Paid.
Tube City Brewing Company, ...	1,875 00	C. S. 1906. Paid.
Jeddo Tunnel Company, Limited,..	500 00	C. S. 1906. Paid.
Penn Traffic Company, ...	4,000 00	C. S. 1906. Paid.
South Bethlehem Supply Company,	850 00	C. S. 1906. Verdict for def't
Harvey's Lake Supply Company,	200 00	C. S. 1906. Paid.
Upper Lehigh Supply Company, Limited.	595 00	C. S. 1906. Paid.
Alden Supply Company, Limited, ..	175 00	C. S. 1906. Paid.
Union Supply Company, ...	5,000 00	C. S. 1906. Paid.
Keystone Telephone Company of Philadelphia.	5,000 00	C. S. 1906. Paid.
Keystone Telephone Company of Philadelphia.	1,795 46	L. T. 1906. Paid.
Provident Life and Trust Company	321,963 03	C. S. 1906. Pending.
Philadelphia Mortgage and Trust Company.	750 00	C. S. 1906. Paid.
Guarantee Trust and Safe Deposit Company.	11,762 50	C. S. 1906. Paid.
Germantown Trust Company, ...	7,640 00	C. S. 1906. Verdict for def't.
Bell Telephone Company of Philadelphia.	91,700 75	C. S. 1906. Paid.
Highspire Distillery Company, Limited.	500 00	C. S. 1906. Verdict for def't.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1907.

Name.	Amount.	Remarks.
Schenley Distilling Company, ...	1,750 00	C. S. 1906. Paid.
Schenley Distilling Company, ...	38 00	L. T. 1906. Verdict for def't.
Carnegie Natural Gas Company, ..	600 00	C. S. 1906. Paid.
Butler Mine Company, Limited, ..	100 00	C. S. 1906. Paid.
Westmoreland Coal Company, ...	25,000 00	C. S. 1906. Paid.
West Branch Coal Company, ...	100 00	C. S. 1906. Verdict for def't.
Powhatan Coal and Coke Company,	1,000 00	C. S. 1906. Paid.
Jefferson Coal Company, ...	875 00	C. S. 1906. Paid.
Blossburg Coal Company, ...	625 00	C. S. 1906. Paid.
Diamond Coal Land Company, ...	500 00	C. S. 1906. Paid.
Thomas Colliery Company, ...	375 00	C. S. 1906. Paid.
Thomas Colliery Company, ...	570 00	L. T. 1906. Paid.
New York, Lake Erie and Western Coal and Railroad Company.	2,000 00	C. S. 1906. Paid.
Clearfield Bituminous Coal Corporation.	2,490 50	C. S. 1906. Paid.
Clearfield Bituminous Coal Corporation.	842 46	L. T. 1906.
Pennsylvania Coal Company, ...	40,550 00	C. S. 1906. Paid.
Hollenback Coal Company, ...	2,100 00	C. S. 1906. Verdict for Com'th.
Gilpin Coal Company, ...	600 00	C. S. 1906. Paid.
Bowman Coal Mining Company, ..	250 00	C. S. 1906. Paid.
Edri Coal Company, ...	300 00	C. S. 1906. Paid.
Parrish Coal Company, ...	5,000 00	C. S. 1906. Paid.
Dodson Coal Company, ...	1,500 00	C. S. 1906. Paid.
National Mining Company, ...	3,000 00	C. S. 1906. Paid.
Cascade Coal and Coke Company,..	1,500 00	C. S. 1906. Paid.
Hillside Coal and Iron Company,..	875 00	C. S. 1906. Paid.
New York, Susquehanna and Western Coal Company.	450 00	C. S. 1906. Paid.
Northwestern Mining and Exchange Company.	700 00	C. S. 1906. Paid.
Leetonia Railway Company, ...	500 00	C. S. 1906. Paid.
Beech Creek Railroad Company, ..	32,500 00	C. S. 1906. Paid.
Beech Creek Railroad Company, ..	1,742 00	L. T. 1906. Paid.
Coudersport and Port Allegheny Railroad Company.	1,750 00	C. S. 1906. Paid.
Coudersport and Port Allegheny Railroad Company.	931 00	L. T. 1906. Paid.
Jefferson Railroad Company, ...	2,500 00	C. S. 1906. Paid.
Jefferson Railroad Company, ...	3,512 10	L. T. 1906. Paid.
Lake Shore and Michigan Southern Railway Company.	33,091 79	C. S. 1906. Paid.
Buffalo, Bradford and Pittsburg Railroad Company.	625 00	C. S. 1906. Paid.
Columbus and Erie Railroad Company.	300 00	C. S. 1906. Paid.
Jamestown and Franklin Railroad Company.	1,200 00	C. S. 1906. Paid.
New York Railroad Company, ...	6,500 00	C. S. 1906. Paid.
Etna and Montrose Railroad Company.	750 00	C. S. 1906. Paid.
Monongahela Southern Railroad Company.	800 00	C. S. 1906. Paid.
St. Clair Terminal Railroad Company.	2,500 00	C. S. 1906. Paid.
Erie and Wyoming Valley Railroad Company.	5,125 00	C. S. 1906. Paid.
Wilkes-Barre and Eastern Railroad Company.	4,950 00	C. S. 1906. Paid.
Allegheny and Western Railway Company.	22,989 20	C. S. 1906. Paid.
Sharon Railway Company, ...	311 60	L. T. 1906. Verdict for def't.
Tioga Railroad Company, ...	455 05	L. T. 1906. Verdict for def't.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1907.

Name.	Amount.	Remarks.
Lewisburg, Milton and Watsontown Passenger Railway Company.	319 29	C. S. 1906. Paid.
Northern Liberties Railway Company.	125 00	C. S. 1906. Paid.
Donora Southern Railroad Company.	500 00	C. S. 1906. Paid.
Pittsburg and Ohio Valley Railway Company.	600 00	C. S. 1906. Paid.
Atlas Portland Cement Company,	1,550 00	C. S. 1906. Paid.
Central District Printing Telegraph Company.	52,266 26	C. S. 1906. Paid.
Commercial Trust Company, ...	20,530 50	C. S. 1906. Paid.
Eastern Securities Company, ...	250 00	C. S. 1906. Paid.
Union Steel Company, ...	22,292 73	L. T. 1906. Verdict for Com'th.
Union Steel Company, ...	127 50	C. S. 1906. Paid.
Silver Brook Coal Company, ...	866 35	C. S. 1906. Paid.
River Coal Company, ...	2,250 00	C. S. 1906. Paid.
Sterling Coal Company, ...	1,250 00	C. S. 1906. Paid.
Beech Creek Coal and Coke Company.	1,295 00	C. S. 1903. Paid.
Beech Creek Coal and Coke Company.	7,700 00	C. S. 1904. Paid.
Beech Creek Coal and Coke Company.	7,700 00	C. S. 1905. Paid.
Mac Manufacturing Company, ...	175 00	C S. 1906. Pending.
Norfolk and Western Railway Company.	500 00	C S. 1906. Pending.
Curtis Publishing Company, ...	1,440 00	C. S. 1906. Verdict for def't.
Electric Company of America, ...	448 15	C. S. 1903. Verdict for def't.
Electric Company of America, ...	457 63	C. S. 1904. Verdict for def't.
Electric Company of America, ...	567 81	C. S. 1905. Verdict for def't.
Electric Company of America, ...	567 81	C. S. 1905. Verdict for def't.
Electric Company of America, ...	379 29	C. S. 1906. Verdict for def't.
Electric Storage Battery Company,	800 00	C. S. 1904. Verdict for def't.
Electric Storage Battery Company,	800 00	C. S. 1905. Verdict for def't.
Electric Storage Battery Company,	800 00	C. S. 1906. Verdict for def't.
Fairmount Park Transfer Company.	4,500 00	C. S. 1906. Paid.
New York Central and Hudson River Railroad Company.	700 00	C. S. 1906. Paid.
Central Railroad Company of New Jersey.	1,350 00	C. S. 1906. Paid.
American Ice Company, ...	4,069 30	L. T. 1906. Verdict for def't.
Investment Company of Philadelphia.	16,882 70	C. S. 1906. Paid.
Stevens Coal Company, ...	1,250 00	C. S. 1906. Paid.
American Steel and Wire Company New Jersey.	1,250 00	C. S. 1904. Paid.
American Steel and Wire Company New Jersey.	1,250 00	C. S. 1905. Paid.
York Haven Water and Power Company.	5,000 00	C. S. 1906. Paid.
McCall Ferry Power Company, ..	5,000 00	C. S. 1906. Paid.
Westinghouse Electric Manufacturing Company.	44,725 00	C. S. 1906. Paid.
Westinghouse Electric Manufacturing Company.	106,294 87	C. S. 1906. Paid.
Buffalo, Rochester and Pittsburg Railway Company.	58,465 29	L. T. 1906. Paid.
Lehigh Valley Railroad Company,	139,968 53	C. S. 1906. Paid.
Pennsylvania Company for Insurances on Lives and Granting Annuities.	55,757 37	C. S. 1906. Paid.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1907.

Name.	Amount.	Remarks.
Finance Company of Pennsylvania.	45,500 00	C. S. 1906. Paid.
Gimbel Brothers, Incorporated, ..	20,645 00	C. S. 1906. Paid.
Lehigh Valley Transit Company, ..	9,352 80	C. S. 1906. Paid.
Pennsylvania Salt Manufacturing Company.	375 00	C. S. 1906. Paid.
Albert Lewis Manufacturing Company.	1,000 31	C. S. 1906. Paid.
The United Gas Improvement Company.	295,035 88	C. S. 1906. Paid.
Scranton Gas and Water Company.	19,825 00	C. S. 1906. Paid.
Kingston Coal Company, ...	17,500 00	C. S. 1906. Paid.
Penn Gas Coal Company, ...	9,000 00	C. S. 1906. Paid.
Midvalley Coal Company, ...	3,670 50	C. S. 1906. Paid.
Lehigh and Wilkes-Barre Coal Company.	20,000 00	C. S. 1906. Paid.
George B. Newton and Company, Incorporated.	500 00	C. S. 1906. Verdict for def't.
Clairton Land Company, ...	1,875 00	C. S. 1906. Paid.
Pittsburg, Bessemer and Lake Erie Railroad Company.	25,048 63	C. S. 1906. Paid.
Bessemer, Lake Erie Railroad Company.	5,000 00	C. S. 1906. Paid.
Fall Brook Coal Company, ...	4,000 00	C. S. 1906. Paid.
Lehigh Valley Transit Company,..	12,998 43	L. T. 1906. Paid.
Meadville Conneaut Lake and Linesville Railroad Company.	107 50	C. S. 1906. Paid.
Thomas Meehan and Sons, Incorporated.	500 00	C. S. 1906. Paid.
National Tube Company of New Jersey.	545 42	Bonus, 1906. Pending.
National Tube Company of New Jersey.	80 00	C. S. 1907. Paid.
Shelby Steel Tube Company, ...	1,634 38	Bonus, 1906. Pending.
Glen Summit Hotel and Land Company.	67 50	C. S. 1906. Paid.
Union Railroad Company, ...	19,500 00	C. S. 1906. Paid.
Hazleton Water Company, ...	1,250 00	C. S. 1906. Paid.
H. C. Frick Coke Company, ...	10,913 82	L. T. 1906. Paid.
H. C. Frick Coke Company, ...	56,693 92	C. S. 1906. Paid.
Pittsburg, Bessemer and Lake Erie Railroad Company.	4,984 70	L. T. 1906. Paid.
Delaware, Susquehanna, Schuylkill Railroad Company.	6,250 00	C. S. 1906. Paid.
Bethlehem and Nazareth Passenger Railway Company.	300 00	L. T. 1906. Paid.
Bethlehem and Nazareth Passenger Railway Company.	625 00	C. S. 1906. Verdict for def't.
Pennsylvania and New York Canal and Railroad Company.	5,000 00	C. S. 1906. Paid.
Wyoming Valley Coal Company,..	375 00	C. S. 1906. Paid.
Meadville, Conneaut Lake and Linesville Railroad Company.	324 90	L. T. 1906. Paid.
Republic Coke Company, ...	2,250 00	C. S. 1906. Paid.
New York and Middle Coal Field Railroad and Coal Company.	6,000 00	C. S. 1906. Paid.
Union Improvement Company, ...	6,000 00	C. S. 1906. Paid.
Virginia Coal and Iron Company,.	990 00	C. S. 1884 to 1906. Verdict for def't.
Virginia Coal and Iron Company,.	33 34	Bonus. Verdict for def't.
Filbert Paving and Construction Company.	909 50	C. S. 1906. Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1907.

Name.	Amount.	Remarks.
Lackawanna Steel Company, ...	125 00	C. S. 1906. Verdict for def't.
Lackawanna Steel Company, ...	243 30	L. T. 1906. Verdict for def't.
McKeesport Connecting Railroad Company.	375 00	C. S. 1906. Paid.
Altoona and Logan Valley Electric Railway Company.	7,305 00	L. T. 1906. Verdict for def't.
Schuylkill and Lehigh Valley Railroad Company.	3,500 00	C. S. 1906. Paid.
Youghiogheny Northern Railway Company.	2,125 00	C. S. 1906. Paid.
The Eastern Steel Company, ...	380 00	L. T. 1906. Discontinued.
D. J. Kennedy Company, ...	171 00	L. T. 1905. Paid.
Leechburg Land and Improvement Company.	375 00	C. S. 1906. Paid.
Delaware Division Canal Company of Pennsylvania.	1,250 00	C. S. 1906. Paid.
Citizens Title and Trust Company	1,154 75	C. S. 1906. Pending.
Blackwood Coal and Coke Company.	100 55	Bonus, 1906. Verdict for def't.
Blackwood Coal and Coke Company.	55 13	C. S. 1905. Verdict for def't.
Blackwood Coal and Coke Company.	150 82	C. S. 1906. Verdict for def't.
The Good Roads Machinery Company.	86 04	Bonus, 1906. Paid.
Fairmount Park Transportation Company.	633 35	L. T. 1897. Pending.
Fairmount Park Transportation Company.	940 00	L. T. 1898. Pending.
Fairmount Park Transportation Company.	1,940 00	L. T. 1899. Pending.
Fairmount Park Transportation Company.	2,347 95	L. T. 1900. Pending.
Fairmount Park Transportation Company.	2,469 34	L. T. 1901. Pending
Fairmount Park Transportation Company.	2,608 64	L T. 1902. Pending.
Fairmount Park Transportation Company.	2,668 34	L. T. 1903. Pending.
Fairmount Park Transportation Company.	2,688 24	L. T. 1904. Pending.
Fairmount Park Transportation Company.	2,688 24	L T. 1905. Pending.
Fairmount Park Transportation Company.	2,688 24	L. T. 1906. Pending.
Follmer Clogg Company, ...	797 48	Bonus, 1905. Verdict for def't.
Jessup and Moore Paper Company,	83 33	Bonus, 1906. Verdict for def't.
General Insurance Investment Company.	299 87	Bonus, 1905. Verdict for def't.
Maderia Hill and Company, ...	153 05	L. T. 1906. Verdict for def't.
Mountain Ice Company, ...	172 01	Bonus, 1906. Verdict for def't.
Mountain Ice Company, ...	417 05	C. S. 1906. Paid.
North Jersey and Pocomo Mountain Ice Company.	1,971 85	Loans, 1906. Verdict for def't.
American Railways Company, ..	209 54	Bonus 1905. Verdict for def't.
American Railways Company, ...	.....	Bonus, 1906. Verdict for def't.
American Railways Company, ...	600 18	C. S. 1906. Verdict for Com'th.
American Railways Company, ...	5,886 17	Loans, 1906. Verdict for def't.
Electric Company of America, ...	378 54	Bonus, 1905. Verdict for def't.
Northampton, Portland Cement Company.	1,531 08	Loans, 1902-3-4-5. Pending.
Northmapton, Portland Cement Company.	376 20	L. T. 1906. Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1907.

Name.	Amount.	Remarks.
The Pullman Company, ...	1,020 27	Bonus, 1906. Pending.
The Pullman Company, ...	4,332 64	C. S. 1906. Paid.
Pneumatic Transit Company, ...	760 00	L. T. 1906. Pending.
Pneumatic Transit Company, ...	500 00	C. S. 1906. Pending.
The Goods Roads Machinery Company.	129 06	C. S. 1906. Paid.
Pulaski Iron Company, ...	223 50	C. S. 1906. Verdict for def't.
Scranton and Pittsburg Traction Company.	908 20	L. T. 1906. Verdict for def't.
Scranton Railway Company, ...	6,332 93	L. T. 1906. Paid.
Scranton Railway Company, ...	18,990 00	C. S. 1906. Paid.
Loyalsock Railroad Company, ...	4,125 00	C. S. 1906. Paid.
Huntingdon and Broad Top Mountain Railroad and Coal Company.	19,161 74	C. S. 1906. Paid.
Mahoning Valley Railroad Company.	375 00	C. S. 1906. Paid.
Easton and Northern Railroad Company.	2,825 00	C. S. 1906. Verdict for def't.
Lehigh Valley Coal Company, ...	7,500 00	C. S. 1906. Paid.
Walnut Run Coal Company, ...	500 00	C. S. 1906. Verdict for def't.
Huron Coal Company, ...	500 00	C. S. 1906. Paid.
Upper Lehigh Coal Company, ...	3,000 00	C. S. 1906. Paid.
Coxe Brothers and Company, Incorporated.	14,550 75	C. S. 1906. Paid.
Everhart Coal Company, ...	500 00	C. S. 1906. Paid.
Alden Coal Company, ...	2,500 00	C. S. 1906. Paid.
Potter Gas Company, ...	2,539 25	C. S. 1906. Paid.
Berwick Water Company, ...	792 50	C. S. 1906. Paid.
Manor Gas Coal Company, ...	2,720 00	C. S. 1906. Paid.
Lackawanna Iron and Steel Company.	8,125 00	C. S. 1906. Paid.
Central Pennsylvania Lumber Company.	41,529 10	C. S. 1906. Paid.
Gimbel Brothers, Incorporated, ..	650 55	L. T. 1906. Paid.
Thomas Meehan and Son, Incorporated.	121 60	L. T. 1906. Verdict for def't.
Philadelphia Warehousing and Cold Storage Company.	1,309 77	C. S. 1906. Paid.
Home Electric Light and Steam Heating Company.	268 50	C. S. 1906. Paid.
American Road Machine Company,	335 77	L. T. 1906. Verdict for def't.
Knickerbocker Ice Company, ...	500 00	C. S. 1906. Paid.
West Penn Mining Company, ...	250 00	C. S. 1906. Paid.
Bagdad Coal and Coke Company,..	350 00	C. S. 1906. Paid.
Monterey Coal Company, ...	100 00	C. S. 1906. Paid.
Lehigh Coal and Navigation Company.	187,326 54	C. S. 1906. Paid.
Butler Junction Coal Company, ..	100 00	C. S. 1906. Paid.
Packer Coal Company, ...	400 00	C. S. 1906. Paid.
Tioga Improvement Company, ...	300 00	C. S. 1905. Paid.
Tioga Improvement Company, ...	300 00	C. S. 1906. Paid.
Buffalo and Susquehanna Railroad Company.	34,566 05	L. T. 1906. Paid.
Philadelphia and West Chester Traction Company.	1,211 36	L. T. 1906. Paid.
The Hudson Coal Company, ...	1,000 00	C. S. 1906. Verdict for def't.
Tionesta Valley Railway Company,	2,840 00	C. S. 1906. Paid.
Panther Valley Water Company, ..	125 00	C. S. 1906. Paid.
Susquehanna and New York Company.	3,000 00	C. S. 1906. Paid.
Consolidated Real Estate Company,	50 00	C. S. 1906. Paid.
Alliance Coal Mining Company, ..	2,038 00	C. S. 1906. Verdict for def't.
Peoples Street Railway Company of Nanticoke and Newport.	309 50	C. S. 1906. Paid.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1907.

Name.	Amount.	Remarks.
Delaware, Lackawanna and Western Railroad Company.	524,000 00	C. S. 1906. Paid.
Delaware, Lackawanna and Western Railroad Company.	3,261 65	L. T. 1906. Paid.
Bangor and Portland Railway Company.	5,275 00	C. S. 1905-6. Paid.
Pennsylvania Water Company, ..	1,622 00	C. S. 1906. Paid.
Schuylkill Valley Traction Company.	937 50	Bonus, 1906. Pending.
Tonopah Mining Company, ...	1,236 86	Bonus, 1906. Pending.
Tonopah Mining Company, ...	2,005 29	C. S. 1906. Pending.
The Star Ball Retainer Company,..	310 00	Bonus. Pending.
American Ice Company of New Jersey.	2,966 67	Bonus. Pending.
Woodruff Sleeping and Parlor Car Company.	210 00	C. S. 1906. Paid.
Philadelphia Securities Company,..	125 00	C. S. 1906. Paid.
Nescopec Coal Company, ...	1,350 00	C. S. 1906. Paid.
Manufacturer's Gas and Fuel Company.	372 06	L. T. 1906. Paid.
Hyde Park Gas Company, ...	50 00	C. S. 1906. Verdict for def't.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	812 60	C. S. 1906. Paid.
Allentown Iron Company, ...	175 00	C. S. 1906. Paid.
Allentown and Bethlehem Turnpike Company.	185 00	C. S. 1906. Verdict for def't.
Jersey Shore Electric Company, ..	229 00	C. S. 1906. Paid.
Susquehanna Dye Works, ...	345 80	L. T. 1906. Verdict for def't.
Raven Run Coal Company, ...	60 00	C. S. 1906. Paid.
Yale and Towne Manufacturing Company.	2,148 95	L. T. 1906. Verdict for def't.
Irvona Coal and Coke Company, ..	190 00	L. T. 1906. Verdict for def't.
Oilwell Supply Company, ...	1,825 16	L. T. 1906. Pending.
Cambria Steel Company, ...	8,758 96	C. S. 1906. Paid.
W. J. McCahan Sugar Refining Company.	677 50	C. S. 1906. Pending.
Charles J. Webb and Company, Incorporated.	10,000 00	C. S. 1906. Verdict for def't.
Cheltenham and Willowgrove Turnpike Company.	242 00	C. S. 1906. Verdict for def't.
Goodyear Lumber Company, ...	6,128 35	C. S. 1906. Paid.
Reynsahnhurst Water Company,..	125 00	C. S. 1906. Paid.
Consolidated Water Supply Company.	1,140 00	C. S. 1906. Paid.
American Improvement Company,..	500 00	C. S. 1906. Paid.
Crystal Lake Water Company, ...	465 00	C. S. 1906. Paid.
Rock Cliff Water Company, ...	148 50	C. S. 1906. Paid.
Beech Creek Extension Railroad Company.	3,000 00	C. S. 1906. Paid.
Citizens Light, Heat and Power Company.	4,605 00	C. S. 1906. Paid.
Quakertown Traction Company, ..	300 00	C. S. 1906. Paid.
State Line and Sullivan Railroad Company.	2,545 00	C. S. 1906. Paid.
Quakertown Traction Company,....	929 86	L. T. 1906. Verdict for def't.
Sorosis Shoe Company of Pittsburg.	554 60	C. S. 1906. Paid.
Sorosis Shoe Company of Philadelphia.	640 00	C. S. 1906. Paid.
The Carpenter Steel Company, ...	257 04	Bonus, 1906. Verdict for def't.
The Carpenter Steel Company, ...	3,579 10	Bonus. 1905. Verdict for def't.
Maderia Hill Coal Mining Company	574 50	C. S. 1906. Paid.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1907.

Name.	Amount.	Remarks.
Jenkintown and Cheltenham Gas Company.	801 80	C. S. 1906. Verdict for def't.
Peoples Traction Company, ...	33,300 85	C. S. 1906. Paid.
Bethlehem City Water Company,..	936 22	L. T. 1906. Paid.
Bethlehem City Water Company,..	704 00	C S. 1906. Paid.
Keystone Store Company, ...	450 00	C S. 1906. Paid.
Union Traction Company of Philadelphia.	118,282 46	C S. 1906. Paid.
Lackawanna Valley Water Supply Company.	220 00	C S. 1906. Paid.
W. K. Niver Coal Company, ...	2,000 00	C S. 1906. Paid.
Jermyn and Rush Brook Water Company.	475 00	C S. 1906. Paid.
Philadelphia Traction Company,..	86,725 00	C S. 1906. Paid.
Lackawanna Iron and Coal Company.	1,750 00	C. S. 1906. Verdict for def't.
Columbia and Montour Electric Railway Company.	937 50	C. S. 1906. Paid.
Buffalo and Susquehanna Coal and Coke Company.	3,000 00	C. S. 1906. Paid.
Mortgage Trust Company of Philadelphia.	6,952 81	L. T. 1906. Paid.
Philadelphia Rapid Transit Company.	55,750 00	C. S. 1906. Verdict for def't.
Potter Gas Company, ...	1,134 26	L. T. 1906. Verdict for def't.
Mortgage Trust Company of Pennsylvania.	1,250 00	C. S. 1906. Paid.
Irvona Coal and Coke Company, ..	550 00	C. S. 1906. Paid.
Electric Traction Company, ...	35,975 00	C. S. 1906. Paid.
Wellsbach Company, ...	7,181 86	L. T. 1906. Pending.
Norfolk and Western Railway Company.	3,059 40	L. T. 1906. Pending.
Robesonia Iron Company, Limited,	1,072 00	C. S. 1906. Paid.
Suburban Gas Company of Philadelphia.	7,760 75	L. T. 1906. Paid.
Dents Run Coal Company, ...	222 00	C. S. 1906. Verdict for def't.
Buffalo and Susquehanna Railroad Company.	29,529 15	C. S. 1906. Paid.
Wilkes-Barre Railroad Company,..	1,250 00	C. S. 1906. Pending.
Scranton and Northeastern Railroad Company.	3,750 00	C. S. 1906. Pending.
Lackawanna Tunnel Company, ...	2,000 00	C. S. 1906. Pending.
Lackawanna and Wyoming Valley Railroad Company.	3,000 00	C. S. 1906. Pending.
Central Valley Railroad Company,	1,250 00	C. S. 1906. Pending.
Huntingdon and Clearfield Telephone Company.	1,663 34	Bonus. Paid.
National Ice Company of Philadelphia.	200 00	Bonus. Pending.
Union Telephone Company of Erie,	1,663 34	Bonus. Paid.
Lithuanian Cooperative Association.	33 34	Bonus. Pending.
McCreary and Company, ...	3,333 33	Bonus. Paid.
McCreary and Company, ...	5,205 57	C. S. 1906. Paid.
McCreary and Company, ...	5,000 00	C. S. 1905. Paid.
Elk Oil Company, Limited, ...	350 00	C. S. 1906. Paid.
Scranton Vitrified Brick and Tile Manufacturing Company.	114 00	L. T. 1906. Pending.
Mountain Coal Company, ...	900 00	C. S. 1906. Paid.
Santo Domingo Silver Mining Company.	90 00	C. S. 1906. Paid.
Keystone Coal and Coke Company,	1,685 25	L. T. 1905. Paid.
Keystone Coal and Coke Company,	1,983 24	L. T. 1906. Paid.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1907.

Name.	Amount.	Remarks.
Pittsburg Dry Goods Company, ..	5,000 00	C. S. 1906. Paid.
White Haven Water Company, ..	38 00	Loans, 1906. Verdict for def't.
West Berwick Water Supply Company.	190 00	Loans, 1906. Paid.
Olyphant Water Company, ...	800 00	C. S. 1906. Paid.
Keystone Coal and Coke Company,	17,500 00	C. S. 1905. Paid.
Keystone Coal and Coke Company,	18,750 00	C. S. 1906. Paid.
Kensington Shipyard Company, ..	380 00	L. T. 1906. Verdict for def't.
Dunmore Gas and Water Company,	563 50	C. S. 1906. Paid.
Coatesville Gas Company, ...	246 05	L. T. 1906. Verdict for def't.
Archbold Water Company, ...	750 00	C. S. 1906. Paid.
Western Union Telegraph Company.	7,940 23	C. S. 1905. Paid.
Welsbach Street Lighting Company of America.	61 66	Bonus, 1906. Pending.
The American Railways Company,	5,344 89	L. T. 1905. Verdict for def't.
Sunbury Gas Company, ...	285 00	L. T. 1906. Paid.
Reliance Slate Company,.	250 00	C. S. 1906. Verdict for def't.
Reliance Slate Company, ...	34 20	L. T. 1906. Verdict for def't.
Mifflin County Gas and Electric Company.	260 78	L. T. 1907. Paid.
International Navigation Company.	1,227 70	C. S. 1906. Paid.
Economy Light, Heat and Power Company.	500 00	C. S. 1906. Paid.
Consumers Brewing Company of Erie.	1,007 00	C. S. 1906. Paid.
Cranberry Iron and Coal Company,	260 54	C. S. 1892 to 1905. Pending.
Cranberry Iron and Coal Company,	1,213 00	L. T. 1903. Verdict for def't.
Cranberry Iron and Coal Company,	1,213 00	L. T. 1904. Verdict for def't.
T. W. Philips Gas and Oil Company.	4,220 87	L. T. 1906. Paid.
Harbison-Walker Company, ...	4,726 00	L. T. 1905. Paid.
Harbison-Walker Company, ...	4,129 00	
Harbison-Walker Company, ...	485 00	L. T. 1906. Paid.
Harbison-Walker Company, ...	560 00	C. S. 1905. Paid.
Harbison-Walker Company, ...	5,780 70	C. S. 1906. Paid.
Harbison-Walker Company, ...	5,681 20	L. T. 1906. Paid.
Northern Cambria Street Railway Company.	1,365 80	L. T. 1906. Paid.
Cranberry Furnace Company, ...	95 91	C. S. 1901-6. Pending.
Cranberry Furnace Company, ...	82 36	L. T. 1903. Verdict for def't.
Cranberry Furnace Company, ...	114 00	L. T. 1904. Verdict for def't.
Cranberry Furnace Company, ...	114 00	L. T. 1905. Verdict for def't.
Cranberry Furnace Company, ...	125 71	L. T. 1906. Verdict for def't.
United States Electric Lighting Company.	500 00	C. S. 1906. Paid.
Sharon Coke Company, ...	1,908 32	L. T. 1906. Paid.
Sharon Coke Company, ...	1,824 00	C. S. 1906. Paid.
Powelton Electric Company, ...	2,995 70	C. S. 1906. Verdict for def't.
Pennsylvania Heat, Light and Power Company.	25,000 00	C. S. 1906. Paid.
Pennsylvania Heat, Light and Power Company.	7,887 32	L. T. 1906. Verdict for def't.
Northern Electric Light and Power Company.	4,000 00	C. S. 1906. Verdict for def't.
Keystone Light and Power Company.	310 00	C. S. 1906. Paid.
Kensington Electric Company, ...	451 05	C. S. 1906. Verdict for def't.
Edison Electric Light Company of Philadelphia.	25,000 00	C. S. 1906. Paid.
Chester Electric Light and Power Company.	662 25	C. S. 1906. Verdict for def't.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1907.

Name.	Amount.	Remarks.
Brush Electric Company, ...	7,500 00	C. S. 1906. Paid.
Scranton Gas and Water Company,	833 34	Bonus. Verdict for def't.
Delaware and Atlantic Telegraph and Telephone Company of Pennsylvania.	200 00	C. S. 1906. Paid.
Clairton Steel Company, ...	2,288 20	C. S. 1906. Paid.
DuBois Electric Company, ...	375 00	C. S. 1904. Paid.
DuBois Electric Company, ...	375 00	C. S. 1906. Paid.
Leedom and Worral Company, ...	632 15	C. S. 1906. Paid.
Huntingdon Water Supply Company.	114 00	L. T. 1900. Verdict for def't.
Insurance Company of North America.	21,742 60	C. S. 1906. Verdict for def't.
Producers and Refiners Oil Company.	1,200 00	C. S. 1906. Paid.
Fire Association of Philadelphia,	11,114 20	C. S. 1906. Paid.
Midland Coal Company, ...	1,450 00	C. S. 1906. Paid.
Johnetta Coal Company, ...	7,500 00	C. S. 1904. Paid.
Johnetta Coal Company, ...	7,500 00	C. S. 1905. Paid.
Johnetta Coal Company, ...	7,500 00	C. S. 1906. Paid.
Johnetta Coal Company, ...	4,852 17	L. T. 1906. Paid.
Bethlehem Consolidated Gas Company.	633 34	L. T. 1904. Paid.
Bethlehem Consolidated Gas Company.	1,940 00	L. T. 1905. Paid.
Bethlehem Consolidated Gas Company.	1,940 00	L. T. 1906. Paid.
Stonega Coal and Coke Company,	168 95	C. S. 1906. Pending.
Kenmore Pulp and Paper Company.	211 52	L. T. 1900. Verdict for def't.
Kenmore Pulp and Paper Company.	599 34	L. T. 1901. Verdict for def't.
Kenmore Pulp and Paper Company.	557 40	L. T. 1902. Verdict for def't.
Kenmore Pulp and Paper Company.	676 26	L. T. 1903. Verdict for def't.
Kenmore Pulp and Paper Company.	1,255 28	L. T. 1901. Paid.
Kenmore Pulp and Paper Company.	1,159 88	L. T. 1905. Verdict for def't.
Kenmore Pulp and Paper Company.	1,387 23	L. T. 1906. Verdict for def't.
Real Estate Holding Company, ..	50 00	C. S. 1906. Paid.
Lorain Steel Company of Pennsylvania.	7,910 00	L. T. 1901. Paid.
Lorain Steel Company of Pennsylvania.	4,726 00	L. T. 1903. Paid.
Lorain Steel Company of Pennsylvania.	3,941 94	L. T. 1904. Paid.
Lorain Steel Company of Pennsylvania.	3,543 94	L. T. 1905. Paid.
Lorain Steel Company of Pennsylvania.	3,173 80	L. T. 1906. Paid.
DuBois Traction Company, ...	250 00	C. S. 1906. Verdict for def't.
Mortgage Trust Company of Pennsylvania.	1,597 22	C. S. 1907. Pending.
Philadelphia Mortgage and Trust Company.	1,809 52	C. S. 1907. Pending.
Lycoming Improvement Company,	177 83	C. S. 1903. Verdict for def't.
Lycoming Improvement Company,	923 29	L. T. 1903. Verdict for def't.
Lycoming Improvement Company,	1,343 43	L. T. 1904. Verdict for def't.
Lycoming Improvement Company,	1,362 83	L. T. 1905. Verdict for def't.
Lycoming Improvement Company,	1,642 01	L. T. 1906. Verdict for def't.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
Investment Trust Company, ...	491 32	C. S. 1907. Pending.
Investment Company of Philadelphia.	2,602 14	C. S. 1907. Pending.
E. P. Wilbur Trust Company, ...	3,190 04	C. S. 1907. Pending.
Real Estate Trust Company of Philadelphia.	15,769 03	C. S. 1907. Pending.
Finance Company of Pennsylvania.	8,949 61	C. S. 1907. Pending.
Provident Life and Trust Company of Philadelphia.	12,752 70	C. S. 1907. Pending.
Buffalo and Susquehanna Railroad Company.	2,301 57	G. K. 1907. Pending.
Harrisburg Gas Company, ...	2,119 10	L. T. 1906. Paid.
Equitable Illuminating Gas Light Company of Philadelphia.	12,425 31	L. T. 1906. Paid.
Dauphin County Gas Company, ..	694 45	L. T. 1906. Paid.
Chester County Gas Company, ..	501 60	L. T. 1906. Paid.
Allentown Gas Company, ...	950 00	L. T. 1906. Paid.
National Automatic Weighing Machine Company.	240 75	C. S. 1906. Paid.
Arnold Mining Company, ...	67 92	C. S. 1906. Paid.
Arnold Mining Company, ...	4 15	Bonus, 1906. Paid.
Northern Iron Company, ...	71 35	Bonus, 1906. Paid.
Northern Iron Company, ...	158 99	C. S. 1906. Paid.
Pittsburg, Buffalo Company, ...	5,135 94	L. T. 1906. Paid.
Merion and Radnor Gas and Electric Company.	3,854 40	L. T. 1906. Paid.
W. F. Trimble and Sons Company,	579 66	C. S. 1905. Pending.
W. F. Trimble and Sons Company,	357 50	C. S. 1906. Pending.
Sunbury and Northumberland Electric Railway Company.	140 00	L. T. 1906. Pending.
The Netherlands Company, ...	7,000 00	C. S. 1905. Pending.
The Netherlands Company, ...	7,000 00	C. S. 1906. Pending.
Donora Lumber Company, ...	420 00	C. S. 1905. Pending.
National Automatic Weighing Machine Company.	240 75	C. S. 1907. Pending.
The Deppen Brewing Company, ..	419 90	L. T. 1907. Pending.
J. G. White and Company, ...	369 00	C. S. 1906. Pending.
J. G. White and Company, ...	237 67	Bonus. Pending.
Sorosis Shoe Company of Philadelphia.	375 00	C. S. 1907. Paid.
The Pullman Company, ...	6,067 23	C. S. 1907. Paid.
The Spanish American Iron Company.	693 28	Bonus. Pending.
The Spanish American Iron Company.	1,039 93	C. S. 1906. Pending.
Maryland Steel Company, ...	493 80	Bonus. Pending.
Maryland Steel Company, ...	740 70	C. S. 1906. Pending.
Ross Tacony Crucible Company,..	198 82	Bonus, 1906. Pending.
American Railways Company, ...	281 93	Bonus, 1907. Verdict for Com'th.
American Railways Company, ...	1,023 09	C. S. 1907. Pending.
Wyoming Valley Lace Mills, ...	216 60	L. T. 1907. Pending.
Clarion Gas Company, ...	625 00	C. S. 1907. Pending.
American Dredging Company, ...	11,250 00	C. S. 1907. Paid.
Lackawanna Steel Company, ...	281 20	L. T. 1907. Verdict for def't.
Lackawanna Steel Company, ...	76 54	C. S. 1907. Verdict for def't.
Central Pennsylvania Lumber Company.	22,402 05	C. S. 1907. Paid.
Climax Fire Brick Company, ...	69 88	C. S. 1907. Pending.
New York Central and Hudson River Railroad Company.	700 00	C. S. 1907. Paid.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
New York Central and Hudson River Railroad Company.	7,814 48	L. T. 1907. Pending.
General Insurance Investment Company.	605 85	Bonus, 1907. Verdict Com'th.
General Insurance Investment Company.	1,408 77	C. S. 1907. Verdict for def't.
LaBelle Iron Works, ...	163 34	Bonus. Verdict for def't.
Beech Creek Extension Railroad Company.	3,750 00	C. S. 1907. Paid.
International Paper Company, ...	325 00	C. S. 1907. Pending.
International Paper Company, ...	216 67	Bonus. Pending.
Erie Railroad Company, ...	4,217 63	C. S. 1907. Paid.
Tonopah Mining Company of Nevada.	552 58	C. S. 1907. Pending.
Beech Creek Railroad Company,..	1,722 20	L. T. 1907. Paid.
Nypano Railroad Company, ...	6,500 00	C. S. 1907. Paid.
Wilkes-Barre and Western Railroad.	4,950 00	C. S. 1907. Paid.
Erie and Wyoming Valley Railroad Company.	5,125 00	C. S. 1907. Paid.
New York, Susquehanna and Western Coal Company.	450 00	C. S. 1907. Paid.
New York, Erie and Western Coal and Railroad Company.	2,000 00	C. S. 1907. Paid.
Butler Mine Company, Limited, ..	100 00	C. S. 1907. Verdict for Com'th.
Pennsylvania Coal Company, ...	40,325 50	C. S. 1907. Paid.
Blossburg Coal Company, ...	625 00	C. S. 1907. Paid.
Columbus and Erie Railroad Company.	300 00	C. S. 1907. Paid.
Hillside Coal and Iron Company,..	875 00	C. S. 1907. Paid.
Northwestern Mining and Exchange Company.	700 00	C. S. 1907. Paid.
Buffalo, Bradford and Pittsburg Railroad Company.	625 00	C. S. 1907. Paid.
Erie Land and Improvement Company.	25 00	C. S. 1907. Paid.
Annora Coal Company, ...	250 00	C. S. 1907. Paid.
Annora Coal Company, ...	247 00	L. T. 1907. Verdict for def't.
Jefferson Railroad Company, ...	2,500 00	C. S. 1907. Paid.
LaBelle Iron Works, ...	475 00	C. S. 1907. Verdict for def't.
LaBelle Iron Works, ...	153 34	Bonus, 1907. Verdict for def't.
Filbert Paving and Construction Company.	909 50	C. S. 1905. Pending. C. S. 1906. Paid.
Cherry River Boom and Lumber Company.	192 76	C. S. 1907. Paid.
Cherry River Boom and Lumber Company.	117 49	Bonus. Pending.
Western Union Telegraph Company.	7,439 16	C. S. 1906. Paid.
Bowman Coal Mining Company,..	280 00	C. S. 1907. Paid.
Ridgway Light and Heat Company.	1,625 00	L. T. 1906. Paid.
Ridgway Light and Heat Company.	1,700 00	C. S. 1907. Paid.
Bethlehem City Water Company,	600 00	C. S. 1907. Paid.
Bethlehem City Water Company,	570 00	L. T. 1907. Paid.
Berwick Water Company, ...	894 00	C. S. 1907. Paid.
Eastern Securities Company, ...	250 00	C. S. 1907. Paid.
Alden Coal Company, ...	2,500 00	L. T. 1907. Paid.
Diamond Coal Land Company, ...	500 00	C. S. 1907. Paid.
Dunkirk, Allegheny Valley and Pittsburg Railroad Company.	3,466 66	C. S. 1907. Paid.
J. G. Curtis Leather Company, ...	337 24	L. T. 1907. Pending.
J. G. Curtis Leather Company, ...	295 83	L. T. 1907. Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
Cherry River Paper Company, ...	551 00	L. T. 1907. Pending.
American Ice Company, ...	2,278 30	C. S. 1907. Paid.
Altoona and Logan Valley Electric Railway Company.	6,842 37	L. T. 1907. Paid.
Beech Creek Coal Company, ...	250 00	C. S. 1906. Verdict for Com'th.
Bethlehem and Nazareth Passenger Railway Company.	625 00	L. T. 1907. Verdict for def't.
Allentown Electric Light and Power Company.	1,250 00	C. S. 1907. Verdict for Com'th.
Delaware and Atlantic Telegraph Company of Pennsylvania.	17,860 00	L. T. 1907. Verdict for def't.
Cambria Inclined Plane Company,	500 00	C. S. 1907. Paid.
Autocar Company, ...	595 56	L. T. 1907. Verdict for def't.
Stonega Coke and Coal Company,	53 68	C. S. 1907. Pending.
Ingersoll Rand Company, ...	7,910 00	L. T. 1906. Pending.
Ingersoll Rand Company, ...	7,910 00	L. T. 1907. Pending.
Wichita Natural Gas Company,..	95 00	L. T. 1907. Pending.
Bell Telephone Company of Philadelphia.	18,022 65	Bonus. Pending.
Cheltenham and Willow Grove Turnpike Company.	125 00	C. S. 1907. Verdict for def't.
Tioga Railroad Company, ...	226 10	L. T. 1907. Paid.
Capt. John J. Williams and Company.	125 00	C. S. Pending.
Consumers Brewing Company of Philadelphia.	750 00	C. S. 1907. Paid.
New York, Susquehanna and Western Railroad Company.	216 60	L. T. 1907. Pending.
Adam Scheidt Brewing Company,	1,500 00	C. S. 1907. Paid.
American Improvement Company,	500 00	C. S. 1907. Paid.
Pure Oil Company, ...	1,643 00	L. T. 1907. Pending.
Pittsburg Oil and Gas Company,..	5,082 21	L. T. 1907. Pending.
The Pullman Company, ...	1,156 39	Bonus. Pending.
National Car Wheel Company, ...	365 56	L. T. 1907. Pending.
Pulaski Iron Company, ...	672 63	C. S. 1907. Verdict for def't.
Pulaski Iron Company, ...	299 43	Bonus, 1907. Verdict for def't.
Sorosis Shoe Company of Pittsburg.	202 50	C. S. 1907. Verdict for def't.
Julius Christensen and Company,	1,756 67	C. S. 1907. Paid.
San Luis Valley Land and Mining Company.	118 14	C. S. 1907. Pending.
San Luis Valley Land and Mining Company.	66 76	Bonus, 1907. Pending.
Schwarzschlied and Sulzberger Company.	1,900 56	C. S. 1907. Pending.
Schwarzschlied and Sulzberger Company.	964 47	Bonus. Pending.
National Tube Company of New Jersey.	80 00	C. S. 1907. Paid.
Pure Oil Company, ...	527 11	C. S. 1907. Pending.
Clairton Steel Company, ...	9,016 12	L. T. 1906. Verdict for Com'th.
Jessup and Moore Paper Company,	4,722 02	L. T. 1906. Verdict for Com'th.
Jessup and Moore Paper Company,	4,897 18	L. T. 1907. Verdict for def't.
Victor Coal Company, ...	250 00	C. S. 1907. Verdict for def't.
Upper Lehigh Supply Company, Limited.	450 00	C. S. 1907. Paid.
Upper Lehigh Coal Company, ...	3,235 00	C. S. 1907. Pending.
Tindell-Morris Company, ...	860 44	C. S. 1902. Verdict for def't.
Midvalley Supply Company, Limited.	150 00	C. S. 1907. Verdict for def't.
Manufacturers Gas and Fuel Company.	408 50	L. T. 1907. Verdict for def't.
Hyde Park Gas Company, ...	181 50	C. S. 1907. Verdict for def't.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
Home Electric Light and Steam Heating Company.	269 00	C. S. 1907. Paid.
Haddon Coal Company, ...	350 00	C. S. 1907. Paid.
Erie Electric Motor Company, ..	1,875 00	C. S. 1907. Verdict for Com'th.
Edison Electric Illuminating Company.	912 96	C. S. 1907. Paid.
Columbia and Montour Electric Railway Company.	800 00	C. S. 1907. Paid.
Clearfield Bituminous Coal Corporation.	3,000 00	C. S. 1907. Paid.
Bethlehem Steel Company, ...	42,603 66	L. T. 1907. Paid.
Bell Telephone Company of Philadelphia.	131,221 89	C. S. 1907. Verdict for Com'th.
Delaware and Atlantic Telegraph and Telephone Company.	250 00	C. S. 1907. Paid.
Citizens Light, Heat and Power Company.	5,825 00	C. S. 1907. Paid.
Bagdad Coal and Coke Company,	250 00	C. S. 1907. Paid.
Allegheny and Western Railway Company.	22,400 00	C. S. 1907. Paid.
Hope Mills Manufacturing Company.	1,292 08	C. S. 1891 to 1907. Verdict for def't.
Hope Mills Manufacturing Company.	56 69	Bonus. Verdict for def't.
Central District and Printing Telegraph Company.	53,657 54	C. S. 1907. Paid.
Bethlehem Steel Company.	916 94	C. S. 1907. Verdict for Com'th.
American Improvement Company,	646 00	L. T. 1907. Verdict for def't.
Jersey Shore Electric Company, ..	250 00	C. S. 1907. Paid.
Jamestown and Franklin Railroad Company.	1,311 50	C. S. 1907. Paid.
Manor Gas Coal Company, ...	2,500 00	C. S. 1907. Paid.
Shanferoke Coal Company, ...	2,375 00	C. S. 1907. Paid.
Schenley Distillery Company, ..	.. 1,200 00	C. S. 1907. Paid.
Homestead Real Estate Company,	2,891 67	C. S. 1907. Paid.
Gimbel Brothers, Incorporated, ..	1,009 40	L. T. 1907. Verdict for def't.
Keystone Store Company, ...	375 00	C. S. 1907. Paid.
Stevens Coal Company, ...	1,250 00	C. S. 1907. Paid.
Lackawanna Iron and Steel Company.	8,125 00	C. S. 1907. Paid.
Lackawanna Light Company, ...	500 00	C. S. 1907. Paid.
Schuylkill Coal and Iron Company,	1,500 00	C. S. 1907. Paid.
Philadelphia Warehousing and Cold Storage Company.	1,059 77	C. S. 1907. Paid.
Pittsburg Oil and Gas Company,..	21,512 15	L. T. 1904. Pending.
Pittsburg Oil and Gas Company,..	21,512 15	L. T. 1905. Pending.
Pittsburg Oil and Gas Company,..	21,512 15	L. T. 1906. Pending.
Clinton Iron and Steel Company,	1,940 00	L. T. 1906. Pending.
Welsbach Company, ...	214 32	L. T. 1907. Pending.
Norfolk and Western Railway Company.	2,059 40	L. T. 1907. Pending.
The Good Roads Machinery Company.	125 00	C. S. 1907. Paid.
Fairmount Park Transportation Company.	2,688 24	L. T. 1907. Pending.
Fairmount Park Transportation Company.	4,500 00	C. S. 1907. Paid.
John Baizley Iron Works, ...	608 00	L. T. 1903. Pending.
John Baizley Iron Works, ...	608 00	L. T. 1904. Pending.
John Baizley Iron Works, ...	608 00	L. T. 1905. Pending.
John Baizley Iron Works, ...	608 00	L. T. 1906. Pending.
John Baizley Iron Works, ...	608 00	L. T. 1907. Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
Western Union Telegraph Company.	5,705 40	C. S. 1907. Paid.
Spring Brook Lumber Company,..	281 28	C. S. 1907. Paid.
Thomas Colliery Company, ...	1,148 00	L. T. 1907. Paid.
State Line and Sullivan Railroad Company.	3,250 00	C. S. 1907. Verdict for Com'th.
Tionesta Valley Railway Company,	2,930 00	C. S. 1907. Paid.
Union Railroad Company, ...	18,950 00.	C. S. 1907. Pending.
Philadelphia and Western Railway Company.	1,187 50	C. S. 1907. Paid.
Pittsburg and Ohio Valley Railway Company.	500 00	C. S. 1907. Paid.
Youghiogheny Northern Railway Company.	2,050 00	C. S. 1097. Paid.
Scranton Electric Company, ...	2,712 50	C. S. 1907. Pending.
Vallamont Traction Company, ...	685 62	C. S. 1907. Paid.
West Berwick Water Supply Company.	190 00	L. T. 1907. Paid.
Union Boiler and Manufacturing Company.	319 10	C. S. 1907. Verdict for def't.
McCall Ferry Power Company, ..	5,000 00	C. S. 1907. Paid.
New York, Chicago and St. Louis Railroad Company.	6,409 54	L. T. 1907. Verdict for def't.
Acme White Sand Company, ...	580 37	C. S. 1904-5-6-7. Pending.
Leechburg Land and Improvement Company.	250 00	C. S. 1907. Paid.
Carnegie Land Company, ...	450 00	C. S. 1907. Paid.
Gimbel Brothers, Incorporated, ..	28,980 00	C. S. 1907. Pending.
Clairton Steel Company, ...	10,938 12	L. T. 1905. Pending.
Leedom and Worrall Company, ..	750 00	C. S. 1907. Paid.
Mingo Coal Company, ...	100 00	C. S. 1906. Paid.
Mingo Coal Company, ...	100 00	C. S. 1907. Paid.
Maderia Hill Coal Mining Company.	1,200 00	C. S. 1907. Paid.
Midvalley Coal Company, ...	4,000 00	C. S. 1907. Paid.
Hollenback Coal Company, ...	2,015 00	C. S. 1907. Paid.
H. C. Frick Coke Company, ...	56,777 25	C. S. 1907. Paid.
Gilpin Coal Company, ...	375 00	C. S. 1907. Paid.
Dents Run Coal Company, ...	289 00	C. S. 1907. Verdict for Com'th.
Atlas Portland Cement Company,	1,962 50	C. S. 1907. Verdict for Com'th.
Atlas Portland Cement Company,	18,056 40	L. T. 1907. Verdict for Com'th.
Buffalo and Susquehanna Railway Company.	2,847 64	G. R. 1907. Pending.
Buffalo and Susquehanna Railroad Company.	30,299 15	C. S. 1907. Verdict for Com'th.
Buffalo and Susquehanna Railroad Company.	38,052 53	L. T. 1907. Verdict for Com'th.
Oil Well Supply Company, ...	1,512 32	L. T. 1907. Pending.
St. Benedict Village Company, ...	375 00	C. S. 1905. Paid.
St. Benedict Village Company, ...	98 80	L. T. 1905. Pending.
St. Benedict Village Company, ...	375 00	C. S. 1906. Paid.
St. Benedict Village Company, ...	98 80	L. T. 1906. Pending.
Tioga Improvement Company, ...	600 00	C. S. 1907. Paid.
Walnut Run Coal Company, ...	625 00	C. S. 1907. Paid.
Union Supply Company, ...	5,000 00	C. S. 1907. Pending.
Philadelphia and Garrettford Street Railway Company.	250 00	C. S. 1907. Paid.
American Road Machine Company.	1,189 50	C. S. 1907. Paid.
Sterling Coal Company, ...	2,225 00	C. S. 1907. Paid.
Peoples Street Railway Company of Nanticoke and Newport.	635 00	C. S. 1907. Paid.
Mountain Coal Company, ...	850 00	C. S. 1907. Paid.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
Monongahela Southern Railroad Company.	800 00	C. S. 1907. Paid.
Irvona Coal and Coke Company, ..	400 00	C. S. 1907. Paid.
Etna and Montrose Railroad Company.	625 00	C. S. 1907. Paid.
Allegheny Valley Street Railway Company.	900 00	C. S. 1907. Pending.
Allegheny Valley Street Railway Company.	923 40	C. S. 1907. Pending.
Norfolk and Western Railway Company.	500 00	C. S. 1907. Pending.
Pocono Mountain Ice Company, ..	1,000 00	C. S. 1907. Paid.
Real Estate Holding Company, ..	100 00	C. S. 1905. Paid.
Pencoyd and Philadelphia Railroad Company.	250 00	C. S. 1907. Verdict for Com'th.
Leetonia Railway Company, ...	750 00	C. S. 1907. Paid.
Northern Cambria Street Railway Company.	200 00	C. S. 1907. Paid.
Northern Cambria Street Railway Company.	500 00	C. S. 1907. Paid.
Potter Gas Company, ...	5,750 00	C. S. 1907. Verdict for def't.
Potter Gas Company, ...	1,825 31	L. T. 1907. Paid.
Penn Gas Coal Company, ...	10,000 00	C. S. 1907. Paid.
Westmoreland Coal Company, ...	30,000 00	C. S. 1907. Paid.
Nescopeck Coal Company, ...	1,500 00	C. S. 1907. Paid.
Monterey Coal Company, ...	274 00	C. S. 1907. Paid.
Packer Coal Company, ...	445 00	C. S. 1907. Paid.
Alliance Coal Mining Company, ..	1,707 50	C. S. 1907. Verdict for def't.
Fall Brook Coal Company, ...	4,000 00	C. S. 1907. Verdict for Com'th.
Silver Brook Coal Company, ...	250 00	C. S. 1907. Paid.
Huron Coal Company, ...	750 00	C. S. 1907. Paid.
West Penn Mining Company, ...	400 00	C. S. 1907. Pending.
Powhatan Coal and Coke Company.	1,500 00	C. S. 1907. Paid.
William M. Lloyd Company, ...	2,000 00	C. S. 9107. Paid.
Jessup and Moore Paper Company,	1,280 00	L. T. 1899. Verdict for def't.
Jessup and Moore Paper Company,	3,930 00	L. T. 1900. Verdict for def't.
Jessup and Moore Paper Company,	9,104 00	L. T. 1901-2. Verdict for def't.
Jessup and Moore Paper Company,	4,427 50	L. T. 1903. Verdict for def't.
Jessup and Moore Paper Company,	4,228 50	L. T. 1904. Verdict for def't.
Jessup and Moore Paper Company,	4,029 50	L. T. 1905. Verdict for def't.
American Pin Company, ...	283 34	Bonus, 1907. Verdict for def't.
American Pin Company.	425 00	C. S. 1907. Verdict for def't.
New Jersey and Pocono Mountain Ice Company.	1,813 28	L. T. 1907. Verdict for def't.
Delaware, Lackawanna and Western Railroad Company.	384 08	L. T. 1907. Paid.
Lackawanna Coal and Coke Company.	2,500 00	C. S. 1907. Paid.
Hanover and Newport Railroad Company.	515 00	C. S. 1907. Paid.
Bangor and Portland Railway Company.	4,250 00	C. S. 1907. Paid.
Susquehanna and New York Railroad Company.	2,500 00	L. T. 1907. Paid.
Pennsylvania, Beech Creek and Eastern Coal Company.	114 00	L. T. 1906. Verdict for def't.
Lucesco Coal Company, ...	250 00	C. S. 1907. Verdict for def't.
Robesonia Iron Company, Limited.	1,075 00	C. S. 1907. Paid.
Pennsylvania, Beech Creek and Eastern Coal Company.	1,041 67	C. S. 1906. Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
Parrish Coal Company, ...	3,000 00	C. S. 1907. Paid.
Truman M. Dodson Coal Company.	251 65	C. S. 1907. Paid.
Buffalo and Susquehanna Coal and Coke Company.	2,500 00	C. S. 1907. Paid.
C. Schmidt and Sons Brewing Company.	4,800 00	C. S. 1907. Paid.
J. G. Curtis Leather Company, ..	135 17	L. T. 1901. Pending.
J. G. Curtis Leather Company, ..	210 37	L. T. 1902. Pending.
J. G. Curtis Leather Company, ..	195 62	L. T. 1903. Pending.
J. G. Curtis Leather Company, ..	194 31	L. T. 1904. Pending.
J. G. Curtis Leather Company, ..	195 30	L. T. 1905. Pending.
J. G. White and Company, Incorporated.	284 32	C. S. 1907. Pending.
McCreary and Company, ...	3,945 06	C. S. 1907. Pending.
McCreary and Company, ...	1,834 15	Bonus, 1907. Pending.
Paul Wuesthoff and Company, ..	250 00	C. S. 1907. Verdict for Com'th.
Scranton Gas and Water Company,	22,750 00	C. S. 1907. Verdict for def't.
Scranton Gas and Water Company,	7,890 10	L. T. 1907. Paid.
Quakertown Traction Company, ..	929 86	L. T. 1907. Verdict for def't.
Ridge Avenue Farmers Market Company.	1,250 00	C. S. 1907. Pending.
Pennsylvania Coal and Coke Company.	10,578 27	L. T. 1906. Verdict for Com'th.
Pennsylvania Coal and Coke Company.	8,000 00	C. S. 1906. Verdict for Com'th.
New York, Chicago, St. Louis Railroad Company.	11,566 84	C. S. 1907. Pending.
Lewisburg, Milton and Watsontown Passenger Railway Company.	325 00	C. S. 1907. Paid.
Lake Shore and Michigan Southern Railway Company.	33,306 32	C. S. 1907. Paid.
Economy Light, Heat and Power Company.	400 00	C. S. 1907. Paid.
Delaware, Lackawanna and Western Railroad Company.	628,800 00	C. S. 1907. Paid.
Buffalo, Rochester and Pittsburg Railway Company.	54,240 53	C. S. 1907. Paid.
Buffalo and Lake Erie Traction Company.	5,000 00	C. S. 1907. Verdict for Com'th.
Buffalo and Lake Erie Traction Company.	2,660 38	L. T. 1907. Pending.
Summit Park Land Company, ...	675 00	C. S. 1907. Verdict for Com'th.
Northampton and Bath Railroad Company.	2,500 00	C. S. 1907. Verdict for Com'th.
Howard Gas Coal Company, ...	350 00	C. S. 1907. Verdict for Com'th.
Howard Gas Coal Company, ...	300 00	C. S. 1906. Verdict for Com'th.
Huntingdon and Broadtop Mountain Railroad and Coal Company.	14,750 00	C. S. 1907. Paid.
International Navigation Company,	4,051 41	C. S. 1907. Paid.
W. Dewees Wood Company, ...	1,049 10	L. T. 1906. Verdict for Com'th.
Beech Creek Coal and Coke Company.	10,000 00	C. S. 1906. Verdict for Com'th.
Insurance Company of North America.	20,818 57	C. S. 1907. Pending.
J. B. Lippincot Company, ...	148 67	Bonus. Verdict for def't.
Tidewater Pipe Company, Limited.	40,304 98	C. S. 1907. Paid.
Philadelphia Brewing Company, ..	5,000 00	C. S. 1907. Paid.
Associated Producers Company, ..	14,860 20	C. S. 1907. Paid.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
The Spanish American Iron Company.	420 00	C. S. 1907. Pending.
Maryland Steel Company, ...	403 76	C. S. 1907. Pending.
Bessemer and Lake Erie Railroad Company.	3,000 00	C. S. 1907. Paid.
Republic Coke Company, ...	2,250 00	C. S. 1907. Paid.
National Mining Company, ...	3,000 00	C. S. 1907. Paid.
Meadville, Conneaut Lake and Linesville Railroad Company.	107 50	C. S. 1907. Paid.
Keystone Coal and Coke Company,	2,905 03	L. T. 1907. Verdict for def't.
Keystone Coal and Coke Company	32,776 99	C. S. 1907. Verdict for Com'th.
Clairton Land Company, ...	175 00	C. S. 1907. Paid.
Kingston Coal Company, ...	17,500 00	C. S. 1907. Paid.
Carnegie Natural Gas Company, ..	600 00	C. S. 1907. Paid.
W. K. Niver Coal Company, ...	1,00 00	C. S. 1907. Verdict for Com'th.
Lorain Steel Company of Pennsylvania.	2,763 86	L. T. 1907. Paid.
Union Steel Company, ...	22,874 80	L. T. 1907. Verdict for Com'th.
Union Steel Company, ...	127 50	C. S. 1907. Paid.
Sharon Coke Company, ...	2,165 28	C. S. 1907. Paid.
Sharon Coke Company, ...	1,710 32	L. T. 1907. Verdict for Com'th.
Sharon Land Company, ...	35 00	C. S. 1907. Paid.
St. Clair Terminal Railroad Company.	2,375 00	C. S. 1907. Pending.
River Coal Company, ...	2,250 00	C. S. 1907. Paid.
Lehigh Portland Cement Company,	1,816 71	C. S. 1907. Pending.
Philadelphia Mortgage and Trust Company.	2,893 49	Shares C. S. Pending.
Mortgage Trust Company of Pennsylvania.	2,500 00	Shares C. S. Pending.
Real Estate Trust Company of Philadelphia.	24,411 45	Shares C. S. Pending.
International Harvester Company of America.	305 10	Bonus, 1907. Pending.
International Harvester Company of America.	907 65	C. S. 1907. Pending.
Standard Gas Light Company (Danville).	672 60	L. T. 1905-6-7. Pending.
Standard Electric Light Company (Danville).	570 00	L. T. 1905-6-7. Pending.
The Nelson Valve Company, ...	512 04	Bonus. Pending.
Meadville and Cambridge Springs Street Railway Company.	1,504 40	L. T. 1906. Pending.
Meadville and Cambridge Springs Street Railway Company.	1,504 40	L. T. 1907. Pending.
Hazlewood Savings and Trust Company.	1,183 87	C. S. 1906. Pending.
Knickerbocker Ice Company (Philadelphia).	500 00	C. S. 1907. Paid.
Beechwood Park Amusement Company.	250 00	C. S. 1907. Verdict for Com'th.
Pittsburg, Bessemer and Lake Erie Railroad Comapny.	10,520 88	L. T. 1907. Paid.
T. W. Phillips Gas and Oil Company.	2,982 76	L. T. 1907. Pending.
Delaware and Hudson Company,	50,205 40	C. S. 1907. Paid.
New York and Middle Coal Field Railroad and Coal Company.	6,000 00	C. S. 1907. Pending.
Lehigh Valley Railroad Company,	154,482 58	C. S. 1907. Paid.
Cambria Iron Company, ...	2,250 00	C. S. 1907. Paid.
Delaware, Susquehanna and Schuylkill Railroad Company.	6,250 00	C. S. 1907. Paid.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
Equitable Illuminating Gas Light Company of Philadelphia.	23,575 28	L. T. 1907. Paid.
Glen Summit Hotel and Land Company.	67 50	C. S. 1907. Paid.
Pennsylvania Heat, Light and Power Company.	42,500 00	C. S. 1907. Pending.
Consolidated Real Estate Company,	250 00	C. S. 1907. Paid.
Coxe Brothers and Company, Incorporated.	15,000 00	C. S. 1907. Paid.
Schuylkill and Lehigh Valley Railroad Company.	2,500 00	C. S. 1907. Pending.
Pennsylvania and New York Canal and Railroad Company.	5,000 00	C. S. 1907. Pending. C. S. 1907. Paid.
Class and Nachod Brewing Company.	750 00	C. S. 1907. Pending.
Lehigh Valley Coal Company, ...	45,500 00	C. S. 1907. Paid.
Wyoming Valley Coal Company,	1,850 00	C. S. 1907. Paid.
The United Gas Improvement Company.	332,073 79	C. S. 1907. Paid.
Empire Coal Mining Company, ..	375 00	C. S. 1907. Verdict for def't.
National Biscuit Company, ...	397 12	Bonus. 1907. Pending.
Central Railroad of New Jersey,..	633 33	Bonus. 1907. Pending.
Central Railroad Company of New Jersey.	1,850 00	C. S. 1907. Paid.
Central Railroad Company of New Jersey.	3,124 05	L. T. 1906. Pending.
Central Railroad Company of New Jersey.	3,430 51	L. T. 1907. Pending.
Goodyear Lumber Company, ...	25,745 96	C. S. 1907. Pending.
Mortgage Trust Company of Pennsylvania.	5,514 44	L. T. 1907. Paid.
Scranton Railway Company, ...	7,703 04	L. T. 1907. Paid.
Scranton Railway Company, ...	19,000 00	C. S. 1907. Pending.
Scranton and Carbondale Traction Company.	467 40	L. T. 1907. Pending.
Consolidated Water Supply Company.	4,347 90	L. T. 1907. Verdict for def't.
Cambria Steel Company, ...	8,899 40	C. S. 1907. Paid.
Harrisburg Gas Company, ...	4,162 83	L. T. 1907. Paid.
Northern Electric Light and Power Company.	5,400 00	C. S. 1907. Pending.
United States Electric Lighting Company.	690 13	C. S. 1907. Pending.
Brush Electric Light Company, ..	4,333 33	C. S. 1907. Verdict for Com'th.
Edison Electric Light Company of Philadelphia.	19,833 75	C. S. 1907. Verdict for Com'th.
Wyoming Valley Coal Company,	989 60	L. T. 1907. Pending.
Dodson Coal Company, ...	1,300 00	C. S. 1907. Paid.
Hudson Coal Company, ...	550 00	C. S. 1907. Verdict for Com'th.
The Carlisle Gas and Water Company.	188 10	L. T. 1907. Pending.
Provident Life and Trust Company of Philadelphia.	121,881 77	C. S. 1907. Pending.
W. J. McCahan Sugar Refining Company.	677 50	C. S. 1907. Pending.
York Haven Water and Power Company.	5,000 00	C. S. 1907. Pending.
Archbald Water Company, ...	800 00	C. S. 1907. Paid.
Olyphant Water Company, ...	940 00	C. S. 1907. Pending.
Dunmore Gas and Water Company,	650 00	C. S. 1907. Paid.
Lehigh Valley Transit Company, ..	20,697 74	L. T. 1907. Verdict for Com'th.
Keystone Watch Case Company, ..	8,308 00	L. T. 1907. Paid.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
Easton Transit Company, ...	1,020 89	L. T. 1907. Paid.
Easton, Palmer and Bethlehem Street Railway Company.	500 00	V. S. 1907. Pending.
Easton and South Bethlehem Transit Company.	750 00	C. S. 1907. Pending.
Northampton Portland Cement Company.	383 80	L. T. 1907. Pending.
Pine Run Coal and Coke Company,	125 00	C. S. 1907. Verdict for def't.
Paulton Coal Mining Company, ..	175 00	C. S. 1907. Verdict for def't.
Lehigh Valley Transit Company,	3,725 64	G. R. Pending.
Cheltenham Electric Light, Heat and Power Company.	250 00	C. S. 1907. Paid.
Philadelphia Mortgage and Trust Company.	1,956 12	L. T. 1907. Pending.
Chester Electric Light and Power Company.	247 00	L. T. 1907. Verdict for def't.
White Haven Water Company, ..	30 40	L. T. 1907. Verdict for def't.
Commonwealth Trust Company,..	2,577 46	C. S. 1907. Pending.
Sharon Steel Company, ...	3,392 70	L. T. 1907. Pending.
Farmers and Mechanics Trust Company (West Chester).	193 27	C. S. 1907. Pending.
Carbondale Railway Company, ..	218 50	L. T. 1907. Verdict for def't.
Standard Ice Manufacturing Company.	577 60	C. S. 1907. Paid.
Mount Vernon Cemetery Company,	125 00	C. S. 1907. Pending.
Allentown Iron Company, ...	175 00	C S. 1901. Paid.
DuBois Electric Company, ...	400 00	C. S. 1907. Verdict for def't.
Westinghouse Air Brake Company,	27,066 54	C. S. 1907. Pending.
Standard Real Estate Improvement Company.	462 96	L. T. 1907. Pending.
Pittsburg-Buffalo Company, ...	5,428 08	L. T. 1907. Pending.
Pennsylvania Central Brewing Company.	3,875 00	C. S. 1907. Pending.
Belle Vernon Bridge Company, ..	232 87	L. T. 1907. Pending.
Lehighton Water Supply Company,	2,946 94	L. T. 1905-6-7. Pending.
Philadelphia, Bristol and Trenton Street Railway Company.	756 20	L. T. 1906. Pending.
Philadelphia, Bristol and Trenton Street Railway Company.	756 20	L. T. 1907. Pending.
The Eastern Steel Company, ...	506 67	L. T. 1907. Verdict for def't.
Lackawanna Steel Company, ...	288 80	L. T. 1905. Pending.
Lackawanna Steel Company, ...	125 00	C. S. 1905. Pending.
Greensburg and Hempfield Electric Street Railway Company (now the Pittsburg, McKeesport and Greensburg Railway Company).	175 00	C. S. 1900. Verdict for Com'th.
Greensburg and Hempfield Electric Street Railway Company (now the Pittsburg, McKeesport and Greensburg Railway Company).	2,100 00	C. S. 1901-1907. Verdict for Com'th.
Pittsburg, McKeesport and Greensburg Railway Company.	3,400 00	L. T. 1907. Paid.
Pittsburg, McKeesport and Greensburg Railway Company.	10,300 00	C. S. 1906-7. Pending.
Keystone Telephone Company of Philadelphia.	10,498 99	L. T. 1907. Paid.
Keystone Telephone Company of Philadelphia.	8,812 00	C. S. 1907. Paid.
John B. Stetson Company, ...	3,274 35	C. S. 1907. Pending.
Santo Domingo Silver Mining Company.	120 00	C. S. 1904. Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
Philadelphia and Chester Railway Company.	836 00	L. T. 1907. Pending.
Johnetta Coal Company, ...	4,367 38	L. T. 1907. Pending.
Wilkes-Barre and Wyoming Valley Traction Company.	4,276 26	L. T. 1907. Pending.
Wilkes-Barre, Dallas and Harveys Lake Railway Company.	448 40	L. T. 1907. Pending.
Pennsylvania Company for Insurance on Lives and Granting Annuities.	17,970 90	C. S. 1907. Pending.
Acme Coal Mining Company, ...	1250 00	C. S. 1904. Paid.
Acme Coal Mining Company, ...	1250 00	C. S. 1905. Paid.
Acme Coal Mining Company, ...	1250 00	C. S. 1906. Paid.
Acme Coal Mining Company, ...	150 00	C. S. 1907. Paid.
Kramer-Web Manufacturing Company.	137 50	C. S. 1903. Verdict for def't.
Kramer-Web Manufacturing Company.	550 00	C. S. 1904. Verdict for def't.
Kramer-Web Manufacturing Company.	550 00	C. S. 1905. Verdict for def't.
Kramer-Web Manufacturing Company.	550 00	C. S. 1906. Verdict for def't.
Kramer-Web Manufacturing Company.	550 00	C. S. 1907. Verdict for def't.
Julius Christensen and Company,	322 05	L. T. 1907. Pending.
Dauphin County Gas Company,..	1,407 38	L. T. 1907. Pending.
Chester County Gas Company, ...	1,005 44	L. T. 1907. Pending.
Lehigh Coal and Navigation Company.	147,432 92	C. S. 1907. Paid.
Clairton Steel Company, ...	2,819 44	C. S. 1907. Paid.
American Railways Company, ..	7,084 48	L. T. 1907. Verdict for def't.
Allentown Gas Company, ...	1,181 66	L. T. 1907. Pending.
Buffalo and Susquehanna Railway Company.	1,833 72	G. R. Pending.
Merion and Radnor Gas and Electric Company.	4,258 35	L. T. 1907. Pending.
Maderia, Hill and Company, ...	401 00	L. 1904. Pending.
Maderia, Hill and Company, ...	274 27	L. T. 1905. Pending.
Lycoming Improvement Company,	74 50	C. S. 1907. Pending.
Lycoming Improvement Company,	3,673 29	L. T. 1907. Pending.
Harbison-Walker Company, ...	2,290 24	L. T. 1907. Pending.
Harbison-Walker Refractories Companies.	5,454 34	L. T. 1907. Pending.
Northern Iron Company, ...	268 39	Bonus. Pending.
Northern Iron Company, ...	456 05	C. S. 1907. Pending.
Manufacturers Gas and Fuel Company.	425 00	C. S. 1907. Pending.
Williams Valley Light, Heat and Power Company.	250 00	C. S. 1907. Pending.
Darby, Media and Chester Street Railway Company.	3,492 20	L. T. 1907. Pending.
Empire Passenger Railway Company.	760 00	L. T. 1907. Pending.
Peoples Passenger Railway Company.	2,935 00	L. T. 1907. Pending.
Philadelphia and Willow Grove Company.	3,930 00	L. T. 1907. Pending.
Doylestown and Willow Grove Railway Company.	1,940 00	L. T. 1907. Pending.
Market Street Elevated Passenger Railway Company.	39,750 00	L. T. 1907. Pending.
Continental Passenger Railway Company.	1,068 80	L. T. 1907. Pending.

SCHEDULE C—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1908.

Name.	Amount.	Remarks.
Hestonville, Mantua and Fairmount Passenger Railroad Company.	4,925 00	L. T. 1907. Pending.
Philadelphia and Darby Railway Company.	380 00	L. T. 1907. Pending.
Philadelphia City Passenger Railway Company.	1,148 00	L. T. 1907. Pending.
Union Passenger Railway Company.	2,935 00	L. T. 1907. Pending.
Thirteenth and Fifteenth Streets Passenger Railway Company.	2,298 20	L. T. 1907. Pending.
Seventeenth and Nineteenth Streets Passenger Railway Company.	380 00	L. T. 1907. Pending.
Twenty-Second Street and Allegheny Railway Company.	5,614 00	C. S. 1907. Pending.
West Philadelphia Passenger Railway Company.	3,914 08	L. T. 1907. Pending.
Catharine and Bainbridge Streets Railway Company.	570 00	L. T. 1907. Pending.
Electric Traction Company, ...	31,322 40	C. S. 1907. Pending.
Electric Traction Company, ...	1,077 12	L. T. 1907. Pending.
Philadelphia Traction Company, ..	75,516 00	C. S. 1907. Pending.
Philadelphia Traction Company, ..	1,983 78	Pending, L. 1907.
Peoples Traction Company, ...	36,401 32	C. S. 1907. Pending.
Philadelphia Rapid Transit Company.	78,839 20	C. S. 1907. Pending.
Union Traction Company, ...	95,994 37	C. S. 1907. Pending.
Union Traction Company of Philadelphia.	5,713 04	L. 1907. Pending.
Lackawanna Steel Company, ...	51 02	Bonus, 1907. Pending.

SCHEDULE D.

LIST OF CASES ARGUED IN THE SUPREME COURT OF PENNSYLVANIA DURING THE YEARS 1907 AND 1908.

Commonwealth of Pennsylvania ex rel., Hampton L. Carson, Attorney General, vs. A. H. Rowe, J. S. Strickler, H. C. Criswell, J. E. Frantz, W. J. C. Jacobs and F. M. Stoler, school directors of Waynesboro school district, appellants. Reported in 218 Pa. 168, ...	Reversed.
Commonwealth of Pennsylvania ex rel., Hampton L. Carson, Attorney General, vs. Broad Street Rapid Transit Street Railway Company, appellant. Reported in 219 Pa. 11, ...	Reversed.
The Pennsylvania Railroad Company vs. Philadelphia County, appellant. Reported in 220 Pa. 100, ...	Affirmed.
Commonwealth vs. Edward Emmers, appellant. Reported in 221 Pa. 298, ...	Affirmed.
Commonwealth of Pennsylvania, appellant, vs. Clairton Steel Company. Reported in 222 Pa., 293, ...	Affirmed.
Commonwealth of Pennsylvania ex rel., Hampton L. Carson, Attorney General, appellant, vs. Beaver Valley Railroad Company. Reported in 222 Pa. 220, ...	Affirmed.
Jeremiah C. Jones, on behalf of himself and other stockholders of Lincoln Savings and Trust Company, who desire to become parties may contribute to the expense of this suit vs. Lincoln Savings and Trust Company. Appeal of M. Hampton Todd, Attorney General. Reported in 222 Pa., 325, ...	Affirmed.
Jeremiah C. Jones, on behalf of himself and other stockholders of Lincoln Savings and Trust Company, who desire to become parties may contribute to the expense of this suit vs. Lincoln Savings and Trust Company. Appeal of Charles F. Warwick. Reported in 222 Pa., 325,	Affirmed.

LIST OF CASES ARGUED IN THE SUPERIOR COURT OF PENNSYLVANIA DURING THE YEARS 1907 AND 1908.

Commonwealth of Pennsylvania vs. Samuel W. Black Company, a corporation, appellant. Reported in 34 Superior Court Reports, 431, ...	Affirmed.
John F. Walsh to use of the Commonwealth of Pennsylvania vs. The County of Luzerne. Reported in Superior Court Reports, ...	Affirmed.

LIST OF CASES ARGUED IN THE CIRCUIT COURT OF THE UNITED STATES DURING THE YEARS 1907 AND 1908.

W. D. McKeefrey, a citizen and resident of Leetonia, Ohio, and John McKeefrey, N. J. McKeefrey and W. D. McKeefrey, all citizens and residents of Leetonia, Ohio, partners doing business under the name of McKeefrey & Co., plaintiffs, vs. Iron City Trust Company, a corporation organized and existing under the laws of Pennsylvania. Defendants.

SCHEDULE E.

ACTIONS IN ASSUMPSIT INSTITUTED IN COMMON PLEAS OF DAUPHIN COUNTY.

Name of Defendant.	Nature of Claim.	Amount.	Remarks.
Huntingdon and Clearfield Telephone Company.	Bonus, ...	$1,663 34	Paid.
National Ice Company of Philadelphia.	Bonus, ...	200 00	Judgment for Com'th and execution.
Union Telephone Company of Erie.	Bonus, ...	1,663 34	Paid.
Lithuanian Cooperative Association.	Bonus, ...	33 34	Out of business.
Charles F. Cook, Register of Wills of Somerset county and Jonas M. Cook and Jesse J. Cook.	Suit to recover collateral inheritance tax collected.	4,365 49	Paid.
Pottstown Borough, Montgomery county.	Tax on corporate loans for 1899 to 1907 inclusive.	1,458 25	Pending.
Mary Mullin (formerly Mary Campbell), Trustee for John Campbell vs. William H. Berry, Treasurer of the State of Pennsylvania.	Suit to recover unclaimed deposit in savings bank, under provisions of Act of April 17, 1872 (P. L. 16).	418 67	Verdict for plaintiff. Paid.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
Commonwealth of Pennsylvania, ex rel., Clara Vare, executrix of the last will and testament of George A. Vare, late of the city of Philadelphia, deceased. vs. John O. Sheatz, State Treasurer of Pennsylvania.	Alternative Mandamus awarded. Pending.

SCHEDULE F.

LIST OF CASES NOW PENDING IN THE SUPREME COURT OF PENNSYLVANIA.

Commonwealth of Pennsylvania, appellant, vs. Lancaster county.

Commonwealth of Pennsylvania, appellant, vs. The County of Allegheny.

Commonwealth of Pennsylvania, appellant, vs. American Steel Hoop Company, now Carnegie Steel Company.

Commonwealth of Pennsylvania vs. John Caldwell, Jr., Joshua Rhodes, J. McM. King, Walter Chess, Thomas Evans and William Montgomery. Appeal of Joshua Rhodes.

Commonwealth of Pennsylvania vs. William Stewart, Walter Chess, William Montgomery, Thomas Evans, Robert McAfee, William H. Latshaw, Joshua W. Rhodes and Henry Oliver. Appeal of Executors of Joshua W. Rhodes, deceased.

Commonwealth of Pennsylvania vs. John Caldwell, Jr., Joshua Rhodes, J. McM. King, Walter Chess, Thomas Evans and W. Montgomery. Appeal of Walter Chess.

Commonwealth of Pennsylvania vs. William Stewart, Walter Chess, William Montgomery, Thomas Evans, Robert McAfee, Joshua W. Rhodes, Henry Oliver and William H. Latshaw. Appeal of Walter Chess.

Commonwealth of Pennsylvania vs. John Caldwell, Jr., Joshua Rhodes, J. McM. King, Walter Chess, Thomas Evans and W. Montgomery. Appeal of Thomas Evans.

Commonwealth of Pennsylvania vs. William Stewart, Walter Chess, William Montgomery, Thomas Evans, Robert McAfee, Joshua W. Rhodes, Henry Oliver and William H. Latshaw. Appeal of Thomas Evans.

Commonwealth el rel., M. Hampton Todd, Attorney General, vs. The Lincoln Savings and Trust Company of Philadelphia, appellant.

CASES NOW PENDING IN THE SUPERIOR COURT OF PENNSYLVANIA.

Commonwealth vs. Sanderson, Snyder, Mathues and Shumaker.
Appeal of John H. Sanderson.
Appeal of William P. Snyder.
Appeal of William L. Mathues.
Appeal of James M. Shumaker.

CASE NOW PENDING IN THE CIRCUIT COURT OF THE UNITED STATES

W. D. McKeefrey, a citizen and resident of Leetonia, Ohio, and John McKeefrey, N. J. McKeefrey and W. D. McKeefrey, all citizens and residents of Leetonia, Ohio, partners doing business under the name of McKeefrey & Company, plaintiffs, vs. Iron City Trust Company, a corporation organized and existing under the laws of Pennsylvania, defendants.

SCHEDULE G.

LIST OF EQUITY CASES.

Names of Parties.	Action Taken.
Commonwealth of Pennsylvania, plaintiff, vs. The Philadelphia and Erie Railroad Company, the Pennsylvania Railroad Company.	Bill filed in Dauphin county. Amicably adjusted.
Commonwealth of Pennsylvania, plaintiff, vs. Pittsburg, McKeesport and Youghiogheny Railroad Company, Pittsburg and Lake Erie Railroad Company.	Bill filed in Dauphin county. Amicably adjusted.
The Pennsylvania Railroad Company, vs. The county of Philadelphia.	Bill field. Decree entered by Court of Common pleas No. 4, Philadelphia county, sitting in equity, in favor of plaintiff. Affirmed by Supreme Court. See 220 Pa. 100 &c.
Philadelphia and Reading Railway Company, plaintiff, vs. Philadelphia county, defendant.	Bill filed. Argued in Court of Common Pleas No. 4, Philadephia county, sitting in equity. Pending.
United States Fidelity and Guaranty Company, a corporation, vs. Allegheny National Bank, a corporation, Robert Lyons, Receiver of the Allegheny National Bank, M. Hampton Todd, Attorney General of the Commonwealth of Pennsylvania and John O. Sheatz, Treasurer of the Commonwealth of Pennsylvania, defendants.	Bill filed in Allegheny county. Preliminary injunction continued. Pending on motion and argument to dissolve.
Fidelity and Deposit Company of Maryland, a corporation, complainant, vs. Allegheny National Bank, a corporation, Robert Lyons, receiver of the Allegheny National Bank, M. Hampton Todd, Attorney General of the Commonwealth of Pennsylvania and John O. Sheatz, Treasurer of the Commonwealth of Pennsylvania, respondents.	Bill filed in Allegheny county. Preliminary injunction continued. Pending on motion and argument to dissolve.
The Provident Life and Trust Company of Philadelphia, complainant, vs. John S. Hammond and H. Gilbert Cassidy, assessors, and Simon Gratz, Rinaldo A. Lukens and J. Wesley Durham, members of the Board of Revision of Taxes for the city and county of Philadelphia.	Bill filed in Philadelphia county. Preliminary injunction awarded. Pending.

QUO WARRANTO PROCEEDINGS.

The Provident Beneficial Association of Philadelphia.	Allowed. Decree of dissolution.
Philanthropic Mutual Benefit Society, Philadelphia, Pa.	Allowed. Pending.

SCHEDULE H.

PROCEEDINGS HAVE BEEN INSTITUTED BY THIS DEPARTMENT AGAINST THE FOLLOWING INSURANCE COMPANIES, BUILDING AND LOAN ASSOCIATIONS, BANKS AND TRUST COMPANIES.

Name of Defendant.	Result.
Lumbermens' and Merchants' Mutual Fire Insurance Company of Williamsport.	Dissolved. Receiver.
New Castle Savings and Trust Company, New Castle.	Dissolved. Receiver.
Lincoln Savings and Trust Company of Philadelphia.	Proceedings abandoned.
The Peoples' Mutual Savings Fund and Loan Association, Mt. Pleasant.	Dissolved. Receiver.
German National Building and Loan Association of Pittsburg.	Dissolved. Receiver.
New Equitable Building and Loan Association of Scranton.	Dissolved. Receiver.
First Northern Colored Co-operative Banking Association.	Dissolved.
Keystone Bonding Company, ...	Dissolved. Receiver.
Keystone Trust Company, ...	Dissolved.
Lincoln Savings and Trust Company of Philadelphia.	Dissolved. Receiver.
Reliance Trust Company of Pittsburg,	Dissolved. Receiver.
Iron City Trust Company of Pittsburg,	Dissolved. Receiver.
First Mortgage Guarantee and Trust Company of Philadelphia.	Proceedings discontinued.
Traders' Mutual Fire Insurance Company of Philadelphia.	Pending.
Independence Mutual Life Insurance Company of Philadelphia.	Unable to locate officers of company.
Traders' and Mechanics' Bank of Pittsburg.	Dissolved. Receiver.
Treasury Trust Company of Pittsburg,	Dissolved. Receiver.
German National Building and Loan Association of Pittsburg.	Dissolved. Receiver.
Pennsylvania Mutual Life Insurance Company of Philadelphia.	Proceedings discontinued.
Oriental Mutual Fire Insurance Company of Johnstown.	Pending.
Integrity Mutual Fire Insurance Company of Philadelphia.	Pending.

SCHEDULE I.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
1907.			
Jan. 2,	Lake Shore and Michigan Southern Railway Company:		
	Capital stock, 1905,	$1,000 00	
	Fees of office,	50 00	
			$1,050 00
2,	Shenango Valley Railroad Company:		
	Capital stock, 1905,	$75 00	
	Fees of office,	3 75	
			78 75
2,	Huntingdon Gas Company:		
	Capital stock, 1905,	$25 00	
	Fees of office,	1 25	
			26 25
3,	N. Z. Graves Company:		
	Capital stock, 1905,	$2 75	
	Fees of office,	14	
			2 89
3,	Westinghouse Electric and Manufacturing Company:		
	Capital stock, 1904,	$7,100 00	
	Fees of office,	355 00	
			7,455 00
4,	Fairmount Park Transportation Company:		
	Capital stock, 1905,	$525 00	
	Fees of office,	26 25	
			551 25
4,	Woodside Real Estate Company:		
	Capital stock, 1905,	$100 00	
	Fees of office,	5 00	
			105 00
7,	Delaware, Lackawanna and Western Railroad Company:		
	Loans tax, 1905,	$375 00	
	Fees of office,	18 75	
			384 75
7,	Real Estate Holding Company:		
	Capital stock, 1905,	$5 00	
	Fees of office,	25	
			5 25
9,	Delaware, Lackawanna and Western Railroad Company:		
	Capital stock, 1905,	$19,500 00	
	Fees of office,	975 00	
			20,475 00
9,	Water Street Bridge Company:		
	Capital stock, 1905,	$230 00	
	Fees of office,	11 50	
			241 50
9,	Edison Electric Light Company of Philadelphia:		
	Capital stock, 1905, $900 00		
	Capital stock, 1904, 1,250 00		
		$2,150 00	
	Fees of office,	107 50	
			2,257 50
9,	The Philadelphia Electric Company:		
	Capital stock, 1904,	$4,107 50	
	Fees of office,	205 37	
			312 87
9,	Pennsylvania Heat, Light and Power Company:		
	Capital stock, 1904, $6,000 00		
	Capital stock, 1905, 6,250 00		
		$12,250 00	
	Fees of office,	612 50	
			12,862 00

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.			Amount.
9	Northern Electric Light and Power Company,			
	Capital stock, 1904,		$275 00	
	Fees of office,		13 75	
				288 75
9,	Germantown Electric Light Company:			
	Capital stock, 1904,		$125 00	
	Fees of office,		6 25	
				131 25
9,	Southern Electric Light and Power Company:			
	Capital stock, 1904,		$625 00	
	Fees of office,		31 25	
				656 25
9,	Overbrook Electric Company:			
	Capital stock, 1904,	$100 00		
	Capital stock, 1905,	50 00		
			$150 00	
	Fees of office,		7 50	
				157 00
9,	Lehigh Coal and Navigation Company:			
	Capital stock, 1905,		$13,500 00	
	Fees of office,		675 00	
				14,175 00
10,	Columbia and Montour Electric Railway Company:			
	Capital stock, 1900,	$150 00		
	Capital stock, 1901,	175 00		
	Capital stock, 1902,	200 00		
	Capital stock, 1903,	200 00		
	Capital stock, 1904,	300 00		
	Capital stock, 1905,	300 00		
	Loans tax 1901,	333 00		
	Loans tax 1902,	665 00		
	Loans tax 1903,	665 00		
	Loans tax, 1904,	665 00		
	Loans tax 1905,	665 00		
			$4,318 00	
	Fees of office,		215 90	
				4,533 90
11,	Westinghouse Electric and Manufacturing Company:			
	Capital stock, 1905,		$7,187 50	
	Fees of office,		359 38	
				7,546 88
14,	Consumers Brewing Company of Erie:			
	Capital stock, 1905,		$12 50	
	Fees of office,		63	
				13 12
14,	York Haven Water and Power Company:			
	Capital stock, 1901,	$150 00		
	Capital stock, 1902,	100 00		
	Capital stocw, 1903,	200 00		
	Capital stock, 1904,	350 00		
	Capital stock, 1905,	600 00		
	Loans tax 1902,	590 00		
	Loans tax 1901,	57 00		
	Loans tax 1903,	211 00		
	Loans tax 1904,	336 00		
	Loans tax 1905,	342 00		
			$2,836 00	
	Fees of office,		141 80	
				2,977 80
14,	Ross Tacony Crucible Company:			
	Capital stock, 1905,		$43 00	
	Fees of office,		2 15	
				45 15

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
14,	Dunbar Furnace Company:		
	Capital stock, 1904,	$150 00	
	Fees of office,	7 50	
			157 00
14,	Pennsylvania Salt Manufacturing Company,.		
	Capital stock, 1905,	$100 00	
	Fees of office,	5 00	
			105 00
14,	Central Railroad Company of New Jersey:		
	Capital stock, 1905,	$900 00	
	Fees of office,	45 00	
			945 00
14,	The United Gas Improvement Company:		
	Bonus,	$1,558 20	
	Fees of office,	77 91	
			1,636 13
14,	American Ice Company:		
	Capital stock, 1905,	$1,560 00	
	Fees of office,	78 00	
			1,638 00
14,	Pennsylvania Coal Company:		
	Capital stock, 1904,	$25 00	
	Fees of office,	26 25	
			51 25
The foregoing collections were made during the term of Attorney General Carson.			
	Amount continued,		$84,850 98
17,	People's Light Company of Pittston:		
	Loans tax 1903,	$106 40	
	Loans tax 1904,	106 40	
	Loans tax 1905,	106 40	
		$319 20	
	Fees of office,	15 96	
			335 16
18,	Mt. Vernon Cemetery Company:		
	Capital stock, 1856-91,	$270 00	
	Capital stock, 1892-99,	250 00	
	Capital stock, 1900-05,	422 25	
		$942 25	
	Fees of office,	47 11	
			989 36
18,	Consolidated Real Estate Company:		
	Capital stock, 1905,	$25 00	
	Fees of office,	1 25	
			26 25
18,	Schuylkill and Lehigh Valley Railroad Company:		
	Capital stock, 1905,	$200 00	
	Fees of office,	10 00	
			210 00
18,	Pennsylvania and New York Canal and Railroad Co.:		
	Capital stock, 1905,	$200 00	
	Fees of office,	10 00	
			210 00
18,	Loyalsock Railroad Company:		
	Capital stock, 1905,	$400 00	
	Fees of office,	20 00	
			420 00
18,	Easton and Northern Railroad Company:		
	Capital stock, 1905,	$100 00	
	Fees of office,	5 00	
			105 00

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.			Amount.
18,	Western Union Telegraph Company:			
	Capital stock, 1903,	$1,000 00		
	Capital stock, 1904,	1,500 00		
			$2,500 00	
	Fees of office,		125 00	
				2,625 00
18,	Woodruff Sleeping Parlor Coach Company:			
	Capital stock, 1905,		$10 00	
	Fees of office,		50	
				10 50
18,	Hazleton Water Company:			
	Capital stock, 1905,		$350 00	
	Fees of office,		17 50	
				367 50
18,	Lehigh Valley Railroad Company:			
	Capital stock, 1905,		$1,250 00	
	Fees of office,		62 50	
				1,312 50
18,	Delaware, Susquehanna and Schuylkill Railroad Co.:			
	Capital stock, 1905,		$1,250 00	
	Fees of office,		62 50	
				1,312 50
21,	Wyoming Valley Coal Company:			
	Capital stock, 1905,		$225 00	
	Fees of office,		11 25	
				236 25
21,	New York and Middle Coal Field Railroad and Coal Co.:			
	Capital stock, 1905,		$1,800 00	
	Fees of office,		90 00	
				1,890 00
21,	Curtis Publishing Company:			
	Capital stock, 1905,		$600 00	
	Fees of office,		20 00	
				620 00
23,	Lehigh Valley Coal Company:			
	Capital stock, 1905,	$350 00		
	Loans tax, 1905,	523 00		
			$873 00	
	Fees of office,		31 15	
				904 15
24,	Sorosis Shoe Company of Pittsburg:			
	Capital stock, 1905,		$25 00	
	Fees of office,		1 25	
				26 25
24,	Sorosis Shoe Company of Philadelphia:			
	Capital stock, 1905,		$27 07	
	Fees of office,		1 35	
				28 42
25,	Glen Summit Hotel and Sand Company:			
	Capital stock, 1905,		$67 50	
	Fees of office,		3 37	
				70 87
25,	Coxe Brothers & Company, Inc.:			
	Capital stock, 1905,		$100 00	
	Fees of office,		5 00	
				105 00
28,	St. Benedict Village Company:			
	Capital stock, 1902,	$21 25		
	Capital stock, 1903,	5 00		
	Capital stock, 1904,	5 00		
			$31 25	
	Fees of office,		1 56	
				32 81

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.			Amount.
28,	Coaldale Mining Company:			
	Capital stock, 1903,		$12 50	
	Fees of office,		63	
				13 13
29,	Boston and Philadelphia Steamship Company:			
	Capital stock, 1903-4-5,	$3,925 00		
	Capital stock, 1902,	462 50		
			$4,387 50	
	Fees of office,		219 38	
				4,606 88
29,	Lucesco Coal Company:			
	Capital stock, 1905,		$95 00	
	Fees of office,		4 75	
				99 75
29,	Huron Coal Company:			
	Capital stock, 1905,		$5 00	
	Fees of office,		25	
				5 25
30,	Republic Iron and Steel Company:			
	Bonus,	$436 67		
	Capital stock, 1902,	47 21		
	Capital stock, 1903,	25 28		
	Capital stock, 1904,	25 28		
	Capital stock, 1905,	508 07		
			$1,042 51	—
	Fees of office,		52 11	
				1,094 62
31,	Sayre Land Company:			
	Capital stock, 1905,		$37 50	
	Fees of office,		1 88	
				39 38
Mar. 4,	People's Ice Light and Storage Company:			
	Capital stock, 1905,		$88 50	
	Fees of office,		4 43	
				92 93
5,	D. L. Clark Company:			
	Loans, 1905,		$50 00	
	Fees of office,		2 50	
				52 50
18,	Northern Liberties Railway Company:			
	Capital stock, 1905,		$98 00	
	Fees of office,		4 90	
				102 90
26,	Olean Rock City and Bradford Railroad Company:			
	Loans, 1904,		$96 00	
	Fees of office,		4 80	
				$100 80
Apr. 3,	H. C. Frick Coke Company:			
	Capital stock, 1905,		$1,797 00	
	Fees of office,		89 85	
				1,886 85
3,	Cambria Coal Mining Company:			
	Capital stock, 1905,		$75 00	
	Fees of office,		3 75	
				78 75
4,	Clairton Steel Company:			
	Capital stock, 1904,		$24 25	
	Fees of office,		1 21	
				25 46
4,	Carnegie Land Company:			
	Capital stock, 1905,		$450 00	
	Fees of office,		22 50	
				472 50

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
5,	St. Clair Terminal Railroad Company:		
	Capital stock, 1905,	$450 00	
	Fees of office,	22 50	
			472 50
8,	Union Railroad Company:		
	Capital stock, 1905,	$4,300 00	
	Fees of office,	215 00	
			4,515 00
8,	Clearfield Bituminous Coal Corporation:		
	Loans, 1905,	$12 00	
	Fees of office,	60	
			12 60
8,	Carnegie Natural Gas Company:		
	Capital stock, 1905,	$200 00	
	Fees of office,	10 00	
			210 00
15,	National Tube Company of New Jersey:		
	Capital stock, 1905,	$80 00	
	Fees of office,	4 00	
			84 00
15,	Union Supply Company:		
	Capital stock, 1905,	$875 00	
	Fees of office,	43 75	
			918 75
15,	Hecla Coke Company:		
	Capital stock, 1905,	$975 00	
	Fees of office,	48 75	
			1,023 75
15,	Republic Coke Company:		
	Capital stock, 1905,	$250 00	
	Fees of office,	12 50	
			262 50
16	Monongahela Southern Railroad Company:		
	Capital stock, 1905,	$30 00	
	Fees of office,	1 50	
			31 50
16,	Etna and Montrose Railroad Company:		
	Capital stock, 1905,	$200 00	
	Fees of office,	10 00	
			210 00
16,	River Coal Company:		
	Capital stock, 1905,	$375 00	
	Fees of office,	18 75	
			393 75
16,	Pittsburg Bessemer and Lake Erie Railroad Company:		
	Loans, 1905, $394 00		
	Capital stock, 1905, 1,100 00		
		$1,494 00	
	Fees of office,	74 70	
			1,568 70
16,	Bessemer and Lake Erie Railroad Company:		
	Capital stock, 1905,	$450 00	
	Fees of office,	22 00	
			472 50
16,	Mingo Coal Company:		
	Capital stock, 1904,	$5 00	
	Fees of office,	25	
			5 25
16,	Meadville, Conneaut Lake and Linesville Railroad Co.:		
	Capital stock, 1892-05,	$205 00	
	Fees of office,	10 25	
			215 25

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
16,	Union Steel Company:		
	Capital stock, 1905,	$127 50	
	Fees of office,	6 38	
			133 88
16,	Sharon Steel Company:		
	Loans, 1905,	$535 00	
	Fees of office,	26 75	
			561 75
16,	Clairton Land Company:		
	Capital stock, 1905,	$150 00	
	Fees of office,	7 50	
			157 50
16,	Sharon Land Company:		
	Capital stock, 1905,	$25 00	
	Fees of office,	1 25	
			26 25
17,	Clairton Steel Company:		
	Capital stock, 1905,	$250 00	
	Fees of office,	12 50	
			262 50
25,	Sharon Coke Company:		
	Capital stock, 1905,	$210 00	
	Fees of office,	10 50	
			220 50
26,	Cameron Lumber Company:		
	Capital stock, 1904,	$125 00	
	Fees of office,	6 25	
			131 25
26,	Pittsburg and Ohio Valley Railway Company:		
	Capital stock, 1905,	$75 00	
	Fees of office,	3 75	
			78 75
June 13,	McCall Ferry Power Company:		
	Capital stock, 1905,		100 00
24,	Mutual Telephone Company:		
	Bonus, balance due,		83 34
July 1,	City Bank of York, Pa.:		
	Bonus, balance due,		250 00
1,	Wm. Kavanaugh Company:		
	Bonus, balance due,		250 00
9,	Westmoreland Coal Company:		
	Capital stock, 1906,	$1,025 00	
	Fees of office,	54 25	
			1,079 25
9,	Bell Telephone Company of Philadelphia:		
	Capital stock, 1906,	$7,831 55	
	Fees of office,	394 58	
			8,226 13
9,	Commercial Trust Company:		
	Capital stock, 1906,	$800 00	
	Fees of office,	43 00	
			843 00
9,	American Dredging Company:		
	Capital stock, 1906,	$350 00	
	Fees of office,	20 50	
			370 50
9,	Schenley Distilling Company:		
	Capital stock, 1906,	$325 00	
	Fees of office,	19 25	
			344 25
9,	Guarantee Trust and Safe Deposit Company:		
	Capital stock, 1906,	$1,025 00	
	Fees of office,	54 25	
			1,079 25

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
9,	Hollenback Coal Company:		
	Capital stock, 1906,	$400 00	
	Fees of office,	23 00	
			423 00
9,	Sterling Coal Company:		
	Capital stock, 1906,	$75 00	
	Fees of office,	6 75	
			81 75
9,	Silver Brook Coal Company:		
	Capital stock, 1906,	$100 00	
	Fees of office,	8 00	
			108 00
9,	Upper Lehigh Supply Company, Limited:		
	Capital stock, 1906,	$55 00	
	Fees of office,	5 75	
			60 75
9,	McCall Ferry Power Company:		
	Fees of office,	$3 00	
	Laurel Hill Cemetery company:		
	Fees of office,	3 00	
			6 00
10,	Kendig Chocolate Company now Ideal Cocoa and Chocolate Company:		
	Bonus, balance due,		416 67
10,	Penn Gas Coal Company:		
	Capital stock, 1906,	$875 00	
	Fees of office,	46 75	
			921 75
10,	Pennsylvania Company for Insurance on Lives and Granting Annuities:		
	Capital stock, 1906,	$900 00	
	Fees of office,	48 00	
			948 00
10,	Philadelphia Mortgage and Trust Company:		
	Capital stock, 1906,	$300 00	
	Fees of office,	18 00	
			318 00
10,	Diamond Coal Land Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
10,	Parrish Coal Company:		
	Capital stock, 1906,	$62 50	
	Fees of office,	6 12	
			68 62
10,	Cascade Coal and Coke Company:		
	Capital stock, 1906,	$82 50	
	Fees of office,	7 12	
			89 62
11,	Edri Coal Company:		
	Capital stock, 1906,	$187 50	
	Fees of office,	12 38	
			199 88
11,	Alden Supply Company, Limited:		
	Capital stock, 1906,	$15 00	
	Fees of office,	3 75	
			18 75
11,	Thomas Colliery Company:		
	Capital stock, 1906,	$75 00	
	Fees of office,	6 75	
			81 75
11,	Dodson Coal Company:		
	Capital stock, 1906,	$200 00	
	Fees of office,	13 00	
			213 00

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
11,	Bowman Coal Mining Company:		
	Capital stock, 1906,	$76 97	
	Fees of office,	6 85	
			83 82
12,	Gilpin Coal Company:		
	Capital stock, 1906,	$290 00	
	Fees of office,	17 50	
			307 50
12,	Cranberry Improvement Company:		
	Capital stock, 1906,	$150 00	
	Fees of office,	10 50	
			160 50
12,	Central Dristrict and Printing Telegraph Company:		
	Capital stock, 1906,	$1,645 00	
	Fees of office,	85 25	
			1,730 25
12,	Philadelphia Brewing Company:		
	Capital stock, 1906,	$105 00	
	Fees of office,	8 00	
			113 00
12,	Harveys Lake Supply Company, Limited:		
	Capital stock, 1906,	$37 50	
	Fees of office,	4 88	
			42 38
12,	Penn Traffic Company:		
	Capital stock, 1906,	$175 00	
	Fees of office,	11 75	
			186 75
12,	Allegheny and Western Railway Company:		
	Capital stock, 1906,	$183 75	
	Fees of office,	12 19	
			195 94
12,	Buffalo, Rochester and Pittsburg Railway Company:		
	Capital stock, 1906,	$4,000 00	
	Fees of office,	203 00	
			4,203 00
15,	Merchants Telephone and Telegraph Company:		
	Bonus, balance due,		100 00
15,	Chapot-Shirlaw Company now Pennsylvania Tanning Company:		
	Bonus, balance due,		50 00
15,	Jeddo Tunnel Company, Limited:		
	Capital stock, 1906,	$100 00	
	Fees of office,	8 00	
			108 00
15,	Stonega Coal and Coke Company:		
	Bonus,	$0 50	
	Fees of office,	3 03	
			3 53
	Capital stock, 1902,	75	
	Fees of office,	3 04	
			3 79
	Capital stock, 1903,	75	
	Fees of office,	3 04	
			3 79
	Capital stock, 1904,	75	
	Fees of office,	3 04	
			3 79
	Capital stock, 1905,	75	
	Fees of office,	3 04	
			3 79

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
15,	Keystone Telephone Company of Philadelphia:		
	Capital stock, 1906,	$1,500 00	
	Fees of office,	78 00	
			1,578 00
15,	Keystone Telephone Company of Philadelphia:		
	Loans, 1906,	$150 54	
	Fees of office,	10 53	
			161 07
15,	McCall Ferry Power Company:		
	Capital stock, 1906,	$450 00	
	Fees of office,	25 50	
			475 50
15,	Stevens Coal Company:		
	Capital stock, 1906,	$175 00	
	Fees of office,	11 75	
			185 75
15,	Lewisburg, Milton and Watsontown Passenger Railway Company:		
	Capital stock, 1906,	$75 00	
	Fees of office,	6 75	
			81 75
16,	Wilkes-Barre Stationery Paper Company:		
	Bonus, balance due,		30 00
16,	Atlas Portland Cement Company:		
	Capital stock, 1906,	$450 00	
	Fees of office,	25 50	
			475 50
17,	Fall Brook Coal Company:		
	Capital stock, 1906,	$750 00	
	Fees of office,	40 50	
			790 50
19,	Jefferson Coal Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
19,	Beech Creek Railroad Company:		
	Loans, 1906,	$372 00	
	Fees of office,	21 60	
			393 60
22,	Lehigh Valley Transit Company:		
	Loans, 1906,	$115 00	
	Fees of office,	8 75	
			123 75
	Fairmount Park Transportation Company:		
	Capital stock, 1906,	$250 00	
	Fees of office,	15 50	
			265 50
23,	Powhatan Coal and Coke Company:		
	Capital stock, 1906,	$450 00	
	Fees of office,	25 50	
			475 00
23,	Lake Shore and Michigan Southern Railway Company:		
	Capital stock, 1906,	$250 00	
	Fees of office,	15 50	
			265 50
23,	Jamestown and Franklin Railroad Company:		
	Capital stock, 1906,	$50 00	
	Fees of office,	5 50	
			55 50

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
30,	Clearfield Bituminous Coal Corporation:		
	Capital stock, 1906,	$150 00	
	Fees of office,	10 50	
			160 50
	Loans, 1907,	$34 08	
	Fees of office,	4 70	
			38 78
Aug. 2,	Investment Company of Philadelphia:		
	Capital stock, 1906,	$5,000 00	
	Fees of office,	253 00	
			5,253 00
5,	Westinghouse Air Brake Company:		
	Capital stock, 1906,	$1,780 00	
	Fees of office,	92 00	
			1,872 00
5,	Scranton Gas and Water Company:		
	Capital stock, 1906,	$4,825 00	
	Fees of office,	244 25	
			5,069 25
13,	Central Railroad of New Jersey:		
	Capital stock, 1906,	$1,000 00	
	Fees of office,	53 00	
			1,053 00
14,	Huntingdon and Clearfield Telephone Company:		
	Bonus,	$1,663 34	
	Fees of office,	86 16	
			1,749 50
17,	Treasury Trust Company:		
	Capital stock, 1906,	$1,110 43	
	Fees of office,	55 52	
			$1,165 95
19,	Tube City Brewing Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
23,	Lehigh and Wilkes-Barre Coal Company:		
	Capital stock, 1906,	$1,765 00	
	Fees of office,	91 25	
			1,856 25
23,	Union Steel Company:		
	Capital stock, 1906,	$127 50	
	Fees of office,	9 38	
			136 88
23,	Westinghouse Electric Manufacturing Company:		
	Loans, 1906,	$933 60	
	Fees of office,	49 68	
			983 28
23,	Union Supply Company:		
	Capital stock, 1906,	$475 00	
	Fees of office,	26 75	
			501 75
23,	Coudersport and Port Allegheny Railroad Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
	Loans, 1906,	$23 00	
	Fees of office,	4 15	
			27 15
26,	National Mining Company:		
	Capital stock, 1906,	$250 00	
	Fees of office,	15 50	
			265 50

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
'26,	River Coal Company:		
	Capital stock, 1906,	$250 00	
	Fees of office,	15 50	265 50
28,	Sharon Land Company:		
	Capital stock, 1906,	$35 00	
	Fees of office,	4 75	39 75
28,	Carnegie Land Company:		
	Capital stock, 1906,	$450 00	
	Fees of office,	25 50	475 50
30,	Carnegie Natural Gas Company:		
	Capital stock, 1906,	$200 00	
	Fees of office,	13 00	213 00
30,	Etna and Montrose Railroad Company:		
	Capital stock, 1906,	$450 00	
	Fees of office,	25 50	475 50
30,	Monongahela Southern Railroad Company:		
	Fees of office,	13 00	
	Capital stock, 1906,	$200 00	213 00
30,	St. Clair Terminal Railroad Company:		
	Capital stock, 1906,	$500 00	
	Fees of office,	28 00	528 00
Sept. 10,	Lehigh Valley Railroad Company:		
	Capital stock, 1906,	$3,250 00	
	Fees of office,	165 50	3,415 50
11,	New York Central and Hudson River Railroad Company:		
	Capital stock, 1906,	$400 00	
	Fees of office,	23 00	423 00
17,	Kingston Coal Company:		
	Capital stock, 1906,	$1,275 00	
	Fees of office,	66 75	1,341 75
20,	Pittsburg and Ohio Valley Railway Company:		
	Capital stock, 1906,	100 00	
	Fees of office,	8 00	108 00
Oct. 4,	Finance Company of Pennsylvania:		
	Capital stock, 1906,	$2,850 00	
	Fees of office,	145 50	2,995 50
9,	Somerset Electric Light, Heat and Power Company:		
	Bonus, balance due,	$50 00	
	Fees of office,	2 50	52 50
16,	Retail Hardware Dealers Association of Philadelphia, now Hardware Merchants Association:		
	Bonus, balance due,	$33 34	
	Fees of office,	1 66	35 00
21,	Pennsylvania Power Company:		
	Bonus,	$1,316 67	
	Fees of office,	65 83	1,382 50
23,	Franklin Electric Company:		
	Bonus, balance due,	$166 67	
	Interest,	11 38	178 05

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Nov. 8,	Marietta Gravity Water Company:		
	Bonus,		75 00
16,	Pennsylvania Coal Company:		
	Capital stock, 1906,	$675 00	
	Fees of office,	33 75	
			708 75
16,	Wilkes-Barre and Eastern Railroad Company:		
	Capital stock,	$950 00	
	Fees of office,	47 50	
			997 50
16,	Jefferson Railroad Company:		
	Loans, 1906,	$23 00	
	Fees of office,	1 15	
			24 15
16,	Nypano Railroad Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			25 25
16,	New York, Susquehanna and Western Coal Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
16,	Erie Land and Improvement Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
16,	Columbus and Erie Railroad Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
16,	Butler Mine Company, Limited:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
16,	Buffalo, Bradford and Pittsburg Railroad Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
16,	Blossburg Coal Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
16,	Erie Railroad Company:		
	Capital stock, 1906,	$100 00	
	Fees of office,	5 00	
			105 00
16,	New York, Lake Erie and Western Coal and Railroad Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
16,	Northwestern Mining and Exchange Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
16,	Jefferson Railroad Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
16,	Hillside Coal and Iron Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
16,	Erie and Wyoming Valley Railroad Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
25,	Citizens Light, Heat and Power Company:		
	Capital stock, 1906,	$487 50	
	Fees of office,	27 37	
			514 87
25,	Mortgage Trust Company of Pennsylvania:		
	Loans, 1906,	$569 00	
	Fees of office,	31 45	
			600 45
26,	Upper Lehigh Coal Company:		
	Capital stock, 1906,	$500 00	
	Fees of office,	28 00	
			528 00
26,	Leechburg Land and Improvement Company:		
	Capital stock, 1906,	$100 00	
	Fees of office,	8 00	
			108 00
26,	Huron Coal Company:		
	Capital stock, 1906,	$50 00	
	Fees of office,	5 50	
			55 50
26,	Mortgage Trust Company of Pennsylvania:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
26,	Cambria Steel Company:		
	Capital stock, 1906,	$1,132 00	
	Fees of office,	59 60	
			1,191 60
27,	T. W. Phillips Gas and Oil Company:		
	Loans, 1906,	$549 18	
	Fees of office,	27 45	
			576 63
27,	Fire Association of Philadelphia:		
	Capital stock, 1906,	$63 40	
	Fees of office,	3 17	
	Attorney fees in both cases,	6 00	
			72 57
27,	Packer Coal Company:		
	Capital stock, 1906,	$10 50	
	Fees of office,	3 53	
			14 03
27,	Everhart Coal Company:		
	Capital stock, 1906,	$1 50	
	Fees of office,	3 08	
			4 58
27,	Philadelphia Warehousing and Cold Storage Company:		
	Capital stock, 1906,	$159 77	
	Fees of office,	10 98	
			170 75
27,	Thomas Colliery Company:		
	Loans, 1906,	$142 50	
	Fees of office,	10 12	
			152 62
29,	Elk Oil Company, Limited:		
	Capital stock, 1906,	$225 00	
	Fees of office,	21 75	
			246 75

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
29,	Pittsburg Dry Goods Company:		
	Capital stock, 1906,	$1,250 00	
	Fees of office,	65 50	
			1,315 50
29,	Monterey Coal Company:		
	Capital stock, 1906,	$15 00	
	Fees of office,	3 75	
			18 75
29,	Bagdad Coal and Coke Company:		
	Capital stock, 1906,	$300 00	
	Fees of office,	18 00	
			318 00
29,	Butler Junction Coal Company:		
	Capital stock, 1906,	$60 00	
	Fees of office,	6 00	
			66 00
29,	Mountain Coal Company:		
	Capital stock, 1906,	$37 50	
	Fees of office,	4 87	
			42 37
29,	Mid Valley Coal Company:		
	Capital stock, 1906,	$450 00	
	Fees of office,	25 50	
			475 50
29,	Good Roads Machinery Company:		
	Capital stock, 1906,	$12 50	
	Fees of office,	3 63	
			16 13
29,	Alden Coal Company:		
	Capital stock, 1906,	$100 00	
	Fees of office,	8 00	
			108 00
29,	Cedar Rapids Refrigerator Express Company:		
	Capital stock, 1891 to 1906,	$12 26	
	Fees of office,	3 61	
			15 87
29,	Woodruff Sleeping and Parlor Coach Company:		
	Capital stock, 1906,	$10 00	
	Fees of office,	3 50	
			13 50
29,	Columbia and Montour Electric Railway Company:		
	Capital stock, 1906,	$125 0	
	Fees of office,	3 63	
			16 13
29,	Eastern Securities Company:		
	Capital stock, 1906,	$45 00	
	Fees of office,	5 25	
			50 25
29,	Quakertown Traction Company:		
	Fees of office,	3 00	
29,	Lackawanna Iron and Steel Company:		
	Capital stock, 1906,	$250 00	
	Fees of office,	13 50	
			263 50
29,	Manor Gas Coal Company:		
	Capital stock, 1906,	$100 00	
	Fees of office,	8 00	
			108 00
29,	Santo Domingo Silver Mining Company:		
	Capital stock, 1906,	$1 00	
	Fees of office,	3 05	
			4 05

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
29,	American Ice Company (New Jersey):		
	Capital stock, 1906,	$100 00	
	Fees of office,	8 00	
			108 00
Dec. 2,	Producers and Refiners Oil Company, Limited:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
2,	Mifflin County Gas and Electric Company:		
	Loans, 1906,	$3 65	
	Fees of office,	11 87	
			15 52
2,	Knickerbocker Ice Company:		
	Capital stock, 1906,	$5 00	
	Fees of office,	3 25	
			8 25
2,	Delaware and Atlantic Telegraph and Telephone Company of Pennsylvania:		
	Capital stock, 1906,	$200 00	
	Fees of office,	13 00	
			213 00
2,	Albert Lewis Lumber and Manufacturing Company:		
	Capital stock, 1906,	$250 00	
	Fees of office,	15 50	
			165 50
2,	Jersey Shore Electric Company:		
	Capital stock, 1906,	$5 00	
	Fees of office,	3 25	
			8 25
2,	Peoples Street Railway Company of Nanticoke and Newport:		
	Capital stock, 1906,	$155 00	
	Fees of office,	10 75	
			165 75
2,	Robesonia Iron Company, Limited:		
	Capital stock, 1906,	$172 90	
	Fees of office,	11 64	
			184 54
2,	Mountain Ice Company:		
	Capital stock, 1906,	$71 50	
	Fees of office,	6 57	
			78 07
2,	Pennsylvania Salt Manufacturing Company:		
	Capital stock, 1906,	$10 00	
	Fees of office,	3 50	
			13 50
3,	Central Pennsylvania Lumber Company:		
	Capital stock, 1906,	$1,250 00	
	Fees of office,	65 50	
			1,315 50
3,	Maderia Hill Coal Mining Company:		
	Capital stock, 1907,	$12 50	
	Fees of office,	3 62	
			16 12
3,	Raven Run Coal Company:		
	Capital stock, 1907,	$5 00	
	Fees of office,	3 25	
			8 25
3,	Brookwood Coal Company:		
	Bonus,	$20 00	
	Fees of office,	4 25	
			24 25

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
3,	Berwick Water Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
3,	International Navigation Company:		
	Capital stock, 1906,	$50 00	
	Fees of office,	5 50	
			5 50
3,	Tioga Improvement Company:		
	Capital stock, 1905,	$100 00	
	Fees of office,	8 00	
			108 00
4,	Archbald Water Company:		
	Capital stock, 1906,	$150 00	
	Fees of office,	10 50	
			160 50
4,	Olyphant Water Company:		
	Capital stock, 1906,	$212 50	
	Fees of office,	13 62	
			226 12
4,	Dunmore Gas and Water Company:		
	Capital stock, 1906,	$330 00	
	Fees of office,	19 50	
			349 50
4,	Crystal Lake Water Company:		
	Capital stock, 1906,	$5 00	
	Fees of office,	3 25	
			8 25
4,	Jermyn & Rushbrook Water Company:		
	Capital stock, 1906,	$6 50	
	Fees of office,	3 32	
			9 82
4,	Lackawanna Valley Water Supply Company:		
	Capital stock, 1906,	$12 50	
	Fees of office,	3 63	
			16 13
4,	Reynshanhurst Water Company:		
	Capital stock, 1906,	$12 50	
	Fees of office,	3 63	
			16 13
4,	Rock Cliff Water Company:		
	Capital stock, 1906,	$2 00	
	Fees of office,	3 10	
			5 10
5,	Girard Trust Company:		
	Capital stock, 1903,	1,367 45	
	Fees of office,	71 37	
			1,438 82
5,	Girard Trust Company:		
	Capital stock, 1904,	$406 21	
	Fees of office,	23 31	
			429 52
	Capital stock, 1905,	$1,045 19	
	Fees of office,	55 26	
			1,100 45
5,	The Pullman Company:		
	Capital stock, 1906,	$12 37	
	Fees of office,	3 62	
			15 99
5,	Electric Traction Company:		
	Capital stock, 1906,	$1,020 00	
	Fees of office,	3 96	
			1,923 96

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
5,	Peoples Traction Company:		
	Capital stock, 1906,	$2,942 00	
	Fees of office,	150 10	
			3,092 10
5,	Union Traction Company of Philadelphia:		
	Capital stock, 1906,	$7,344 00	
	Fees of office,	370 20	
			7,714 20
5,	Philadelphia Traction Company:		
	Capital stock, 1906,	$4,700 00	
	Fees of office,	238 00	
			4,938 00
5,	Donora Southern Railroad Company:		
	Capital stock, 1906,	$300 00	
	Fees of office,	18 00	
			318 00
5,	Bessemer and Lake Erie Railroad Company:		
	Capital stock, 1906,	$550 00	
	Fees of office,	30 50	
			580 50
5,	Pittsburg, Bessemer and Lake Erie Railroad Company:		
	Capital stock, 1906,	$2,100 00	
	Fees of office,	108 00	
			2,208 00
	Loans, 1906,	$284 70	
	Fees of office,	17 23	
			301 93
5,	Union Railroad Company:		
	Capital stock, 1906,	$500 00	
	Fees of office,	28 00	
			528 00
5,	Consumers Brewing Company:		
	Capital stock, 1906,	$50 00	
	Fees of office,	35 50	
			85 50
6,	Gimbel Brothers, Incorporated:		
	Capital stock, 1906,	$500 00	
	Fees of office,	28 00	
			528 00
	Loans, 1906,	$270 58	
	Fees of office,	16 52	
			287 10
6,	Susquehanna and New York Railroad Company:		
	Capital stock, 1906,	$500 00	
	Fees of office,	28 00	
			528 00
6,	Tionesta Valley Railroad Company:		
	Capital stock, 1906,	$337 50	
	Fees of office,	19 87	
			357 37
6,	Thomas Meehan & Sons, Incorporated:		
	Capital stock, 1906,	$75 00	
	Fees of office,	6 75	
			81 75
9,	American Improvement Company:		
	Capital stock, 1906,	$125 00	
	Fees of office,	9 25	
			134 25
9,	Huntingdon and Broad Top Mountain Railroad and Coal Company:		
	Capital stock, 1906,	$145 45	
	Fees of office,	10 27	
			155 72

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
9,	DuBois Electric Company:		
	Capital stock, 1904,	$25 00	
	Fees of office,	4 25	
			29 25
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
9,	Sorosis Shoe Company of Philadelphia:		
	Capital stock, 1906,	$80 00	
	Fees of office,	7 00	
			87 00
9,	Sorsosis Shoe Company of Pittsburg:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
	Bonus,	$8 34	
	Fees of office,	3 42	
			11 76
10,	The United Gas Improvement Company:		
	Capital stock, 1906,	$2,409 26	
	Fees of office,	123 46	
			2,532 72
10,	Bangor and Portland Railway Company:		
	Capital stock, 1906,	$750 00	
	Fees of office,	40 50	
			790 50
10,	Irvona Coal and Coke Company:		
	Capital stock, 1906,	$5 00	
	Fees of office,	3 25	
			8 25
11,	Dunkirk, Allegheny Valley and Pittsburg Railroad Company:		
	Capital stock, 1906,	$812 50	
	Fees of office,	43 62	
			856 12
12,	Scranton Railway Company:		
	Loans, 1906,	$141 40	
	Fees of office,	10 07	
			151 47
12,	Home Electric Light and Steam Heating Company:		
	Fees of office,	3 00	
	Capital stock, 1906,	$40 00	
	Fees of office,	5 00	
			45 00
12,	Delaware, Lackawanna and Western Railroad Company:		
	Loans, 1906,	$361 00	
	Fees of office,	21 05	
			382 05
16,	United States Leather Company:		
	Common stock 1893 to 1906,	$241 75	
	Fees of office,	15 08	
			256 83
16,	Philadelphia Securities Company:		
	Capital stock, 1906,	$75 00	
	Fees of office,	6 70	
			81 75
16,	Keystone Store Company:		
	Capital stock, 1906,	$50 00	
	Fees of office,	5 50	
			55 50
16,	Buffalo and Susquehanna Railroad Company:		
	Capital stock, 1906,	$250 00	
	Fees of office,	15 50	
			265 50

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
16,	Goodyear Lumber Company:		
	Capital stock, 1906,	$162 50	
	Fees of office,	11 12	
			173 62
16,	State Line and Sullivan Railroad Company:		
	Fees of office,	3 00	
18,	Bethlehem Consolidated Gas Company:		
	Loans, 1904,	$356 66	
	Fees of office,	20 83	
	Loans, 1905,	29 70	
	Fees of office,	56 53	
	Loans, 1906,	29 70	
	Fees of office,	56 53	
	Fees of office,	56 53	
			549 95
19,	Mahoning Valley Railroad Company:		
	Capital stock, 1906,	$50 00	
	Fees of office,	5 50	
			55 50
19,	Panther Valley Water Company:		
	Capital stock, 1906,	$50 00	
	Fees of office,	5 50	
			55 50
19,	Delaware, Lackawanna and Western Railroad Company:		
	Capital stock, 1906,	$15,000 00	
	Fees of office,	753 00	
			15,753 00
19,	Allentown Iron Company:		
	Capital stock, 1906,	$48 25	
	Fees of office,	5 41	
			53 66
19,	Delaware Division Canal Company:		
	Capital stock, 1906,	$100 00	
	Fees of office,	8 00	
			108 00
19,	Consolidated Real Estate Company:		
	Capital stock, 1906,	$50 00	
	Fees of office,	5 50	
			55 50
19,	Hazleton Water Company:		
	Capital stock, 1906,	$10 00	
	Fees of office,	3 50	
			13 50
19,	Pennsylvania and New York Canal and Railroad Company:		
	Capital stock, 1906,	$1,000 00	
	Fees of office,	53 00	
			1,053 00
19,	Schuylkill and Lehigh Valley Railroad Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
19,	Delaware, Susquehanna and Schuylkill Railroad Company:		
	Capital stock, 1906,	$1,250 00	
	Fees of office,	65 50	
			1,315 50
19,	Northern Cambria Street Railway Company:		
	Loans, 1906,	$133 00	
	Fees of office,	9 65	
			142 65

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
19,	Buffalo and Susquehanna Railroad Company:		
	Loans, 1906,	$1,250 00	
	Fees of office,	65 50	
			1,315 50
20,	H. C. Frick Coke Company:		
	Loans, 1906,	$18 00	
	Fees of office,	3 90	
			21 90
	Capital stock, 1906,	$1,693 92	
	Fees of office,	87 69	
			1,781 61
20,	Clairton Land Company:		
	Capital stock, 1906,	$175 00	
	Fees of office,	11 75	
			186 75
21,	Youghiogheny Northern Railway Company:		
	Capital stock, 1906,	$125 00	
	Fees of office,	9 25	
			134 25
21,	Republic Coke Company:		
	Capital stock, 1906,	$250 00	
	Fees of office,	15 50	
			265 50
21,	Sharon Coke Company:		
	Loans, 1906,	$83 00	
	Fees of office,	7 15	
			90 15
	Capital stock, 1906,	$224 00	
	Fees of office,	14 20	
			238 20
23,	Easton Gas Light Company:		
	Capital stock, 1903,	$26 01	
	Fees of office,	1 30	
			27 31
23,	New York and Middle Coal Field Railroad and Coal Company:		
	Capital stock, 1906,	$500 00	
	Fees of office,	28 00	
			528 00
23,	Wyoming Valley Coal Company:		
	Capital stock, 1906,	$875 00	
	Fees of office,	46 75	
			921 75
23,	Beech Creek Extension Railroad Company:		
	Capital stock, 1906,	$100 00	
	Fees of office,	8 00	
			108 00
23,	Beech Creek Railroad Company:		
	Capital stock, 1906,	$1,525 00	
	Fees of office,	79 25	
			1,604 25
23,	Clairton Steel Company:		
	Capital stock, 1906,	$288 20	
	Fees of office,	17 41	
			305 61
26,	Lehigh Valley Coal Company:		
	Capital stock, 1906,	$125 00	
	Fees of office,	9 25	
			134 25
26,	Coxe Brothers & Company, Incorporated:		
	Capital stock, 1906,	$2,500 00	
	Fees of office,	128 00	
			2,628 00

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
26,	Meadville, Conneaut Lake and Linesville Railroad Company:		
	Capital stock, 1906,	$107 50	
	Fees of office,	8 37	
			115 87
	Loans, 1906,	$0 40	
	Fees of office,	3 02	
			3 42
27,	Bethlehem City Water Company:		
	Loans, 1906,	$45 00	
	Fees of office,	5 25	
			50 25
	Capital stock, 1906,	$275 00	
	Fees of office,	16 75	
			291 75
1908.			
Jan. 2,	McKeesport Connecting Railroad Company:		
	Capital stock, 1906,	$175 00	
	Fees of office,	11 75	
			186 75
2,	National Tube Company of New Jersey:		
	Capital stock, 1906,	$80 00	
	Fees of office,	7 00	
			87 00
2,	Beech Creek Coal and Coke Company:		
	Capital stock, 1903,	$825 00	
	Fees of office,	44 25	
			869 25
	Capital stock, 1904,	$125 00	
	Fees of office,	9 25	
			134 25
	Capital stock, 1905,	$125 00	
	Fees of office,	9 25	
			134 25
3,	Powers-Weightman-Rosengarten Company:		
	Loans, 1905,	$897 75	
	Fees of office,	44 89	
			942 64
6,	Union Improvement Company:		
	Capital stock, 1906,	$389 80	
	Fees of office,	19 49	
			409 29
9,	Woddropp & Welch Wood Company:		
	Capital stock, 1897,	$37 50	
	Capital stock, 1898,	100 00	
	Capital stock, 1899,	100 00	
			237 50
13,	Keasbey & Mattison Company:		
	Capital stock, 1905,		1,035 00
13,	B. F. Jacobs Lumber Company:		
	Capital stock, 1904,	$110 78	
	Loans, 1904,	23 94	
	Fees of office,	6 74	
			141 46
15,	Delahunty Dyeing Machine Company:		
	Bonus,	$4 44	
	Fees of office,	3 22	
			7 66
17,	Buffalo and Susquehanna Coal and Coke Company:		
	Capital stock, 1906,	$737 00	
	Fees of office,	39 85	
			776 85

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
17,	James Manufacturing Company:		
	Loans, 1895,	$10 71	
	Loans, 1896,	33 77	
	Loans, 1897,	32 44	
	Loans, 1898,	28 18	
	Loans, 1899,	28 00	
	Loans, 1900,	31 41	
	Loans, 1901,	26 60	
	Loans, 1902,	26 60	
	Loans, 1903,	23 11	
	Loans, 1904,	21 21	
	Fees of office,	13 10	
			275 13
20,	Midland Coal Company:		
	Capital stock, 1906,	$1,450 00	
	Fees of office,	75 50	
			1,525 50
20,	Philadelphia and West Chester Traction Company:		
	Loans, 1906,	$187 50	
	Fees of office,	12 37	
			199 87
20,	United States Electric Lighting Company:		
	Capital stock, 1906,	$1 00	
	Fees of office,	3 05	
			4 05
20,	Edison Electric Light Company of Philadelphia:		
	Capital stock, 1906,	$1,775 00	
	Fees of office,	91 75	
			1,866 75
20,	Brush Electric Light Company:		
	Capital stock, 1906,	$50 00	
	Fees of office,	5 50	
			55 50
20,	Pennsylvania Heat, Light and Power Company:		
	Capital stock, 1906,	$6,000 00	
	Fees of office,	303 00	
			6,303 00
20,	Lehigh Coal and Navigation Company:		
	Capital stock, 1906,	$10,037 00	
	Fees of office,	504 85	
			10,541 85
20,	Western Union Telegraph Company:		
	Capital stock, 1905,	$1,550 00	
	Fees of office,	80 50	
			1,630 50
20,	Nescopec Coal Company:		
	Capital stock, 1906,	$125 00	
	Fees of office,	9 25	
			134 25
20,	Potter Gas Company:		
	Capital stock, 1906,	$800 00	
	Fees of office,	43 00	
			843 00
20,	W. K. Niver Coal Company:		
	Capital stock, 1906,	$125 00	
	Fees of office,	9 25	
			134 25
20,	Keystone Coal and Coke Company:		
	Loans, 1905,	$41 00	
	Fees of office,	5 05	
			46 05

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
20,	Loans, 1906,	$23 34	
	Fees of office,	4 16	
			27 50
20,	Capital stock, 1905,	$1,250 00	
	Fees of office,	65 50	
			1,315 00
20,	Capital stock, 1906,	$1,750 00	
	Fees of office,	90 50	
			1,840 50
21,	York Haven Water and Power Company:		
	Capital stock, 1906,	$900 00	
	Fees of office,	48 00	
			948 00
22,	Economy Light, Heat and Power Company:		
	Capital stock, 1906,	$200 00	
	Fees of office,	13 00	
			213 00
22,	Suburban Gas Company of Philadelphia:		
	Loans, 1906,	$200 00	
	Fees of office,	4 00	
			24 00
24,	Bethlehem and Nazareth Passenger Railway Company:		
	Loans, 1906,	$0 80	
	Fees of office,	3 04	
			3 84
24,	Lehigh Valley Transit Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
24,	West Penn Mining Company:		
	Capital stock, 1906,	$25 00	
	Fees of office,	4 25	
			29 25
24,	Leedom & Worrall Company:		
	Capital stock, 1906,	$165 00	
	Fees of office,	23 75	
			188 75
27,	Northern Liberties Railway Company:		
	Capital stock, 1906,	$100 00	
	Fees of office,	8 00	
			108 00
27,	Arnold Mining Company:		
	Capital stock, 1906,	$1 00	
	Fees of office,	3 05	
			4 05
	Bonus,	$1 00	
	Fees of office,	3 05	
			4 05
27,	Northern Iron Company:		
	Bonus,	$1 00	
	Fees of office,	3 05	
			4 05
27,	Capital stock, 1906,	$1 00	
	Fees of office,	3 05	
			4 05
27,	Sunbury Gas Company:		
	Loans, 1906,	$10 00	
	Fees of office,	3 50	
			13 50
28,	Westinghouse Electric and Manufacturing Company:		
	Capital stock, 1906,	$2,200 00	
	Fees of office,	113 00	
			2,313 00

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
29,	Pressed Steel Car Company:		
	Bonus,	$1 00	
	Fees of office,	3 05	
			4 05
29,	McCreery & Company:		
	Capital stock, 1906,	$185 21	
	Fees of office,	17 37	
			202 58
29,	Capital stock, 1905:		
	Fees of office,	$3 00	
			3 00
	Bonus,	$580 91	
	Fees of office,	32 04	
			612 95
29,	National Automatic Weighing Machine Company:		
	Capital stock, 1906,	$75 00	
	Fees of office,	6 75	
			81 75
30,	Pennsylvania Water Company:		
	Capital stock, 1905,	$275 00	
	Fees of office,	16 75	
			291 75
30,	Pennsylvania Water Company:		
	Capital stock, 1906,	$443 00	
	Fees of office,	25 15	
			468 15
Feb. 3,	Pittsburg-Buffalo Company:		
	Loans, 1906,	$57 00	
	Fees of office,	5 85	
			62 85
3,	Loyalsock Railroad Company:		
	Capital stock, 1906,	$401 00	
	Fees of office,	23 05	
			424 05
4,	Peoples Garbage and Fertilizer Company:		
	Capital stock, 1902-3,	$109 37	
	Capital stock, 1904,	41 50	
	Fees of office,	7 54	
			158 41
Mar. 2,	Glen Summit Hotel and Land Company:		
	Capital stock, 1906,	$67 50	
	Fees of office,	6 37	
			73 87
9,	Johnetta Coal Company:		
	Capital stock, 1904,	$502 50	
	Capital stock, 1905,	502 50	
	Capital stock, 1906,	502 50	
	Loans, 1906,	45 16	
	Fees of office,	80 61	
			1,633 27
Apr. 2,	Mingo Coal Company:		
	Capital stock, 1905,	$100 00	
	Fees of office,	8 00	
			108 00
6,	Dewees Wood & Company:		
	Loans, 1904,	$1,070 00	
	Fees of office,	56 50	
			1,126 50
22,	Harbison-Walker Company:		
	Loans, 1905,	$378 10	
	Fees of office,	21 90	
			400 00

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
22,	Harbison-Walker Company:		
	Loans, 1906,	$377 20	
	Fees of office,	21 86	
			399 06
22,	Harbison-Walker Company:		
	Capital stock, 1905,	$200 00	
	Fees of office,	13 00	
			213 00
	Capital stock, 1906,	$185 00	
	Fees of office,	12 25	
			197 25
24,	Harbison-Walker Refractories Company:		
	Loans, 1903,	$1,105 74	
	Fees of office,	58 28	
			1,165 02
	Loans, 1906,	$1,105 24	
	Fees of office,	58 26	
			1,164 50
May 8,	Union Telephone Company of Erie:		
	Bonus on Incorporation,	$1,663 34	
	Interest,	99 80	
	Fees of office,	86 17	
			1,849 31
27,	Sea Girt Land Improvement Company:		
	Distribution $1.00 on 597 shares of stock owned by Commonwealth of Pennsylvania (formerly the property of John Bardsley),		1,791 00
June 18,	Chas. F. Cook, Register of Wills of Somerset County:		
	Inheritance tax,	$3,940 71	
	Fees of office,	194 07	
			4,134 78
Aug. 3,	Millville Manufacturing Company:		
	Fees of office,	$55 00	
	Fees of office,	1 33	
			1 90
3,	Mays Landing Water and Power Company:		
	Fees of office,		1 50
5,	Millville Manufacturing Company:		
	Fees of office,		3 00
5,	Mays Landing Water and Power Company:		
	Fees of office,		3 00
Oct. 30,	Fidelity and Casualty Company of New York:		
	On account bond for $25,000 dated February 23, 1907, issued to Wm. H. Berry, State Treasurer, to secure State deposit in Cosmopolitan National Bank of Pittsburg,		14,511 94
31,	United States Fidelity and Guaranty Company of Baltimore, Md.:		
	On account bond for $50,000 dated ——, issued to Wm. H. Berry State Treasurer, to secure State deposit in the Cosmopolitan National Bank of Pittsburg,		29,023 88
31,	American Bonding Company of Baltimore, Md.:		
	On account bond for $100,000 dated ——, issued to Wm. H. Berry State Treasurer, to secure State deposit in Cosmopolitan National Bank of Pittsburg,		58,047 76
28,	Robert Lyons, Receiver Allegheny National Bank of Pittsburg, being dividend of 40 per cent. of the amount on deposit in the "General Fund" in said bank at time of failure,		185,928 18

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
	Also, dividend of 40 per cent. of the amount on deposit in the "Sinking Fund" in said bank at time of failure, ...	23,604 36	
			$209,532 54
24,	Associated Producers Company:		
	Capital stock, 1907, ...	$2,000 00	
	Fees of office, ...	100 00	
			2,100 00
24,	American Dredging Company:		
	Capital stock, 1907, ...	$350 00	
	Fees of office, ...	17 50	
			367 50
24,	Altoona and Logan Valley Electric Railway Company:		
	Loans, 1907, ...	$93 00	
	Fees of office, ...	4 65	
			97 65
25,	Bagdad Coal and Coke Company:		
	Capital stock, 1907, ...	$75 00	
	Fees of office, ...	3 75	
			78 75
25,	Adam Scheidt Brewing Company:		
	Capital stock, 1907, ...	$25 00	
	Fees of office, ...	1 25	
			26 25
25,	Manor Gas Coal Company:		
	Capital stock, 1907, ...	$105 00	
	Fees of office, ...	5 25	
			110 25
25,	Philadelphia Warehousing and Cold Storage Company:		
	Capital stock, 1907, ...	$150 00	
	Fees of office, ...	7 50	
			157 50
27,	International Navigation Company:		
	Capital stock, 1907, ...	$230 00	
	Fees of office, ...	11 50	
			241 50
27,	Real Estate Holding Company:		
	Capital stock, 1906, ...	$5 00	
	Fees of office, ...	25	
			5 25
	Capital stock, 1907, ...	$5 00	
	Fees of office, ...	25	
			5 25
27,	American Ice Company:		
	Capital stock, 1907, ...	$100 00	
	Fees of office, ...	5 00	
			105 00
27,	Mid Valley Coal Company:		
	Capital stock, 1907, ...	$250 00	
	Fees of office, ...	12 50	
			262 50
27,	Nescopec Coal Company:		
	Capital stock, 1907, ...	$125 00	
	Fees of office, ...	6 75	
			141 75
27,	Sterling Coal Company:		
	Capital stock, 1907, ...	$100 00	
	Fees of office, ...	5 00	
			105 00
27,	Peoples Street Railway Company of Nanticoke and Newport:		
	Capital stock, 1907, ...	$167 50	
	Fees of office, ...	8 37	
			175 87

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
27,	Alden Coal Company:		
	Capital stock, 1907,	$100 00	
	Fees of office,	5 00	
			105 00
30,	D. Ross, et al, sureties on official bond of Robert G. McMichael, deceased late recorder of Carbon county, balance due Commonwealth for 1905,	43 46	
	Fees of office,	2 17	
			45 63
30,	D. J. Kennedy Company:		
	Loans, 1905,	$171 00	
	Fees of office,	8 55	
			179 55
30,	Republic Coke Company:		
	Capital stock, 1907,	$400 00	
	Fees of office,	20 00	
			420 00
30,	River Coal Company:		
	Capital stock, 1907,	$250 00	
	Fees of office,	12 50	
			262 50
30,	Lackawanna Iron and Steel Company:		
	Capital stock, 1907,	$750 00	
	Fees of office,	37 50	
			787 50
30,	Lackawanna Coal and Coke Company:		
	Capital stock, 1907,	$450 00	
	Fees of office,	22 50	
			472 50
30,	Philadelphia Brewing Company:		
	Capital stock, 1907,	$350 00	
	Fees of office,	17 50	
			367 50
30,	Mortgage Trust Company of Pennsylvania:		
	Loans, 1907,	$395 00	
	Fees of office,	19 75	
			414 75
30,	Cambria Incline Plane Company:		
	Capital stock, 1907,	$50 00	
	Fees of office,	2 50	
			52 50
30,	Equitable Illuminating Gas Light Company of Philadelphia:		
	Loans, 1906,	$425 00	
	Fees of office,	21 25	
			446 25
30,	Allegheny and Western Railway Company:		
	Capital stock, 1907,	$1,000 00	
	Fees of office,	50 00	
			1,050 00
30,	Knickerbocker Ice Company:		
	Capital stock, 1907,	$5 00	
	Fees of office,	25	
			5 25
30,	Annora Coal Company:		
	Capital stock, 1907,	$175 00	
	Fees of office,	8 75	
			183 75
30,	Diamond Coal Land Company:		
	Capital stock, 1907,	$30 00	
	Fees of office,	1 50	
			31 50

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
30,	Robesonia Iron Company, Limited:		
	Capital stock, 1907,	$225 00	
	Fees of office,	11 25	
			236 25
30,	Gilpin Coal Company:		
	Capital stock, 1907,	$50 00	
	Fees of office,	2 50	
			52 50
30,	Bowman Coal Mining Company:		
	Capital stock, 1907,	$75 00	
	Fees of office,	3 75	
			78 75
30,	Hollenback Coal Company:		
	Capital stock, 1907,	$275 00	
	Fees of office,	13 75	
			288 75
30,	Schenly Distilling Company:		
	Capital stock, 1907,	$150 00	
	Fees of office,	7 50	
			157 50
30,	Huron Coal Company:		
	Capital stock, 1907,	$120 00	
	Fees of office,	6 00	
			126 00
30,	Haddon Coal Company:		
	Capital stock, 1907,	$85 00	
	Fees of office,	4 25	
			89 25
30,	Leechburg Land and Improvement Company:		
	Capital stock, 1907,	$75 00	
	Fees of office,	3 75	
			78 75
30,	Consumers Brewing Company:		
	Capital stock, 1907,	$100 00	
	Fees of office,	5 00	
			105 00
30,	Columbia and Montour Electric Railway Company:		
	Capital stock, 1907,	$75 00	
	Fees of office,	3 75	
			78 75
30,	Truman M. Dodson Company:		
	Capital stock, 1907,	$12 50	
	Fees of office,	63	
			13 13
30,	Scranton Gas and Water Company:		
	Loans, 1907,	$20 00	
	Fees of office,	1 00	
			21 00
30,	Consolidated Water Supply Company:		
	Capital stock, 1906,	$585 50	
	Fees of office,	29 27	
			614 77
30,	Leedom & Worrall Company:		
	Capital stock, 1907,	$75 00	
	Fees of office,	3 75	
			78 75
30,	Sorosis Shoe Company of Philadelphia:		
	Capital stock, 1907,	$12 25	
	Fees of office,	61	
			12 86
30,	Walnut Run Coal Company:		
	Capital stock, 1907,	$125 00	
	Fees of office,	6 25	
			131 25

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
30,	Monterey Coal Company:		
	Capital stock, 1907,	$30 00	
	Fees of office,	1 50	
			31 50
30,	Mountain Coal Company:		
	Capital stock, 1907,	$137 50	
	Fees of office,	6 87	
			144 37
30,	Home Electric Light and Steam Heating Company:		
	Capital stock, 1907,	$40 00	
	Fees of office,	2 00	
			42 00
30,	Tide Water Pipe Company, Limited:		
	Capital stock, 1907,	$2,671 55	
	Fees of office,	133 57	
			2,805 12
30,	American Improvement Company:		
	Capital stock, 1907,	$125 00	
	Fees of office,	6 25	
			131 25
30,	Harrisburg Gas Company:		
	Loans, 1906,	$550 00	
	Fees of office,	27 50	
			577 50
	Loans, 1907,	$900 00	
	Fees of office,	45 00	
			945 00
30,	Fairmount Park Transportation Company:		
	Capital stock, 1907,	$1,000 00	
	Fees of office,	50 00	
			1,050 00
30,	Ridgway Light and Heat Company:		
	Capital stock, 1906,	$40 00	
	Fees of office,	2 00	
			42 00
30,	Capital stock, 1907,	$110 00	
	Fees of office,	5 50	
			115 50
Dec. 3,	Clearfield Bituminous Coal Corporation:		
	Capital stock, 1907,	$140 50	
	Fees of office,	7 02	
			147 52
3,	Scranton Railway Company:		
	Loans, 1907,	$39 94	
	Fees of office,	2 00	
			41 94
3,	Packer Coal Company:		
	Capital stock, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
3,	The Good Roads Machinery Company:		
	Capital stock, 1907,	$15 00	
	Fees of office,	75	
			15 75
3,	Westmoreland Coal Company:		
	Capital stock, 1907,	$1,025 00	
	Fees of office,	51 25	
			1,076 25
3,	Penn Gas Coal Company:		
	Capital stock, 1907,	$875 00	
	Fees of office,	43 75	
			918 75

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
3,	Lackawanna Light Company:		
	Capital stock, 1907,	$100 00	
	Fees of office,	5 00	
			105 00
3,	Parrish Coal Company:		
	Capital stock, 1907,	$562 50	
	Fees of office,	28 12	
			590 62
3,	Central Pennsylvania Lumber Company:		
	Capital stock, 1907,	$2,750 00	
	Fees of office,	137 50	
			2,887 50
3,	Thomas Colliery Company:		
	Loans, 1907,	$142 50	
	Fees of office,	7 12	
			149 62
3,	Manufacturer's Gas and Fuel Company:		
	Loans, 1906,	$38 00	
	Fees of office,	1 90	
			39 90
3,	Potter Gas Company:		
	Loans, 1907,	$5 00	
	Fees of office,	25	
			5 25
3,	Jersey Shore Electric Company:		
	Capital stock, 1907,	$37 50	
	Fees of office,	1 87	
			39 37
3,	Vallamont Traction Company:		
	Capital stock, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
3,	Economy Light, Heat and Power Company:		
	Capital stock, 1907,	$200 00	
	Fees of office,	10 00	
			210 00
3,	Easton Transit Company:		
	Loans, 1907,	$30 00	
	Fees of office,	1 50	
			31 50
3,	Berwick Water Company:		
	Capital stock, 1907,	$344 00	
	Fees of office,	17 20	
			361 20
3,	West Berwick Water Supply Company:		
	Loans, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
	Loans, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
3,	Silver Brook Coal Company:		
	Capital stock, 1907,	$30 00	
	Fees of office,	1 50	
			31 50
3,	Upper Lehigh Supply Company:		
	Capital stock, 1907,	$55 00	
	Fees of office,	2 75	
			57 75
3,	Eastern Securities Company:		
	Capital stock, 1907,	$40 00	
	Fees of office,	2 00	
			42 00

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
3,	The Pullman Company:		
	Capital stock, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
4,	Lewisburg, Milton and Watsontown Passenger Railway Company:		
	Capital stock, 1907,	$100 00	
	Fees of office,	5 00	
			105 00
4,	Susquehanna and New York Railroad Company:		
	Capital stock, 1907,	$500 00	
	Fees of office,	25 00	
			525 00
4,	Leetonia Railway Company:		
	Capital stock, 1907,	$50 00	
	Fees of office,	2 50	
			52 50
4,	Tionesta Valley Railway Company:		
	Capital stock, 1907,	$325 00	
	Fees of office,	16 25	
			341 25
4,	H. C. Frick Coke Company:		
	Capital stock, 1907,	$1,777 25	
	Fees of office,	88 86	
			1,866 11
4,	Union Supply Company:		
	Capital stock, 1907,	$975 00	
	Fees of office,	48 75	
			1,023 75
4,	Youghiogheny Northern Railway Company:		
	Capital stock, 1907,	$50 00	
	Fees of office,	2 50	
			52 50
7,	Mingo Coal Company:		
	Capital stock, 1907,	$100 00	
	Fees of office,	5 00	
			105 00
7,	Union Steel Company:		
	Capital stock, 1907,	$127 50	
	Fees of office,	6 38	
			133 88
7,	Maderia Hill Coal Mining Company:		
	Capital stock, 1907,	$112 50	
	Fees of office,	5 62	
			118 12
7,	Bessemer and Lake Erie Railroad Company:		
	Capital stock, 1907,	$500 00	
	Fees of office,	25 00	
			525 00
7,	Etna and Montrose Railroad Company:		
	Capital stock, 1907,	107 50	
	Fees of office,	5 37	
			112 87
7,	Sharon Coke Company:		
	Capital stock, 1907,	$2,165 28	
	Fees of office,	108 26	
			2,273 54
7,	Irvona Coal and Coke Company:		
	Capital stock, 1907,	$7 50	
	Fees of office,	37	
			7 87

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
7,	National Mining Company:		
	Capital stock, 1907,	$500 00	
	Fees of office,	25 00	
			525 00
7,	Carnegie Land Company:		
	Capital stock, 1907,	$450 00	
	Fees of office,	22 50	
			472 50
7,	Clairton Land Company:		
	Capital stock, 1907,	$175 00	
	Fees of office,	8 75	
			183 75
7,	Sharon Land Company:		
	Capital stock, 1907,	$35 00	
	Fees of office,	1 75	
			36 75
7,	Powhatan Coal and Coke Company:		
	Capital stock, 1907,	$450 00	
	Fees of office,	22 50	
			472 50
7,	Pencoyd and Philadelphia Railroad Company:		
	Capital stock, 1907,	$165 00	
	Fees of office,	8 25	
			173 25
7,	Wm. L. Sidler, Register and Recorder, Montour county:		
	Balance due Commonwealth for 1907,	$390 15	
	Fees of office,	19 50	
			409 65
7,	Citizens Light, Heat and Power Company, Johnstown:		
	Fees of office,		10 00
7,	Lake Shore and Michigan Southern Railway Company:		
	Capital stock, 1907,	$1,500 00	
	Fees of office,	75 00	
			1,575 00
7,	Spring Brook Lumber Company:		
	Capital stock, 1907,	$40 00	
	Fees of office,	2 00	
			42 00
7,	Philadelphia and Western Railway Company:		
	Capital stock, 1907,	$1,187 50	
	Fees of office,	59 37	
			1,246 87
7,	Jamestown and Franklin Railroad Company:		
	Capital stock, 1907,	$60 00	
	Fees of office,	3 00	
			63 00
7,	Julius Christensen & Company:		
	Capital stock, 1907,	$100 00	
	Fees of office,	5 00	
			105 00
7,	William M. Lloyd Company:		
	Capital stock, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
7,	Edison Electric Illuminating Company, Williamsport:		
	Capital stock, 1907,	$75 00	
	Fees of office,	3 75	
			78 75
8,	C. Schmidt & Sons Brewing Company:		
	Capital stock, 1907,	$1,161 00	
	Fees of office,	58 05	
			1,219 05

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
8,	Class & Nachod Brewing Company:		
	Capital stock, 1908,	$50 00	
	Fees of office,	2 50	
			52 50
8,	Buffalo, Rochester and Pittsburg Railway Company:		
	Capital stock, 1907,	$11,000 00	
	Fees of office,	550 00	
			11,550 00
8,	Dunkirk, Allegheny Valley and Pittsburg Railroad Company:		
	Capital stock, 1907,	$800 00	
	Fees of office,	40 00	
			840 00
8,	Bethlehem Steel Company:		
	Loans, 1907,	$600 00	
	Fees of office,	30 00	
			630 00
9,	Pittsburg, Bessemer and Lake Erie Railroad Company:		
	Loans, 1907,	$1,502 10	
	Fees of office,	75 10	
			1,577 20
9,	Standard Ice Manufacturing Company:		
	Loans, 1907,	$237 50	
	Fees of office,	11 87	
			249 37
9,	Cambria Steel Company:		
	Capital stock, 1907,	$713 38	
	Fees of office,	35 67	
			749 05
9,	Cambria Iron Company:		
	Capital stock, 1907,	$300 00	
	Fees of office,	15 00	
			315 00
9,	McCall Ferry Power Company:		
	Capital stock, 1907,	$500 00	
	Fees of office,	25 00	
			525 00
9,	St. Benedict Village Company:		
	Capital stock, 1905,	$125 00	
	Fees of office,	6 25	
			131 25
	Capital stock, 1906,	$125 00	
	Fees of office,	6 25	
			131 25
10,	Dodson Coal Company:		
	Capital stock, 1907,	$35 00	
	Fees of office,	1 75	
			36 75
10,	Delaware, Lackawanna and Western Railroad Company:		
	Loans, 1907,	$12 92	
	Fees of office,	65	
			13 57
10,	National Tube Company of New Jersey:		
	Capital stock, 1907,	$80 00	
	Fees of office,	4 00	
			84 00
10,	Huntingdon and Broad Top Mountain Railroad and Coal Company:		
	Capital stock, 1907,	$249 95	
	Fees of office,	12 49	
			262 44

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
11,	American Steel and Wire Company of New Jersey:		
	Capital stock, 1904,	$222 55	
	Fees of office,	11 12	
			233 67
	Capital stock, 1905,	$162 19	
	Fees of office,	8 10	
			170 29
12,	Carnegie Natural Gas Company:		
	Capital stock, 1907,	$300 00	
	Fees of office,	15 00	
			315 00
12,	Clairton Steel Company:		
	Capital stock, 1907,	$319 44	
	Fees of office,	15 97	
			335 41
12,	The United Gas Improvement Company:		
	Capital stock, 1907,	$66,000 00	
	Fees of office,	3,300 00	
			69,300 00
14,	Lehigh Coal and Navigation Company:		
	Capital stock, 1907,	$9,500 00	
	Fees of office,	475 00	
			9,975 00
14,	Mingo Coal Company:		
	Capital stock, 1906,	$100 00	
	Fees of office,	5 00	
			105 00
14,	Hanover & Newport Railroad Company:		
	Capital stock, 1907,	$50 00	
	Fees of office,	2 50	
			52 50
14,	Bangor and Portland Railway Company:		
	Capital stock, 1907,	$825 00	
	Fees of office,	41 25	
			866 25
14,	Lorain Steel Company of Pennsylvania:		
	Loans, 1901,	$46 60	
	Fees of office,	2 33	
			48 93
	Loans, 1903,	$46 60	
	Fees of office,	2 33	
			48 93
	Loans, 1904,	$46 60	
	Fees of office,	2 33	
			48 93
	Loans, 1905,	$57 00	
	Fees of office,	2 85	
			59 85
14,	Lorain Steel Company of Pennsylvania:		
	Loans, 1906,	$20 00	
	Fees of office,	1 00	
			21 00
	Loans, 1907,	20 00	
	Fees of office,	1 00	
			21 00
14,	Philadelphia and Garretford Street Railway Company:		
	Capital stock, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
14,	Stevens Coal Company:		
	Capital stock, 1907,	$25 00	
	Fees of office,	1 25	
			26 25

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
14,	Central District and Pittsburg Telegraph Company:		
	Capital stock, 1907,	$5,250 00	
	Fees of office,	262 50	
			5,512 50
14,	Pocono Mountain Ice Company:		
	Capital stock, 1907,	$10 00	
	Fees of office,	50	
			10 50
14,	Keystone Watch Case Company:		
	Loans, 1907,	$174 17	
	Fees of office,	8 70	
			182 87
14,	Western Union Telegraph Company:		
	Capital stock, 1906,	$750 00	
	Fees of office,	37 50	
			787 50
14,	Pittsburg, McKeesport and Greensburg Railway Company:		
	Loans, 1907,	$200 00	
	Fees of office,	10 00	
			210 00
14,	Dunmore Gas and Water Company:		
	Capital stock, 1907,	$330 00	
	Fees of office,	16 50	
			346 50
14,	Archbald Water Company:		
	Capital stock, 1907,	$200 00	
	Fees of office,	10 00	
			210 00
14,	The Good Roads Machinery Company:		
	Bonus, 1906,	$3 74	
	Fees of office,	19	
			3 93
14,	Homestead Real Estate Company:		
	Capital stock, 1907,	$45 00	
	Fees of office,	2 25	
			47 25
15,	Northern Cambria Street Railway Company:		
	Capital stock, 1905,	$50 00	
	Fees of office,	2 50	
			52 50
15,	Captal stock, 1906,	$150 00	
	Fees of office,	7 50	
			157 50
15,	Allentown Iron Company:		
	Capital stock, 1907,	$80 30	
	Fees of office,	4 02	
			84 32
15,	Keystone Light and Power Company:		
	Capital stock, 1906,	$5 00	
	Fees of office,	25	
			5 25
15,	Coxe Brothers & Company, Incorporated:		
	Capital stock, 1907,	$1,000 00	
	Fees of office,	50 00	
			1,050 00
15,	Lehigh Valley Railroad Company:		
	Capital stock, 1907,	$18,100 00	
	Fees of office,	905 00	
			19,005 00
15,	Lehigh Valley Coal Company:		
	Capital stock, 1907,	$4,125 00	
	Fees of office,	206 25	
			4,331 25

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
15,	James H. Worden, Prothonotary, docket fees $3.00 each in 152 cases adjusted since November 23, 1908 and up to date:		
	Fees of office,		456 00
22,	Pittsburg and Ohio Valley Railway Company:		
	Capital stock, 1907,	$200 00	
	Fees of office,	10 00	
			210 00
22,	Central Railroad of New Jersey:		
	Capital stock, 1907,	$1,110 00	
	Fees of office,	55 00	
			1,155 00
22,	Delaware, Lackawanna and Western Railroad Company:		
	Capital stock, 1907,	$20,000 00	
	Fees of office,	1,000 00	
			21,000 00
24,	Pennsylvania Coal Company:		
	Capital stock, 1907,	$1,325 50	
	Fees of office,	66 27	
			1,391 77
24,	New York, Susquehanna and Western Coal Company:		
	Capital stock, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
24,	Hillside Coal and Iron Company:		
	Capital stock, 1907,	$175 00	
	Fees of office,	8 75	
			183 75
24,	Butler Mine Company, Incorporated:		
	Capital stock, 1907,	$100 00	
	Fees of office,	5 00	
			105 00
24,	North West Mining and Exchange Company:		
	Capital stock, 1907,	$100 00	
	Fees of office,	5 00	
			105 00
24,	Wilkes-Barre and Eastern Railroad Company:		
	Capital stock, 1907,	$250 00	
	Fees of office,	12 50	
			262 50
	New York, Susquehanna and Western Railroad Company:		
	Loans, 1907,	$216 60	
	Fees of office,	10 80	
			227 43
24,	Buffalo, Bradford and Pittsburg Railroad Company:		
	Capital stock, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
24,	Columbus and Erie Railroad Company:		
	Capital stock, 1907,	$50 00	
	Fees of office,	2 50	
			52 50
24,	Erie Land and Improvement Company of Penn'a.:		
	Capital stock, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
24,	Erie Railroad Company:		
	Capital stock, 1907,	$217 63	
	Fees of office,	10 88	
			228 51

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
24,	Erie and Wyoming Valley Railroad Company:		
	Capital stock, 1907,	$225 00	
	Fees of office,	11 25	
			236 25
24,	Jefferson Railroad Company:		
	Capital stock, 1907,	$100 00	
	Fees of office,	5 00	
			105 00
24,	New York, Lake Erie and Western Coal and Railroad Company:		
	Capital stock, 1907,	$150 00	
	Fees of office,	7 50	
			157 50
24,	Tioga Railroad Company:		
	Loans, 1907,	$226 10	
	Fees of office,	11 30	
			237 40
24,	Nypano Railroad Company:		
	Capital stock, 1907,	$1,250 00	
	Fees of office,	62 50	
			1,312 50
24,	Blossburg Coal Company:		
	Capital stock, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
24,	Consolidated Real Estate Company:		
	Capital stock, 1907,	$50 00	
	Fees of office,	2 50	
			52 50
24,	Delaware, Susquehanna and Schuylkill Railroad Company:		
	Capital stock, 1907,	$1,250 00	
	Fees of office,	62 50	
			1,312 50
24,	Glen Summit Hotel and Land Company:		
	Capital stock, 1907,	$67 50	
	Fees of office,	3 38	
			70 88
24,	New York Central and Hudson River Railroad Company:		
	Capital stock, 1907,	$425 00	
	Fees of office,	21 25	
			446 25
24,	Beech Creek Railroad Company:		
	Loans, 1907,	$30 00	
	Fees of office,	1 50	
			31 50
24,	Beech Creek Extension Railroad Company:		
	Capital stock, 1907,	$150 00	
	Fees of office,	7 50	
			157 50
24,	Cheltenham Electric Light, Heat and Power Company:		
	Capital stock, 1907,	$1 00	
	Fees of office,	05	
			1 05
24,	The Oscar Smith & Sons Company:		
	Bonus,	$3 91	
	Fees of office,	20	
			4 11
24,	Kingston Coal Company:		
	Capital stock, 1907,	$1,600 00	
	Fees of office,	80	
			1,680 00

SCHEDULE I—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
28,	Acme Coal Mining Company:		
	Capital stock, 1904,	$10 00	
	Fees of office,	50	
			10 50
	Capital stock, 1905,	$10 00	
	Fees of office,	50	
			10 50
	Capital stock, 1906,	$10 00	
	Fees of office,	50	
			10 50
	Capital stock, 1907,	$20 00	
	Fees of office,	1 00	
			21 00
	Total,		$566,503 37

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