Commonwealth of Pennsylvania

REPORT

AND

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

OF

PENNSYLVANIA

FOR THE

TWO YEARS ENDING DECEMBER 31, 1912.

JOHN C. BELL,
Attorney General.

HARRISBURG, PA.:
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1914

REPORT OF THE ATTORNEY GENERAL

FOR THE

Two Years Ending December 31, 1912.

Office of the Attorney General,

Harrisburg, Pa., January 1, 1913.

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

I have the honor to submit a summary and report of the official business transacted by the Attorney General during the two years ending December 31st, 1912.

I entered upon the performance of the duties of the office of Attorney General, on the seventeenth of January, 1911.

Hon. J. E. B. Cunningham was re-appointed and commissioned Deputy Attorney General, which position he now occupies. Hon. Wm. M. Hargest was re-appointed and continued as Assistant Deputy Attorney General, and continues to serve in that office.

By the Act of March 15, 1911, P. L. 21, the office of Second Assistant Deputy Attorney General was created, and Hon. Wm. N. Trinkle was appointed to that office and continues to occupy the same.

I retained in their several positions the office staff of my predecessor.

The amount of collections shows, to some extent, the increase in business of this Department. During the two years ending January 31, 1911, my predecessor reported the collection through the Department of $1,180,711.16. During the two years just ended, the collections made through this Department have amounted to $4,436,686.38.

Of this amount, however, $1,300,000.00 was the amount covered in the civil suits growing out of the so-called Capitol graft cases, and was paid into the Treasury by my predecessor on January 10, 1911. This leaves, however, $3,136,686.38, collected in the usual course

of business through this office during the two years just ended, as compared with $1,180,711.16 during the two years ending Dec. 31, 1910.

SUMMARY OF BUSINESS OF THE ATTORNEY GENERAL'S DEPARTMENT FROM JANUARY 1, 1911, TO DECEMBER 31, 1912.

Quo warranto proceedings in Common Pleas of Dauphin County,		104
Equity proceedings in Common Pleas of Dauphin County,	8	
In all other counties,	7	
		15
Actions in assumpsit instituted by the Commonwealth in the Common Pleas of Dauphin County,		226
Actions of assumpsit brought against the Commonwealth of Pennsylvania, defendant,		1
Actions in assumpsit brought by the Commonwealth against boroughs to recover penalties imposed for violation of the decrees of the State Department of Health,		4
Orders to show cause, etc., against insolvent companies and associations,		30
Mandamus proceedings in Common Pleas of Dauphin County,		7
Cases argued in the Supreme Court of Pennsylvania,		19
Cases argued in the Superior Court of Pennsylvania,		1
Cases argued in the U. S. Circuit Court, Eastern District of Pennsylvania,		1
Appeals from the decision of the State Commissioner of Health,		1
Tax appeals in the Common Pleas of Dauphin County,		765
Bridge proceedings under the Act of June 3, 1895, and supplements,		2
Insurance charters approved by the Attorney General,		23
Bank charters approved by the Attorney General,		27
Applications for sewerage approved by the Attorney General,		100
Formal opinions rendered in writing,		140
Cases now pending in the Supreme Court of Pennsylvania,		2
Cases now pending in the Supreme Court of United States,		1

FORMAL HEARINGS BEFORE THE ATTORNEY GENERAL.

	Heard.	Refused.	Allowed.	Withdrawn.	Pending.	Continued indefinitely.
Quo warranto,	32	2	15	2	1	12
Equity,	7	1	3	1	2	.....

Proceedings under Act of May 7, 1887,		1
Proceedings under Act of May 23, 1895,		2
Collections for 1911, (Note),	$3,058,713	19
Collections for 1912,	1,377,973	19
Total,	$4,436,686	38

Note.—Of the above amount the sum of $1,388,587.28 was collected during the period extending from January 1st, 1911, to January 18th, 1911, during the term of Hon. M. Hampton Todd as Attorney General.

SPECIAL CASES.

Attention is called to a few of the cases in which the Attorney General's Department was concerned, which involved important issues.

Commonwealth vs. McAfee.

The amendment to the Constitution of 1909, and the schedule to carry those amendments into effect, were found to be so incomplete that the Legislature passed the Act of March 2, 1911, P. L. 8, for the purpose of carrying the amendments into complete operation, and of preventing any hiatus in the terms of offices affected by the amendments and the confusion incident to such hiatus.

This Act of Assembly was, by its terms, comprehensive and included all public officers whose terms were in any way affected by the amendments and schedule.

Doubts arose as to whether the Legislature could further legislate on the subject with reference to judges, and a petition for mandamus was filed by the Commonwealth at the relation of Hon. Norris S. Barratt, a Judge of the Court of Common Pleas No. 2 of Philadelphia, against Robert McAfee, Secretary of the Commonwealth, to compel the Secretary of the Commonwealth to certify his name as a candidate for election at the municipal election on the Tuesday following the first Monday of November, 1911.

The Supreme Court held, affirming the Court of Common Pleas of Dauphin County (232 Pa. 36), that the Act of March, 1911, was unconstitutional, inasmuch as it is an attempt to extend the constitutional term of judges beyond the limit fixed by the constitution.

Etter vs. McAfee, et al.

Under the amendments of the constitution of 1909 which were adopted at the same time that Hon. A. E. Sisson was elected Auditor General, he contended that those amendments extended his term as Auditor General from three years as it was prior thereto, to four years beginning the first Monday of May, 1910. George E. Etter, a taxpayer of the City of Harrisburg, brought a bill in equity against Robert McAfee, Secretary of the Commonwealth, and against the Commissioners of Dauphin county, the clerk of the Commissioners

and the Sheriff of Dauphin county to prohibit the names of the several persons nominated by political parties for the office of Auditor General from being certified to the County Commissioners and printed on the ballots.

This case raised the question as to whether or not the constitutional amendments of 1909 or the schedule to carry them into effect, operated to extend the term of the Auditor General who was elected on the same day on which the amendments were adopted, but who entered upon the duties of his office on the first day of May, 1910.

The Court of Common Pleas of Dauphin County and the Supreme Court held that the amendments did not operate to extend the term of Auditor General Sisson, and the general election held on Tuesday next following the first Monday in November, 1912, was the appropriate time to elect his successor.

Provident Life & Trust Company vs. Blakely D. McCaughn, et al.

This was a bill in equity brought by the Provident Life & Trust Company to restrain the assessment of a tax upon $59,999,086.39 of the assets of that company. The Provident Life & Trust Company operates in the dual capacity of a trust and insurance company, and under the provisions of its charter "all the net profits to be derived from the business of life insurance after deducting the expenses of the company, shall be divided pro rata among the holders of policies of such life insurance, equitably and rateably as the directors of said company shall and may from time to time ascertain, determine and report the same for division." The $59,999,086.39 are insurance assets of which $8,070,812.81 were undivided profits.

An Act of Assembly of June 7, 1911, (P. L. 673) introduced a provision into the law taxing personal property, which provided that only those corporations, limited partnerships, joint stock associations which are liable to capital stock tax should be exempt from the payment of any further tax on mortgages, bonds and other securities owned by them, where the "whole body of stockholders or members as such have the entire equitable interest in the remainder," in such mortgages, bonds and securities. The Assessors and Board of Revision of Taxes for the City and County of Philadelphia, demanded a return of the insurance assets of the Provident Life & Trust Company of Philadelphia, for the purpose of taxing the same, and a bill in equity was brought by the company, enjoining them from effecting such taxation.

The Court of Common Pleas No. 2 of Philadelphia has decided against the Commonwealth, upon the ground that the insurance assets thus invested in securities are securities "in which the whole body of stockholders or members as such have the equitable interest in remainder" and are therefore not taxable.

Henry Heide, et al., vs. James Foust, Dairy and Food Commissioner, et al.

This case was brought by twelve non-resident candy manufacturers in the Circuit Court of the United States for the Eastern District of Pennsylvania, upon a bill in equity praying the Court to restrain the Dairy and Food Commissioner and his agent by injunction, from bringing or causing criminal prosecutions against certain citizens of Pennsylvania, customers of the plaintiffs, for violation of the Pure Food Law of May 13, 1909, (P. L. 520). The constitutionality of this law was attacked in a number of particulars. The case was several times argued, and its final determination awaited the determination of the case of Commonwealth vs. Christian Pflaum in the criminal courts of the State. After the determination of the case of Commonwealth vs. Christian Pflaum, the Circuit Court of the United States dismissed the bill and sustained the Pure Food Act of 1909 in every particular. Application was made to the United States Supreme Court for the allowance of an appeal, and that application was refused.

Commonwealth of Pennsylvania vs. Christian Pflaum.

This was a criminal prosecution against a candy merchant in the City of Philadelphia for selling adulterated candies in violation of the Pure Food Act of May 13, 1909, (P. L. 520). The defendant was convicted in the Quarter Sessions of Philadelphia County, and on a motion in arrest of judgment, the Court of Quarter Sessions sustained some of the contentions of the defendant, which involved an interpretation of the Act of Assembly which seriously affected the scope of the Act of Assembly, and its enforcement by the Pure Food Department. Upon appeal, the Court of Quarter Sessions was reversed by the Superior Court, (48 Super. Ct. 370), and by the Supreme Court of the State, (236 Pa. 294), and every contention made for the construction of the Act and for its constitutionality was sustained.

Commonwealth vs. Independent Trust Company.

This case involved the proper interpretation of the law regulating the imposition of bonus upon corporations. The defendant was incorporated in 1889, under the General Corporation Act of 1874, with an authorized capital of one million dollars. It paid the bonus of one-fourth of one per cent. the rate then established by law, on $1,000,000 capital. In 1903 it decreased its capital stock to $75,000.00 and operated as a corporation of $75,000.00 capital, until 1909, when it increased to $2,000,000.00. It paid a bonus at the rate of one-fourth of one per cent. on the second million dollars of its capital.

The Commonwealth claimed a bonus at the rate of one-third of one per cent. on $1,925,000.00. The Supreme Court (233 Pa. 92) held that the Commonwealth was not entitled to any bonus on the original one million dollars capital on which bonus had once been paid, but it was entitled to a bonus at the rate of one-third and not one-fourth of one per cent. on the second million dollars of capital.

The bonus act provided that corporations were required to pay a bonus upon the amount of capital which they were "authorized" to have, and "upon any subsequent authorized increase thereof." It was understood that under the authority of the case of Commonwealth vs. Railroad Company, 207 Pa. 154, the authority referred to in the bonus acts, means the Act of Assembly authorizing the company to have capital, but this case reverses the rule as understood by the profession, and decides, as contended by the Commonwealth, that the authority refers to the act of the corporation in increasing its capital stock, and not to the Act of Assembly authorizing the increase.

Commonwealth vs. Equitable Life Assurance Association of the United States.

This case involved the question as to whether the Commonwealth, under the taxing acts, could exact from a non-resident insurance company the tax on the premiums paid by the residents of this State, when such premiums were sent by mail directly to the home office of the company, or to the agents of the company out of the State, and were not paid through the agents of the company resident in the State.

The Court of Common Pleas of Dauphin County, under the Act which provides for a tax "upon the gross premiums of every character and description received from business done within this Commonwealth," held that the mailing of the premiums by residents in the State to non-resident agents, or to the home office of the company, was not business done within the Commonwealth," and that the Commonwealth was not entitled to tax on such premiums. The case was appealed, argued in the Supreme Court at the May term 1912, but has not yet been finally determined.

Commonwealth vs. Union Trust Company.

This case involved a construction of the Act of June 13, 1907, P. L. 640, providing the method of taxation of trust companies, and its determination was important to the Commonwealth. The Union Trust Company owned certain securities which were carried upon their books at the cost price, but which were admittedly worth two million dollars more than the amount at which they were carried on the books of the company. The Auditor General added the said two

million dollars to the valuation, which was obtained by taking the capital stock surplus and undivided profits of the company, as shown on their books, and dividing the same by the number of shares.

The company contended that the Auditor General was bound by the books of the company, and that there were no undivided profits in these securities until they were sold and the profit realized.

The Court of Common Pleas of Dauphin County sustained the contention of the defendant, but the Supreme Court reversed (227 Pa. 353) and held that the Auditor General had a right to ascertain the actual value of the shares by going behind the business of the company and determining the real value of the securities.

Trustees of the State Hospital for the Insane at Danville, vs. County of Lycoming.

The Attorney General, who is charged with the duty of acting for the State Hospital for the Insane at Danville, brought this case against the County of Lycoming to recover the entire cost of the maintenance of the criminal insane committed to that institution from the County of Lycoming. The question raised was whether the County of Lycoming was liable to the whole cost of maintenance of criminal insane who are indigent persons, or whether it was liable only, as in the case of indigent insane, for $1.75 per week. The Commonwealth contended that the Legislature has created two separate and distinct classes: one criminal insane and the other indigent insane; that the Commonwealth has not come to the relief of the counties for the support of its criminal insane, and that therefore the counties are liable for the whole cost of maintenance. The Court of Common Pleas of Dauphin County held that indigent insane includes criminal insane who are indigent; that there is no more liability for insane criminals who are indigent than for other indigent persons, and that the cost to the county was limited to $1.75 per week. This case is on appeal to the Supreme Court of Pennsylvania.

Commonwealth vs. Joseph Patsone.

This case involves the constitutionality of the Act of May 8, 1909, which prohibited unnaturalized foreign born residents from owning or being in possession of a shot gun or rifle.

The defendant was convicted in the Court of Quarter Sessions of Allegheny County, under this law, and appealed to the Superior Court, alleging that the Act was unconstitutional. The Superior Court sustained the constitutionality (44 Pa. Super. Ct. 128) and the Supreme Court affirmed the Superior Court (231 Pa. 46). An appeal has been taken to the Supreme Court of the United States where the case is now pending.

Commonwealth ex rel. vs. Allemania Fire Insurance Company, et al.

This was a bill in equity filed by the Attorney General in the Court of Common Pleas of Allegheny County, alleging that the domestic and foreign fire insurance companies therein named, and certain individuals licensed as fire insurance brokers, had formed a combination under the name of the Board of Fire Underwriters of Allegheny County for the purpose of establishing and maintaining rates of fire insurance, which combination in connection with the practices of the defendants thereunder, amounted to an unreasonable restraint of trade and created a monopoly in a business affected with a public interest. The defendants in their answer admitted the combination and alleged that on account of the peculiar nature of the fire insurance business, combinations to establish and maintain rates and to secure the application of the theory of schedule rating are beneficial to the community, and are in accordance with wise public policy. After a full hearing the Court decided, on December 30, 1912, that the combination of the defendants for the purposes stated in the constitution and by-laws of the said Board, is not legal *per se,* but that the testimony in the case showed that the practices of the defendants, as developed in the testimony, amounted to an unreasonable restraint of trade, stifled competition, and were against public policy, in that they deprived the property owner of full information as to the means of improving his property and decreasing his rate and produced an absolute monopoly among the defendants in securing business under unfair conditions.

The present practice of having the secretary of the Board appointed Fire Marshal of Allegheny County, was especially condemned by the Court. An injunction was awarded, restraining the defendants from continuing their present practices, and directing that a decree be submitted, setting forth correct future practices.

Commonwealth vs. Joseph M. Huston.

As stated at page 7 of the Biennial Report of this Department for the years 1909-1910, the appeal of Joseph M. Huston, Architect of the New Capitol Building, and employee of the Board of Commissioners of Public Grounds and Buildings, to prepare plans, specifications, etc., for the furniture and equipment of the building, from the sentence of the Court of Quarter Sessions of Dauphin County, following his conviction upon an indictment charging him and others with having conspired to defraud the Commonwealth in connection with the equipment and furnishing of the new Capitol building, was argued in the Superior Court on December 12th, 13th and 14th, 1910, and was then pending in said court.

On March 3, 1911, the Superior Court handed down an opinion (reported in 46 Pa. Super Ct. 172), affirming the judgment of the

Court of Quarter Sessions of Dauphin County. Upon petition of the defendant, the Supreme Court granted him a special allowance of an appeal, limiting the argument in that Court to the assignments of error which related to the action of the Court of Quarter Sessions in sending the jury back for further deliberation after a verdict of "Guilty of defrauding the Commonwealth" had been presented.

On the 25th day of May, 1911, the Supreme Court handed down an opinion (reported in 232 Pa. 209) stating that a majority of that Court were of the opinion that the judgment appealed from should be affirmed on the opinion of the Superior Court. The defendant forthwith surrendered himself to undergo the sentence pronounced upon him by the Court of Quarter Sessions of Dauphin County.

Commonwealth vs. Keystone Guard and National Protective Association.

Upon information received by this Department from the Insurance Department, to the effect that the Keystone Guard and National Protective Association, fraternal, beneficial associations, incorporated under the laws of this State, had, through their respective officers, divested themselves of their assets and proposed to reinsure their members in an Illinois corporation, quo warranto proceedings were instituted against them. At the hearing, in the course of these proceedings, it appeared that the officers of these associations had corruptly agreed to turn over the assets and the control of their respective corporations to a group of New York and New Jersey speculators for a cash consideration which had been paid to said officers personally.

Decrees of ouster were obtained in the Court of Common Pleas of Dauphin County against each of these associations, and receivers were apponited to wind up their affairs. The officers of the National Protective Association have been indicted and convicted, in the courts of Lycoming County, for their participation in the conspiracy to defraud the certificate holders in that association. Some of the officers of the Keystone Guard have likewise been convicted in the courts of Bradford County, and indictments are pending against others, as well as a bill in equity against all the officers of that association to compel an accounting.

Pennsylvania Railroad Co. vs. Nathaniel Ewing, et al., Constituting Pennsylvania State Railroad Commission.

The Legislature, at the session of 1911, passed the act, entitled "An act to promote the safety of travelers and employees upon railroads by compelling common carriers by railroad to properly man their trains," approved June 19, 1911, (P. L. 1053), which has come to be known as the "Full Crew Act."

A concentrated effort, by equity proceedings instituted in the Dauphin County Court by the Pennsylvania Railroad Company, the Philadelphia and Reading Railway Company, the Delaware, Lackawanna and Western Railroad Company, the Delaware and Hudson Company, and the Lehigh Valley Railroad Company, was made to have this act of the general assembly declared null and void, as in violation of both the State and National Constitutions, and to restrain, by injunction, the Pennsylvania State Railroad Commission from enforcing the provisions of said act. The bill in equity of the Pennsylvania Railroad Company was filed in the Court of Common Pleas of Dauphin County on July 13, 1911, and the bills of the other railroad companies above mentioned, containing substantially the same allegations, were soon afterward filed in the same court in separate suits. Answers to these bills in equity were prepared by the Attorney General and duly filed, and the case of the Pennsylvania Railroad Company vs. the Pennsylvania State Railroad Commission was placed at issue, and a hearing upon the merits held by President Judge Kunkel and Associate Judge McCarrell, in the Dauphin County Court, on October 26 and 27th, 1911. After argument the position of the Commonwealth was sustained by the Court, which upheld the constitutionality, in every respect, of the said act of assembly. The Court held that the said act was a valid exercise of the police power possessed by the Legislature to promote the safety of travelers and employees upon the railroads operated within the territorial limits of the Commonwealth, and that it did not violate any of the provisions of the 14th Amendment to the Constitution of the United States, nor any of the provisions of the Constitution of Pennsylvania, nor did it constitute in any sense a regulation of interstate commerce, the power to regulate which is vested in the Congress of the United States by the Federal Constitution,—these being the principal grounds upon which the railroads contended that the act was unconstitutional.

An appeal from the decree entered by the Dauphin County Court denying the prayer of the complainant for an injunction was taken to the Supreme Court of Pennsylvania by the Pennsylvania Railroad Company and argued in said Court on the 7th day of October, 1912. No decision upon the appeal has yet been rendered by the Supreme Court. The proceedings, instituted by the companies other than the Pennsylvania Railroad Company have not been proceeded with by said companies which will probably abide by the final determination of the Supreme Court on the Pennsylvania Railroad Company's appeal.

Vincenzo Abruzzo vs. Charles F. Wright, State Treasurer, et al.

The Legislature, at the last session of 1911, also passed an act designed to regulate, in Pennsylvania, the business of what has come to be known as "Private Banking," that is to say, the business of receiving deposits of money for safe keeping, or for transmission, or for any other purpose, as carried on by private individuals and unincorporated associations of individuals, the purpose being to put a stop, as far as possible, by legislation, to the widespread frauds practiced upon confiding persons by individuals calling themselves bankers, who, prior to this act remained free from any efficient regulation and control so far as the protection of innocent depositors against fraud was concerned. In a suit in equity commenced by one Vincenzo Abruzzo and others against the State Treasurer, Secretary of the Commonwealth and the Commissioner of Banking (which State officials constitute the licensing board provided for by the act), in the Court of Common Pleas No. 5 of Philadelphia County, an effort was made to have the court declare this act of assembly unconstitutional and void, upon the ground that it violated limitations contained in the State and Federal Constitutions. The Commonwealth, in its answer to the bill in equity filed, defended upon the ground that the act of assembly was, in all respects, constitutional and within the legislative power of the general assembly to enact, and that the suit brought to have the act declared unconstitutional was, in effect, under the law, a suit against the Commonwealth itself. On January 25, 1912, the position of the Commonwealth was sustained and the said equity proceedings dismissed. The plaintiffs in this case took no appeal.

The result of this litigation has been that many individual bankers who had previously been disposed to take a position antagonistic to this act, upon the ground that its provisions were invalid, have come in and made applications for the licenses required to be obtained as a condition precedent to the carrying on of this class of business.

Violations of the act have come to the knowledge of the Banking Commissioner and prosecutions have been instituted in those cases with successful results. One John Tonkay was arrested, and afterwards tried and convicted by the Court of Westmoreland County, of three separate violations of said act of assembly. On a motion for a new trial in these cases the Westmoreland County Court sustained the constitutionality of the act as against the grounds of objection which were made thereto, by that defendant.

Insurance Fraud Cases.

Criminal prosecutions were instituted under the supervision of the Attorney General against one David Balaity and others associated with him in the operation in the City of Philadelphia and

elsewhere of certain fraudulent mutual fire insurance companies, organized under the Act of May 1st, 1876, to wit: Colonial, Schuylkill, Integrity, Fairmount, Imperial, Metropolitan, Columbia, George Washington, Loyal, Peoples and Mercantile Mutual Fire Insurance Companies.

Bills of indictment were subsequently found by the Grand Jury of Philadelphia County against these defendants, and the cases await trial in the Court of Quarter Sessions of Philadelphia County. In connection with these prosecutions a suggestion was filed for the dissolution of said eleven companies in the Court of Common Pleas of Dauphin County, which court, after a hearing held, granted the prayer of the petition of the Commonwealth on August 4, 1911, and decreed that liquidation of the business of said companies be made by and under the direction of the Insurance Commissioner, as provided by the Act of June 1, 1911.

By direction of the Attorney General, one Frank B. Anthony, believed to have been one of the principal consiprators in the formation and subsequent operation of these fraudulent companies, has recently been apprehended in Brooklyn, N. Y., and extradited for trial in the Court of Quarter Sessions of Philadelphia County, upon an indictment found by the Grand Jury of said county.

Commonwealth ex rel. Attorney General vs. Tradesmen's Trust Co. of Philadelphia.

Information having been lodged by the Banking Commissioner with the Attorney General and a hearing had by him, proceedings were begun in the Court of Common Pleas of Dauphin County for the appointment of a Receiver and the winding up of the business of the Tradesmen's Trust Company of Philadelphia. After hearing, the court, on October 11, 1911, entered a decree dissolving said company and appointing Percy M. Chandler of Philadelphia, Receiver, to take charge of its assets, wind up its business and affairs and dispose of its assets according to law. The receiver immediately proceeded to discharge his duties.

On January 18, 1912, a certiorari was taken to the Supreme Court, upon the ground that the court had no power to decree the dissolution of said trust company,—it being contended that the insolvency of the corporation was not established in the manner required by law.

The Supreme Court rendered a decision dismissing the appeal at the cost of the appellant and affirming the decree of the court below, (237 Pa. 316). The Supreme Court decided the important point that, within the meaning of the Act of February 11, 1895, under which said proceedings were instituted by the Attorney General,

the fact admitted by the trust company in its answer, to wit: That the company had, on September 18, 1911, "voluntarily closed its doors," of itself, "established insolvency within the meaning of the statute."

JOHN C. BELL,
Attorney General.

OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

FOR THE

TWO YEARS ENDING DECEMBER 31, 1912.

JOHN C. BELL,

Attorney General.

OPINIONS GIVEN TO THE GOVERNOR.

2—23—1913

OPINIONS GIVEN TO THE GOVERNOR.

STANDARD QUEMAHONING COAL CO.

Charters—Similarity in titles—Jurisdiction of State departments—Appropriation of geographical names.

The department of the Secretary of the Commonwealth, in determining questions relating to alleged similarities in names of proposed corporations to those of existing corporations, should limit its inquiry to the question whether confusion would arise in the assessment and collection of State taxes and in the service of judicial process, leaving all questions relating to possible or apprehended interference by the new corporation with the business of the older corporation to the adjudication of the courts.

The only duty of the State department is to see that names are not so similar as to be calculated or reasonably liable to deceive. This is the statutory rule with reference to trade-marks, and no higher rule can be applied to questions of incorporation.

Questions of possible interference by the proposed corporation with the trade and business of a protestant cannot be disposed of by the department of the Secretary of the Commonwealth or other department of the State government with the accuracy which should attend the disposal of legal issues, there being no machinery for taking testimony and disposing of the respective contentions of protestants and applicants upon competent evidence.

The word "Quemahoning," a geographical name, designating a valley of considerable extent, and applied also to a valuable vein of coal in the Quemahoning Valley, cannot be exclusively appropriated by a corporation as part of its title.

There is not such similarity between the names "Standard Quemahoning Coal Company" and the "Quemahoning Coal Company" as would result in confusion in the assessment and collection of State taxes or in the service of judicial process, and a charter should be granted for the former title against the protest of an existing corporation having the latter title, it appearing that the name "Quemahoning" is in use by several different corporations.

Instances cited of action as to granting charters upon protests of existing corporations.

Kidd Bros and Burgher Steel Wire Co., 5 Dist. R. 56, and Quemahoning Valley Coal Co., 13 Dist. R. 446, followed.

Office of the Attorney General,

Harrisburg, Pa., June 27, 1911.

Honorable John K. Tener, Governor of Pennsylvania, Harrisburg.

Sir: On the 3rd day of March, 1911, application was made in due form for the granting of a charter to a proposed corporation under the name of "Standard Quemahoning Coal Company," for the purpose, inter alia, of mining and selling coal.

A protest was duly filed against the issuing of letters patent to said proposed corporation by the "Quemahoning Coal Company," an existing corporation, engaged in the business of mining and selling coal in the same locality as that in which the proposed corporation desires to operate.

A hearing was had in accordance with the rules of the Department of the Secretary of the Commonwealth, and, after due consideration of the said protest, Hon. John F. Whitworth, corporation clerk in said Department, filed an opinion recommending the approval of the pending application of the Standard Quemahoning Coal Company.

An appeal from that decision was taken by the protestant to your Excellency, and you now ask to be advised by this Department with relation to the granting or refusal of letters patent to said proposed corporation.

In his opinion, the said Corporation Clerk points out that the word "Quemahoning" is a geographical name used to designate a certain valley of considerable extent located in the county of Somerset, through which flows a stream called the "Quemahoning Creek." The word "Quemahoning" is also applied to a valuable vein of coal found in said Quemahoning Valley. It is held in said opinion that the word "Quemahoning" cannot, therefore, be exclusively appropriated by protestant company, and reference is made to an opinion under date of December 3, 1903, by former Attorney General Carson, reported in 28 Pa. C. C. 669, in which it was held that a protest made at that time by the present protestant against the incorporation of a proposed corporation under the corporate name of the "Quemahoning Valley Coal Company" should be overruled, if the then applicants for a charter should amend the name to read "The Quemahoning Valley Mining Company." The said opinion of the said Corporation Clerk then proceeds to state that under previous rulings of the Attorney General's Department the Department of the Secretary of the Commonwealth, in dealing with questions growing out of the alleged similarity of the name of a proposed corporation to the name of an existing corporation, should limit its inquiry to the question of whether or not confusion would arise in the assessment and collection of State taxes, and in the service of judicial process, leaving all questions relating to the possible or apprehended interference of the business of the new corporation with that of the older corporation to the adjudication of the courts, when, and in the event that, such interference or confusion should arise. It is then stated in said opinion that there is not such similarity between the names "Standard Quemahoning Coal Company" and "Quemahoning Coal Company" as would result in confusion in the matter of the assessment and collection of State taxes, or in the service of judicial process.

The conclusion reached in the opinion of the Corporation Clerk is fully sustained by an examination of the former rulings of this Department, cited in said opinion, and other rulings not expressly referred to therein.

In the case of Kidd Bros. and Burgher Steel Wire Co., reported in 17 Pa. C. C. 238, the Kidd Steel Wire Co., Ltd., protested against the granting of a charter to the Kidd Bros. and Burgher Steel Wire Company upon the ground, inter alia, that the granting of said charter would create business confusion and that customers of the protestant would be misled and possibly tranact business with the proposed corporation, under the impression that they were dealing with the protestant. The applicants denied that such consequences would result. In disposing of this question Secretary of the Commonwealth Reeder said:

> "It is the belief of this Department, that this discussion is entirely irrelevant to the matter at issue; that such financial results, and the mental attitude of intending purchasers, together with the question raised as to trademarks, are matters which, if capable of adjudication at all, must be determined in the courts. They are matters of speculation entirely outside the cognizance of this Department. It is not the province of this Department to in any manner regulate trade competition. They, therefore, are to be eliminated from consideration, and the question as to similarity must be decided upon other grounds."

The opinion then states that the practice of the Department of the Secretary of the Commonwealth to refuse to grant a charter to a corporation under a name too nearly similar to that of a company already incorporated is based upon the obvious necessity of avoiding confusion to the State in the imposition and collection of taxes and the necessity of avoiding uncertainty in the judicial process of courts in which such corporations might sue or be sued.

Again, in the case of the Pittsburgh No 8 Coal Company, in an opinion by Attorney General Todd, under date of June 5, 1907, cited in the opinion of the Corporation Clerk and reported in Bound Volume of Official opinions of the Attorney General of Pennsylvania. 1907-1908, page 49, the following appears:

> "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 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."

The following illustrations may be cited of cases in which charters have been granted to new corporations against the protest of corporations already in existence: "Quemahoning Valley Mining Company" against the protest of "Quemahoning Coal Co."; "Pittsburgh No. 8 Vein Coal Company" against the protest of "Pittsburgh Coal Co."; "West End Savings and Trust Company" and the "West End Trust Company of Pittsburgh" notwithstanding protests filed by each against the other, and the protest of the "West End Savings Bank" against the latter; "The Crystal Ice Company of Pittsburgh" against the protest of "The Crystal Ice Company of Pittsburgh and Allegheny"; "The Penn Printing and Publishing Company" against the protest of the "The Penn Publishing Company."

On the other hand it was held that a charter should be refused to the "Pennsylvania Correspondence School" on the protest of the "Pennsylvania Correspondence Institute" upon the ground that the method of conducting business by both was by correspondence, and both were to operate from the same territory, and, upon the further ground, that the distinction between "School" and "Institute" where both were educational establishments, and not corporations dealing in articles of commerce, was too slight to differentiate them.

Upon the argument before this Department, on the appeal from the decision of the Corporation Clerk, counsel for the protestant earnestly and ably contended that two questions necessarily arise in this case: (1) A question relating to the confusion of names, and (2) the question of the right of the Quemahoning Coal Company as the first taker of the name to be protected by the Commonwealth in the business use of that name.

It was urged that this Department should consider not merely whether the names of the protestant and that of the proposed corporation are so similar as to result in confusion and uncertainty in the imposition and collection of State taxes, and in the service of judicial process, but also whether there was such similarity in names as would probably create confusion in the transaction of the business of the respective corporations and result in injury to the rights of the protestant as the first taker of the name. In support of this contention the case of American Clay Manufacturing Company, a corporation of Pennsylvania, vs. American Clay Mfg. Co., a corporation of New Jersey, 198 Pa. 189, is cited.

This case was a bill in equity for an injunction by a Pennsylvania corporation to restrain a New Jersey corporation, the name of which

was identical with that of the Pennsylvania corporation, from the use of such corporate name. In the course of the opinion of the Supreme Court, Mr. Justice Mitchell said:

> "It is conceded that the defendant could not have been chartered as a Pennsylvania corporation by its present name because that name was already appropriated by the plaintiff. The law requires notice to be published, among other things, of the name of an intended corporation, and the authority granting the charter is required to see that the corporation will not be 'injurious to the community.' Part of the intent of the act has always been understood to be to prevent confusion of titles and to protect the first taker of the name which has assumed the responsibilities and paid for the privileges of incorporation. Accordingly, it has been the practice both of the Executive Department and the courts to consider the question of interference with previous corporations having the same or similar names."

Upon this authority it is vigorously contended that it is the duty of the departments authorized to grant charters "to consider the question of interference with previous corporations having the same or similar names" in the same manner and to the same extent as such questions are considered by the courts.

It is therefore urged that this case should not be disposed of within the compass of previous rulings, but that the field of inquiry should be extended to embrace the question of probable confusion in the transaction of the business of the respective corporations. When this contention is carefully investigated and examined it will become apparent that the questions now urged upon the consideration of this Department, viz: the apprehended interference by the proposed corporation with the trade and business of the protestant, and the alleged infringement upon the rights acquired by the protestant as the first taker of the name "Quemahoning" cannot be disposed of by this Department, or by any department of the State government, with the accuracy which should attend the disposition of legal issues. None of the departments of the State government have any machinery for taking testimony and disposing of the respective contentions of protestants and applicants upon competent evidence.

It is to be remembered that the language quoted from the opinion of the Supreme Court was used in connection with the decision of a case in which the names of the contesting corporations were identical. In a case of that kind it is, of course, apparent to any one that confusion must necessarily arise in the transaction of the business of the corporations. Where, however, the names are not identical, and it is contended by the applicants, on the one hand, that the names are so dissimilar that it is improbable that any confusion will arise,

and by the protestants, on the other hand, that the names are so similar that confusion will, in all probability, arise, the issue thus arising with relation to the probabilities of the case is one which cannot be disposed of by any department of the State government with any degree of certainty. The only thing that can be done by the departments charged with the responsibility of considering and disposing of applications for charters is to require that the name of a proposed corporation shall differ from that of an existing corporation to such an extent as to render unwarranted an assumption either that the name of the proposed corporation would reasonably be mistaken for that of the protestant, or would deceive the public, or be calculated to deceive the public, or that confusion with reference to the identity of the two corporations would exist to the prejudice of the protestant.

It is the duty of the departments of the State governement to see that the names are not so similar as to be calculated or reasonably liable to deceive. This is the statutory rule with reference to trade marks, and certainly no higher rule can be applied to questions of incorporation. Unless, therefore, the similarity in names is such that it may reasonably and fairly be assumed that there will be confusion in the transaction of business, applicants should be permitted to incorporate under the name they have chosen. If it should subsequently be made to appear that confusion has, in fact, resulted, the injured parties have their remedy in the courts.

In order to obtain relief, it would be necessary, of course, for the complaining corporation to show that confusion and uncertainty has actually arisen. It is impossible for this Department, the Department of the Secretary of the Commonwealth, or the Executive Department, to accurately predict what the result of the granting of a charter to one corporation may be with relation to the business interests of a protesting corporation, engaged in the same line of business; but unless it reasonably, fairly and clearly appears that confusion and uncertainty will probably result on account of the similarity in names, the Commonwealth is under no obligation to sustain a protest, based upon that ground.

In the case of Hygeia Water Ice Co. vs. The New York Hygeia Ice Co., 140 N. Y. 97, the court said:

> "The gravamen of the action is that the defendant has appropriated and is using a corporate name calculated to confuse and deceive the public to the plaintiff's injury. There is no finding and no satisfactory proof that the defendant by the use of the name ever deceived anyone, or that any confusion as to identity was ever produced in consequence. The two corporations certainly have different names, though the word 'Hygeia' occurs in both; but this fact would not warrant us in assuming, as matter of law, that the name adopted by the defendant has

> deceived the public, or is calculated, to deceive them, or that any confusion with reference to the identity of the two corporations exists to the prejudice of the plaintiff in consequence of the defendant's act. Courts of equity must, in such cases asume that the public will use reasonable intelligence and discrimination with reference to the name of the corporations with which they are dealing or intend to deal, the same as in the case of individuals bearing the same or similar names. It is time enough in such cases for equity to use its extraordinary powers when it appears that deception or confusion has in fact resulted from the use of a word or a name, or when it clearly appears that such result is likely to follow."

If the courts, in the absence of proof of actual confusion and uncertainty, will not act, except "when it clearly appears that such result is likely to follow," certainly no department of the State government should be expected to adopt a different rule of action.

In the present case it is clear that no confusion can arise in the departments of the State government in the matter of assessment and collection of State taxes, nor can confusion arise in the service of judicial process. It is equally true that no one can say at this time that it clearly appears that confusion will necessarily, or even probably arise in the transaction of the business of the applicants and the protestants.

When the claim is made that it is the duty of the Commonwealth to protect the Quemahoning Coal Company in the use of its corporate name because it is the first taker of that name and has paid the fees for incorporation under that name, the fact must be borne in mind that the word "Quemahoning" is a geographical name and cannot, therefore, be exclusively appropriated.

In Laughman's Appeal, 128 Pa. 1, it is held that a geographical name designating a district of country cannot be appropriated, even as a trade name, for articles manufactured or produced within that district, so as to exclude other persons in the same district from truthfully using the same designation to indicate the local origin of similar articles manufactured or produced by them.

In the course of the opinion in this case the Supreme Court say:

> "The ownership of a trademark has, in general, been considered as a right of property, and equity will protect that right from infringement; proof of fraud is not required; the mere violation of a right is sufficient to induce the exercise of the equity powers of the court. The trade-name of any natural product or other article of manufacture, upon which a trade mark cannot conveniently be affixed, though not strictly a trade mark, is, nevertheless, a species of property and will, as a general rule, be protected in like manner."

If a geographical name cannot be appropriated as a trade name it may be said with equal, if not greater, force, that it cannot be appropriated as a corporate name; for, as above pointed out, the ownership of a trade name is considered a right of property, but a corporation has no absolute vested right in its corporate name.

In the case of Charity Hospital vs. Maternity Hospital, 29 Pa. Sup. Ct. 421, a case relating to a contest about the use of corporate names, the Superior Court, in a per curiam opinion, say that the similarity of the name of one corporation to that of another corporation having its hospital in the same vicinity is a matter eminently proper for the consideration of the court, to whose sound legal discretion an application for an amendment of a charter is addressed, but add:

> "This is not because any absolute vested right of the appellees would be infringed by the appellant's adoption of the proposed name, but because of the tendency to confusion that might result."

In the above cited case of Laughman's Appeal, it appeared that a large tract of coal land had become known by the name of the original patentee—Sonman—, and that the name "Sonman Coal" had been adopted by a firm as a trade name, which said firm claimed the exclusive right to the use of such name. In the course of its opinion the Supreme Court said:

> "It is clear from the evidence that Sonman is a word of geographical signification; it denotes a specific territory or region of country of considerable extent which is and for many years both before and since the trade name was adopted has been devoted to the production of a somewhat peculiar quality of coal by different operators, * * * * * * * * * and we hold that no one of these can assume and adopt as a trade name the name by which the place is generally known in the geography of the country to the exclusion of others."

This reasoning, applicable to a question relating to the use of a trade name, applies with even greater force to the present controversy. It further appears, from an examination of the records of the Department of the Secretary of the Commonwealth, that the name "Quemahoning" is used by several different corporations engaged in the business of mining and selling coal in the Quemahoning Valley.

In 1903 the Quemahoning Coal Company, the present protestant, was incorporated and, as has already been pointed out, the incorporation of the Quemahoning Valley Mining Company was authorized in the same year.

In 1904 a corporation was incorporated under the name of the Jenner Quemahoning Coal Company, and in 1910 a fourth corporation was incorporated under the name of Belmont Quemahoning Coal Company.

Taking into consideration, therefore, the former rulings of this Department, and the principle stated in American Clay Manufacturing Company vs. American Clay Manufacturing Company, supra, in so far as that principle can be applied by the departments of the State government, I am of opinion that the protest of the Quemahoning Coal Company should be overruled and letters patent issued to the Standard Quemahoning Coal Company.

Yours very truly,

JNO. C. BELL
Attorney General.

MINE INSPECTORS.

The four additional mine inspectors provided by the Act of June 9th, 1911, are to be appointed at once and should be selected from the list qualified under the Act of 1893, their tenure of office to hold until May 15, 1913.

Office of the Attorney General,

Harrisburg, Penna., July 29, 1911.

Honorable John K. Tener, Governor.

Sir: This is a reply to your letter of the 21st inst., enclosing communications (herewith returned), from John Fox, of Donora, Penna., under date of June 10th, and from James E. Roderick, Chief of Department of Mines, under date of July 17th, relative to the appointment of four additional Mine Inspectors, as a result of the passage of the new Bituminous Coal Mining Act, approved June 9th, 1911, entitled "An Act to Provide for the Health and Safety of Persons employed in and about the Bituminous Coal Mines of Pennsylvania, and for the protection and preservation of property connected therewith."

I subjoin my conclusion, without, however, stating at appreciable length the reasons leading to such conclusion.

The said Act of June 9th, 1911, is intended to be a code and substantially re-enacts, with some amplification and amendments, all of the essential provisions of the previous Act or Code of May 15, 1893, (P. L. 52).

Under the Act of 1893, the Bituminous coal regions were divided into twenty-one districts and a like number of inspectors appointed by the Governor, having the qualifications required by said Act. The Act of 1911 provides for the appointment of twenty-five inspectors—or four additional ones.

The questions now arise:

1. Are the four additional inspectors created by the Act of 1911 to be appointed now, or are they to be appointed only after May 15th, 1913, (the beginning of the term of appointees specified in Section 5, Article XIX of said Act)?

2. If now to be appointed, from which list of qualified persons are these four inspectors to be selected? i. e., from

(a) The existing list already qualified under the Act of 1893, or,

(b) A new list to be qualified (with somewhat different and higher qualifications), under the Act of 1911.

The answer to these questions is by no means free from difficulty, and I am conscious that a different opinion may, with much show of reason, be entertained by others. My opinion, nevertheless, is:

That the four additional inspectors provided for by the Act of 1911, are to be appointed now. Article XXII of the Act directs the arrangement or divisions of the Bituminous Counties of the Commonwealth into twenty-five inspection districts; and there is nothing in the mandatory language of this article to indicate an intention of the Legislature to postpone such division.

The second question above propounded remains to be answered. In my opinion, the four additional inspectors should be selected from the list qualified under the Act of 1893. The Act of 1911, in Article XIX, provides for the appointment "during the month of January", 1913, of the new "Mine Inspectors Examining Board"; and for the examination of applicants by such new Board; and further, in Section 3 of said Article, defines and prescribes the qualifications of such applicants. The Act only repeals "all acts or parts of acts inconsistent therewith." Therefore, the old Board of Examiners under the Act of 1893, in my judgment, should continue to hold examinations as therein provided, and from the list certified by the said Board, the Governor should continue to appoint inspectors—but to the increased number of twenty-five—until the new Examining Board is established in January, 1913. And these additional inspectors will hold office until the 15th of May, 1913. For, by Section 5, of the said Article XIX, it is provided that "each inspector appointed under the provisions of the Act of May fifteenth, eighteen hundred and ninety-three, may continue in office until May fifteenth, nineteen hundred and thirteen."

This conclusion harmoniously welds together the Acts of 1893 and 1911, and provides a rational method for the operation and enforcement of the same until 1913, when the new system of examining candidates goes into effect.

Yours faithfully,
JNO. C. BELL
Attorney General.

Enclosure.

BRADDOCK GENERAL HOSPITAL.

In the appropriation of June 13, 1911, to the Braddock General Hospital, the sum of $10,000 was appropriated for the purpose of "outstanding notes and mortgages on new buildings."

Office of the Attorney General,

Harrisburg, Pa., December 1st, 1911.

Honorable John K. Tener, Governor of Pennsylvania.

Sir: I am of opinion, after careful consideration, that, under the proper legal construction of the act, entitled:

> "An act making an appropriation to the Braddock General Hospital of the Borough of Braddock, Pennsylvania."

of June 13, 1911, pages 195-196 of the volume containing the appropriation acts passed at the last session of the Legislature, the sum of ten thousand dollars, or so much thereof as may be necessary, is specifically appropriated to said hospital for the two fiscal years beginning June first, 1911, for the purpose of "outstanding notes and mortgages on the new buildings."

Any other construction of this act would be to render the provisions of the last portion thereof wholly inoperative, and, therefore, to conclude that the Legislature intended to do a vain thing, whereas, the language of the act in its entirety does not make it necessary to reach such conclusion.

I therefore think, that the true construction, under the rules of law governing the interpretation of statutes, is as above stated.

Very respectfully yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

TERM OF COUNTY TREASURER.

Where one elected county treasurer of Butler county dies before qualifying in office, the county treasurer in office holds over until his successor is duly qualified.

Office of the Attorney General,

Harrisburg, Pa., December 7, 1911.

W. H. Gaither, Esq., Private Secretary to the Governor.

Sir: The Attorney General has referred to me for attention your communication of December 6th, in which you state the following circumstances, with regard to the county treasurership of Butler county, viz:

> "Cunningham Trimble was elected county treasurer three years ago, his term to expire the first Monday in January, 1912. At the last election in November Jacob W. Glessner was elected to this office to succeed Trimble. After the election, however, Glessner's death occurred and the contention is that the law provides that Trimble's administration does not expire until his successor shall duly qualify."

This contention, to the effect that Trimble, the incumbent elected as county treasurer at the election in 1908, holds over until his successor shall be duly qualified, is correct, by reason of the express provisions of Section 2 of Article XIV of the Constitution, as amended by the amendments thereto of 1909.

Section 2 of Article XIV provides:

> "County officers shall be elected at the general elections and shall hold their offices for the term of three years beginning on the first Monday of January next after their election *and until their successors shall be duly qualified,*" etc.

Section 1 of the same article provides that:

> "County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, *treasurers,*" etc.

Section 10 of the amendments of 1909 amending the said Section 2 of Article XIV of the original Constitution, makes no change with regard to the holding over. The amendment reads as follows:

> "County officers shall be elected at the municipal elections and shall hold their offices for the term of four years, beginning on the first Monday of January next after their election, *and until their successors shall be duly qualified,*" etc.

Construing the above constitutional provision, it was held in the cases of the Commonwealth v. Hanley, 9 Pa. 513, and Commonwealth v. Wise, 216 Pa. 152, that the elected incumbent to a county office has the constitutional right to hold over until his successor is duly qualified.

> "A county officer is not elected or commissioned for only three years (or for four years under the new amendment) but for such additional period as may intervene between the end of the three years and the time when his successor is duly qualified. The additional period is by an express provision of the Constitution as much a part of his official term as the definite number of years fixed in his commission, when he holds over. Therefore his term is extended in exact compliance with the Constitution and the period during which he holds over is a part of his constitutional tenure. It necessarily follows that no vacancy can occur in a county office so long as the elected incumbent continues to perform the duties of the office. This rule prevails when the officer elected or appointed has for any cause whatever failed to qualify, and is recognized not only in our own but in other jurisdictions of this country."

The above quoted language is that of Mr. Justice Mestrezat, delivering the opinion of the Supreme Court in the case of Commonwealth v. Sheatz, 228 Pa. 301, in which the Supreme Court distinguishes between State officers and county officers with regard to the tenure of their office. The term of the State Treasurer was fixed by the Constitution at two years, and the Constitution contained no provision that at the end of this period of time, if the successor did not qualify, the incumbent previously elected should hold over. In the case of county officers, by Article XIV of the Constitution, there is such a provision as above stated.

It follows, therefore, that Mr. Trimble is entitled to hold his office as county treasurer until his successor is elected at the general municipal election in the next odd numbered year, 1913, and has duly qualified.

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

SOUTH FORK-PORTAGE RAILWAY COMPANY.

Letters patent should be issued to the South Fork-Portage Railway Company, notwithstanding the protest filed by the Johnstown and Altoona Railway Company.

Office of the Attorney General,

Harrisburg, Pa., August 21, 1912.

Hon. John K. Tener, Governor of Pennsylvania, Harrisburg.

Sir: I return herewith, with my recommendation for approval, the articles of association and proposed letters patent of the South Fork-Portage Railway Company.

After hearing, of which due notice was given, and careful consideration of the protest filed by the Johnstown and Altoona Railway Company and argument by counsel in support thereof against the granting of the letters patent, in this case, I am of opinion, in accord with that of Mr. Whitworth, the Corporation Clerk, that letters patent should issue.

The charter of the protestant company was granted in 1909, under and subject to the provisions contained in the Act of May 3, 1905, (P. L. 368), Section 1 of which act provides that "whenever a charter under the provisions of this act, shall be granted to any corporation to build a road, as provided by this act, no other charter to build a road on the same streets, highways and bridges or property shall be granted to any other company, within the time during which, by the provisions of this act, the company first securing the charter has the right to commence and complete its work."

Section 6 of the same Act of 1905 prescribes the limit of time within which the right to commence and complete said work of building its road continues to exist, as follows:

> "Section 6. Any company which does not * * * forthwith diligently proceed to occupy and use the same (i. e. the streets, highways and bridges which by its charter it is authorized to occupy and use) and does not begin work within two years after such consent (i. e. the consent of 'the local authorities of the proper city, borough or township for leave to occupy and use' such streets, highways and bridges) shall be obtained, and complete its road, or a portion thereof, as herein provided, within the time limited by such consent, or any extension thereof, shall be deemed to have abandoned the right to occupy and use such streets, highways and bridges not so used, and the same may be occupied and used by any other company duly chartered and obtaining consent so to do."

It appeared at the hearing that the protestant company, by virtue of its charter of incorporation, had the right to use at least some of the streets and highways, a franchise to use and occupy which the

proposed South Fork-Portage Railway Company now makes application. The further and undisputed fact appeared, however, that the Johnstown and Altoona Railroad Company has never since incorporation and obtaining the requisite municipal consent, actually begun the work of building its road over the route mentioned in its charter of incorporation, and has not "forthwith diligently proceeded" to occupy and use the streets, highways and bridges which, by its charter, it was originally authorized to occupy and use, and as more than two years time has elapsed since the consent of the local municipal authorities was obtained, it follows, as matter of law, that under the express legislative declaration contained in the 6th Section of said Act of 1905, the protestant company must "be deemed to have abandoned the right to occupy and use such streets, highways and bridges not so used, and the same may be occupied and used by any other company duly chartered and obtaining consent so to do," and said protestant company no longer has the right to commence the building of its said road.

The undisputed facts relieve this case from the application of the general rule of law that a corporation is not deemed to be dissolved by reason of misuser or non-user of its franchises, nor its rights and privileges forfeited until default has been judicially ascertained and declared by a judgment of forfeiture. Under the undisputed facts and circumstances, the Legislature itself has, by the 6th Section of said Act of May 3, 1905, (P. L. 368), declared the protestant company's right and privilege to build its road at an end.

Commonwealth v. Lykens Water Co., 110 Pa. 391.

The amendatory Act of June 1st, 1907, (P. L. 366) does not, in any wise, alter or change the provisions of the previous Act of 1905, above referred to, with regard to the limitation of time, after the requisite municipal consent, within which the protestant company was obliged to begin work and forthwith diligently begin to occupy and use the streets and highways which, by the terms of its charter, it was authorized to occupy and use. Said Act of 1907, in this connection, merely required that the municipal consent be obtained as a condition precedent to incorporation. That which it was necessary for the protestant company to do and perform subsequent to obtaining said consent in order to keep alive its franchise to build its road is definitely prescribed by said Act of 1905, as above stated.

The further charge contained in the protest that the application for this charter was not made in good faith is not sustained.

For these reasons the issue of letters patent in this case is recommended.

Respectfully,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

3—23—1913

OPINIONS TO THE AUDITOR GENERAL.

OPINIONS TO THE AUDITOR GENERAL.

INCREASE OF JUDGES SALARIES.

The salaries of the judges of the 24th and 46th judicial districts in the increased amounts caused by the increase of population in their districts may be computed from December 14, 1910, the date when the President messaged to Congress the new census.

Office of the Attorney General,

Harrisburg, Pa., March 22, 1911.

Hon. A. E. Sisson, Auditor General, Harrisburg, Pa.

Sir: Your favor of March 2nd was duly received. You ask to be advised at what date the increase of salaries of Judges in the Twenty-fourth and Forty-sixth Judicial Districts takes effect.

The Judges' Salary Act of April 14, 1903 (P. L. 176), in Section 4, provides:

> "In judicial districts having a population of ninety thousand and less than five hundred thousand, the annual salary of the judges of the court of common pleas, learned in the law, shall be six thousand dollars ($6,000.00); and in said judicial districts, having a population of ninety thousand and less than five hundred thousand, where there there is only one judge, he shall receive one thousand dollars ($1,000.00) additional; and in other judicial districts, having less than ninety thousand, the annual salary of the judges of the court of common plas, learned in the law, shall be five thousand dollars ($5,000.00)."

I understand that Blair county, which composes the Twenty-fourth Judicial District, prior to the census of 1910 contained a population of 85,099, and that the census of 1910 shows that Blair county now has a population of 108,858; that Clearfield county, which composes the Forty-sixth Judicial District, prior to the census of 1910, contained a population of 80,614, and that the census of 1910, as promulgated by the Census Bureau, shows that said county now has a population of 93,768. These counties, therefore, have passed from districts in which the Judges of the Court of Common Pleas, under the law quoted, are entitled to receive the annual salary of five thousand dollars ($5,000.00), into districts in which the Judges of the said court are entitled to receive the annual salary of six thousand dollars ($6,000.00).

In your letter to me you state that you have information from the Census Bureau that "On December 14, 1910, they (the Census Bureau) transmitted Bulletin 109 of the said Bureau, advising Congress of the results of the census and giving figures pertaining thereto." Further, the President of the United States in a message (a copy of which is hereto attached), dated December 14, 1910, transmitted to the Senate and House of Representatives a statement showing the population according to the Thirteenth Decennial Census, taken as of the date of April 15, 1910.

In the light of the above facts, the ruling of the Supreme Court in the case of Lewis v. Lackawanna County, 200 Pa. 590, is, in my opinion, decisive of the question you ask. In that case, it was held that, in an inquiry like the present, it is not the mere existence of the population or number of people shown by the census that governs, but the legal and official ascertainment of the fact. In its opinion the Supreme Court says: "It was argued that as the census was taken as of June 1, 1900, the fact must be taken to be established as of that date, without regard to when the result is made known." Answering this argument, the court further says: "The question is not one of announcement, as the appellee has argued—it is of the legal ascertainment of the fact."

Similarly, in Commonwealth ex rel. vs. Handley, 106 Pa. 245, Clark, J., said:

> "The fact that a county contains forty thousand inhabitants determines its constitutional right to be made a separate district; but that fact must be somehow authoritatively ascertained in order that the right may be exercised."

The Census Act of March 3, 1899, which was before the court in the case of Lewis v. Lackawanna County, contains substantially the same provisions as the Act of Congress, pursuant to which the census of 1910 was taken. While in neither act is there any provision for formally laying the returns of the population before Congress, yet such submission was in fact made in each instance, and the date of such submission is the legal and official ascertainment of the fact. Reverting to the decided case, it appears from the report thereof, that the Census Bureau, on December 13, 1900, submitted to Congress an official bulletin, giving the population by counties.

Of this official communication Mr. Justice Mitchell says:

> ". . . . . as an official act of the department of the government, in connection with congress, this was probably a part of the public history of which not only the courts but officers of election and electors are bound to take notice. But that is the earliest date at which

> the fact of population, on which the status of Lackawanna county was to be changed, can be considered as legally ascertained."

Similarly, although the census of 1910 was taken as of April 15, 1910, yet the official return or submission of the same to Congress by the Census Bureau and the President was not made, as above noted, until December 14, 1910.

Upon the authority of this case I am, therefore, of opinion, and so advise you, that December 14, 1910, the date on which the President, by message to Congress, transmitted the statement showing the result of the enumeration according to the Thirteenth Decennial Census, taken as of the date of April 15th, 1910, is the earliest date from which the increased salary of the Judges in the Twenty-fourth and Forty-sixth Judicial Districts can be computed.

In giving you this opinion I am mindful of the case of Commonwealth vs. Matthews, 210 Pa. 373, wherein it is ruled that there is no question or doubt as to the power of the Legislature, in case of inadequacy, to increase judicial compensation to adequate amounts during incumbency.

Very respectfully,

JNO. C. BELL

Attorney General.

ABBEY PAINTINGS.

The appropriation for the Abbey paintings in the Capitol does not lapse, and is applicable for the specific purpose for which the appropriation was made.

Office of the Attorney General,

Harrisburg, Pa., May 15, 1911.

Hon. A. E. Sisson, Auditor General, Harrisburg, Pa.

Dear General: I am in receipt of your favor of the 9th instant in which you say:

> "I am advised by Hon. John G. Johnson, of Philadelphia, that he represents Mr. Abbey who has the contract for some mural decorations at the Capitol Building, and he desires to know whether this Department will recognize drafts upon the old appropriation or will require that a new appropriation be made on the theory that the old appropriation will lapse at the expiration of the two appropriation years."

Mr. Johnson's inquiry and your letter obviously refer to the appropriation made for the payment of the balance of the cost of the mural and art paintings for the new Capitol Building under the contract with Edwin A. Abbey. For such payment an appropriation of $212,000.00 was made in the general appropriation bill approved June 14, 1907, (P. L. 764-765). A comparatively small portion of this sum was expended in the two fiscal years following the said appropriation. Thereupon a specific appropriation, for the specially expressed purpose of making payment of the balance of the cost of the mural and art paintings referred to, was approved on the 13th day of May, 1909. This act is entitled:

> "An act making an appropriation to the Board of Commissioners of Public Grounds and Buildings, for the payment of the balance of the cost of the mural and art paintings for the new Capitol Building, in accordance with contract with Edwin A. Abbey."

The Act is as follows:

> "Section 1. Be it enacted, etc., That by reason of the lapsing of the greater part of the appropriation contained in the general appropriation act of one thousand nine hundred and seven, for the payment of the cost of contract with Edwin A. Abbey, the sum of one hundred eighty-three thousand three hundred and nine dollars and ninety-seven cents, or so much thereof as may be necessary, is hereby specifically appropriated to the Board of Commissioners of Public Grounds and Buildings, for the payment of the balance of the cost of the mural and art paintings for the new Capitol Building, on the contract with Edwin A. Abbey."
>
> (See Pamphlet Laws 1909, p. 776).

I am further advised that the work upon these mural and art paintings has since progressed, and that you have made further payments on account, leaving a balance still in your hands, applicable, unless the same should lapse, to the completion of the said paintings.

In my opinion this unexpended balance will not lapse or revert to the State Treasury at the close of the present fiscal year. The Act approved May 15, 1889 (P. L. 8), does not apply to such a case.

The above recited Act of May 13, 1909 (P. L. 776), being a specific appropriation for a specific purpose, the unexpended balance in your hands, in my opinion, remains and will continue to remain applicable to the specific purpose for which the appropriation was made, to wit: "for the payment of the balance of the cost of the mural and art paintings in the new Capitol Building, under contract with Edwin A. Abbey"—until said mural and art paintings are completed and this without any further appropriation or legislation upon the subject.

I may add that the view herein expressed is in accord with the principle of the opinion of my predecessor, Hon. M. Hampton Todd, rendered to the Deputy Auditor General on June 15, 1908, with reference to the unexpended balance of a like specific appropriation for the erection of a State hospital for the criminal insane. (See Report and Official Opinions of the Attorney General, 1908, p. 103, et seq.)

Very truly yours,

JNO. C. BELL
Attorney General.

SALARIES.

The salaries of the chief clerk of the House and the chief clerk of the Senate may be increased during the term of the incumbents and the increased salary dates from the beginning of the session, and not at the date of the passage of the act making such increase.

Office of the Attorney General,

Harrisburg, Pa., May 24, 1911.

Hon. A. E. Sisson, Auditor General, Harrisburg, Pa.

Dear Sir: Your favor of the 19th instant addressed to the Attorney General, was duly received.

You refer to the Act approved March 1, 1911, which changes the salaries of the Chief Clerk of the House and the Chief Clerk of the Senate and ask to be advised whether these Clerks are officers within the meaning of Article III, Section 3 of the Constitution of Pennsylvania, which provides:

> "No law shall extend the term of any public officer or increase or diminish his salary or emoluments after his election or appointment,"

and whether their salaries begin to run from the date of the passage of the Act, or from the beginning of the session.

The positions of Chief Clerk of the Senate and Chief Clerk of the House were not created by or referred to in the Constitution. They were created by the Act of May 11, 1874 (P. L. 129). They are, therefore, legislative, and not Constitutional positions.

The position exists by the will of the Legislature only, and may be abolished at any time.

Lloyd vs. Smith, 176 Pa. 213.

It has been held that Section 13 of Article III of the Constitution does not apply to offices that are created by the Legislature, or by municipal ordinances, but only to offices that "were created or at least preserved by the Constitution itself."

White vs. Constitution of Pennsylvania, p. 260.

Even assuming that the positions of Chief Clerk of the House a Chief Clerk of the Senate are offices within the broad acceptation that term, I am of opinion and so advise you, that they are n offices within the meaning of Article III, Section 13 of the Consti tion, and that the salaries attaching thereto may be increased duri the term of the incumbents of such positions.

The second inquiry is whether the salaries, at the rate of $3.000.(for each regular biennial session, commences at the beginning of t session of 1911, or at the date of the passage of the Act of March 1911. This inquiry has been answered by an opinion furnished by t Attorney General, to the Hon. John F. Cox, Speaker of the Hou of Representatives, on May 4, 1911. The Attorney General there he —following similar opinions of former Attorney General Todd— that under this same Act of Assembly of March 1, 1911, which pr vides in Section 13:

> "All other officers and employees herein authorized shall be paid the same compensation and mileage *for sessions* and as returning officers as is now paid similar officers,"

the clerks to the committees in the House and Senate, which position were created by the Act, were entitled to compensation from the be ginning of the session.

I therefore advise you that the Chief Clerks of the House an Senate are entitled to the salary of $3,000.00 for the whole session o 1911, and that the salaries are not to be pro rated to that part of th session since March 1, 1911, the date of the approval of the Act.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

STATE PRINTER.

Charles E. Aughinbaugh, the State printer, died and a new partnership wa formed under his name to continue and complete the State printing contract Checks for State printing should be drawn to Charles E. Aughinbaugh but mus be endorsed before payment by each member of the partnership.

Office of the Attorney General,

Harrisburg, Pa., June 23, 1911.

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

Dear Sir: Your favor of the 19th inst., addressed to the Attorne General, was duly received.

You ask to be advised how the checks for State printing are now be drawn. As I understand the facts, the contract for State printg was made with Charles E. Aughinbaugh, March 17, 1909, and the ntract for printing the Legislative Journal was made with Charles Aughinbaugh, January 3, 1911.

Articles of co-partnership were entered into on the 10th day of ugust, 1909, and supplemented by further articles on the 16th day of ctober, 1909, between Charles E. Aughinbaugh and John L. L. Kuhn, th of the city of Harrisburg, by which it was agreed that "the partrship or firm name shall be known as Charles E. Aughinbaugh, and all continue as such until dissolved as hereinafter provided for," d Section 5 of these articles provides:

> "The said partnership or firm may be dissolved at any time by the agreement of both of the aforementioned Charles E. Aughinbaugh and John L. L. Kuhn and in event of the death of the aforesaid partners or members of the firm, the interest of the deceased partner or partners shall remain in and the share of the capital of each continue to be employed in the business until the surviving partner and legal representatives of the deceased partner shall agree to dissolve the said partnership."

Charles E. Aughinbaugh, one of the partners recently died, leaving will which was probated by the Register of Wills of Dauphin county, d letters testamentary were issued to Bessie L. Aughinbaugh and ary M. Aughinbaugh.

The heirs and legal representatives of Charles E. Aughinbaugh ve agreed to continue the partnership. Under the facts thus disosed, it appears that Charles E. Aughinbaugh, although the name of individual, is also the trade or partnership name of the partnership hich is doing the State printing.

A warrant drawn to the order of Charles E. Aughinbaugh would ot under the circumstances be considered a warrant drawn to a eceased person, but to a live partnership. The partnership, however, composed of different entities from that which existed during the fetime of Charles E. Aughinbaugh, to the extent that the estate of harles E. Aughinbaugh takes his place therein.

So that no question can be raised by creditors of the partnership it existed in the life time of Mr. Aughinbaugh, or by creditors of s estate, an agreement, of which the articles of co-partnership and ie will of Charles E. Aughinbaugh are made a part, should be filed ith the Auditor General, signed by John L. L. Kuhn and the executices of the estate of Charles E. Aughinbaugh, whereby they agree at the warrants hereafter to be drawn shall be to the order of harles E. Aughinbaugh. In addition to that the State Treasurer ould require, before the checks are drawn upon which such war-

rants are paid by the bank upon which they are drawn, that such checks be endorsed by John L. L. Kuhn, surviving partner, and by Bessie L. Aughinbaugh and Mary M. Aughinbaugh, executrices of the estate of Charles E. Aughinbaugh.

With these precautions, warrants may be drawn in favor of Charles E. Aughinbaugh, and the Commonwealth will be abundantly protected.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

ESCHEATS.

The fees of an informant in an escheated estate is fixed and must be determined by the act in force at the time the information is made.

The fee of an escheator is governed by the same principles as fees and costs and is to be determined by the statute in force at the time of the adjudication of the estate, and not by the law in force a the time of he appointment of the escheator.

Office of the Attorney General,

Harrisburg, Pa., June 27, 1911.

Hon. A. E. Sisson, Auditor General.

Sir: Your favor of May 17th was duly received.

You call attention to the fact that by the Act of Assembly No. 180, approved May 11, 1911, amending Sections 24 and 27 of the Act approved May 2, 1889, entitled:

> "An act defining and regulating escheats in cases where property is without a lawful owner, and providing for more convenient proceedings relative to the same,"

the compensation paid to "any person who shall first inform the Auditor General of an escheat" has been changed by the amendments from one-third to one-fourth part of the proceeds of an escheated property, and the fees of an escheator appointed by the Auditor General have likewise been changed from five to fifteen per cent.

You ask to be advised:

> "Whether fees of informants and escheators in cases in which the information was filed, and the escheator appointed, prior to May 11th, are to be determined by

reference to the Act of May 2, 1889, alone, or by reference to the Act of May 2, 1889, as amended by the Act of May 11, 1911."

The said Section 24, as amended, provides that:

> "Any person who shall first inform the Auditor General by writing * * * * * that an escheat hath occurred * * * * * * and who shall procure necessary evidence to substantiate the fact of said escheat and shall prosecute the right of the Commonwealth to the property escheated with effect shall be entitled to one-fourth part of the proceeds of all property real, personal or mixed that has been declared escheated to the Commonwealth in pursuance of such information * * * * * *"

The compensation due an informer is analogous to a reward offered for the detection of crime or for the recovery of property. *Commonwealth ex rel. Henry vs. Gregg, 1 Dauphin County Reporter 203.*

The offer as set forth in this Act of Assembly, is an invitation to the public, or proposal to enter into a contract. The second element of the contract is the acceptance by the Auditor General of the information given. The performance by the informer is "the last element of the contract and makes the theretofore conditional and revocable proposal a part of a completed contract, with an executed consideration on the one side and a binding promise to pay on the other." *24 Am. & Eng. Ency of Law, 2d Ed., 943-952-955.*

The authorities are not uniform as to when the informer's share vests. In some States it has been held that the informer's share does not become vested until the recovery of judgment, or until the money is actually paid over and ready for distribution, and that the "informer's share is to be determined by the law in force at the time of the payment over for distribution." *16 Am. & Eng. Ency. of Law, 2d Ed., 326.*

In this State the question has been learnedly considered and decided by Judge McPherson in the case of *Commonwealth ex rel. Henry vs. Gregg, supra.* The facts are as follows:

In 1873 about $14,000, arising from the sale by a receiver of the Atlantic & Great Western Railway Company, was deposited with the Pennsylvania Company for Insurance on Lives and Granting Annuities. This sum was the amount due and payable to the owners of certain bonds and overdue coupons of the railroad company, and was thus deposited because the names and whereabouts of the owners were unknown and no claim had been made for this portion of the fund. In 1884 the relator gave notice to the Auditor General, in the form required by law, that the Commonwealth was entitled to this money under the statutes relating to escheat. In accordance with

this information a deputy escheator was appointed in December, 1886, and began proceedings. The relator secured the evidence to substantiate the title of the Commonwealth, and was ready to prosecute the claim, but delays occurred, for which neither the relator nor the deputy escheator was responsible, and final decree was not entered until May, 1894, pursuant to which decree, $17,474.70 was paid into the treasury of the Commonwealth. The relator asked to be paid the informer's fee, as provided by the Act of 1787, and its supplement of 1869. It was contended by the Auditor General that the Act of 1787 was repealed by the Act of 1889, and, as this latest act made no provision for informers' fees in such cases of escheat, he was entitled to nothing. The court declined to adopt this view and held that the informer's fee, under the Act of 1787, amended by the Act of 1869, is a sum offered as pay for a definite service, and the State is liable on the footing of a contract when the offer is accepted, i. e., when the information is duly given,—provided, only, the service be subsequently performed.

In his opinion the court said:

> "When the information is given the offer is accepted, and a contract is then made of which the terms are chiefly executory. One term of the contract is executed when the information is given, and the other terms are still to be carried out. Ordinarily, a legal proceeding is necessary, at least in the case of personal property, and the informer is bound to furnish the necessary evidence and to prosecute the Commonwealth's title to a successful result. If he performs those terms, the State is bound to perform its contingent engagement and to pay the sum that has thus been earned."

And again:

> "Whether or not the Act of 1889 repeals the previously existing provision for informer's fees in the case of equitable estates, we do not find it necessary to determine. For the present it is enough to decide (as we have no difficulty in deciding) that although the act may have abolished such fees upon information to be given thereafter, and although its language may apparently extend so as to abolish also such fees upon informations then pending and uncompleted (thus reaching the claim now before the court), it could not constitutionally take away the right of the relator, because his right rested upon a contract.
>
> * * * * * *
>
> Whatever may be the proper construction of the Act of 1889, it did not affect the relator's right under the facts above found; and we accordingly conclude that his right is to be determined by the Act of 1787 and of

> 1869, taken together as statute and supplement. As declared by the former act, he is entitled to receive one-third part of the price which was produced by the bonds and coupons above referred to, after deducting all proper costs and charges."

Following and adopting the ruling of the above case, I am of opinion that the informant's compensation is fixed and must be determined by the act in force at the time the information is duly given, and, therefore, that in those cases in which the information was duly given to your department prior to May 11, 1911, the fees of the informant are to be determined by reference to the Act of May 2, 1889, and not by the amended Act of May 11, 1911.

It will be noted that thus far we have only been dealing with the fees of informants. Your above stated inquiry is also as to the fees of escheators *"appointed prior to May 11th,"* 1911. This part of your question will be considered and answered in the consideration and answer of your second inquiry, i. e.:

You further ask to be advised "Whether the fees of escheators in which the information was filed prior to May 11, 1911, but the escheator *not appointed until after May 11, 1911,* are to be determined by reference to the Act of May 2, 1889, or by reference to the Act of May 11, 1911."

The compensation of the escheator is upon a somewhat different basis from that of the informant. The escheator is appointed by the Auditor General to perform services for the State, and, in my judgment should be paid the fees fixed by law for such services *at the time of performance.* His compensation is analogous to that of an administrator of a decedent's estate, and can be properly considered the costs of administration.

> "The right to costs and the amount and items taxable are as a general rule governed by the statutes in force at the time of the termination of the action, as the question of costs is one which is solely of statutory regulation and wholly dependent upon it. A party has no vested right to costs at the commencement of an action. It is competent for the Legislature, at any time during the progress of a suit, to create an allowance for services not before provided for, and to increase or diminish or wholly abolish such allowance as existed at the time the suit was commenced."
>
> 11 Cyc. 26.

The Supreme Court in the case of Grim vs. Weissenberg School District, 57 Pa. 433, on page 438, said:

> "Nor is there any greater force in the argument which has been strongly urged upon us that the plaintiff having commenced this action before the passage of

> the confirming act, had thereby acquired a right to his costs of suit of which he cannot now be deprived. There is no vested right to costs in any case of which a party cannot be divested by the Legislature."

I am of opinion, that the compensation to an escheator is governed by the same principles as fees and costs, and, in the light of the above authorities, is to be determined by the statute in force at the time that the adjudication of the escheat, as required by the 10th Section of the Act of May 2, 1889, is made, and not by the law in force at the time of the appointment of the escheator; and hence, that where the services of the escheator have been performed since May 11, 1911, his fees are to be determined by that act, and this although his appointment may have been prior thereto.

Very truly yours,

JNO. C. BELL
Attorney General.

ASSIGNMENT OF JUDGES.

The Act of April 27, 1911, entitled "An act for the assignment of judges to districts other than their own for the purpose of expediting business, with provision for their compensation," establishes a uniform system and repeals by implication prior legislation upon the subject.

Office of the Attorney General,

Harrisburg, Pa., July 18, 1911.

Hon. A. E. Sisson, Auditor General, Harrisburg, Pa.

Sir: Your favor of June 28th was duly received.

In substance you ask to be advised whether the Act of April 27, 1911, entitled "An act for the assignment of judges to districts other than their own for the purpose of expediting business, with provision for their compensation," repeals the Act of March 27, 1887, (P. L. 14), and the Act of April 14, 1903, (P. L. 175). The Act of 1887 is entitled "An act authorizing the president judges of the several judicial districts of this Commonwealth to procure the assistance of president or additional law judges of another district in the transaction of business in the several courts of such districts."

This act provides that the president judge of any of the districts, whenever, in his opinion, the proper dispatch of business shall require it, may procure the assistance of any president judge or additional law judge, to try or assist in the trial of civil or criminal cases, or

the transaction of other business, and invests the judge thus procured with all the authority of the president judge of the district. It provides that:

> "The said president or additional law judge so called in shall be entitled to receive the sum of ten dollars for each day so employed outside of his district, and ten cents for each mile necessarily traveled in the performance of such duty, to be paid in the same manner as judges are now by law paid."

The Act of 1903 fixed and increased salaries of the judges of the several courts of Pennsylvania and provided in Section 7:

> "No judge of the said courts shall receive any compensation for official services rendered, other than the salary fixed by this act, except mileage and actual expenses incurred when holding court outside of the district for which he is commissioned."

The Act of 1911 provides a system by which judges may be assigned for the disposal of judicial business outside of their respective districts, and provides for compensation and carfare in the performance of such extra duties. This Act covers the whole subject which was dealt with in the Act of 1887. It provides a complete scheme and I am of opinion that it was the intention of the Legislature that this act should establish the uniform system by which judges may be obtained to perform judicial duties outside of their respective districts, and although the act has no separate repealing clause, that it supplies, and, therefore, by implication, repeals the Act of 1887. I am also of opinion that Section 5 which provides compensation for judges so assigned, repeals Section 7 of the Act of 1903 which provides that they shall receive no compensation.

I therefore advise you that payment to judges for the performance of judicial duties outside their judicial districts is to be made pursuant to the Act of April 27, 1911.

Very truly yours,

JNO. C. BELL
Attorney General.

YORK CHRISTIAN HOME.

The balance of the appropriation of $3,000, made by the Act of May 13, 1909, P. L. 699, to the Christian Home of York, Pa., is not available to the York Society to Protect Children and Aged Persons, a corporation created since the appropriation, into which the former corporation has been merged or consolidated.

4—23—1913

Office of the Attorney General,

Harrisburg, Pa., July 25, 1911.

Hon. A. E. Sisson, Auditor General, Harrisburg, Penna.

Dear Sir: On March 16, 1911, Hon. T. A. Crichton, Deputy Auditor General, requested an opinion as to whether the York Society to Protect Children and Aged Persons was entitled to the balance of an appropriation of three thousand dollars ($3,000.00) made by the Legislature of 1909 to the Christian Home, York, Pa.

I understand that the Christian Home, York, Pa., to which said appropriation was made, by proceedings in the Court of Common Pleas of York County, merged with the York Society to Protect Children from Cruelty, and by decree of the Court made March 6, 1911, the two corporations were consolidated under the name, style and title of "York Society to Protect Children and Aged Persons."

On July 7, 1910, an opinion was rendered to the Deputy Auditor General to the effect that the appropriation made by the Legislature of 1909 to the Pennsylvania Industrial School, which was an institution then located at Chester Valley and incorporated by the Court of Common Pleas of Chester County, would not be available to a new institution, to be called by the same name, to be thereafter incorporated by the Courts of Montgomery County. That was based upon the theory that the appropriation was made to the Pennsylvania Industrial School at Paoli, Pennsylvania, and would certainly not refer to or describe the Pennsylvania Industrial School located in another county and created since the appropriation.

The situation in this case is similar. The Christian Home of the City of York, to which the appropriation of 1909 was made, has gone out of existence and a separate and distinct corporation, known as The York Society to Protect Children and Aged Persons, has been created since the appropriation was made. The Legislature made no appropriation to the York Society to Protect Children and Aged Persons.

I am, therefore, of the opinion that the balance of the appropriation of three thousand dollars, made by the Act of May 13, 1909, P. L. 699, to the Christian Home of York, Pa., is not available to The York Society to Protect Children and Aged Persons.

Very truly yours,

JNO. C. BELL,
Attorney General.

APPROPRIATIONS.

An appropriation to a hospital for placing an elevator and for constructing walks, sidewalks or driveways, give to the Commonwealth a lien under the provisions of the Act of June 9th, 1911.

Office of the Attorney General,

Harrisburg, Pa., Aug. 2, 1911.

Hon. A. E. Sisson, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your communication dated July 25th, 1911, requesting an opinion on the following question:

> "Is an appropriation to a benevolent, charitable, philanthropic, educational or eleemosynary institution—not wholly supported by this Commonwealth and not under its exclusive control or management—for equipping a hospital building; for placing an elevator therein or for betterments, such an appropriation for 'structure, erection or permanent improvement' as to bring it under the provisions of the Act of June 9th, 1911, making certain appropriations liens on the premises of such institutions?"

The Act of Assembly to which you refer is entitled:

> "An Act making appropriations to institutions not wholly managed by the Commonwealth liens on the premises of such institutions for the use of the Commonwealth, and providing for the collection thereof."

Although this title seems to include all appropriations to the designated class of institutions, an examination of the first section of the act discloses, that its operation is limited not only with reference to the classification of the institution, by excluding all institutions wholly supported by the Commonwealth and under its exclusive control and management, but also with reference to the purpose and object of the appropriation. The Act applies only to appropriations made to benevolent, charitable, philanthropic, educational or eleemosynary institutions not wholly supported by the Commonwealth, and not under the exclusive control and management thereof, whether incorporated or not, and then only when such appropriations are made "for structures, erections or other permanent improvements of any kind." All appropriations made to such institutions for any of the purposes above stated are by this Act of Assembly made liens on the real estate upon which "such structure, erection or other permanent improvement is to be made." After appropriate provisions requiring the institutions described in the Act to give notice to the State Treasurer of the acceptance of the appropriation

and to file in the Auditor General's Department complete descriptions of the real estate upon which the erection, structure or other permanent improvement is to be erected, constructed or made, the act requires the Auditor General to transmit to the prothonotary of the proper county a certificate setting forth the amount of the appropriation, the location, and full description of the real estate, etc., upon receipt of which certificate the prothonotary is required to enter the same in a docket, to be known as the "State Appropriation Docket."

By Section 6 of the act it is provided that the appropriation thus made, accepted and certified, shall be a non-interest bearing lien on the real estate described from the date of the entry of such certificate in said docket, and in case of the public or private sale of such real estate, said lien shall be paid out of the proceeds thereof before any subsequent lien, mortgage, encumbrance or other charge.

A method is provided for satisfying such liens, in whole or in part, upon re-payment of the amount of such appropriations to the Commonwealth, in full or in partial payments, by the institutions accepting the same.

By Section 8 it is provided that if at any time before such lien is paid in full and satisfied of record, the institutions in question should fail to utilize the said real estate, erections, constructions, or other permanent improvements for the purpose for which the appropriation was made, the Commonwealth, at the relation of the Attorney General, shall have the right to issue a writ of *scire facias* on the lien, prosecute the same to final judgment for the amount thereof remaining unpaid, and sell the real estate, erections, constructions and other improvements by a writ of *levari facias in the same manner and with the same effect as if the same were being sold on a mortgage.* This act is a comprehensive expression of a legislative intent to protect and, under certain conditions to enforce, the rights of the Commonwealth when appropriations of public funds have been made to and accepted by institutions not wholly supported by, and under the exclusive control of, the Commonwealth.

You do not refer in your communication to any particular appropriation made by the Legislature of 1911, and therefor I infer that you desire this Department to indicate to your Department in a general way the principles which should guide you in deciding, from time to time as the question arises, whether a specified appropriation entitles the Commonwealth to a lien. Each concrete case as it arises must, of course, be decided upon its own facts, and this Department, without having before it the exact language used by the Legislature in stating the object and purpose of any particular appropriation, can only indicate in a general way its construction of the law in question, and the principles which should govern

your Department in applying it. You do, however, give several illustrations in your communication which indicate some of the difficulties under which your Department labors in construing and applying the said Act of 1911. You ask whether an appropriation (1) for "equipping a hospital building," (2) for "placing an elevator therein," or (3) for "repairs and betterments" is such an appropriation for "structure, erection, or permanent improvement" as to entitle the Commonwealth to a lien against the real estate of the institution to which the appropriation is made. Among the numerous appropriations made by the Legislature of 1911, it is not difficult to find other illustrations of appropriations couched in language which renders it somewhat difficult to determine whether the Commonwealth is entitled under the act in question to a lien for the same. For instance, appropriations are frequently made to hospitals and similar institutions for "maintenance" and sometimes for "walks, sidewalks and driveways," or for the "erection, completion and furnishing of a surgical annex" or for the "erection of a laundry building and equipment of the same." The Commonwealth is not entitled to a lien for all of the money appropriated to an institution not exclusively under State control, but only to a lien for the money which is appropriated for "structures, erections or other permanent improvements of any kind." In the administration of the affairs of your Department you will frequently be called upon to determine whether a certain designated appropriation is an appropriation for "structures, erections or other permanent improvements of any kind," and you now ask for an opinion to guide you in reaching your conclusions upon the different cases coming before you. The question can be somewhat simplified by a process of elimination. It is clear that the Legislature had no intention of giving the Commonwealth a lien for an appropriation to be expended for the "maintenance" of an institution, and it is equally clear that appropriations for structures and erections are within the act and entitle the Commonwealth to a lien.

By considering what may be included under a proper interpretation of the term "maintenance" as that word is used in appropriation acts, we can eliminate some of the factors entering into the problem. We are not without authority and precedents in endeavoring to define the word "maintenance" when used in legislation making appropriations. In an opinion dated November 21, 1893, reported in Opinions of the Attorney General for 1893-4, at page 60, Attorney General Hensel clearly defined the word "maintenance" as used in the Act of Assembly making an appropriation to the trustees of the Hospital for the Insane at Warren. The trustees purchased for hospital purposes a property adjoining the property bought, constructed, owned and maintained by the Commonwealth for the general and ordinary

purpose of the hospital, erected a building thereon and charged to the "maintenance" account of the hospital for a certain quarter expenditures for furnishing this new building mostly in the nature of new furniture, such as carpets, chairs, books, hardware, lumber, etc. It was objected that these amounts were not strictly items of maintenance, but were expenditures for additional buildings or for the furnishing and equipment thereof, and were incurred in fitting up accommodations on additional land for an additional number of patients. Attorney General Hensel held that money specifically appropriated by the Legislature for the "maintenance" of patients in a hospital or for the maintenance of the hospital could not properly be applied "either to the purchase of additional lands, the erection of additional buildings, or the furnishing or equipment thereof." Discussing the things comprehended under the term "maintenance," he holds that this term comprises "expenses incurred for the food and clothing and care of the inmates and for repairs to buildings and equipment such as are necessary to keep the existing institution up to its original condition." After pointing out that the word "maintenance" means, according to the Century Dictionary, "to hold in an existing state or condition * * * * * * preserve from lapse, decline, failure or cessation; the act of maintaining, keeping up, supporting or upholding; preservation," the opinion states that: "a fair and liberal construction of appropriation for maintenance would be to supply dilapidation, to arrest, prevent or remedy decay, to maintain or restore, to erect where destruction has taken place; for example: To paint buildings from time to time; to restore worn out furniture; to erect a fence where one has fallen down; to replace insecure or dilapidated walls, ceiling or foundations, etc.; but the purchase of new grounds and buildings, the original furnishing of the same, the erection of a costly fence where none had stood or had been needed before," are not included within the term. It is perhaps significant that subsequent to the rendition of this opinion, the Legislature, in making the general appropriation in 1895 for the "care, treatment and maintenance of the indigent insane" inserted this proviso:

> "Provided that the words 'care, treatment, and maintenance' used in this act shall be construed to mean medical and surgical treatment and nursing, food, clothing, and absolutely necessary repairs to existing buildings of such hospitals and asylums."

This proviso has been inserted in each biennial appropriation for the above purpose, since 1895.

In an opinion dated April 26, 1904, reported in Opinions of the Attorney General 1903-4, page 302, Attorney General Carson held that the trustees of the Western Pennsylvania Hospital were entitled to

onstruct out of the fund appropriated for the "maintenance" of hat institution a fireproof wall in the place of one which was not so n the theory that the construction of such wall was but the substitution of one wall for another, and not strictly an improvement, r enlargement of the building.

Again, in an opinion dated September 17, 1903, reported in Opinons of the Attorney General 1903-4, at page 338, Attorney General arson held that where a stack belonging to a State hospital is so far ut of repair as to be useless for the purposes of the institution, and f insufficient size to do the required work, and forms an indispensile part of the economy of the buildings, the re-construction of the tack can properly be incurred as "maintenance."

To the same effect is another opinion by Attorney General Carson, eported under date of November 13, 1906, in Opinions of the Attorney eneral 1905-6, page 424, in which it is held that expenditures by State hospital for fittings, beltings, hangers, tools and the like; or the purchase of electric lights and lamps and fitting them to old as chandeliers; the purchase of wrought iron fittings, valves, etc., or the distribution of sewage on the farm, and the repairing of greenhouse, all come within the term "maintenance."

You are accordingly advised that an appropriation to any institution contemplated by the act for any purpose which may be fairly ncluded under the term "maintenance" as interpreted, defined and llustrated in the above mentioned opinions, does not give the Commonwealth any right to file a lien.

The conclusion thus reached assists in the disposition of your inquiry as to whether an appropriation "for equipping a hospital uilding" entitles the Commonwealth to a lien. You are advised that f the appropriation be for the equipment of a new building, such ppropriation cannot, as shown by Attorney General Hensel's opinon, be included within the term "maintenance" and is, therefore, ot eliminated from further consideration. On the other hand, it by o means follows that all appropriations made for purposes not ncluded within the term "maintenance" entitle the Commonwealth o a lien. Outside of structures and erections, the only appropriaions which entitle the Commonwealth to a lien are appropriations or permanent improvements. For instance, it is clear that the movble furniture and equipment in a new hospital building, or in the ew surgical annex or laundry of an existing hospital building, would not, as is above pointed out, be included under the term 'maintenance," neither could it be properly said to be a "permanent mprovement" within the meaning of the Act of 1911. In the Century Dictionary the word "improvement" is defined as "a betterment; hat by which the value or excellence of a thing is enhanced; a beneficial or valuable change or addition." By way of illustration it is

stated that "an improvement in real property is something done or added to it to increase its value, as cultivation, or the erection of or addition to buildings."

In attempting to prescribe and define a line of demarcation between appropriations for purposes which are included neither within structures or erections, nor within the term "maintenance," it is essential to keep in mind the purpose of the act under consideration. The legislative intent as expressed in that act is to place the Commonwealth in the position of a mortgagee of the real estate of the institution accepting the appropriation. The test, therefore, as to whether an appropriation entitles the Commonwealth to a lien, may be stated as follows: Was the appropriation made for the purpose of providing the institution with something that would pass under a judicial sale of its real estate upon a mortgage to the purchaser at such sale?

My construction of the act may be stated in other words, as follows: If an appropriation be made for a purpose which is comprehended neither under the terms "maintenance" nor "structure or erection," but which is for the purpose of providing the institution accepting the same with a fixture which as between mortgagor and mortgagee, lienor and lienee, would pass under a judicial sale to the purchaser thereat, the Commonwealth is entitled to a lien for such appropriation upon the theory that it is a permanent improvement within the meaning of said Act of 1911.

Applying this distinction to your inquiry, it would seem to be clear that an appropriation for "placing an elevator" in a hospital building would be an appropriation for a permanent improvement.

Again, in applying the same test to an appropriation for the purpose of "constructing walks, sidewalks or driveways," at a hospital, we have no difficulty in reaching the conclusion that the Commonwealth is entitled to its lien. The adoption of this principle and its application will, in my opinion, carry out the legislative intent expressed in the act under consideration, and will give the Commonwealth the rights of a mortgagee against the institutions accepting her appropriations.

This opinion, of course, is not to be construed as a decision by this Department upon any particular appropriation, but is intended to be a general guide to you in the performance of your official duties. Under the law you are charged with the responsibility of deciding, in the first instance, whether the Commonwealth is entitled to a lien for the whole or any part of a particular appropriation, and in my opinion you should be guided in reaching your conclusions by the principles herein expressed.

Yours very truly,
J. E. B. CUNNINGHAM,
Deputy Attorney General.

STATE HOMEOPATHIC HOSPITAL FOR THE INSANE.

The appropriation to a State Hospital contained the provision that no part thereof shall be available until the Governor, State Treasurer and Auditor General have filed in the office of the State Treasurer and Auditor General a certificate that there is in the State Treasury a sufficient sum of money not otherwise appropriated to pay the said appropriation. The said certificate may be made if there is in the general fund sufficient money to pay the entire amount now due on all appropriations and a surplus over sufficient to pay the requisition for said hospital now pending.

Office of the Attorney General,

Harrisburg, Pa., August 26th, 1911.

Hon. C. F. Wright, State Treasurer, and Hon. E. A. Sisson, Auditor General, Harrisburg, Pa.

Gentlemen: This Department is in receipt of your joint request under date of August 17th, 1911, asking for a construction of the proviso to the 3rd Section of the Act of May 10, 1911, (P. L. ....) amending Section 5 of the Act of July 18, 1901 (P. L. 737), entitled:

> "An act to provide for the selection of a site and the erection of a State Hospital for the treatment of the insane under homeopathic management, to be called the Homeopathic State Hospital for the Insane, and making an appropriation therefor."

which proviso reads as follows:

> "That no part of any appropriation hereafter made to the Commissioners shall become available until the Governor, Auditor General and State Treasurer shall have filed in the office of the Auditor General and State Treasurer a certificate setting forth that there is in the Treasury a sufficient sum of money, not otherwise appropriated, to pay the said appropriation."

At the legislative session of 1911, an appropriation of $478,000 was made for the erection and completion of the buildings and appurtenances and the purchase of additional grounds, etc., subject to the above proviso.

As I understand the facts, the present commissioners have entered into contracts and are proceeding as rapidly as possible to the completion of the hospital in question. The commissioners have made a requisition upon you as State Treasurer and Auditor General, respectively, for a portion of the above mentioned sum of $478,000, for the purpose of paying accounts now due and payable under contracts awarded by them.

The requisition of the commissioners cannot be honored, under existing legislation, until you and the Governor can file in your

respective offices a certificate to the effect "that there is in the treasury a sufficient sum of money not otherwise appropriated" to pay the amount of said requisition.

You state in your communication that there has not been in the treasury, at any one time, in recent years, sufficient money to pay all of the existing appropriations made by the Legislature, and that at the present time there is not enough money in the State Treasury to pay the entire amount of all appropriations made by the last Legislature remaining unpaid at this date, nor is it probable that there will be sufficient funds in the State Treasury, at any one time during the next two years, to pay the entire balance of all existing appropriations.

In view of these facts you ask to be advised as to the meaning of the phrase "not otherwise appropriated" as used in the above recited proviso, and what money, if any, in the State Treasury you are at liberty to regard as available for the payment of the requisition now pending.

Complying with your request permit me to say that an absolutely literal construction of the proviso in question would be to hold that the Legislature, by its insertion, intended to indicate a legislative intent to provide that no part of the appropriation made to the hospital in question could be paid out of the State Treasury until after all other existing appropriations had been paid in full, or, in other words, that the appropriation in question is a conditional appropriation, and is to be paid only in the event that there is money remaining in the State Treasury after all other appropriations have been paid in full.

Under our system of making appropriations, although the appropriations are all made at one time by the Legislature, the amounts thereof become due and payable at different periods of time during the two ensuing fiscal years, and these appropriations are payable out of the revenues of the Commonwealth as these revenues are received from time to time during said years.

From this it follows that at no time during the two years within which the revenues are received and the appropriations paid out, is it probable that there will be a sufficient sum of money in the State Treasury to pay at once and in full the entire amount of the existing and unpaid appropriations.

Under the literal construction of the proviso above mentioned, no part of the appropriation to the hospital in question could be paid until a considerable period of time after May 31, 1913, for it could not be absolutely determined until after that date whether all other appropriations made by the Legislature at the session of 1911 had actually been paid in full.

The spirit and intent of the said Act of May 10, 1911, is to provide for the completion of the buildings of said hospital as rapidly as possible, in order that the same may be used for the reception of patients. If this spirit and intent is to be carried into effect some construction of the proviso, other than the one above suggested, must be made.

The administration of the fiscal affairs of the Commonwealth is a business proposition and their administration should be governed by sound business principles. There are several different funds in the State Treasury, that is, the General Fund; the Sinking Fund, applicable only to the payment of the public debt; one-half of the tax on premiums received from foreign fire insurance companies, which fund is returnable to the counties of Pike and Susquehanna; the funds received from the Federal Government for the use of State College and the Soldiers' and Sailors' Home at Erie; the portion of the State tax on personal property returnable to the counties; the amounts paid into the State Treasury by boroughs and townships for road construction, which amounts are required by law to be placed to the credit of the General Fund for Road Construction, and probably some other funds not herein enumerated. In one sense of the word, all of these funds, with the exception of the General Fund, may be said to be appropriated under existing legislation for certain purposes, and are to be excluded in ascertaining the amount of "funds not otherwise appropriated."

Strictly speaking, however, " 'Appropriation' is the setting apart from the public revenue of a certain sum of money for a specified object, in such manner that the executive officers of the government are authorized to use that money and no more for that object and for no other." Words and Phrases Judicially Defined, Vol. 1, p. 471.

Numerous appropriations of this character have been made by the legislative enactment out of the general funds in the treasury available for purposes of appropriation. The requisition now pending is to be paid out of money "not otherwise appropriated."

The appropriations made at the last session of the Legislature exceeded $50,000,000, but only a comparatively small portion of this sum is due and payable up to this date. In many instances no part of the appropriation is payable until certain quarterly reports are filed and other specified conditions complied with.

In ascertaining the ability of the State to pay any designated sum of money, the test to be applied should, in my judgment, be the same as that applied for the purpose of testing the solvency of any other corporation.

> "Insolvency, when applied to a person, firm or corporation, engaged in trade, means inability to pay debts as they become due in the usual course of business."

Or, again:

> "The term 'insolvency' under the bankruptcy laws and acts of like character is declared to be a person's inability to pay current obligations as they mature."
> Words and Phrases Judicially Defined, Vol. 4, p. 3651.

You are therefore advised, that if you are satisfied that there is, at the present time, in the General Fund in the State Treasury, a sum of money sufficient to pay the entire amount now due upon all appropriations, other than the appropriation to the hospital in question, and a surplus over and above such amount sufficient to pay the requisition now pending for payment out of the appropriation to the commissioners of that hospital, you are justified in certifying that there is in the State Treasury "a sufficient sum of money not otherwise appropriated" to pay the requisition now before you.

Yours very truly,
J. E. B. CUNNINGHAM,
Deputy Attorney General.

STATE HIGHWAY DEPARTMENT.

The auditor of the State Highway Department under the provisions of the Act of May 31st, 1911, has no duties to perform in connection with the warrant issued under Section 11 of said act by the Auditor General and State Treasurer. The certificate made by the State Highway Commissioner to the Auditor General setting forth the amount considered to be due and payable for highway construction, required to be made under Section 11 of said act, is the instrument which is to be countersigned by the auditor of the State Highway Department.

The said Act of 1911 in no way modifies or repeals the provisions of the Act of March 30, 1811, P. L. 145, which provides for the settling of public accounts.

Office of the Attorney General.

Harrisburg, Pa., August 26th, 1911.

Hon. Chas F. Wright, State Treasurer, and Hon. A. E. Sisson, Auditor General, Harrisburg, Pa.

Gentlemen: This Department is in receipt of your joint request as State Treasurer and Auditor General of the Commonwealth, respectively, for an opinion upon the following questions:

First: What "warrants" are to be countersigned by the Auditor of the State Highway Department unde the Act of May 31st, 1911, P. L. ...., providing for the establishment of a State Highway Department?

Second: Are the provisions of the Act of March 30th, 1811, P. L. 145, relating to the settlement of public accounts, repealed or

modified by the provisions of the said Act of May 31st, 1911, P. L. ...., providing for the establishment of a State Highway Department, in so far as the duties of the State Treasurer under the said Act of 1811 are concerned?

There is an apparent conflict between Sections 1 and 11 of the said Act of May 31st, 1911, providing for the establishment of a State Highway Department. By Section 1 of said act it is provided, inter alia, that the Governor shall appoint an Auditor of the Highway Department, who shall be an expert accountant and who shall be a certified public accountant under the laws of this Commonwealth, and that "it shall be the duty of said Auditor to examine and audit all accounts of the Department and to countersign all warrants."

By Section 11 of the act in question it is provided, inter alia, that "the expense of the construction, improvement and maintenance of State Highways provided for in this act, when properly certified by the State Highway Commissioner, shall be audited by the Auditor General, and when audited and allowed shall be paid out of moneys specifically appropriated for this purpose, by *warrants* drawn therefor by the Auditor General upon the State Treasurer.

The confusion arises by reason of the use of the word "warrants" in both sections. A brief consideration of the method of paying accounts for highway construction prior to the approval of the said Act of 1911 and of the manifest spirit and intent of that act, will relieve the question of all difficulty.

Under Section eighteen of the former Highway Act of May 1st, 1905, P. L. 318, it was provided that the total expense of highway improvement or maintenance under the provisions of that act should be paid by the State Treasurer upon the warrant of the State Highway Commissioner, attested by the Chief Clerk of the State Highway Department, out of any specific appropriations made by the Legislature to carry out the provisions of that act. Under the former system, therefore, the State Highway Commissioner was authorized to draw his warrant, attested by the Chief Clerk of his Department, directly upon the State Treasurer. Under the provisions of the Act of April 29th, 1909, P. L. 281, however, the warrants thus drawn by the State Highway Commissioner upon the State Treasurer were to be transmitted to the Auditor General for his counter-signature.

The method of making payment to contractors and others having claims against the Commonwealth arising out of contracts awarded by the State Highway Commissioner, prevailing under former legislation, was materially modified by the 11th Section of the said Act of 1911. It is clear that under this section payments were to be no longer made upon the warrant of the State Highway Commissioner, attested by the Chief Clerk of the Highway Department, but were to be made upon the warrant of the Auditor General drawn by him

upon the State Treasurer. This change in the method of makin payment brought payments made on account of State Highway co tracts under the general and uniform system adopted for the pa ment of all public accounts.

Under the express provisions of said Section 11 of said Act of 191 whenever in the opinion of the State Highway Commissioner an person is entitled to payment for any part of the expense of th construction, improvement and maintenance of the State Highwa provided for in the act, it becomes the duty of the State Highwa Commissioner to properly certify the amount due and the name of th person entitled to receive the same, to the Auditor General, wher upon it becomes the duty of the Auditor General to audit the accou thus certified as all other accounts are audited. When the accou has been duly audited and allowed, the amount is to be paid out moneys specifically appropriated for that purpose by a warra drawn therefor by the Auditor General upon the State Treasurer.

Turning now to Section 1 of the said Act of 1911 and construin this section in connection with Section 11, it is clear that the Legi lautre in passing the Act of 1911 did not intend to provide tha the Auditor of the State Highway Department should perform an duties in connection with the warrant issued under Section 11 by th Auditor General upon the State Treasurer.

In the drafting of the Act of 1911 providing for the transitio from the old to the new method, the draftsmen having in mind th provisions of the Act of 1905 with relation to the warrant authoriz by that Act to be drawn by the State Highway Commissioner upo the State Treasurer, attested by the Chief Clerk of the State Highwa Department, evidently used the word "warrant" in Section 1 of th Act of 1911 as descriptive of the instrument by which the Sta Highway Commissioner, under the new method, was to certify to th Auditor General the amount which the State Highway Commission considered to be due and payable for highway construction. Th certificate required to be made under Section 11 of said Act of 191 is the instrument which is to be countersigned by the Auditor of th State Highway Department.

Upon receipt of this certificate signed by the State Highway Co missioner and countersigned by the Auditor of the State Highwa Department, it becomes the duty of the Auditor General to audit th account thus certified in the same manner as other public accoun are required to be audited by him.

The Act of 1911, now under consideration, in no way modifies effects, in my opinion, the provisions of the Act of March 30th, 181 P. L. 145. After the Auditor General has audited and settled an a count certified to him by the State Highway Commissioner, th account must then be submitted to the State Treasurer for his r vision and approbation, as required by said Act of 1811.

In the matter of payment of amounts due for highway reconstruction, it may be of interest for this Department to call your attention to the fact that accounts will probably be presented for payment under the proviso to Section 40 of said Act of May 31st, 1911, reading as follows: "and provided further, that any State-aid highway for which plans and specifications have been made, and for which bids have been received and the contract awarded, and for which the counties, townships, boroughs, or towns have signed the necessary agreement, contracting to pay to the Commonwealth their several and respective shares of the cost of reconstructing said highway, shall not be affected by the provisions of this act; but the same shall be built, reconstructed, completed, finally settled, paid for and accepted by the Department in accordance with the terms and provisions of the act or acts, supplement or supplements and amendment or amendments thereto under which said work was commenced or initiated."

By the express terms of this proviso the amounts due under the contracts described therein, are to be finally settled and paid under the provisions of the above mentioned eighteenth Section of the Act of 1905; that is upon the warrant of the present State Highway Commissioner, attested by the Chief Clerk of the State Highway Department, and countersigned by the Auditor General, under the provisions of the above mentioned Act of April 29th, 1909, P. L. 281.

It is therefore important that the Auditor General and State Treasurer carefully distinguish between payments on account of contracts within the above quoted proviso to the fortieth Section of the Act of 1911, and payments made under the general terms of that act.

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

APPROPRIATIONS TO BRADDOCK GENERAL HOSPITAL AND STATE HOSPITAL FOR THE INSANE AT NORRISTOWN.

The specific and itemized terms of an appropriation prevail against the general terms. The appropriation to the Braddock General Hospital is $40,000 and to the State Hospital for the Insane at Norristown is $97,500.

Office of the Attorney General.

Harrisburg, Pa., Nov. 20, 1911.

Hon. C. P. Rogers, Jr., Deputy Auditor General, Harrisburg, Pa.

Sir: Your favor of November 9th, addressed to the Attorney General was duly received.

You request an opinion as to whether the appropriation made by the Act approved June 13, 1911 (Appropriation Acts 195) to the Braddock General Hospital of the Borough of Braddock, Pa., is $30,000 or $40,000, and also whether the appropriation made by the Act of June 13, 1911, (Appropriation Acts 138), to the State Hospital for the Insane for the Southeastern District of Pennsylvania at Norristown, Pa., is $87,500 or $97,500.

It appears that as to the first appropriation mentioned, the Act of Assembly provides as follows:

> "That the sum of thirty thousand dollars ($30,000) or so much thereof as may be necessary, be and the same is hereby specifically appropriated to the Braddock General Hospital, of the borough of Braddock, county of Allegheny, Pennsylvania, for the two fiscal years beginning June first, one thousand nine hundred and eleven, for the following purposes, to wit,—
>
> For the purpose of maintenance, the sum of thirty thousand dollars ($30,000) or so much thereof as may be necessary.
>
> For the purpose of outstanding notes, and mortgages on new buildings, the sum of ten thousand dollars ($10,000) or so much thereof as may be necessary."

The appropriation to the Norristown Hospital provides:

> "That the sum of $87,500 or so much thereof as may be necessary, be and the same is hereby specifically appropriated to the trustees of the State Hospital for the Insane of the Southeastern District of Pennsylvania for the two fiscal years commencing June first, one thousand nine hundred and eleven, for the following purposes, viz,—"

Then followed eight specific items of appropriation which, in the aggregate, amount to $97,500.

It is a well settled rule of construction that where a written instrument deals with the same subject matter in general terms and also in specific or itemized terms, that the specific language or items control as against the general language used. This rule is also applicable to Acts of Assembly.

Applying this principle, the specific appropriations to the Braddock General Hospital amounts to $40,000. The specific appropriations to the State Hospital for the Insane for the Southeastern District of Pennsylvania at Norristown, amount to $97,500. It would be difficult to determine if the appropriations were in the smaller amount what items should be eliminated.

I am, therefore, of opinion that the appropriation carried by the Act of Assembly above referred to, to the Braddock General Hospital,

is $40,000 and that carried by the Act of Assembly to the State Hospital for the Insane for the Southeastern District of Pennsylvania at Norristown, is $97,500.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

PRIMARY ELECTION BILLS.

Services rendered by the clerks of county commissioners in re. primary elections may be paid by the State if the county commissioners have in fact paid the clerks for the services performed as extraordinary and outside of the usual services required from said clerks under the terms of their employment, i. e., in addition to their regular salaries.

Office of the Attorney General,

Harrisburg, Pa., January 11, 1912.

Hon A. E. Sisson, Auditor General, Harrisburg, Pa.

Sir: Your favor of December 12th, 1911, was duly received.

You ask to be advised as to whether or not the county of Juniata can be paid the amount of the bill therein stated, amounting to $95.08, claimed to have been paid by the county commissioners to George B. Kramer, county commissioners' clerk, for services as shown by the itemized bill, in connection with the primary election of 1911, and also whether the county of Berks is entitled to be reimbursed by the Commonwealth for charges made by J. William A. Mattern, chief clerk of the county commissioners, and claimed to have been paid to him by the county for the services in your letter itemized and set out, in connection with the primary election of 1911, amounting to $134.34, and also whether the county of Berks is entitled to be reimbursed for similar clerical services rendered in connection with said primary election by other clerks in said county commissioners' office.

The Act of February 17, 1906 (P. L. 36), Section 9, provides:

> "The County Commissioners shall keep an accurate account of the entire expenses of holding such primaries, including the preparation and delivery of supplies, voting materials, et cetera, and the total amount shall be paid, in the first instance, by the county treasurer, upon the order of the county commissioner. As soon as convenient thereafter, the county commissioners shall prepare an itemized statement of the amount so paid, verified by oath, and send the same accompanied by the receipted vouchers, to the Auditor General, who, if he finds the same correct, shall 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 the money in the State Treasury not otherwise appropriated."

The services itemized in your letter appear to be within the language of the act providing for the payment to the county of "the entire expenses of holding such primaries, including the preparation and delivery of supplies, voting materials, et cetera."

The only question is whether or not, the services having been performed by clerks already in the employ of the county commissioners, the county can be reimbursed.

This question depends upon the contract between the county commissioners and the clerks. If the county commissioners have in fact paid the clerks for the services performed as extraordinary and outside of the usual services required from said clerks under the terms of their employment, i. e., in addition to the regular salaries severally paid said clerks, then the counties, in my opinion, are entitled to be reimbursed. If, however, the counties have paid the several clerks the amounts of the bills rendered and have in fact deducted such amounts from, or charged the same against the regular salaries of the said clerks, the counties are not entitled to reimbursement.

I therefore advise you that if you find the claims made by the several counties to be correct, and to have been paid by the county commissioners, in addition to the usual and ordinary salaries paid to said clerks, the counties are entitled to be reimbursed for such payment.

Very truly yours,
JNO. C. BELL,
Attorney General.

APPROPRIATIONS.

The Act of April 27, 1909, P. L. 265, provides that the revenues derived from the registration of motor vehicles and from licensing operators shall be paid into the State Treasury "to be used for the improvement of the roads of this Commonwealth." This is a specific appropriation of the whole amount of such moneys without need for further specific appropriation of the same.

Office of the Attorney General,
Harrisburg, Pa., Jan. 24, 1912.

Hon. A. E. Sisson, Auditor General, Hon. E. M. Bigelow, State Highway Commissioner.

Gentlemen: I am in receipt of a recent communication from each of you, relative to the present use for the improvement of the roads of the Commonwealth—without the necessity of further legislative

appropriation—of certain moneys which have been paid into the State Treasury by the State Highway Commissioner; being the revenues derived from the registration of motor vehicles and from licensing operators thereof, under the Act of Assembly relating thereto, approved the 27th day of April, 1909, (P. L. 265).

An earlier act, approved May 25, 1907 (P. L. 259), to which the Auditor General refers, provides generally that the State Highway Commissioner, as well as the officers and heads of the other departments of the Commonwealth therein mentioned, "shall pay daily into the State Treasury, for the use of the Commonwealth of Pennsylvania, all fees, licenses, fines, penalties, commissions, costs, and all moneys received or collected, on behalf of the Commonwealth, from any source whatever."

The act first above mentioned, however, further provided as follows:

> "Section 21. The revenues derived from the registration of motor-vehicles, and from licensing operators thereof, under the provisions of this act, shall be paid by the State Highway Commissioner to the State Treasurer, to be used for the improvement of the roads of this Commonwealth."

By the said quoted section of the last act there was thus earmarked and specifically set aside, from the general fund so collected and paid into the State Treasury, all of the revenues derived from the registration of motor-vehicles and the licensing of operators thereof, to be used for the purpose mentioned, viz: for the improvement of the roads of the Commonwealth. There was thus, by plain intendment, a specific appropriation of the whole amount of such moneys, for the specific use and purpose mentioned.

In my opinion, therefore, the Auditor General is authorized to issue his warrants for the payment of said moneys, or any part thereof, to the State Highway Commissioner for the improvement of the roads of the Commonwealth, without any further specific appropriation of the same; and such payments will be in accord, and not in conflict, with the true intent and meaning of the Act approved May 11th, 1909 (P. L. 519), referred to in the communication of the Auditor General.

Very truly yours,

JNO. C. BELL,

Attorney General.

SITE FOR WESTERN PENITENTIARY.

The site chosen for the Western Penitentiary near State College, Pa., is "in the Western part of the State" within the meaning of the Act of March 30, 1911, P. L. 32.

Office of the Attorney General,

Harrisburg, Pa., May 1, 1912.

Hon. A. E. Sisson, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your communication dated April 22, 1912, asking to be advised as to the proper construction of the Act of Assembly, approved March 30th, 1911, (P. L. 32), entitled "An act providing for the selection and purchase, or the appropriation from the State Forest Reserves of a tract of land and the erection thereon of buildings for the Western Penitentiary; making an appropriation therefor, etc.," with reference to the extent of the discretion vested in the Board of Inspectors of the Western Penitentiary in the matter of the selection of the site for the proposed new Western Penitentiary.

In your communication, after calling attention to the fact that the second Section of the act provides "that as soon as practicable after the approval of this act, the Board of Inspectors of the Western Penitentiary shall proceed to select a tract of land of not less than one thousand five hundred (1,500) acres in the western part of the State, suitable for the erection of buildings for the said Western Penitentiary, etc.," you state that the Board of Inspectors has selected a site in Centre county, very near to State College, and has requested you, as Auditor General, to issue warrants on the State Treasurer, pursuant to the Fifth Section of the Act, in payment for said site. You then state "I desire to be informed by you, in the event that it appears that the site so selected is not more than from two to six miles west of the center of a line drawn across the center of the State from the Delaware River to the Ohio State line, if it is *'in the western part of the State'* within the meaning of said Act of Assembly, approved March 30, 1911, and if the Auditor General is justified, under the provisions of said act, in drawing a warrant or warrants therefor."

Your inquiry, as I understand it, amounts practically to a request for an opinion from this Department as to whether the site selected by the Board of Inspectors of the Western Penitentiary is "in the western part of the State" within the meaning of the act in question. The paragraph of your request above quoted seems to indicate that you have in mind the question whether the site selected by the Board of Inspectors is located in the western part of the State in a geographical sense and from a purely geographical point of view.

In my opinion the proper answer to your inquiry does not depend upon the determination of the fact of whether or not the site which has been selected is "in the western part of the State" in a strict geographical sense. The phrase "in the western part of the State" must be construed in connection with the main subject of the enactment and the object which the Legislature had in view.

The act is entitled "An act providing for the selection and purchase * * * * * of a tract of land and the erection thereon of buildings for the Western Penitentiary, etc.," and is introduced by a preamble reciting an evil or mischief which the Legislature seeks to remedy. That evil or mischief relates to the present condition of the Western Penitentiary, and it is recited that this institution is overcrowded and unsanitary. It is further stated that, for lack of a large body of land appurtenant to the institution, it is impossible, under existing laws, to keep the inmates sufficiently employed, etc. The remedy proposed is the erection of new buildings, in a rural district, upon a tract of land large enough to provide useful employment for the inmates, etc.

Of course, neither the title nor the preamble to the act can control the enacting portion thereof; yet both the title and the preamble may, and should, be taken into consideration in construing the act. Since the adoption of the present constitution the title is a necessary part of the act and an important guide to its construction, and the preamble may be considered in endeavoring to ascertain the motive of the Legislature in the enactment.

Having thus referred to the mischief and the proposed remedy, the Legislature next gave its attention to the means by which the remedy was to be applied, and enacted that the Board of Inspectors of the present Western Penitentiary should proceed to select a tract of land of not less than one thousand five hundred (1,500) acres *"in the western part of the State,"* suitable for the erection of buildings for the proposed new Western Penitentiary, which tract should be selected with a view to the preservation of the health of the inmates, as well as to afford ample acreage of arable land, well supplied with good water, and capable of being properly sewered and drained without excessive expense. It was then provided that "upon the tract of land so selected, and the cost thereof, being approved by the Governor and the Attorney General having approved the titles thereto, the Board shall purchase the same, having the titles conveyed to the Commonwealth in fee simple; provided that if it be found that the Commonwealth owns as part of its Forest Reserve any land which the said Inspectors and the Governor may find suitable for the purpose aforesaid, the same shall be used for said purpose, in preference to making additional purchases of land therefor."

It appears from the report made by the Board of Inspectors to the Governor that it has selected a tract of land, containing about 3,900 acres, located in Centre county, near State College, and that a large tract of land, comprising a part of the State Forest Reserve, adjoins the site thus selected upon the south and west. The Governor has approved the selection of the site and the cost thereof. The titles to the various tracts forming the proposed site have been examined and the Board of Inspectors, now desiring to complete the purchase of the tract of land thus selected, has made requisition upon you, as Auditor General, for warrants payable to the different vendors of the tracts of land going to make up the large body selected by it.

It is clear from a consideration of the act in the light of its title and preamble, that the subject matter of the enactment and the object which the Legislature had in view relate to the erection of a new Wester Penitentiary. The only limitation placed upon the discretion of the Board of Inspectors of the present Western Penitentiary in the matter of the selection of a site is that such site shall be "in the western part of the State." What did the Legislature mean by this limitation?

Endlich, in his work on the interpretation of Statutes at Section 73, says:

> "The words of the statute are to be understood in the sense in which they best harmonize with the subject of the enactment and the object which the Legislature has in view. Their meaning is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or on the occasion in which they are used and the object to be attained; that is, in the construction of a statute, as in that of other instruments, words are to be understood, not according to their mere ordinary general meanings, but *according to their ordinary meaning as applied to the subject-matter with regard to which they are used,* unless, indeed, there be something requiring them to be read in a sense which is not their ordinary sense in the English language as so applied. It is a general and very sound rule, applicable to the construction of every statute, that it is to be taken in reference to its *subject-matter,* and equally the construction ought to be with reference to the *object* to be accomplished by the act, and to keep in view the conditions existing."

Separated from this context and considered wholly apart from the subject-matter and object of the act in question, the phrase "in the western part of the State" would ordinarily mean in the geographical western half of the State; but these words, considered and under-

stood not merely according to their ordinary general meaning, but according to this meaning as applied to the subject-matter with regard to which they are used, have, in my judgment, a wider signification.

The subject-matter with regard to which they are used and the object of the enactment in which they appear both relate to the erection of a new Western Penitentiary. It is a legal presumption that the Legislature was cognizant of previous legislation on the same subject, and it is the duty of courts to interpret statutes in the light of such previous legislation: Pepper and Lewis' Digest of Decisions, Volume 20, Column 34,978.

When the act in question was passed the Legislature knew that the State of Pennsylvania had been divided, by legislative enactment, into two districts for prison purposes, one district known as the Western District, having the present Western Penitentiary erected therein, and the other, known as the Eastern District, having the present Eastern Penitentiary therein. By the Act approved April 10, 1826, (P. L. 280), entitled "An act relative to the State Penitentiary in the county of Allegheny," it is provided that:

> "For the more convenient punishment of those criminals hereinafter mentioned, this State shall be divided into two districts, and the counties of Fayette, Greene (and other counties therein mentioned, including Centre county) shall compose the Western District, and the residue of the State shall compose the Eastern District, and every person who shall be convicted in any court in the said Western District of any crime or crimes committed after the said first day of May next, who, by the existing laws of this Commonwealth would be liable to be sentenced to receive his or her punishment in the gaol and penitentiary house of Philadelphia, shall be sentenced by the proper court to receive a like punishment in the State penitentiary in the county of Allegheny, and for that purpose to be removed to said State penitentiary."

By subsequent legislation Centre county was at one time attached to the Eastern District, but it is now provided, by the Act of 27th April, 1871, (P. L. 293), entitled "An act in relation to the allotment of prisoners to the Eastern and Western Penitentiaries," that "the counties of Cameron, Potter Clinton, *Centre,* Mifflin, Juniata and Fulton, from and after the passage of this act, shall be and the same are hereby attached to the Western District of Pennsylvania so far as respects the punishment of offenders convicted in said counties," etc. The act now under consideration and those just cited are statutes *in pari materia,* and should be so construed.

The line dividing Pennsylvania into two penitentiary districts is accurately defined by the foregoing legislation, and its location is presumed to have been known to the Legislature of 1911. Giving to the

phrase "in the western part of the State" its ordinary meaning, therefore, as applied to the subject-matter with regard to which it was used, I am of opinion that the only limitation intended by the Legislature to be placed upon the discretion of the Board of Inspectors of the Western Penitentiary in the matter of the selection of a site for the erection of a new Western Penitentiary, was that such site must be located within the lines of the Western Penitentiary District of Pennsylvania, as now created and defined by law. In my opinion the phrase "in the western part of the State" should be construed as equivalent to the phrase "in the Western Penitentiary District of the State." The site selected by the Board of Inspectors of the Western Penitentiary is wholly within Centre county, and as that county is a part of the Western District, I am of opinion that the Board of Inspectors in the selection of the site in question has acted within the discretion vested in it by law.

Any other attempted construction of the phrase "in the western part of the State" leads to uncertainty and speculation. If it be argued that the site, in order to meet the requirements of the Act of Assembly in question, must be located in the geographical western half of the State, or, in other words, that the phrase "in the western part of the State" means "in the western geographical half of the State," it is practically impossible, without some designation by the Legislature of what is to be considered the eastern boundary of Pennsylvania, to determine, with any degree of accuracy, just where the center line of the State from north to south should be drawn. There is no difficulty about the location of the western boundary of the State, for it is located on meridian 80° 31′ west of Greenwich. On account of the indentations in the eastern boundary of the State, due to the winding course of the Delaware River, it is impossible to select a meridian which may be said to be the eastern boundary of Pennsylvania. The extreme eastern point of Pennsylvania, as appears from the records of the Department of Internal Affairs, and the certificate filed in your Department in connection with this matter, is located upon meridian 74° 43′ west of Greenwich.

It also appears from said certificate that meridian 75° west of Greenwich is the average eastern boundary of the State of Pennsylvania, and that the site selected is one mile west of meridian 77° 45′ 30″ west of Greenwich, which last mentioned meridian is the mean meridian between the western and average eastern boundary of the State.

If the extreme eastern and western meridians be selected as the eastern and western boundaries of the State, then the site selected is $8\frac{3}{4}$ miles west of meridian 77° $36\frac{1}{2}$′ west of Greenwich, which meridian is the mean meridian between the extreme eastern and western boundaries of the State.

As above stated, however, I do not consider this fact material to the disposition of your inquiry. The controlling question, as I construe the act, is whether the site is within the territory embraced in the Western Penitentiary District as defined by existing legislation. There being no question about this fact, you are advised that the Board of Inspectors of the Western Penitentiary has acted within the discretion vested in it in the matter of the selection of a site and you would not be justified in declining to issue your warrant upon the ground that the site selected is not "in the western part of the State."

Very truly yours,
JNO. C. BELL,
Attorney General.

TOWNSHIPS OF THE SECOND CLASS.

One-half of the appropriation carried by the Act of 1911 and available for the purpose of paying the bonus authorized by said act, should be applied pro rata for the payment of the fifty per centum of the amount of road taxes collected in cash during the year 1911 by such townships of the second class as have collected their road taxes in cash and filed the required reports with the State Highway Commissioner on or before the first day of January, 1912.

Office of the Attorney General,

Harrisburg, Pa., June 25, 1912.

Hon. A. E. Sisson, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of June 6, 1912, asking, in substance, to be advised whether the townships of the second class in this State, which, during the year 1911, collected their road taxes in cash, are entitled to receive any part of the appropriation of $500,000.00 contained in the Act of June 14, 1911, (P. L. 942), entitled:

> "An act relating to roads, providing for the election and appointment of township supervisors in second class townships; defining their powers, duties and limitations; relating to road tax and the expenditures thereof; abolishing the work tax; defining certain duties of the clerk of court; fixing penalties for violation of this act; and making an appropriation to carry out its provisions."

Your inquiry involves the question of the proper construction of the provisions of said Act of 1911, in so far as they relate to the filing of certain reports by township supervisors with the High-

way Commissioner, and the payment by the Commonwealth to the respective townships of the State of a certain sum of money, as a bonus or reward for the collection of all road taxes in cash by the township authorities, instead of permitting such taxes to be worked out under the old system.

A review of former legislation upon this subject is essential to a proper construction of the Act of 1911, which supplies the legislation heretofore existing. By the Act of April 12, 1905, (P. L. 142), entitled:

> "An act providing for the election and appointment of road supervisors in the several townships of the second class of this Commonwealth, etc."

the Legislature inaugurated the plan of offering an inducement to townships to change the prevailing system of working out road taxes to a cash payment system. By this Act of 1905 it was provided that the supervisors of each township of the second class should meet, to perform their official duties, on the first Monday of March, 1906, and yearly thereafter, at which meeting they should levy a road tax within the limits prescribed in said act. It was further provided that any township might, by a majority vote of the electors thereof, at the February municipal election, change the system of taxation, and that any township which abolished the work tax and provided for the collection of its road taxes in cash, should annually receive from the State fifteen per centum of the amount of the road tax collected in that township, as shown by a sworn statement of the board of supervisors furnished to the State Highway Commissioner on or before the 15th day of March in each year, which statement was required to show the amount of tax assessed, as well as the amount collected. The bonus thus provided for was to be paid out of any moneys in the state Treasury not otherwise appropriated.

This Act of 1905 was amended by the Act of May 13, 1909, (P. L. 752). Under the provisions of the amendatory act the supervisors were required to meet at the same time as that fixed by the Act of 1905, viz: the first Monday of March in each year, and were directed to proceed immediately to levy a road tax. By the terms of the amendment it was further provided:

> "That the said road tax shall hereafter be collected in cash, and no such taxes shall be payable in labor or worked out, but provided further that any township may by a majority vote of the electors thereof at the February municipal election, after thirty days prior notice thereof, adopt the system of payment of road taxes by work on the public roads."

It is to be noted that under the Act of 1905 the old system of working out road taxes was to prevail except where a township by an election adopted the cash payment system, but under the amendment of 1909 the cash system was prescribed as the prevailing system, unless a township elected to adopt the work system. Under the amendment of 1909, any township which collected its road taxes in cash became entitled to receive from the State fifty per centum of the amount of road taxes collected in said township, as shown by a sworn statement of the board of supervisors furnished to the State Highway Commissioner on or before the first day of April in each year. The bonus was therefore changed by this amendment from fifteen to fifty per centum and the last day for filing the statement with the Highway Commissioner was changed from the 15th of March to the 1st of April in each year.

Under the Act of 1909 the amounts due townships were to be paid to the treasurer of the board of supervisors out of moneys appropriated for that purpose, and not out of the general funds in the State Treasury. Thus stood the law at the date of the approval of the Act of 1911, which act is intended to be a comprehensive system regulating the election and appointment of supervisors in townships of the second class, defining their powers, duties and limitations, and the settlement and collection of road taxes, etc.

Between the date of the approval of the said Act of 1909 and the enactment of said Act of 1911, the Constitution had been amended so as to require the election of supervisors at the municipal election held in November of odd numbered years.

Provision is therefore made in the Act of 1911 for the election of township supervisors at the municipal election in odd numbered years, and it is provided that they shall meet to perform their official duties on the first Monday of December, 1911, and yearly thereafter. By the 2nd Section of said Act of 1911 it is provided, inter alia, that the board of supervisors shall proceed immediately to levy a road tax and that "the said road tax shall hereafter be collected in cash and no such taxes shall be payable in labor or worked out."

Under the express provisions of this act all road taxes levied under its authority must be paid in cash. In and by said second Section it is further provided, as follows:

> "Each township shall receive annually from the State fifty per centum of the total amount of road tax collected by such township, as shown by the sworn statement of the board of township supervisors, contained in the annual report furnished to the State Highway Commissioner on or before the first day of January in each year, as hereinafter provided for: Provided, that no township shall receive in any one year more

> than twenty dollars for each mile of township road in said township * * * * Upon receipt of the sworn statement from the board of township supervisors, it shall be the duty of the State Highway Commissioner to certify to the Auditor General the amount due the respective townships and he shall draw a warrant upon the State Treasurer for the payment of the amount due said township under the provisions of this section, to the treasurer of the board of township supervisors, which shall be paid out of the moneys appropriated for that purpose, etc."

By the 10th Section of the act it is provided that the supervisors shall annually, on or before the first day of January in each and every year, make a sworn statement to the State Highway Commissioner, on blanks furnished to them by the said Commissioner, of the whole amount of tax levied during the preceding year for road purposes, and the total amount of road taxes collected during the year, specifying in such report the amount expended for maintenance or repair of roads and for opening and building new roads, etc.

This act carries an appropriation in the following language:

> "The sum of $500,000.00 or so much thereof as may be necessary, is hereby appropriated to carry out the provisions of this act for the two fiscal years beginning the first day of June, Anno Domini one thousand nine hundred and eleven."

By the 16th Section of the Act it is provided that the act shall take effect the first Monday in December, 1911. Under the system prescribed by the Act of 1911, the supervisors are to meet on the first Monday of December each year, instead of the first Monday of March, as theretofore, and the statement of the amount of taxes collected, etc., is to be filed with the State Highway Commissioner on or before the first day of January in each year, instead of on or before the first day of April, as provided in the amendatory Act of 1909.

If we were to consider only the second Section of the Act of 1911, and the provision that the act should become effective on the first Monday of December, 1911; it is clear that the bonus to which the townships would be entitled would be fifty per centum of the taxes collected during the year 1912, as reported in the statement required to be filed on or before the first Monday of January, 1913.

You ask to be advised whether, under a consideration of the whole act, townships which collected their road taxes in cash during the year 1911, are entitled to receive out of the appropriation carried by the Act of 1911, a bonus of fifty per centum (or such part thereof as the appropriation is sufficient to pay) on the amount of such taxes collected in cash during the year 1911. Under the former system

such townships were required to report the amount of road taxes collected in cash during the year 1910, on or before the first day of April 1911, so that at the date of the approval of the Act of 1911, no reports were due from such townships, nor would any such reports be due under the former system until the first day of April, 1912. Under the new system the first full year for which a report could be made, would be the year 1912. That the Legislature had this situation in mind and intended to adjust the new system to the old, is apparent from the provisions of the 16th Section of the act in question.

By this section it is enacted that:

> "The provisions of this act shall take effect the first Monday in December, Anno Domini one thousand nine hundred and eleven, when the current fiscal year shall end; the township road accounts shall be settled and audited, and, on or before January first, one thousand nine hundred and twelve, such reports made to the State Highway Commissioner as are provided for in heretofore existing law which this act supplies."

The current fiscal year referred to in this enactment is clearly the fiscal year which would have ended on April 1, 1912, and it is provided that it shall end on the first Monday of December, 1911, It is further provided that the township road accounts shall be settled and audited, and that the reports required to be made by township supervisors to the State Highway Commissioner, under heretofore existing law, shall be made on or before January 1, 1912. Under the law as it existed prior to the approval of the Act of 1911, these reports would not have been due until April 1, 1912, but they are now required to be filed on or before January 1, 1912. For what purpose? Manifestly for the purpose of furnishing the State Highway Commissioner with the necessary data for the ascertainment of the amount of bonus due each township by reason of the collection of road taxes in cash during the year 1911. The current fiscal year is shortened, and the reports are to be filed earlier than would otherwise have been required in order that the former system and practice may be supplied by the new, with as little inconvenience as possible. There is no indication that the Legislature intended that townships which had collected their road taxes in cash during the year 1911 should be deprived of their share of the bonus provided by the Act of 1911. On the contrary, it is expressly provided in the appropriation section of the act, that the fund therein mentioned is appropriated for the purpose of carrying out the provisions of the act for the two fiscal years beginning the first day of June, one thousand nine hundred and eleven.

You are therefore advised that in the opinion of this Department one-half of the appropriation carried by the Act of 1911, and available for the purpose of paying the bonus authorized by said act, should be applied pro rata to the payment of fifty per centum of the amount of road taxes collected in cash during the year 1911 by such townships of the second class as have collected their road taxes in cash and filed the required reports with the State Highway Commissioner, on or before the first day of January, 1912.

Very truly yours,

JNO. C. BELL,
Attorney General.

MERCANTILE APPRAISERS.

Women are ineligible to public office, in the absence of an express constitutional or legislative enactment making them eligible, and as there is nothing in the Act of May 2, 1899, P. L. 184, relating to the appointment of mercantile appraisers and the collection of the mercantile license tax, indicating that the Legislature intended expressly to provide that women should be eligible to the office of mercantile appraiser, a woman cannot legally be appointed to that office by the county commissioners.

Office of the Attorney General,

Harrisburg, Pa., December 26, 1912.

Hon. A. E. Sisson, Auditor General, Harrisburg, Pa.

Sir: This Department is in receipt of your inquiry of November 14th, 1912, asking to be advised whether the county commissioners of Mercer county may legally appoint a woman as mercantile appraiser in and for said county under the provisions of the Act of May 2, 1899, (P. L. 184), entitled "An act to provide revenue by imposing a mercantile license tax on vendors of or dealers in goods, wares and merchandise and providing for the collection of said tax."

It is essential to inquire in the first place whether the duties imposed upon the person appointed mercantile appraiser in one of the counties of the State constitute such person a public officer or merely make him an employe or representative of the Auditor General of the State and county commissioners of the county in question.

As was forcibly said of Patton vs. the Board of Health of the city and county of San Francisco, 78 Am. St. Rep. 66, it is almost imposible to deduce from the mass of learning displayed in cases determining the meaning of the term "office" a definition of the term universally applicable. In general, an office is a public charge or employment but as every employment is not an office it is sometimes difficult to distinguish between employments which are and which are not offices.

The folowing definitions or descriptions of a public office are quoted with approval in re Opinion of Justices of the Supreme Court of New Hampshire, 5 L. R. A. (N. S.) 415, upon the question of the eligibility of a woman to appointment as a notary public in that State:

> "An office is a public station or employment, conferred by the appointment of government. The term embraces the ideas of tenure, duration, emoluments, and duties. The term 'office' implies a delegation of a portion of the sovereign power to, and possession of it by, the person filling the office; and the exercise of such power within legal limits constitutes the correct discharge of the duties of such office. The power thus delegated and possessed may be a portion belonging sometimes to one of the three great departments, and sometimes to another; still it is a legal power, which may be rightfully exercised, and in its effects it will bind the rights of others, and be subject to revision and correction only according to the standing laws of the State."

With these definitions in mind, we should next inquire with relation to the duties of a mercantile appraiser under the act above mentioned. By the first Section of the act, retail and wholesale dealers are described and classified; the amount of mercantile license tax to be paid by each class is prescribed, and the basis upon which it is to be assessed, namely "the whole volume, gross, of business transacted annually" is specified.

In the third Section of the act, it is provided as follows:

> "For the purpose of carrying into effect the provisions of this act, the appointment of mercantile appraisers shall be made annually on or before the thirtieth day of December of each year by the county commissioners except in cities of the first class, when the Auditor General and the treasurer of the city are authorized and required to appoint five *suitable, qualified citizens,* all of whom shall not be of the same political party, and the term of office of said appraisers shall be for three years."

By subsequent sections of the act, it is provided that blanks, prepared by the Auditor General, shall be sent by the respective mercantile appraisers to each vender of or dealer in goods, wares and merchandise in the county, upon which blanks such dealers are required to make return of the gross volume of business transacted during the preceding year, and each mercantile appraiser is required to make a personal visit to the place of business of every person

against whom a mercantile license tax is to be assessed for the purpose of making a personal inspection and investigation in addition to requiring the making of the returns prescribed by the act.

In the sixth Section of the act it is provided that, if the mercantile appraiser is dissatisfied with the return made by the dealer, "he shall ascertain and assess the mercantile license tax according to the classification so made." If an appeal be taken from the assessment made upon the return of the dealer, or by the mercantile appraiser, the appraiser is required to sit with the county treasurer for the purpose of hearing and determining such appeal, their decision being subject to the right of appeal to the court of common pleas of the proper county.

By the eighth Section, it is enacted, in substance, that any mercantile appraiser who shall neglect or refuse to visit the store or other place of business of any person required to be visited by him or to furnish such person with the notices required by the act, shall be subject to a penalty of one hundred dollars to be recovered for the use of the Commonwealth.

This general description of the duties imposed by law upon the mercantile appraiser demonstrates that such appraiser possesses and exercises a portion of the sovereign power of the State delegated to him by law. The right to levy and collect taxes is one of the attributes of sovereignty inherent in the Commonwealth. The manner of exercising that right must be prescribed by the Legislature and the Legislature has delegated to the mercantile appraisers under discussion the power to "ascertain and assess the mercantile license tax" in accordance with the judgment of such appraiser, subject only to the prescribed right of appeal. The power thus delegated and possessed is a portion of the legislative power and, in the language of the definition above quoted, "it is a legal power which may be rightfully exercised and in its effects it will bind the rights of others and be subject to revision and correction only according to the standing laws of the State."

All of the essential characteristics of an office, namely, tenure, duration, emoluments, and duties, are present in the case of a mercantile appraiser. Such person performs duties and renders services which are prescribed not by an express or implied contract, but by legislative enactment. You are therefore advised that the persons appointed mercantile appraisers by the commissioners of the several counties of this State hold appointive public offices.

This brings us to the immediate inquiry: whether the county commissioners of a county in this State may legally appoint a woman to fill the public office of mercantile appraiser in and for said county, or, in other words, whether a woman is eligible, in the sense of being legally qualified, to be chosen to and to hold the office of mercantile appraiser.

It may be safely stated that, under the law of Pennsylvania—based as it is upon the common law of England— women are ineligible to any elective or appointive public office except those offices to which they have been expressly made eligible by constitutional or legislative enactment.

The true significance of our constitutional provision in Section three, Article ten, of that instrument, enacting that "women twenty-one years of age and upwards shall be eligible to any office of control or management under the school laws of this State" and of our Act of Assembly of April 14, 1893, (P. L. 16), providing that "women being twenty-one years of age and citizens of this Commonwealth shall be eligible to the office of notary public," becomes apparent, in the light of the above mentioned principle. Although there may be no express constitutional prohibition against a female exercising a public office, enabling legislation is generally considered necessary to make women eligible to public offices. The decisions, both in England and in this country, upon the eligibility of women to public offices are by no means harmonious.

The earlier decisions upon the question are collated in a note to the case of the State of Missouri ex rel. vs. Hostetter, 38 L. R. A. 208, decided in 1897. In this case it was decided that a woman was eligible to election as a county clerk under the constitution and laws of the State of Missouri. In the conclusion of the note to this case the following language is used:

> "It may be said to be the general doctrine now held both in England and America that women are ineligible to any important office except when made so by enactment. It is usually said that this is the common law of the subject but it is somewhat startling to find that there is not a decision earlier than the present generation against their right. In the absence of any adjudication against them, the theory that they are incompetent at common law must be based on the fact that they did not actually hold office except in rare instances and, that these instances were usually treated by the judges and law-writers as exceptional. But there is quite an array of cases in which they did hold office and their right to do so was upheld."

An interesting opinion of the Supreme Court of New Hampshire upon the eligibility of women to appointment of the office of notary public has already been referred to as reported in 5 L. R. A. (N. S.) 415. This case was decided in 1906 upon the request of the Governor and Council for an opinion of the Supreme Court as to the power to appoint women as notaries public. Unlike Pennsylvania, New Hampshire had no statutory enactment making women eligible to the office in question. The opinion concludes as follows:

> "Because of our common law, women are disabled from holding public office and because the place of notary public is a public governmental office, and because we are unable to find any evidence of legislative purpose or intention to change the common law in this State in this respect, if such power exists, a point not considered, we are compelled to answer in the negative the question submitted."

The later cases on the subject are collected in a note to the case of Nebraska ex rel. vs. Quibble, 27 L. R. A. (N. S.) 531, in which case it was decided that a woman was eligible to the office of county treasurer. In the case cited, a distinction seems to be made between administrative and other public offices and the eligibility of the relator seems to have been determined in her favor largely upon the ground that the office of county treasurer is administrative in character and its duties are in no way incompatible with the incumbency of a woman who was competent to fill the office. In a dissenting opinion, the position is advanced that inasmuch as the office in question in that case was an elective office and the constitution of Nebraska declared who shall be electors, namely, every male person of the age of twenty-one years or upwards, etc., it was an absurdity to hold that any person can be elected to an office for which he or she is ineligible to vote at an election.

As the office now under discussion is appointive we need not consider the effect of Section one of Article eight of our Constitution restricting the privilege of voting to "male citizens" possessing certain qualifications.

The only qualifications expressly provided in the Act of 1899 is that a person to be eligible to appointment to the office of mercantile appraiser shall be a "suitable, qualified citizen."

In re Robinson, 131 Mass. 376 (41 Am. Rep. 239) it was held that "the word 'citizen,' when used in its most common and most comprehensive sense, doubtless includes women; but a woman is not, by virtue of her citizenship, vested, by the Constitution of the United States or by the Constitution of the Commonwealth (Massachusetts) with any absolute right, independent of legislation, to take part in the government either as a voter or as an officer, or to be admitted to practice as an attorney."

Throughout the act, pronouns importing the masculine gender are used. For instance, in Section six, it is provised that it shall be the duty of each mercantile appraiser appointed under the provisions of this act to forward by mail, at least ten days prior to the date when *he* makes a personal visit to the place of business of every person whom *he* is required by law to ascertain and assess, a blank prepared for distribution by the Auditor General as heriubefore provided. Neither the use of the word "citizen", nor the use of the words

importing the masculine gender should necessarily have any controlling weight in the disposition of the question in hand for, as above pointed out, the word "citizen" includes women as well as men, and, when necessary to ascertain the legislative intent, it is sometimes permissible to construe words importing the masculine gender to include females, the singular to include the plural and the plural to include the singular, etc.

In my opinion the question must be determined upon the broad principle of law hereinbefore stated to the effect that, under the law of this State, women are ineligible to public office in the absence of an express constitutional or legislative enactment making them eligible, and, as there is nothing in the Act of 1899, relating to the appointment of mercantile appraisers and the collection of the mercantile license tax, indicating that the Legislature intended expressly to provide that women should be eligible to the office of mercantile appraiser, you are advised that a woman cannot legally be appointed to said office by the commissioners of Mercer county.

It is proper to add that the general views herein expressed are in harmony with the opinion of former Attorney General Carson, dated February 20, 1903, (Report of the Attorney General, 1903-4, p. 351) in which he held that a woman was ineligible to be appointed Commissioner of Deeds.

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

OPINIONS TO THE STATE TREASURER.

OPINIONS TO THE STATE TREASURER.

FORM OF BOND.

The State Treasurer is advised as to the form of justification by individual sureties to bonds to secure State deposits.

Office of the Attorney General,

Harrisburg, Pa., May 5, 1911.

Hon. Charles F. Wright, State Treasurer, Harrisburg, Pa.

Sir: Your favor of April 19th, addressed to the Attorney General, was duly received.

You ask to be advised whether the form of justification approved by the Board of Revenue Commissioners July 14, 1908, and now used by individuals who become sureties on bonds given by banks and trust companies to secure deposits of State funds, and which is severe in its requirements, can be dispensed with and whether the form of qualifying by individual sureties attached to the bond, marked No. 4, fully complies with the Act of Assembly approved February 17, 1906, P. L. 45.

Section 6 of the Act of February 17, 1906, P. L. 45, provides:

> "That wherever 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."

The form attached to the bond marked No. 4 sets out in full, the name and residence of each surety, and the amount which said surety is worth, over and above all his liabilities, and I am therefore of opinion that it complies fully with the requirements of the said Act of Assembly.

The Board of Revenue Commissioners are required to adopt a form which contains the requirements of the Act of 1906.

It is a matter of discretion whether the Board requires any additional facts to be stated in such form. It therefore follows that the Board may abandon or revise the form approved July 14, 1908.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

SALARIES.

The salaries fixed by the Act of June 14, 1911, relating to State Treasurer's Department, commence June 1st, 1911.

Office of the Attorney General,

Harrisburg, Pa., June 21, 1911.

Hon. Charles F. Wright, State Treasurer, Harrisburg, Pa.

Sir: Your favor of the 16th instant, addressed to the Attorney General, was duly received. You ask to be advised whether the salaries fixed by the Act of June 14, 1911, relating to your Department, begin June 1st, 1911.

The Act of June 14, 1911, No. 690, fixes the annual salaries of the cashier, assistant cashier and various clerks of the Treasury Department. The General Appropriation Act provides in Section one:

> "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 eleven.*"

and, to the Treasury Department is appropriated, the several amounts for the payment of the salaries of the cashier, the assistant cashier and clerks, to conform to the salaries fixed in the Act of June 14, 1911. It appears that the General Appropriation Bill was originally drawn to appropriate only the amount necessary to pay the salaries fixed prior to the Act of June 11, 1911, but, in anticipation of the passage and approval of that act, the amounts were changed to conform to those fixed by that act.

Inasmuch as the Legislature has specifically appropriated the amounts to cover the salaries as fixed by the Act of June 14, 1911, and directed that the amounts as appropriated are for salaries from June 1st, 1911, I am of opinion that the salaries as provided by the Act No. 690, approved June 14, 1911, and the Appropriation Bill, are payable from the first day of June, 1911.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

HAWAII ISLAND BONDS.

Hawaii Island bonds are not within the class of securities which the Board of Revenue Commissioners can receive in lieu of surety bonds as security for the deposit of State money.

Office of the Attorney General,

Harrisburg, Pa., June 23, 1911.

Hon. Charles F. Wright, State Treasurer, Harrisburg, Pa.

Dear Sir: Your favor of the 13th inst., addressed to the Attorney General was duly received.

You ask to be advised whether Hawaii Island bonds are securities within the meaning of the Act of February 17, 1906 (P. L. 45).

This Act which regulates the deposit of State funds, and provides for the security of such deposits, provides in Section 7:

> "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," etc.,

and the question is whether bonds issued by Hawaii could be considered municipal bonds.

"The authorities are numerous that the word 'municipal' has not a well defined and technical meaning."

20 Am. & Eng. Ency. of Law, 2d Ed., 1080.

It is derived from the Roman word "municipium" which means "a city", and in the usual meaning it refers to cities, boroughs, townships and even to counties.

Words and Phrases, Vol. 5, 4619.
Bouvier's Law Dict., Vol. 2, 452, 453.
20 Am. & Eng. Ency. of Law, 1080.

Municipal taxes usually refer to those of a city or borough. Municipal courts refer to the courts of cities or towns. In its ordinary acceptation the word is not extended to larger subdivisions than counties. This Act of Assembly uses the language "municipal *or* county bonds," so that the Legislature evidently intended to distinguish between counties and smaller subdivisions which issue bonds, and classed the smaller subdivisions as "municipal."

Hawaii is and has been since June 14, 1900, a territory of the United States, and its bonds would not be ordinarily considered municipal bonds.

I am of the opinion and therefore advise you, that Hawaii Island bonds are not within the class of securities which the Board of Revenue Commissioners can receive in lieu of surety bonds as security of the deposit of State money.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

STATE HIGHWAY DEPARTMENT.

An automobile purchased by the State Highway Department may be charged against the appropriation for maintenance, repair and construction of State Highways, but may not be charged against the appropriation for traveling expenses.

Office of the Attorney General,
Harrisburg, Pa., October 16, 1911.

Hon. Charles F. Wright, State Treasurer, Harrisburg, Pa.

Sir: By your favor of September 23rd, 1911, you request an opinion as to whether an automobile may be purchased by the Highway Department and charged against the appropriation of three million dollars contained in Section 37 of the Act of May 31, 1911, entitled "An act providing for the establishment of a Highway Department," etc., and also called attention to the General Appropriation Act of 1911, which provides $88,000.00 for necessary traveling expenses.

Section 3 of the Act providing for the establishment of the State Highway Department, etc., provides, in part, with reference to the powers of the Highway Commissioner:

> "He is hereby authorized and empowered to purchase all machinery, implements, tools and materials of any and every kind, incident to or necessary in the construction, building, rebuilding and maintenance of the State Highways hereinafter described, including the right to employ all necessary labor; *and if in the judgment of the Commissioner it is necessary in order to expedite and more efficiently carry out the work of the department, he may purchase and maintain at the expense of the department, wagons and other vehicles, including* horses, mules and harness, and provide for their keeping and maintenance, which shall be used only in connection with the work of the department."

This Act of Assembly creates a new departure in highway construction by the State of Pennsylvania, and it lays out two hundred and ninety-six different routes to constitute a system of highways. It provides, in Section 5:

> "The highways designated in this act as State Highways shall be taken over by the State Highway Department from the several counties or townships of the State * * * from time to time, as circumstances and conditions will permit; provided, that all township roads, abandoned and condemned turnpikes, or turnpikes that may hereafter be abandoned or which may hereafter be condemned and paid for by the county in which the same may be located, and which form a part of any such highways, shall be taken over by the State Highway Department before the first day of June, one thousand nine hundred and twelve."

I am advised by the Highway Commissioner that many of the routes have an indefinite or unidentified beginning or ending, and Section 7 provides:

> "That where the description of any route herein given may state the beginning or termination or intermediate points of the route to be at an indefinite or unidentified point or place, or at or upon an unnamed road or street, the same shall be definitely identified and determined by the State Highway Commissioner."

I am also advised that the automobile purchased by the Highway Department has been used indefinitely determining and fixing the points on the various roads referred to in this Act of Assembly, and that it would be practically impossible, without the use of automobiles, to do the work required in order to take over the two hundred and ninety-six routes referred to in the Act of Assembly, prior to June 1st, 1912.

The Act of Assembly in terms gives the Commissioner power "if, in the judgment of the Commissioner it is necessary in order to expedite and more efficiently carry out the work of the Department" to purchase and maintain, at the expense of the Department, wagons and other vehicles.

I am of opinion that an automobile is a vehicle within the meaning of this section and that the cost of its purchase is properly chargeable against, and payable out of the appropriation contained in Section 37 of this Act of Assembly, which is as follows:

> "The sum of three million dollars, or so much thereof as may be necessary in establishing and carrying on the work of the department, is hereby appropriated for the purpose of maintenance, repair, and construction of the State highways herein described."

I am also of opinion that the cost of said automobile is not payable out of the appropriation carried by the General Appropriation Act "for the payment of the necessary traveling expenses" of the State Highway Commissioner and his assistants.

Very truly yours,

JNO. C. BELL,
Attorney General.

BOARD OF PUBLIC GROUNDS AND BUILDINGS.

A proposal for a State contract, accompanied by a bond that has not been approved by a judge of the proper court, as required by the Act of Assembly, must be rejected, and the Board cannot legally return the bond for correction, and subsequently award the contract to such bidder.

Office of the Attorney General,

Harrisburg, Pa., October 24, 1911.

Hon. Charles F. Wright, State Treasurer, Harrisburg, Pa.

Dear Sir: Your favor of recent date, addressed to the Attorney General was duly received.

You ask to be advised as to whether the Board of Public Grounds and Buildings may consider or accept a proposal under the provisions of the Act of March 26, 1895, P. L. 23, where such proposal is accompanied by a bond which has not been approved by a Judge of the Court of Common Pleas of the county in which the bidder resides, and after having opened the bids, whether such bond can be returned and the approval of a judge of the proper court obtained and the contract then awarded to such bidder.

Section 2 of the said Act of Assembly provides:

> "That no proposal for any contract shall be considered or accepted unless such proposal be accompanied by a bond, in such form and amount as the Board of Public Grounds and Buildings shall direct, with at least two sureties or one surety company, *approved by a Judge of the Court of Common Pleas of the county in which the person or persons making such proposal may reside,* conditioned for the faithful performance of the terms of the contract."

The provisions of this Act of Assembly are mandatory and provide that no proposal shall be considered or accepted unless accompanied by a bond approved by a judge of the proper court. This approval is a condition precedent to the submission of a bid in proper form, and unless such bid or proposal complies with all the requirements of the act, it cannot be considered or accepted.

The Board of Public Grounds and Buildings have no power to waive the mandatory provisions of this Act of Assembly.

I am, therefore, of opinion that where a proposal is submitted, accompanied by a bond that has not been approved by a judge of the proper court, as required by the 3rd Section of the act, the bid should be rejected, and that the Board cannot legally return the bond for correction and subsequently award the contract to such bidder.

Very truly yours,
WM. M. HARGEST.
Assistant Deputy Attorney General.

STATE HIGHWAY DEPARTMENT.

An automobile may be purchased for the State Highway Department out of the appropriation for traveling expenses, as well as from the appropriation for the maintenance, repair and construction of State Highways.

Office of the Attorney General,

Harrisburg, Pa., June 13, 1912.

Hon. Charles F. Wright, State Treasurer, Harrisburg, Pa.

Sir: On October 16th, 1911, at your request, this Department gave you an opinion that automobiles purchased by the State Highway Department could be charged against the appropriation of three million dollars, contained in Section 37 of the Act of May 31, 1911, entitled "An act to provide for the establishment of a Highway Department, etc.," and also that they could *not* be paid for out of the appropriation carried by the General Appropriation Act of 1911, for the payment of necessary traveling expenses of the State Highway Commissioner and his assistants. The latter appropriation is, in terms, as follows:

> "For the payment of the necessary traveling expenses of the State Highway Commissioner, the First Deputy State Highway Commissioner, the Second Deputy State Highway Commissioner, the Chief Engineer, the Bridge Engineer, the fifteen Civil Engineers and the fifty Superintendents, two years, the sum of eighty-eight thousand dollars ($88,000)."

At the time that opinion was given we were not in possession of all the facts which have since been brought to our attention. It now appears that the taking over of the various roads included in the 296 routes designated in the Act of Assembly creating the Highway

Department, the making of maps and gathering of data therefor, the placing of signs and obtaining of data therefor, the supervision of work of contractors, and the other work imposed upon the Department by said act, requires the State Highway Commissioner, his assistants, engineers and superintendents, to travel repeatedly in sections of the State which are not readily accessible by railroad, and that in carrying on the work imposed upon him it is necessary to reach such places either by means of automobiles or by means of carriages, in order that the duties may be properly and economically performed. It further appears that to attempt to do the work thus imposed upon the Highway Commissioner great loss of valuable time would ensue if he hired horses and carriages, or automobiles for this purpose, and the expense of such hiring would probably be more, in the aggregate, than the purchase of automobiles.

In view of these facts this Department desires to modify the last clause of the opinion given on October 16th, 1911, and to say that the purchase of automobiles by the Highway Commissioner is properly payable out of the appropriation contained in Section 37 of the Act of Assembly, which is as follows:

> "The sum of three million dollars, or as much thereof as may be necessary in establishing and carrying on the work of the department, is hereby appropriated for the purpose of maintenance, repair and construction of the State Highways herein described, and for the payment of the State's share of the maintenance and repair of State-aid highways heretofore constructed, or constructed or improved under the provisions of this act,"

and that the purchase of automobiles to be used by the officers designated in the item of the General Appropriation Act of 1911, appropriating $88,000, hereinabove quoted, is also properly payable out of that fund.

Very truly yours,
WM. M. HARGEST.
Assistant Deputy Attorney General.

OPINIONS TO THE SECRETARY OF THE COMMONWEALTH.

OPINIONS TO THE SECRETARY OF THE COMMONWEALTH.

PRIMARY ELECTIONS.

Nominating petitions, incorrectly labelled "Spring Primary" may be amended by changing the word "Spring" to "Fall" and when thus amended are valid.

Office of the Attorney General,

Harrisburg, Pa., May 3, 1911.

Hon. Robert McAfee, Secretary of the Commonwealth, Harrisburg, Pa.

Dear Sir: Your favor of April 26th, 1911, addressed to the Attorney General, was duly received.

You state that several petitions for nomination have been filed in your office naming candidates for the office of associate judge, for the purpose of having the names of such candidates certified to the county commissioners printed on the official ballot for the primaries to be held this year, and that such petitions purport to name candidates to be placed on the ballot for the *"Spring Primary."*

The Act of April 6, 1911, provides for but one primary in each year, and that in the odd numbered years it shall be known as the *"Fall Primary."*

Some of the petitions have been filed prior to the passage of the Act of April 6, 1911. You ask to be advised whether the use of the word "Spring" in the form of petition and the fact that the petitions were filed prior to the passage of the Act of April 6th, requires the filing of new petitions. The Act of April 6, 1911, to which you refer, does not change the requirements of petitions for nomination, and I am, therefore, of opinion that the fact that the petitions filed prior to said act, if otherwise regular, are valid.

It has been determined a number of times that nomination papers and certificates which are defective in form but not wholly void, are susceptible of amendment, and I am of opinion that these petitions can be amended by changing the word "Spring" to the word "Fall," and when thus amended will be valid.

Very truly yours,

WM. M. HARGEST.

Assistant Deputy Attorney General.

PRINTING PAMPHLET LAWS.

The Secretary of the Commonwealth must be the judge of what may be omitted between the title of an act and the preamble thereof, in printing the pamphlet laws. Such matter as was intended only for the information of the Legislature, and not necessary to a complete understanding of the law may be omitted.

Office of the Attorney General,

Harrisburg, Pa., June 27, 1911.

Hon. Robert McAfee, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: Your favor of the 14th inst. was duly received.

You refer to Act No. 255, approved June 3, 1911, which is entitled:

> "An act regulating the printing of the laws of this Commonwealth."

You ask to be advised whether this law contemplates the omission from the Pamphlet Laws of everything between the title of an act and the first section thereof.

The first Section of this Act of Assembly is:

> "That hereafter no preamble or other introductory matter intended for the guidance and information of the members of the General Assembly in their consideration of a bill shall be printed when such bill becomes a law and is printed for general use."

Some acts are so drawn that the preambles or other introductory matter are necessary to an understanding of them and in others the preambles and introductory matter are merely for the information of the members of the Legislature in consideration of bills. To illustrate: In Act No. 2, of 1911, making an appropriation to the Pittsburgh Hospital Sisters of Charity, at least so much of the preamble as contains the letter of Governor Stuart would not be necessary to a complete understanding of the law by the public; while in Act No. 7 of 1911, entitled "An act to carry into complete operation the amendments," etc., the preamble might materially aid in the construction of the act. A number of other similar instances might be readily pointed out. It appears to have been the intention of the Legislature that only such preambles and introductory matter as was intended for their guidance and information in the consideration of the bill, or as an inducement to its passage, should be eliminated when the bill is printed for general use.

I am, therefore, of opinion that the Act of Assembly above referred to does not contemplate the omission of everything between the title and the first section of every Act of Assembly, but that it contemplates the omission of such matters as were intended only for the information of the Legislature and are not necessary to a complete

understanding of the law, and that within the above principle or rule, the Secretary of the Commonwealth must be the judge of what shall be included or omitted in printing the laws for general use.

Very truly yours,

JNO. C. BELL,
Attorney General.

FEES.

The Secretary of the Commonwealth is advised as to fees which may be charged in certain cases.

Office of the Attorney General,

Harrisburg, Pa., November 16, 1911.

Hon. Robert McAfee, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: With reference to the Act of June 15, 1911, (P. L. 975), enacted at the last session of the Legislature, you make inquiry in your letter of October 24th, as follows:

> 1. "What is the proper fee to be paid to the Secretary of the Commonwealth for the use of the State upon the filing of description of names, marks, etc., on bottles, boxes, cans, kegs and other containers and receptacles, respectively, making the proper record and issuing certificate of registration?"
> 2. "What is the proper fee so to be paid for the filing and certifying descriptions identically the same to be applied to bottles, cans, boxes, and other containers, when set forth in a single application?"
> 3. "What is the proper fee so to be paid for the filing and certifying descriptions to be applied to *bottles,* and other descriptions not exactly identical to be applied to *cans,* and still other descriptions not identical to either of the foregoing to be applied to *boxes,* and so on as to other containers, when all are set forth in a single application?"

The act is entitled:

> "An act providing for the registration of bottles, boxes, siphons, siphon-heads, tins, kegs, cans, soda-fountains, cylinders of carbonic acid gas, or other containers, etc."

and provides in the first section thereof that:

> "Any person or corporation engaged in manufacturing, bottling or selling soda-waters, mineral or aerated waters, porter, ale, root beer, cider, ginger ale, milk,

> cream, small beer, lager beer, weiss beer, white beer, or other beverages, or any medicines, medical preparations, perfumery, oils, ketchup, compounds or mixtures, in bottles, boxes, siphons, siphon-heads, tins, cans, kegs, soda-fountains, cylinders of carbonic acid gas, or other containers, with his, her, their, its name or names, or other mark or marks, or device or devices, branded, stamped, engraved, etched, blown, impressed, or otherwise produced upon such bottles, boxes, siphons, siphon-heads, tins, cans, kegs, or other containers used by him, her, them, or it, may file in the office of the Secretary of the Commonwealth a description of the name or names, marks or devices, so used by him, her, them, or it, respectively, and cause such description to be printed once a week for two weeks successively in a newspaper published in the county in which the principal office or place of business of the owner shall be located; and, upon legal proof being furnished the Secretary of the Commonwealth, a certificate shall be issued by the Secretary of the Commonwealth, upon payment of the sum of twenty-five cents," etc.

The 8th Section of the act repeals generally "all laws or parts of laws inconsistent" therewith. There is no specific repealer of the prior Act of April 27, 1871, (P. L. 242), entitled:

> "An act prescribing the fees for the office of Secretary of the Commonwealth."

which, as amended by the Act of March 28, 1873, (P. L. 53), provides, among other fees, for services therein enumerated, that

> "The fees of the Secretary of the Commonwealth for the use of the State shall be * * * * filing description of bottles under act of assembly, five dollars"

and further provides that

> "The fees of the Secretary of the Commonwealth for the use of the State shall be * * * * equivalent fees for any like service though not herein specified."

It can hardly be questioned, I think, that the services to be performed in connection with the "filing" of the "description of the name or names, marks or devices" branded, stamped, or otherwise produced upon bottles or other containers and examination of the proof of publication of such description, the registration, etc., under the Act of June 15, 1911, are services like the "filing of description of bottles," specified in the Act of March 28, 1873, (P. L. 53), above mentioned, and are therefore within the express provisions of that act.

I am of opinion, that this prior Act of 1873 so comprehensively regulating the fees of the Secretary of the Commonwealth for the use of the State, by providing "equivalent fees" for any services like

those therein specifically enumerated, is not inconsistent with the purpose and meaning of, and therefore not repealed by, the said Act of 1911. The "payment of the sum of twenty-five cents" is a charge more appropriate to the *issuance of the certificate alone,* and, in the absence of express language in the act rendering it necessary so to do, ought not also to be construed as covering the fee for the services in connection with the filing, etc., provided by this act, I think it more reasonable to read into the Act of 1911, as entirely consistent therewith, the provisions of the prior Act of 1873, concerning the fees for "filing."

In accordance with this construction, the proper fee to be paid by the Secretary of the Commonwealth for the use of the State for the filing of the description, etc., and for issuing the certificate, would be the total sum of five dollars and twenty-five cents ($5.25), five dollars ($5.00) for the filing, and twenty-five cents (25 cts.) for the issuance of the certificate, where the registration is made under the said Act of June 15, 1911.

As to the second inquiry above quoted, inasmuch as it is for the registration of the mark, name or device, that the certificate, provided by the act, is to issue, I am of opinion that when the name, mark or device, is identically the same on all the containers, one application can be made to cover the registration, and one certificate may properly be issued therefor.

As to the third inquiry, however, which concerns the case where the mark, name or device is not identically the same, I think it reasonable to conclude that the act contemplates a separate certificates for each name, mark or device, in other words, it is a distinguishing mark, name or device, and not the kind of container on which it is to be used, which it seems to have been intended, should determine the number of registrations to be made, and certificates to be issued, for the fee hereinabove mentioned, for such services.

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

TERM OF OFFICE.

Associate judges should be commissioned for six years from the first Monday of January next after their election.

Office of the Attorney General,

Harrisburg, Pa., December 6th, 1911.

Hon. Robert McAfee, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: I am in receipt of your inquiry, dated November 28th, 1911, in which you state that it appears by the returns made to your Department, that twenty-one associate judges were elected on November 7, 1911, and in which you request an opinion as to the length of term for which said associate judges should be commissioned.

I am of opinion that, under the Constitution of this Commonwealth, as amended on November 2, 1909, and the Acts of the Legislature carrying said amendments into effect, the associate judges referred to in your communication should be commissioned for the term of six years from the first Monday of January next after their election.

Very truly yours,

JNO. C. BELL,

Attorney General.

COURTS OF ALLEGHENY COUNTY.

The effect of the constitutional amendment to Section 6, Art. V, of the Constitution, adopted Nov. 7, 1911, P. L. 1161, consolidating the courts of common pleas of Allegheny county, is to consolidate as of Jan. 1, 1912, the four separate courts of common pleas theretofore existing into one court of common pleas, of which the judge senior in continuous service will be the president judge. Judges elected Nov. 7, 1911, should be commissioned as judges of the new court, and the remaining judges now in commission should be recommissioned, but such commissions need not indicate the relative rank or length of continuous service of each.

Office of the Attorney General,

Harrisburg, Pa., December 22, 1911.

Hon. Robert McAfee, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of December 19th, calling attention to the amendment to the Constitution providing for the consolidation of the courts of common pleas of Allegheny county, adopted by the people November 7, 1911, to become effective January 1, 1912, and asking to be advised upon the following questions:

1. "Is the President Judge of the consolidated court to be the judge who is the oldest in commission of all the judges now serving in the several numbered courts of said county?"
2. "Should the other judges of the several numbered courts be re-commissioned? If so, should the commissions be in order of seniority?"
3. "Should the judges elected November 7, 1911, for numbered courts be so commissioned, or should the numbers be omitted?"

These questions relating to the effect of the adoption of the Constitutional Amendment of 1911, may be considered together. In order to determine the effect of the amendment in question, it is essential that we clearly understand the situation existing at the time of the adoption of this amendment with relation to the creation and composition of the courts of common pleas of Allegheny county.

As the amendment now under consideration is an amendment to Section 6 of Article V of the Constitution of 1873, it will be sufficient for our present purpose to address our attention to the situation of Allegheny county with reference to its courts of common pleas under that Constitution.

By Article V of the Constitution of 1873, it is provided that the courts of common pleas shall continue as then established, except as changed therein, and that the judges of the courts of common pleas learned in the law shall be judges of oyer and terminer, quarter sessions of the peace, etc.

By Section 13 of the Schedule to the Constitution, the General Assembly was directed to designate the several judicial districts as required by the Constitution at its next session, and by the Act of April 9, 1874, (P. L. 54), it is provided that the Fifth Judicial District of the Commonwealth shall be composed of the county of Allegheny.

At the date of the adoption of the Constitution of 1873, there was in existence in the county of Allegheny an additional court of record by the name and style of "The District Court for the County of Allegheny," created under the Acts of 8th April, 1833 (P. L. 305), 12th June, 1839, (P. L. 261), and 5th June, 1873, (P. L. 399), and consisting, after the last mentioned date, of a president and two associate judges learned in the law.

By Section 6 of Article V of the Constitution of 1873, special provision is made for the courts of common pleas of the counties of Philadelphia and Allegheny. In said section it is provided that:

> "In the counties of Philadelphia and Allegheny all the jurisdiction and powers now vested in the district courts and courts of common pleas subject to such changes as may be made by this Constitution, or by law, shall be in

> Philadelphia vested in four, and in Allegheny in two, distinct and separate courts of equal and co-ordinate jurisdiction, composed of three judges each; these said courts in Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three and number four, and in Allegheny as the court of common pleas number one and number two, but the number of said courts may be by law increased from time to time and shall be in like manner designated by successive numbers. * * * * * In Allegheny each court shall have exclusive jurisdiction of all proceedings at law and in equity commenced therein subject to change of venue as may be provided by law."

By the 19th Section of the Schedule to the Constitution of 1873 it is provided that:

> "In the county of Allegheny, for the purpose of first organization under this Constitution, the judges of the court of common pleas at the time of the adoption of this Constitution, shall be the judges of the court number one, and the judges of the district court, at the same date, shall be the judges of the common pleas number two. The president judges of the common pleas and district court shall be president judge of said courts number one and two, respectively, until their offices shall end; and thereafter the judge oldest in commission shall be president judge, but any president judge re-elected in the same court, or district, shall continue to be president judge thereof."

By the Act of 12th May, 1891, (P. L. 51), a court of common pleas designated "Court of Common Pleas No. 3 of Allegheny County" was created. This court, it was enacted, should be composed of three judges learned in the law, who should exercise equal and co-ordinate jurisdiction with courts of common pleas numbers one and two of said county and the judges thereof.

By the Judicial Apportionment Act of July 18, 1901, (P. L. 669) it is enacted that the fifth Judicial District of the Commonwealth shall be composed of the county of Allegheny "and shall have nine judges learned in the law in the common pleas, and three judges learned in the law in the orphans' court."

By the Act of 15th March, 1907, (P. L. 20), the number of courts of common pleas in the county of Allegheny was increased by the creation of a court to be known and designated as "Court of Common Pleas of Allegheny County No. 4," composed of three judges learned in the law, "with like powers, duties, authority and compensation. and with like constitution and equal and co-ordinate jurisdiction" with the courts of common pleas then existing in said county.

It therefore appears that in November, 1911, there were four separate and distinct courts of common pleas in Allegheny county, composed of three judges each, with a president judge in each court designated according to law.

By the constitutional amendment adopted on November 7, 1911, Section 6 of Article V of the Constitution of 1873 was stricken out and a new section inserted in lieu thereof.

The section stricken out by the amendment read as follows:

> "Section 6. In the *counties* of Philadelphia (and Allegheny) all the jurisdiction and powers now vested in the district courts and courts of common pleas subject to such changes as may be made by this Constitution or by law, shall be in Philadelphia vested in *four,* (and in Allegheny in two) distinct and separate courts of equal and co-ordinate jurisdiction, composed of three judges each; and the said courts in Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three and number four, (and in Allegheny as the court of common pleas number one and number two), but the number of said courts may be by law increased from time to time, and shall be in like manner designated by successive numbers; the number of judges in any of said courts, or in any county where the establishment of an additional court may be authorized by law, may be increased from time to time, and whenever such increase shall amount in the whole to three, such three judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid. In Philadelphia all suits shall be instituted in the said courts of common pleas without designating the number of said court, and the several courts shall distribute and apportion the business among them in such manner as shall be provided by rules of court, and each court to which any suit shall be thus assigned shall have exclusive jurisdiction thereof, subject to change of venue, as shall be provided by law. (In Allegheny each court shall have exclusive jurisdiction of all proceedings at law and in equity commenced therein subject to change of venue, as may be provided by law.)"

The new section adopted by the people in November, 1911, reads as follows:

> "Section 6. In the *county* of Philadelphia all the jurisdiction and powers now vested in the district courts and courts of common pleas subject to such changes as may be made by this Constitution or by law, shall be in Philadelphia vested in *five* distinct and separate courts of equal and co-ordinate jurisdiction, composed of three judges each. The said courts in Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three, number four

and number five, but the number of said courts may be by law increased from time to time, and shall be in like manner designated by successive numbers. The number of judges in any of said courts or in any county where the establishment of an additional court may be authorized by law, may be increased from time to time, and whenever such increase shall amount in the whole to three, such three judges shall compose a distinct and separate court, as aforesaid, which shall be numbered as aforesaid. In Philadelphia all suits shall be instituted in the said courts of common pleas without designating the number of the said court, and the several courts shall distribute and apportion the business among them in such manner as shall be provided by rules of court, and each court to which any suit shall be thus assigned shall have exclusive jurisdiction thereof, subject to change of venue, as shall be provided by law.

In the county of Allegheny all the jurisdiction and powers now vested in the several numbered courts of common pleas shall be vested in one court of common pleas composed of all the judges in commission in said courts. Such jurisdiction and powers shall extend to to all proceedings at law and in equity which shall have been instituted in the several numbered courts and shall be subject to such changes as may be made by law, and subject to change of venue, as provided by law. The president judge of such court shall be selected as provided by law. The number of judges in said court may be by law increased from time to time. This amendment shall take effect on the first day of January succeeding its adoption."

From a comparison of the old and new sections above quoted, it will be observed that the general effect of the amendment is to remove the courts of common pleas of Allegheny county out of the operation of that section of the Constitution of 1873 which authorized the existence of separate numbered courts of common pleas of equal and co-ordinate jurisdiction in certain designated counties, and to consolidate, as of January 1st, 1912, the four separate numbered courts of common pleas now existing in Allegheny county into one court of common pleas for said county, having a president judge, to be selected as provided by law, and eleven other judges learned in the law.

It is expressly provided in the amendment that the court thus created shall exercise in the county of Allegheny all the jurisdiction and powers now vested in the several numbered courts of said county.

One of the questions submitted by you arises by reason of the provision in the amendment to the effect that "the president judge of said court shall be selected as provided by law." You ask how the president judge is to be selected and whether he should be specially commissioned as president judge?

By Section 16 of the Schedule to the Constitution of 1873 it is provided that:

> "After the expiration of the term of any president judge of any court of common pleas, in commission at the adoption of this Constitution, the judge of such court learned in the law and oldest in commission shall be the president judge thereof; and when two or more judges are elected at the same time in any judicial district, they shall decide by lot which shall be president judge; but when the president judge of a court shall be re-elected he shall continue to be president judge of that court," etc.

By Section 19 of said schedule it was provided, as above pointed out, that for the purpose of the first organization under the Constitution of 1873, the judges of the court of common pleas and the judges of the district court should become the judges of the courts of common pleas numbers one and two, respectively, of Allegheny county. This section likewise contains the following provision:

> "The president judges of the common pleas and district court shall be president judge of said courts number one and two, respectively, until their offices shall end; and thereafter the judge oldest in commission shall be president judge; but any president judge re-elected in the same court, or district, shall continue to be president judge thereof."

In the case of Commonwealth ex rel. vs. Pattison, 109 Pa. 165, it was decided that the above quoted 16th Section of the Schedule is of permanent and not temporary force, and that it applies not only to judges whose commissions were in force at the time of the adoption of the Constitution, but also to all judges who may be subsequently commissioned.

It is to be observed, as pointed out in the case above cited, that the phrase "oldest in commission" means "oldest in continuous service," without regard to the date of the commission under which a judge may be serving at any particular date.

From a review of all the constitutional provisions applicable to the question, the Supreme Court decided that they form a complete system, the most prominent feature of which is that the judge senior in continuous service in any court shall be the president thereof. In concluding the opinion Mr. Justice Sterrett said:

> "A careful examination of all the provisions relating to the subject satisfies me that the framers of the Constitution intended to establish a uniform system whereby the judge oldest in commission in each of the courts of common pleas should be president judge thereof," etc.

An examination of the records of your Department discloses that the names of the eleven judges now serving in the four separate numbered courts of common pleas of Allegheny county, who will continue in service after January 1st, 1912, and the dates upon which their respective terms of service began, are as follows:

NAME.	DATE SERVICE BEGAN.
Hon. Robert S. Frazer,	1st Monday of January, 1897.
Hon. John D. Shafer,	June 15th, 1897.
Hon. John A. Evans,	September 5th, 1898.
Hon. Marshall Brown,	September 25th, 1900.
Hon. James R. Macfarlane,	1st Monday of January, 1903.
Hon. Thomas J. Ford,	November 15th, 1906.
Hon. Joseph M. Swearingen,	April 9th, 1907.
Hon. Thomas D. Carnahan,	April 9th, 1907.
Hon. Josiah Cohen,	April 9th, 1907.
Hon. John C. Haymaker,	February 1st, 1908.
Hon. Livingston L. Davis,	December 3rd, 1908.

The twelfth judge now serving in the county of Allegheny, and the senior judge in continuous service at this date, is Hon. John M. Kennedy, President Judge of the Court of Common Pleas No. 3, but his term of service will expire on the first Monday of January, 1912.

From the foregoing statement, it is made to appear that Hon. Robert S. Frazer, now President Judge of the Court of Common Pleas No. 2 of Allegheny County, is the judge who will be senior in continuous service in Allegheny county on and after January 1st, 1912, and you are therefore advised that he is the judge who is entitled to be commissioned President Judge of the Court of Common Pleas of Allegheny County, to serve as such president judge for the unexpired portion of his present term.

At the election of November 7, 1911, Hon. Ambrose E. Reid was elected to fill the vacancy caused by the retirement of Judge Kennedy and is therefore entitled to be commissioned for a term of ten years from the first Monday of January, 1912.

In addition to the election of Judge Reid on November 7, 1911, to fill the vacancy caused by the retirement of Judge Kennedy, Hon. Marshall Brown, now President Judge of the Court of Common Pleas No. 1, who, as appears from the above statement, was first commissioned as a judge of the Court of Common Pleas No. 1 of Allegheny County, on September 25th, 1900, to serve by appointment until the first Monday of January, 1902, and who, after election, was commissioned for ten years from the first Monday of January, 1902, was re-elected at said election on November 7, 1911, and will therefore be entitled to a commission for ten years from the first Monday of January, 1912.

One of the questions arising under your inquiry is whether the nine remaining judges of the several numbered courts of common pleas of said county, who, if the constitutional amendment had not been adopted, would continue to serve under their present commissions after the first day of January, 1912, as judges of the respective courts to which they have been elected, should be re-commissioned for the unexpired portions of their present terms as judges of the Court of Common pleas of Allegheny County, or whether they should serve in the consolidated court under their present commissions.

In addition to this proposition, you inquire whether the judges elected on November 7, 1911, namely, Judge Reid and Judge Brown, for numbered courts, should be commissioned as judges of the numbered courts to which they were elected, or whether they should be commissioned generally for the Court of Common Pleas of Allegheny County?

Taking into consideration the fact that, under the provisions of the amendment the four separate numbered courts of common pleas of Allegheny county will no longer exist on and after the first day of January, 1912, I am of opinion that Judge Reid and Judge Brown should be commissioned as judges of the Court of Common Pleas of Allegheny County, and I am also of opinion that the nine remaining judges now in commission should be re-commissioned, for the unexpired portions of their respective terms, as judges of the Court of Common Pleas of Allegheny County. This method will, in my judgment, carry into operation the plain intent of the people of the Commonwealth in adopting the amendment now under discussion, and will prevent the raising of any question with reference to the regularity of the commissions of the judges of Allegheny county.

You further ask to be advised whether, in the event that the eleven judges in question are to be commissioned as judges of the Court of Common Pleas of Allegheny County, their commissions should be issued in order of seniority?

In reply to this inquiry, you are advised that inasmuch as the records of your office will, at all times, show the comparative periods of continuous service of the judges of Allegheny county, there is no necessity or occasion for indicating in the commissions of the eleven judges now about to be commissioned, the relative rank of the respective judges, in so far as length of continuous service is concerned.

You are therefore advised that you should now issue to Hon. Robert S. Frazer a commission as President Judge of the Court of Common Pleas of Allegheny county for the unexpired portion of his present judicial term, and to Hon. Marshall Brown and Hon Ambrose B. Reid, commissions as judges of the Court of Common Pleas of Allegheny County, for ten years from the first Monday of January,

1912, and to Hon. John D. Shafer, Hon. John A. Evans, Hon. James R. Macfarlane, Hon. Thomas J. Ford, Hon. Joseph M. Swearingen, Hon. Thomas D. Carnahan, Hon. Josiah Cohen, Hon. John C. Haymaker, and Hon. Livingston L. Davis, commissions as judges of the Court of Common Pleas of Allegheny County, for the unexpired portions of their respective judicial terms.

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

TERM OF OFFICE.

An alderman elected in 1907 had his term of office extended by the Constitutional Amendment of 1909 and the Act of March 2, 1911, P. L. 8, until the first Monday of January, 1914, and his successor should be elected in 1913.

Office of the Attorney General.

Harrisburg, Pa., February 14, 1912.

Hon. Robert McAfee, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of February 14, 1912, requesting that you be furnished with an opinion with reference to the appropriate time to elect successors to aldermen and justices of the peace elected and commissioned in the year 1907.

I understand that your request for an opinion grows out of the application of W. D. Mansfield, of McKeesport, Pa., for a commission as alderman of the Fourth Ward of the city of McKeesport, and that said application is based upon the following facts:

The said W. D. Mansfield was elected to the office of alderman of the said Fourth Ward of the city of McKeesport at the February election in 1907, and pursuant to said election and return thereof, was commissioned as alderman of said ward for the term of five years from the first Monday of May, 1907, or until the first Monday of May, 1912. Mr. Mansfield being of the opinion that his term of office would expire on the first Monday of May, 1912, became a candidate for re-election and was voted for as a candidate for said office at the November election of 1911. A return having been duly filed, showing that the said W. D. Mansfield was elected to the said office of alderman at said November election of 1911, you have been requested to issue a commission to him commissioning him as alderman of said ward for the term of six years from the first Monday of May, 1912. In the opinion of this Department the term of Mr. Mansfield as alderman was extended by the terms of the constitutional amendments adopted at the November election of 1909, the provisions of the schedule accompanying said amendments, and the provisions of the Act of March 2, 1911, (P. L. 8), until the first Monday of January, 1914.

Under this construction there was no vacancy in the said office of alderman of said ward to be filled by election at the November election of 1911, nor can any successor to the said W. D. Mansfield be elected until the November election in the year 1913. This construction of course assumes the constitutionality of the said Act of March 2, 1911, in so far as it applies to the office of alderman or justice of the peace.

You are therefore advised that in the opinion of this Department the said W. D. Mansfield is not entitled to a commission by virtue of his election to the office of alderman at the November election of 1911.

Very truly yours,
JNO. C. BELL,
Attorney General.

NOMINATION PAPERS.

The Secretary of the Commonwealth should furnish blank forms of nomination papers in such quantities as may be necessary to carry out the provisions of the Act of Assembly.

Office of the Attorney General,

Harrisburg, Pa., August 21, 1912.

Hon. Robert McAfee, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: I beg to acknowledge receipt of your communication to the Attorney General, under date of the 15th instant, in which you inquire:

> "In the matter of a blank form for making nominations by nomination papers, as per Section 3 of the Ballot Law, approved June 10, 1893, as amended by the Act of June 26, 1895, the Act of June 22, 1897, the Act of July 9, 1897, the Act of April 16, 1903, the Act of April 21, 1903, and the Act of April 29, 1903; whether it is required that this Department furnish these papers, or blank forms, in unlimited quantities to any one who may make application for the same, or to whom should we furnish these papers and in what quantities?"

I am unable to find any definite specification in the legislation referred to as to the number of blank forms of nomination papers to be furnished by the Secretary of the Commonwealth, nor does the legislation prescribe that these forms shall be furnished to any specific person or persons to the exclusion of any other person or persons. The Act of Assembly provides:

> "Blank forms for making such nomination shall be furnished by the Secretary of the Commonwealth, and no other form than the ones so prescribed shall be used for such purpose."

The act then goes on to provide that:

> "Where the nomination is for any office to be filled by the voters of the State-at-large, the number of qualified electors of the State signing such nomination paper, shall be at least one-half of one per centum of the largest vote for any officer elected in the State at the last preceding election at which a State officer was voted for. In the case of all other nominations the number of qualified electors of the electoral district or division, signing such nomination paper, shall be at least two per centum of the largest entire vote for any officer elected at the last preceding election in the said electoral district or division for which said nomination papers are designed to be made."

The first Section of the act provides that:

> "It shall be the duty of the Secretary of the Commonwealth to prepare forms for all the blanks made necessary or advisable by this act, and to furnish copies of the same to the County Commissioners of each county, who shall procure further copies of the same at the cost of the county and furnish them to the election officers or other persons by whom they are to be used, *in such quantities as may be necessary to carry out the provisions of this act.*"

It would seem clear that this latter provision refers only to the blank forms of ballots and not to the blank forms of nomination papers. As to these ballot forms it nevertheless will be observed that the act provides that they are to be furnished "in such quantities as may be necessary to carry out the provisions of this act," and while there is no similar express provision as to the quantities of nomination papers to be furnished, yet the proper and reasonable inference to be derived from the provisions of the act relative to balot forms and nomination papers taken together is that both blank forms of papers are to be furnished in "such quantities as may be necessary to carry out the provisions of this act."

I accordingly advise you that the measure of the number of blank forms of nomination papers to be furnished prescribed by the act is not more definite than that above stated.

Respectfully,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

P. S.—The above opinion is given subject to the approval or disapproval of the Attorney General, upon his return to the office, pursuant to his direction that all official opinions given by this Department shall first be approved by him.

UNIFORM PRIMARIES.

A vote cast at a primary election for a candidate who has died prior thereto is a nullity and should not be considered in determining a primary election under the Act of February 17, 1906, P. L. 36, as amended by the Act of April 6, 1911, P. L. 43.

Where the name of the Socialist party candidate for the nomination to the office of State Representative was printed upon the official ballot, but he died two days before the primary election, and eight votes were cast for the deceased candidate and eight were also cast for a person whose name was written in by the voters: *Held,* that the latter was the legal nominee.

Office of the Attorney General,

Harrisburg, Pa., September 11, 1912.

Hon. Robert McAfee, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of August 6th, 1912, asking to be advised whether, under the facts stated in your letter, and in the accompanying letter of George Sutton, Jr., clerk to the County Commissioners of Potter county, you should certify to the County Commissioners of said county the name of J. B. Rumsey as the candidate of the Socialist party for the office of member of the State House of Representatives, at the ensuing general election.

From the communication before me, I understand the facts to be as follows:

The Socialist party, at the time of the primary elections in the year 1912, was a political party entitled and required to make nominations under the provisions of the Act of February 17, 1906, (P. L. 36), as amended by the Act of April 6, 1911, (P. L. 43), providing among other things, a uniform method of making nominations for certain public offices. In accordance with the provisions of said Act of 1906, as amended, a petition was duly filed in your office for the printing of the name of A. Judd Quimby upon the official primary ballot in Potter county, as a candidate of the Socialist party for nomination to the office of member of the State House of Representatives. Pursuant to this petition, the name of said candidate was duly certified by you to the County Commissioners of Potter county, and was, by said Commissioners, duly printed upon the official ballot for said primary election. Two days before the date of holding the said primary election the said A. Judd Quimby died. Notwithstanding the death of said candidate, eight votes were cast for him, at said primary election, and at the same election, eight members of the Socialist party, exercising their right to vote for a person whose name did not appear on the ballot, wrote or pasted the name of J. B. Rumsey in the blank space provided for that pur-

pose upon their ballots, as their candidate for nomination to the said office of member of the State House of Representatives.

The County Commissioners of Potter county having made the proper certification of returns of votes cast for candidates for nomination for the above mentioned State office to you, as Secretary of the Commonwealth, you now ask to be advised whether you should certify the name of the said J. B. Rumsey to said commissioners as the candidate of the Socialist party for said office at the ensuing general election, or whether, under the facts above stated, a vacancy exists in the nomination to said office which must be filled under the party rules of said political party.

If the said A. Judd Quimby were now living, a tie would exist between him and the said J. B. Rumsey, and upon casting lots, under the provisions of the legislation herein referred to before you as Secretary of the Commonwealth, the one to whom the lot might fall would be entitled to the nomination in question. That provision of the law is, of course, inapplicable under the present state of affairs, and the only question arising is whether the said J. B. Rumsey, although he did not receive a plurality of votes at said primary election, is under the peculiar circumstances now existing, the legal nominee of his party.

The whole purpose of the uniform primary act is to provide a method by which political parties shall nominate candidates for the offices therein specified and elect certain party officers, etc. It is expressly provided that political parties shall not make nominations in any other manner than as set forth in the uniform primaries act.

It goes without saying that the act contemplates and provides only for the selection of persons in being as candidates of the respective parties for election to the offices therein referred to. The votes cast for A. Judd Quimby at the election in question were cast for one who had passed out of existence and could not be the candidate of any party for any office.

In my opinion, each vote cast for A. Judd Quimby was a nullity, and should be eliminated from consideration.

It follows that J. B. Rumsey, having received the only legal votes cast, is the nominee of the Socialist party for said office in said county, and you should so certify to the County Commissioners of Potter county.

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

TERM OF OFFICE.

All county officers elected at the November election of 1909 for terms of office beginning on the first Monday of January, 1910, are entitled to hold office until the first Monday of January, 1914, their successors to be elected in November, 1913. No new commissions are required for the hold over period, but new bonds are necessary, unless the old bonds cover the period "during his continuance in said office."

Office of the Attorney General,

Harrisburg, Pa., November 27, 1912.

Hon. Robert McAfee, Secretary of the Commonwealth, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of November 27th, asking to be advised, in substance, whether the county officers elected at the November election, 1909, for terms of office which began on the first Monday of January, 1910, are entitled to hold their respective offices until the first Monday of January, 1914, or whether their terms will expire on the first Monday of January, 1913?

You are advised that, taking into consideration, the main purpose and object of all the amendments to the Constitution adopted in November, 1909, this Department is of opinion that all county officers elected at the November election of 1909 for terms of office beginning on the first Monday of January, 1910, are entitled to hold their respective offices until the first Monday of January, 1914, and that their successors should be elected at the municipal election to be held in November, 1913.

Replying to your further inquiry with reference to whether new commissions should be issued or new bonds required, you are advised that in so far as commissions are concerned, no new commissions are required, because, under the Constitution, all county officers are expressly commissioned for a definite term of years "and until their successors shall be duly qualified."

In the matter of bonds, you are advised that where the bond already given by a county officer is conditioned that said officer shall faithfully execute and perform his duties "during his continuance in the said office," or contains provisions to the same effect, no new bond is necessary. I learn that in many of the bonds the condition is so expressed.

Where, however, the bond given by the officer is limited to a term of three years, a new bond should be required from such county officer for the year beginning the first Monday of January, 1913, and ending the first Monday of January, 1914.

Very truly yours,

JNO. C. BELL,
Attorney General.

OPINIONS TO THE INSURANCE COMMISSIONER.

OPINIONS TO THE INSURANCE COMMISSIONER.

FIRE CERTIFICATES.

A separate written contract or fire certificate, accompanying and made a part of a contract of lease of a piano, by which the lessor agrees to restore or replace the piano if damaged or destroyed by fire while in the possession of the lessee during the term of the lease, is not a contract of insurance within the prohibition of the Act of Feb. 4, 1870, P. L. 14.

Insurance contract defined.

Office of the Attorney General,

Harrisburg, Pa., April, 1911.

Hon. Samuel W. McCulloch, Insurance Commissioner, Harrisburg, Pa.

Dear Sir: Your favor of the 7th inst., addressed to the Attorney General, was duly received.

You ask to be advised whether what is called a "Fire Certificate" issued by C. J. Heppe & Son, is a contract of insurance and therefore illegal, because said C. J. Heppe & Son do not have authority to issue contracts of insurance. The so-called Fire Certificate is in form as follows:

Philadelphia,

> ....., having leased from C. J. Heppe & Son ..... piano, No. ....., said C. J. Heppe & Son agree that in case of injury to or destruction of said piano, by fire, the said C. J. Heppe & Son will restore the same to the condition in which it was before the fire; or, if destroyed, will replace the same with a piano of equal value. Applies during term of lease only."

From the correspondence it appears that this certificate accompanies a contract of lease by which the said C. J. Heppe & Son, lessor, agrees to lease a piano for a term of ..... months at a fixed rental, and by which the lessee agrees "further, to insure the said instrument against any damage by fire or water, unless the lessee holds a fire certificate under which the lessor agrees to assume the risk."

The Act of Feb. 4, 1870, P. L. 14, prohibits any person, partnership or association from issuing any policy or making a contract of indemnity against loss by fire without authority expressly conferred by a charter of incorporation. It therefore becomes material to inquire whether this fire certificate is a contract of insurance.

"Insurance is a contract by which the one party, in consideration of a price paid to him adequate to the risk, becomes security to the other that he shall not suffer loss, prejudice, or damage, by the perils specified to certain things which may be exposed to them."

22 Cyc. 1384.

This definition, which is taken from Lucena vs. Craufurd, 2nd Box. & P. 300, is generally adopted.

The certificate, as before observed, accompanied and is made a part of the contract of lease. The lessor agrees with the lessee that if the lessor's property be destroyed while in the possession of the lessee, the lessor will restore it, if damaged, or replace it, if destroyed. This is a consideration for the contract of lease, not for a contract of insurance. This is in no sense a contract to insure the property of another; it is only an agreement that the lessee shall not be responsible for damage by fire to the lessor's property while the property is in the lessee's custody. If the lease itself contained the provision that the lessee should not be responsible for the damage to or destruction of the piano by fire, and that in event of such damage or destruction the lessor would restore or replace the same, such a provision dealing with the lessor's own property could hardly be considered a contract of insurance of his own property. It is no more of a contract of insurance because the lessor requires the lessee to be responsible unless he has a fire certificate, and the fire certificate is made upon a separate paper, which refers to the lease.

I am, therefore, of opinion, and so advise you, that the fire certificate of C. J. Heppe & Son is not a contract of insurance within the prohibition of the Act of February 4, 1870, (P. L. 14).

Very truly yours,

WM. M. HARGEST.

Assistant Deputy Attorney General.

LIFE INSURANCE POLICIES.

The purpose of the Act of June 1, 1911, P. L. 581, is to prescribe a definite standard of life insurance policy to be issued within this State by any insurance company, domestic or foreign, with the exception that policies issued by companies of other States may contain additional provisions not inconsistent with the provisions specifically required by the act.

A form of policy of an Iowa life insurance company, containing a provision in regard to the effect of a misstatement of age of the insured, materially different from the provision required by Section 25, Paragraph 5, of the Act of June 1, 1911, P. L. 581, is illegal and cannot be approved by the State Insurance Commissioner.

Office of the Attorney General,

Harrisburg, Pa., February 16, 1912.

Hon. Charles Johnson, Insurance Commissioner, Harrisburg, Pa.

Sir: I understand from your communication of January 16th, duly received, that there has been submitted to you for approval, by a life insurance company organized under the laws of the State of Iowa, a form of policy of life insurance, proposed to be issued by that company in the State of Pennsylvania, which policy contains a provision with regard to misstatement of age of the insured, as follows:

> "If the age of the insured has been mis-stated, upon discovery of the true age the difference between the premium paid and the premium at the correct age, with interest not exceeding six per centum per annum, shall be paid on demand to the company, or to the owner of this policy, as the case may be, and if not so paid shall be deducted from or added to any sum payable under the policy."

In your letter you state that:

> "The claim is that this provision is embodied in the policy under the requirement of the law of the State under which the company is incorporated and cannot be changed."

From the communication received from the Iowa company requesting the approval of this policy containing the above provision it appears that, under a ruling of the Insurance Department of the State of Iowa, the requirement of the law of Iowa is mandatory to the effect that the above provision shall be contained in all policies of the company, whether issued within the State of Iowa or in the State of Pennsylvania, or any other State, and, that in consequence thereof, said company can make no change in the provision in question, in policies it proposes to issue or deliver in Pennsylvania.

The recent Act of Assembly approved June 1st, 1911, (P. L. 581), entitled:

> "An act to provide for the incorporation of life insurance companies, and for the regulation of home and foreign life insurance companies and providing penalties for any violations thereof."

provides, inter alia, in Section 25, as follows:

> "On and after January 1st, 1912, no policy of life or endowment insurance shall be issued or delivered in this Commonwealth unless or until a copy of the form thereof has been filed with the Insurance Commissioner; nor if

> the Insurance Commissioner notifies the company, in writing, that in his opinion the form of said policy does not comply with the requirements of the laws of this Commonwealth, specifying the reasons for his opinion: * * * * Nor shall any such policy, except policies of industrial insurance, where the premiums are payable monthly or oftener, be issued or delivered unless it contains in substance the following provisions:"

And then among the provisions enumerated is the following:

> "Fifth. A provision that, if the age of the insured has been mis-stated, the amount payable under the policy shall be such as the premium would have purchased at the correct age."

In this situation you inquire whether the provision above quoted contained in the policy proposed to be issued by the said foreign insurance company, organized under the laws of the State of Iowa, is, in substance, a provision upon the subject of the misstatement of age such as is required by the above mentioned Pennsylvania statute of 1911, and whether you, as Insurance Commissioner, can properly approve this policy for issue in Pennsylvania, in virtue of the proviso of the said 25th Section of said Act of 1911, which provides:

> "That the policies of a life insurance company organized under the laws of any other State or foreign government may contain, when issued in this Commonwealth, any provision which may be prescribed by the laws of the State or government under which the company is organized."

It is contended by the proponent of the policy in question, that since the misstatement of age clause contained therein, is prescribed by the laws of the State of Iowa, under which the company is organized, that the proviso of the 25th Section of the said Pennsylvania Act of 1911 governs the case, and that this proviso authorizes the retention of said clause, as contained in the form of policy, submitted to you for approval, in lieu and instead of the above quoted provision prescribed by said 25th Section.

In my judgment this contention is not in accord with the true intent and purpose of the said act.

It must, in the first place, be conceded, that the provision upon the misstatement of age, as contained in the policy submitted, is not substantially the same as the provision specifically required by the Pennsylvania statute. Without elaborating the particulars in which it is different, it is sufficient to observe that it is obvious upon a comparison of the provision contained in the policy with the provision prescribed by our own law, that they are materially different,

and such as to materially different obligations and liabilities upon the part of the company, in whose policies they respectively may be incorporated.

If the position assumed by this foreign insurance company, organized under the laws of the State of Iowa, with regard to the meaning of the above mentioned proviso of the 25th Section of our said act is correct, then it would follow that all the other provisions specifically enumerated and required to be incorporated in policies of life insurance issued or delivered in this Commonwealth are really, after all, not necessary to be incorporated in such policies, when the company issuing or delivering them within the State of Pennsylvania is a foreign life insurance company, and when a different provision proposed to be inserted in the policies of that foreign insurance company is required by the laws of the State under which such company is organized. Under such a construction all and every the specific standard requirements prescribed by the 25th Section of the Pennsylvania Act of 1911 for life insurance policies issued or delivered in this Commonwealth might be rendered entirely nugatory, because of the fact that the laws of other States are different, and this would therefore mean that an insurance company organized under the laws of another State, could issue or deliver in this State a policy which contains a provision in regard to misstatement of age of the insured materially different in terms and legal effect from the provision which, by the mandatory requirements of said 25th Section, it is necessary to incorporate in the policies issued by corporations organized under the laws of the State of Pennsylvania.

I see no good reason to hold that the Legislature intended that the law of a sister State should govern the kind of contract of life insurance to be issued or delivered in the State of Pennsylvania, to the exclusion of the law of Pennsylvania, or that any such discrimination between foreign and domestic life insurance companies was intended. The mere statement of the actual results of such a construction of the Act of 1911 is, to my mind, its complete refutation.

It is axiomatic, in the law governing the interpretation of Acts of Assembly, in the effort to determine the true legislative intention to be derived from the language employed, that the act must be read as a whole. Every part of it must be read and construed, with relation to, and in the light of, every other part,—its several provisions harmonized, and the act thus given effect in its entirety.

With this principle in mind, it will be noted that the claim for the approval of the policy in question is based upon but a part of the proviso of the 25th Section, and entirely overlooks the other very significant part thereof, which is as follows:

> "The policies of a life insurance company organized under the laws of this Commonwealth may, when issued in any other State, territory or foreign country, contain any provision required by the laws of such State, territory or foreign country to be contained in policies issued therein."

Thus, life insurance companies organized under the laws of Pennsylvania are specifically authorized and empowered to incorporate in their policies any provision required by the laws of other States or countries to be contained in policies issued therein, and I think it is clear that this means, that such Pennsylvania corporations may incorporate such provisions, even though, were the policies issued in this State, the provisions required by the laws of such other State would conflict with those required by the State of Pennsylvania. In short, it is intended that the law of the place of issue of the policy shall govern its character and legal effect, and to accomplish this purpose the company is given the specific power to comply with the law of the State in which its policy is issued. In the absence of such power granted by the domicile State, it cannot comply with the law of the sister State, hence this enabling provision in the latter part of the proviso of the 25th Section.

At this point it may not be out of place to observe that if the law of Iowa contained a similar provision the company asking the approval of the policy in question would not find itself confronted with the condition in which it is placed.

The purpose of the said Act of 1911 is to prescribe a definite standard of life insurance policy to be issued or delivered within this State by any life insurance company, domestic or foreign, with the exception specifically made in the 12th Paragraph of the 25th Section, to wit, that:

> "Paragraph eight shall not apply to companies of other States and foreign governments."

and further to enable any life insurance company, organized under the laws of Pennsylvania, to issue or deliver in any other State, territory or foreign country, the nature and kind of life insurance policy prescribed by the laws of such other State, territory and foreign country to be contained in policies issued therein.

Where the kind of policy prescribed by the laws of another State or foreign government does not conflict with the policy prescribed by the said Act of 1911, it may be issued or delivered here, although it may contain additional provisions within it which are not required by said act, but which "may be prescribed by the laws of the State or government under which the company is organized." No policy, however, can be issued or delivered in this State which contains

any provision inconsistent or in conflict with the provisions specifically required by the said act. As a proviso must be strictly construed: U. S. vs. Dickson, 15 Pet. 141; U. S. vs. Ry. Co., 189 Fed. 471, I think the true construction of the proviso of the 25th Section of said Act of 1911 with reference to said act as a whole and as applicable to the form of policy submitted for approval, is as follows:

A policy of a life insurance company, organized under the laws of any other State or foreign government, may contain, when issued in the Commonwealth of Pennsylvania, any provision which may be prescribed by the laws of such other State or government, provided such provision is not inconsistent or in conflict with any of the provisions which, by the 25th Section of said Act of 1911, are specifically required to be incorporated in all life insurance policies issued or delivered within the State of Pennsylvania. This is dealing with all life insurance companies, domestic or foreign, alike and upon the same footing, with respect to the subjects of the provisions of their policies issued or delivered within this State.

Inasmuch, therefore, as it is apparent that the above quoted provision, upon the subject of the misstatement of age, contained in the proposed policy submitted to the Insurance Commissioner for approval, is not, in substance, the provision upon that subject prescribed by the Act of June 1st, 1911, (P. L. 581), but materially different in substance and legal effect, the policy submitted is, by force of said act, illegal, and consequently cannot lawfully be approved.

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

INSURANCE AGENTS' LICENSES.

When an insurance company certifies to the State Insurance Commissioner a firm or copartnership as its agent, a license should be taken out in the firm name, and each partner and each soliciting employee is also required by the Act of June 1, 1911, P. L. 607, to take out an individual license.

When a corporation is certified as the agent, the license should be issued in the corporate name, and the officers and employees should also take out individual licenses.

A fee of $2 is provided for each license of either kind issued to any agent of any company not incorporated under the laws of Pennsylvania.

Office of the Attorney General,

Harrisburg, Pa., February 19, 1912.

Hon. Charles Johnson, Insurance Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of January 31st, asking to be advised in substance whether, in the matter of issuing certificates to firms and corporations desiring to act as agents of insurance companies, certificates should be issued to the firm or corporation itself, and additional certificates issued to the individual members of the firm and to the officers of the corporation, and also to every soliciting employee of the partnership or corporation, and in the case of companies not incorporated under the laws of Pennsylvania, whether the prescribed fee of $2.00 should be charged for each certificate thus issued.

The issuing of certificates or licenses authorizing individuals, firms or corporations to act in Pennsylvania as the agents of insurance companies, whether foreign or domestic, is governed and controlled by the Act of June 1, 1911, (P. L. 607), establishing an insurance department, and providing inter alia, "for licensing and regulation of insurance agents and insurance brokers."

By the 17th Section of this act, an agent is defined to be "a person, firm or corporation authorized in writing by a company to solicit, or countersign, or issue policies of insurance in its behalf," and it is further provided in said section that no person, firm or corporation shall act as agent in this Commonwealth of an insurance company, until there has been issued by the Insurance Commissioner a certificate showing that the company has complied with the requirements of the act, and that the person, firm or corporation named has been duly appointed its agent.

The act in question is intended to be a comprehensive system for the regulation of domestic insurance companies, and for the regulation and control of foreign insurance companies, in so far as the transaction of business in this Commonwealth is concerned, by requiring insurance companies of any other State or foreign government to secure certificates of authority from the Insurance Commissioner before being admitted and authorized to do business in this State.

The 14th Section of the Act deals with the matter of issuing certificates or licenses to agents, and in and by this section it is enacted as follows:

> "Companies to which certificates of authority are issued, as provided in the preceding section, shall, from time to time, certify to the Insurance Commissioner the names of agents who may be either individuals, partnerships, or corporations, appointed by them to solicit

risks in this State; and no such agent, either individual, partnership, or corporation, shall transact business until he, they or it has procured from the Commissioner a certificate showing that the company has complied with the requirements of this act, and that the person, either individual, partnership, or corporation, named in said certificate, has been duly appointed its agent:

Provided, That in case a license is issued to a partnership or corporation, every officer and every soliciting employee of such partnership or corporation shall be required to have an individual license under said act of assembly, and shall be subject to all penalties and other provisions of said act:

Provided further, That as to corporations, this section shall not apply to any which are engaged in any business other than insurance and real estate. * * * * The Commissioner shall have the authority to refuse to issue or renew, and to suspend or revoke, certificates previously granted, upon its appearing to his satisfaction that the person, co-partnership, or corporation applying for, or to whom a certificate has been previously granted, has by misconduct, violation of law, or otherwise, proved to be unfit or improper to hold such certificate. Any one whose certificate has been refused, suspended, or revoked, shall have the right to appeal to the court of Dauphin county, in the manner appeals are now allowed by law from summary convictions, which said appeal shall be promptly heard and determined by said court."

One of the evident purposes of this act is to protect the public from imposition at the hands of persons pretending to be the agents of insurance companies, but who in fact have no authority to bind the companies they pretend to represent. The act under discussion. therefore, provided a system under the operation of which, as between the companies and the public, every person soliciting insurance or countersigning or issuing policies, must be a regularly appointed and licensed agent, with power to bind the companies appointing or employing them.

Recognizing the propriety of permitting firms and corporations engaged in the insurance and real estate business to act as the agents of domestic insurance companies, and of foreign companies duly authorized to do business in this State, the act authorizes insurance companies to appoint either individuals, partnerships or corporations as their agents. In order, however, that insurance companies shall not be permitted to evade liability upon the ground that those who seek to charge them with liability have been dealing with unauthorized persons, the act provides that when an insurance company elects to appoint a firm or a corporation as its agent, every officer and every soliciting employee of such partnership or corporation shall

be required to have an individual license. Strictly speaking, there are no officers of a partnership, but if the purpose of the act is to be carried into effect, it should be construed to mean that each member of the partnership and each of its soliciting employees, should have an individual license. It is equally essential that the partnership or corporation should have a license as such partnership or corporation, because in countersigning or issuing policies of insurance, these policies will be signed with the firm or corporate name.

In the enactment and approval of the said Act of June 1, 1911, a change was effected in the public policy of this State with reference to the licensing of agents of insurance companies. Prior to that time every person representing himself as the agent of any insurance company, was required to have an individual license and no licenses were issued to firms or corporations as such. When a firm or corporation desired to engage in the insurance business the policies negotiated by it were signed or countersigned in the firm or corporate name, per the name of a licensed member of the firm or officer of the corporation.

Under the new system insurance companies are authorized to appoint firms or corporations as their agents provided that in addition to the individual licenses heretofore required, a license is also taken out in the name of the firm or corporation.

You are therefore advised that in the opinion of this Department, when any insurance company certifies to you the name of a firm as its agent, each partner and each soliciting employee of the firm should be required to take out an individual license, and a license should also be taken out in the firm name, and that when any company certifies to you the name of a corporation as its agent, a license should be issued in the name of the corporation and the officers and soliciting employees of said corporation should also procure individual licenses. For each license of either kind issued to an agent of any company not incorporated under the laws of Pennsylvania a fee of two dollars should be charged.

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

OPINIONS TO THE COMMISSIONER OF BANKING.

9—28—1918

OPINIONS TO THE COMMISSIONER OF BANKING.

WORKINGMAN'S SAVING BANK AND TRUST COMPANY.

This institution is a trust company, not a bank.

Office of the Attorney General,

Harrisburg, Pa., June 26, 1911.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Sir: Your favor of recent date in reference to the Workingman's Saving Bank and Trust Company of Pittsburgh, Pa., was duly received.

You ask to be advised whether this corporation should be classed as a bank or trust company.

The People's Saving Fund, Insurance, Trust and Safe Deposit Company was incorporated by the Act of March 28, 1867, (P. L. 916), Its name was subsequently changed to the Workingman's Saving Bank and Trust Company. It was given perpetual succession. Section 2 of the Act of Incorporation provides:

> "That the corporation hereby created shall have the power to receive upon deposit for safe keeping jewelry, plate, stocks, bonds, money and valuable property of every kind upon terms to be prescribed by the by-laws of said corporation and in addition to receiving the above deposits, said corporation shall have power to receive and hold on deposit and in trust and as security on such terms as may be agreed upon by the contracting parties, estates, real, personal and mixed, and shall have power to dispose of the same according to the terms of such agreement; and also to purchase, collect, adjust, settle, sell and dispose of notes, bonds, obligations and accounts of estates and of individuals and of companies and of corporations in any place and at any time and in any manner, without proceeding in law or in equity, and on such terms as may be agreed upon between them and the parties contracting with them; and also shall have power to make insurance for the fidelity of persons holding places of resposibility and of trust according to the terms prescribed by the by-law."

This corporation was not, in terms, given banking privileges.

In De Haven vs. Pratt, 223 Pa. 633, Mr. Justice Elkin said, page 649:

> "In our State the privileges, powers and liabilities of banks and banking institutions have been cautiously conferred and carefuly imposed. Our courts have frequently defined what a bank or banking institution is within the meaning of the law, and what is meant by the legislative expressions 'doing a banking business' or 'to engage in the business of banking,' but in no instance has it been held that a trust company, deriving its powers under a special act of assembly passed prior to the adoption of the new Constitution, which did not in express terms, confer banking privileges * * * * * * * was a bank, or banking institution, or company, doing a banking business."

This corporation having been given perpetual succession is not, like a bank, limited to twenty years.

I am, therefore, of opinion that the Workingman's Saving Bank and Trust Company should be classed as a trust company and not as a bank.

Very truly yours,
JNO. C. BELL,
Attorney General.

BANKS OF DISCOUNT.

The Act of June 3, 1911, P. L. 652, requiring bank directors to take a prescribed form of oath reciting that such director is the owner of stock thereof of the par value of at least $300, repeals only so much of Section 12 of the Act of May 13, 1876, P. L. 161, as prescribes the form of the oath, and does not repeal the requirement thereof that a director of a bank of discount shall own ten shares of its capital stock.

Office of the Attorney General,
Harrisburg, Pa. June 28, 1911.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Sir: Your favor of the 6th instant was duly received.

You ask to be advised whether the Act approved June 3, 1911, repeals Section 12 of the Act of May 13, 1876 (P. L. 161).

The Act of 1876 is entitled:

> "An act for the incorporation and regulation of banks of discount and deposit,"

and Section 12 thereof provides as follows:

> "* * * * Every director shall, during his term of service, be a citizen of the United States and a citizen of Pennsylvania; each director shall own in his own right

at least 10 shares of the capital stock of the corporation of which he is a director; each director when appointed or elected, and before assuming the duties of his office, take an oath that he will, so far as a duty devolves upon him, diligently and honestly administer the affairs of such corporation, and that he is the bona fide owner in his own right of the number of shares of stock required by this act, subscribed by him or standing in his name on the books of the corporation, and that the same is not hypothecated or pledged in any way as security for any loan or debt. * * * *"

The Act of 1911 is entitled:

> "An act requiring each and every director of a bank of discount, banking company, co-operative banking association, trust company, safe deposit company, real estate company, mortgage company, title insurance company, guarantee company, surety and indemnity company, and savings bank, which has been or may hereafter be incorporated under the laws of this Commonwealth with the right to receive moneys on deposit, to take an oath of office and prescribing the form thereof, said oath to be filed with the Commissioner of Banking."

and it provides that each and every director of these various companies

> "shall, when appointed or elected, and before assuming the duties of the office, take an oath that he will, so far as the duty devolves upon him, diligently and honestly administer the affairs of such corporation and will not knowingly violate, or permit to be violated, any provisions of law applicable to such corporations, and that he is the owner in good faith, and in his own right, of shares of the capital stock subscribed by him, or standing in his name on the books of the corporation of which he has been appointed or elected a director, the par value of which shall aggregate at least $300.00, and that the same is not hypothecated or in any way pledged as security for any loan or debt."

Section 2 contains a general repealing clause.

The purpose of this Act of Assembly was to require a uniform oath from the directors of all institutions receiving deposits of money. Section 12 of the Act of 1876, however, not only requires a form of oath, but requires that a director, as a prerequisite to his election and a qualification for the office, shall own ten shares. The Act of 1911 does not purport to fix the qualification of directors, in respect of such ownership, but only regulates the form of oath. It may be said that to require a director of a bank of discount to own ten shares and to make affidavit that he owns shares "the par value of which shall aggregate at least $300.00" which is, in fact, six shares, is an

anomaly. It may be so, but in my judgment the law is so written. Furthermore, the Act of 1911 can hardly be contended to repeal that part of Section 12 of the Act of 1876 requiring that a director of a bank of discount shall own ten shares, because there is no notice of such change in the qualification of such director given in the title to the Act of 1911. The title is:

> "An act requiring every director of a bank of discount, etc., * * * * * * to take an oath of office and prescribing the form thereof."

I am therefore of opinion that the Act of 1911 must be construed as repealing only so much of Section 12 of the Act of 1876 as prescribes the form of oath, and that it does not repeal the requirement thereof that a director of a bank of discount shall own ten shares of the capital stock.

Very truly yours,
JNO. C. BELL,
Attorney General.

PITTSBURGH BANK FOR SAVINGS.

Is not required to be rechartered after a period of twenty years.

Officers may borrow money from the institution upon such securities as are designated in Section 2 of the Act of Incorporation.

May invest in bonds and mortgages which are executed and delivered together for the same debt.

Office of the Attorney General,
Harrisburg, Pa., June 28, 1911.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Dear Sir: Some time ago you asked an opinion of this Department concerning the status of the Pittsburgh Bank for Savings, Pittsburgh, Pa. You desire to be advised:

> "First: As to whether or not this is such a corporation as is required to be re-chartered after a period of twenty years to do a banking business.
> Second: As to whether or not it has the right to loan its funds directly or indirectly to directors or others in their interest.
> Third: As to whether or not certain investments in which it has invested a portion of its funds are such as could be purchased under the terms of its charter."

This corporation was created by special Act of April 11, 1862, (P. L. 1863) (667), and its charter was amended by the Act of April 4, 1865, (P. L. 812). By the first Section of the Act of Incorporation

it was given perpetual succession, which it still enjoys, and which was not affected by the adoption of the Constitution of 1874. It is not, therefore, such a corporation as is required to be re-chartered after a period of twenty years to do a banking business.

Section 2 of the Act of Incorporation provides:

> "That the business of said corporation shall be to receive, on deposit, from time to time, such sums of money not less than ten cents, as may be offered by mariners, tradesmen, clerks, mechanics, laborers, servants, minors and others, and to invest the same in the stocks of this Commonwealth, or of the United States, or in stocks, or bonds of any city, authorized to be issued, by any act of the Legislature of this Commonwealth, or in other stocks, and in bonds and in mortgages; and, also, may buy promissory notes, not having more than six (6) months to run, with such endorsement, or endorsements, as may be approved by the board."

Section 4 provides for the creating of trustees, and the filling of vacancies, and

> "That the president, vice-president, or any trustee, or any officer, or servant, of said corporation, shall not, directly or indirectly, borrow the funds of the said corporation, nor any part thereof, nor use the same, or any part thereof, in any other manner than that hereinbefore provided, except for the necessary expenses, under the direction of the board of trustees."

In the absence of legislation there is no rule of law which prohibits the officer of a banking institution from borrowing money from the institution. In Morse on Banking, Fourth Edition, Section 125, sub. sec. C., it is said:

> "In the absence of legislative prohibition there is no rule of common law which prevents the making of loan or discount to a director any more than any other person. Only, a director applying for such a loan must not vote or officially aid in the discussion concerning its allowance. The same principle of law will be applied as to other loans; but they will be rigidly enforced and the proceedings will be severely scrutinized."

In Conyngham's Appeal, 57 Pa. 474, it was said:

> "We are unable to perceive that the official position which the complainant held as president of the corporation defendants, at the time of the pledge, made any difference. Standing in that confidential relation, all his transactions with the bank for his own benefit should be closely scrutinized; but we cannot infer from that relation alone that he gave a special power to sell the pledge

> without notice. The officers of banks ought never to be borrowers; but when they become so, we can only apply to them the principles of law applicable to others."

In this instance the officers and trustees are not prohibited from borrowing, but are permitted to borrow the bank's money. Section 2 provides in what securities the bank may invest its money, and Section 4 provides that the officers and servants "shall not, directly or indirectly, borrow funds of the said corporation, nor any part thereof * * * * * * * *in any other manner than that hereinbefore provided.*" Construing this language as strictly as possible against the right to borrow there still remains the permission to the officers and servants of the corporation to borrow in the method "hereinbefore provided." That is to say, in the method pointed out in Section 2. I am, therefore, of the opinion that the officers and employees have the right to borrow money upon such securities as is designated in Section 2 of the Act of Incorporation.

You ask whether or not certain investments in which the corporation has invested a portion of its funds are such as could be purchased under the terms of its charter, but you do not point out in your letter what investments are referred to. I understand the inquiry is whether or not the bonds of corporations which are not secured by an accompanying mortgage are such as come within the language of the charter. The securities in which this corporation can invest are as follows: (a) stocks of this Commonwealth; (b) stocks of the United States; (c) stocks or bonds of any city authorized to be issued by the Legislature of this Commonwealth; (d) other stocks; (e) bonds and mortgages; (f) promissory notes not having more than six moths to run.

The Legislature at the period of the passage of the act, understood the use of terms, and when it desired to confer the right to invest in the bonds of corporations or to give a wide latitude to the corporation, it said so, in language such as the following:

> "or in stocks and bonds of any corporation."
>
> 1869, P. L. 281.
>
> "or in bonds, mortgages, promissory notes and other approved and valid securities."
>
> 1869, P. L. 470.
>
> "or other stocks and bonds, or real or personal securities."
>
> 1869, P. L. 714 and 962.
>
> 1868, P. L. 140.
>
> "or may loan such money on bond and mortgage, on real estate, bonds or other securities."
>
> 1869, P. L. 1262.

The term "bond and mortgage" appears to have had then, as now, a well defined legal meaning, and referred to a mortgage with the accompanying obligation or bond, the payment of which the mortgage secured. When the right to invest in other bonds was given, it was stated in terms.

I am, therefore, of opinion that "the bonds and mortgages" referred to in Section 2 of the charter of this corporation are those which are executed and delivered together for the same debt.

Very truly yours,

JNO. C. BELL,
Attorney General.

CONEWANGO BUILDING & LOAN ASSOCIATION.

A Building & Loan Association may make by-laws providing for the reduction of a reasonable withdrawal fee from the shares of withdrawing stockholders.

Office of the Attorney General,

Harrisburg, Pa., July 28, 1911.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Dear Sir: Your favor of the 9th instant was duly received. You asked to be advised whether the by-law of the Conewango Building & Loan Association is in conflict with the Act of June 12, 1907, P. L. 525.

The by-law of the Building & Loan Association reads as follows:

> "Special installment stock, classes I and J, may be withdrawn, if in good standing, any time after one year, by giving 30 days' notice to the Association. The member owning the same will be entitled to receive the amount paid in, less the membership fee of $1. per share, the first $1. per share paid."

This by-law permits the deduction of $1. per share from the amount due a shareholder upon his withdrawal.

In the case of Folk vs. State Capitol Savings & Loan Association, 214 Pa. 529, Judge Endlich, in an elaborate opinion, discussed, among other things, the right of Building & Loan Associations to charge a withdrawal fee of $1. per share, and sustained that right under Sec. 37, Clause 2 of the Act of April 29, 1874, the act under which the associations are incorporated. Judge Endlich says:

> "According to Sec. 37, Clause 2 of said Act, a member voluntarily withdrawing during the first year, is entitled to receive the amount paid, 'less all fines and other charges,' and during any subsequent year 'in ad-

> dition thereto' (i. e., to the amount paid less fines and other charges) legal interest thereon: this latter allowance being modified by the provision of Section 2, Act of 1879, the obvious effect of which is to substitute therefor 'such proportion of the profits of the Association, or such rate of interest as may be prescribed by the by-laws.' "

Continuing, the Court—upon the theory that every share-holder in a Building & Loan Association is liable to the extent of his stock, at least for the premiums and expense of the enterprise, and should not be permitted to escape such liability by withdrawing—upheld the right to charge a withdrawal fee, estimated to meet that expense.

The Supreme Court affirmed the case upon the opinion of Judge Endlich.

Does the Act of 1897 change the law as declared in the case above referred to? That act relates generally to banks, trust companies, savings fund societies, building and loan associations, bond and investment companies, provident associations and all other corporations under the supervision of the Banking Commissioner. It provides in Section 1 that all such corporations

> "Shall furnish each depositor or investor with a receipt in full, by pass book, or otherwise, for all moneys received, whether as deposits, dues, or account of installments or any trust or investment whatever, which, until refunded, shall constitute a liability on the part of the association, and shall be kept in proper form on the books prepared for that purpose."

One of the essentials of a building and loan association is the mutuality which exists among the share-holders. Each shares in the profits, and each contributes to the losses and expenses. Applying the Act of 1907 to a building and loan association, it provides in substance that each share-holder shall be furnished with a receipt for all moneys received, which shall constitute a liability. This, in no way, deprives a building and loan association of the right to make a by-law to the effect that if a share-holder desires to withdraw before the maturity of his shares, there shall be deducted $1. per share, as an approximate amount to be contributed by him to the expenses of the association. For the amount paid in by him the association continues to be liable as long as he remains a share-holder. He may change or reduce his liabilities, if the by-laws so provide, to the extent of $1.00 per share if, and when, by a withdrawal, he changes his status, and ceases to be a share-holder. He then and thereby contributes only his estimated share of the expense of the association.

I am, therefore, of the opinion that the Act of June 12, 1907, above referred to, does not change the law with reference to building

and loan associations, as declared by the Supreme Court in the case of Folk vs. State Capitol Savings and Loan Association, and that such an association may make by-laws providing for the deduction of a reasonable "withdrawal fee" from the shares of withdrawing share-holders.

You also ask to be advised whether or not the "withdrawal or membership fee can be deducted from the receipts accepted as dues and deposited." What I have heretofore said answers affirmatively that inquiry. Such fees may be so deducted upon withdrawal.

You further say: "I desire to be further advised as to whether or not in reports to this department, said contemplated losses or charges can be deducted from the liability to the share-holders."

In my opinion they cannot be deducted. The building and loan asociation does not know to what extent its members will withdraw their shares; and until the shares are withdrawn, there is no right to charge against a share, the withdrawal fee. It follows that the association is not entitled to deduct from its liability to existing share-holders, withdrawal fees upon all or any of the shares of such association until application for such withdrawal has actually been made.

Very truly yours,
JNO. C. BELL,
Attorney General.

BANK DIRECTORS.

Under the Act of June 3, 1911, P. L. 652, it is mandatory that each director of a co-operative banking association shall, upon appointment or election, take an oath that he is the owner of shares of its capital stock of the par value of at least $300, notwithstanding the fact that the articles of association restrict each member to the ownership of $250 worth of stock.

Office of the Attorney General,

Harrisburg, Pa., September 6th, 1911.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Sir: I have your letter of the 24th ult., in which you say:

> "The Act of June 3, 1911, requires that each and every director of a Co-operative Banking Association in this State shall own stock, the par value of which shall aggregate at least $300.
>
> The Articles of Association of the Southwark Co-operative Banking Association of Philadelphia, Section 8, restricts each member of said Association to the ownership of $250.-worth of stock.

> Counsel for said Association, in response to the request of this Department for the directors to qualify, under the Act of June 3, 1911, desires information as to whether under the facts stated, the Act above mentioned applies to that Association.
>
> I, therefore, desire to be advised as to the proper interpretation of the Act of June 3, 1911, in relation to Co-operative Banking Associations."

Replying to your request I beg to say that an examination of the Act of May 18, 1893 (P. L. 89), providing for the incorporation of co-operative banking associations provides in Section 9 thereof for the control of the association by a board of six directors who shall serve for three years, two of which shall be elected annually, but there is no provision in the act as to the qualifications of such directors with respect to ownership in the capital stock of the association. The act, however, approved June 3, 1911, to which you refer, expressly requires:

> "That each and every director of a * * * co-operative banking association * * * * which has been or may hereafter be incorporated under the laws of this Commonwealth, with the right to receive moneys on deposit, shall, *when appointed or elected*, * * * * * take an oath * * * * that he is the owner, in good faith and in his own right, of shares of the capital stock subscribed by him, or standing in his name on the books of the corporation of which he has been appointed or elected a director, the par value of which shall aggregate at least three hundred dollars * * * * *"

In my opinion, therefore, it is mandatory that each and every director of the Southwark Co-operative Banking Association of Philadelphia, who since June 3, 1911, has been or may hereafter be appointed or elected, shall take an oath that he is the owner in good faith in his own right of shares of the capital stock of said association to the par value of at least three hundred dollars.

Very truly yours,

JNO. C. BELL,
Attorney General.

PRIVATE BANKS.

A mortgage given in lieu of a bond by a private bank should be to the Commonwealth of Pennsylvania.

Office of the Attorney General,

Harisburg, Pa., April 18, 1912.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Sir: In your communication of the 5th instant to the Attorney General, and by him referred to me, you inquire with reference to the Private Bankers' Act of June 19, 1911, (P. L. 1060), as follows:

> "Where a mortgage is given as collateral security in lieu of the bond required to whom should the mortgage be drawn?"

I am of opinion that the mortgage in such case should be drawn to the Commonwealth of Pennsylvania, in like manner, as the first Section of the act specifically requires that the bond of suretyship in lieu of which the mortgage security is offered, shall be "a bond to the Commonwealth of Pennsylvania."

The specific mortgage accompanying your letter is objectionable for the reason that it is a mortgage to the licensing board, to wit, the State Treasurer, the Secretary of the Commonwealth, and the Commissioner of Banking. It should be a mortgage to the Commonwealth of Pennsylvania.

This mortgage is further objectionable for the reason that its terms do not correspond with the terms of the bond accompanying the same. In the event of default in the performance of the condition of the bond, the mortgage security should be immediately convertible into cash, under proper judicial proceedings.

For these reasons the form of mortgage submitted is not approved.

Very truly yours,

WM. N. TRINKLE,

Assistant Deputy Attorney General.

PRIVATE BANKS. NO. 5.

One who has continuously conducted in the same locality a banking business for seven years prior to the approval of the Act of June 19, 1911, P. L. 1060, and who has not engaged in the sale, as agent or otherwise, of railroad or steamship tickets since Dec. 1, 1911, when the act went into effect, is excepted by the sixth exception of Section 8, from the license and regulation requirements prescribed by the enacting clause.

An applicant for a license under the Private Banking Act of June 19, 1911, P. L. 1060, cannot lawfully transact the business of private banking pending the disposition of his application.

Office of the Attorney General.

Harrisburg, Pa., April 18, 1912.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Sir: The Act of Assembly approved June 19, 1911, P. L. 1060, entitled "An act to provide for licensing and regulating private banking in the Commonwealth of Pennsylvania, and providing penalties for the violation thereof," manifestly has for its object the suppression of those widespread and pernicious frauds which have been practiced upon depositors by irresponsible individual bankers commonly designated "private bankers."

The business of "private banking" dealt with by the act is specificaly defined in the first Section thereof to be "the business of receiving deposits of money for safe keeping or for the purpose of transmission to another, or for any other purpose," subject to the exceptions contained in Section 8 of the act, it is expressly provided in Section 1 thereof "that no indvidual, partnership or unincorporated association, shall hereafter engage directly or indirectly," in said business of private banking, "without having first obtained from the Board, consisting of the State Treasurer, the Secretary of the Commonwealth, the Commissioner of Banking, * * * * * * a license to engage in such business."

One of the questions which you have submitted to this Department in your recent communication, depends upon the proper construction of the sixth exception enumerated in the 8th Section of the act, i. e.,

1. Whether an individual who has conducted such banking business "continuously, and in the same locality * * * * * * for a period of seven years prior to the approval of this act," is excepted from the license and regulation requirements prescribed by the enacting clauses, by reason of the fact, that since the date of the approval of the act, but before or at the date when the same went into effect, he has discontinued the sale of railroad and steamship tickets; or,

2. Whether, if such individual discontinues the sale of railroad and steamship tickets now, he hereby becomes exempt from the requirements of the enacting clause; or,

3. Whether such individual is excepted from said requirements only in case he was not engaged in the sale of such tickets at the time of the approval of the act.

Of course, the question above stated also applies to partnerships and unincorporated associations. The sixth exception contained in the 8th Section of the act reads as follows:

> "Section 8. The foregoing provisions shall not apply; * * * * * * (Six) to any person, firm, partnership or unincorporated association now engaged in busi-

ness as private bankers, when such person, firm, partnership or unincorporated association, and his or their predecessor, predecessors, or one or more of the members in such private banking institutions, continuously and in the same locality have conducted the business of private banking for a period of seven years prior to the approval of this act; *and such banking institution is not engaged in the sale, as agent or otherwise, of railroad or steamship tickets.*"

The words in italics obviously qualify and limit the class thus excepted. How, and to what extent, is the precise question?

If the above Act of Assembly had become effective as a law on the date of its approval, to wit, June 19, 1911, I would be of opinion that the individual, partnership or unincorporated association engaged in the business of private banking, would be within the purview of the enacting clause of the act, and not within the above quoted sixth exception if, at the said date of approval, they were engaged in the sale of railroad or steamship tickets.

But the fact that this act did not go into effect, according to its terms, until December 1, 1911, makes, in my judgment, a difference in the result. We must read the language of the act as of that date, December 1, 1911, when it became effective as a law. Reading it at that time, it will be observed that, with regard to the seven year requirement of the excepted class, it is specifically and plainly provided that they must have conducted the business of private banking "continuously and in the same locality * * * for a period of seven years *prior to the approval of this act.*" Therefore, such requirement has specific and plain relation back to the date of the approval of the act, to wit, June 19, 1911, in consequence of which it is clear that to be within the exception the bankers mentioned must have conducted said business for a period of seven years prior to said date of approval.

On the other hand, there is no such express retrospective reference to the date of the approval with regard to the condition of being engaged in the sale of railroad or steamship tickets, as contained in the clause which limits and qualifies said excepted class. Said condition is predicated by the use of the words "is not" which, in the absence of anything plainly showing a contrary intent presumably refer to the date when the act took effect as a law, and from that time onward.

Grant vs. Alpena, 107 Mich. 335; 65 N. W. 230.
Galveston, etc., R. R. Co. v. State, 81 Texas 572; 1 Sutherland on Statutory Construction (Second Edition) Section 185.

Therefore, I am of opinion that if the individual, partnership, or unincorporated association engaged in the business of private banking, otherwise answer the requirements of the sixth exception in Section 8 of the act above quoted, they are within said exception, provided that on or before December 1, 1911, when the act went into effect, they have discontinued the sale as agent or otherwise, of railroad and steamship tickets.

I am further of opinion that such individual, partnership or unincorporated association, are not within the exception above quoted if they continued the sale of such tickets, or began the sale thereof anew, after the act went into effect on December 1, 1911.

The predicate—"is not"—employed in the limitation to the said sixth exception, in its application to the class of cases last mentioned, obviously is properly construed as expressing futurity as well as the present tense, and therefore as being equivalent to the words "shall not be;" i. e., pointing and referring prospectively to a condition of affairs existing subsequent to said date of December 1, 1911.

This latter class of cases is thus taken out of the said exception.

Hammond vs. Buchanan, 68 Ga. 728, 731.

See also in addition to the above decisions in support of the construction herein above given: *Philadelphia vs. Costello, 17 Super. Ct. 339; Commonwealth vs. Standard Oil Co., 101 Pa. 119, 150.*

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

PRIVATE BANKS.

Section 1 of the Private Banking Act of June 19, 1911, P. L. 1060, applies to the business of receiving money and sending it to foreign countries through banks as foreign exchange, requiring a license, unless the persons engaged in such business come within the exceptions in Section 8 of the act.

Persons who are engaged in the sale of railroad or steamship tickets, but who receive no deposits of money for any purpose, are not within the provisions of the act.

Persons engaged in private banking and also in the control of the sale of railroad and steamship tickets ostensibly conducted by another are subject to the provisions of the act.

Agents of express or steamship companies receiving money for transmission under circumstances rendering the companies, and not the agents, liable to the depositor are not within the purview of the act, but such express or steamship companies are subject to the act, unless they are corporations.

The Private Banking Act of June 19, 1911, P. L. 1060, contemplates a single bond of suretyship upon application for a license and not several bonds aggregating in amount the prescribed sum.

Office of the Attorney General,

Harrisburg, Pa., April 24, 1912.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Sir: Your recent communication to this Department, referred to me by the Attorney General, presents the following additional inquiries concerning the construction and administration of the private banking act approved June 19, 1911, P. L. 1060, entitled "An act to provide for licensing and regulating private banking in the Commonwealth of Pennsylvania, and providing penalties for the violation thereof," viz:

1. "Whether those who receive money and send it to foreign countries through duly accredited banks as foreign exchange, and who do no other banking business, are subject to the provisions of the law."
2. "Whether those who sell steamship tickets and receive no other deposits are subject to the provisions of the law."
3. "Whether an individual engaged in the business of private banking is also engaged in the sale of railroad or steamship tickets, within the meaning of the act, where he has ostensibly turned over such ticket business to some other individual or individuals, but nevertheless, in point of fact retains the control of the conduct of such business, or participates in the conduct thereof."
4. "Whether agents of either express companies or steamship companies engaged in the business of receiving deposits of money for the purpose of transmission to others, are within the purview of said act, and subject to the licensing and regulation requirements thereof."
5. "Whether the act contemplates that a single bond of suretyship, conditioned as provided in the first section of said act, be presented to the Commissioner of Banking by the applicant for a license or whether the presentation of several such bonds to the Commissioner of Banking complies with the requirements of the act, if the aggregate penal sum of all of such bonds amounts to the sum fixed by the Board, within the minimum and maximum prescribed by said act."

With respect to the first inquiry above enumerated, the act expressly defines the business intended to be regulated, to be "the business of receiving deposits of money for safe keeping, or for the purpose of transmission to another, or for any other purpose."—Section 1.

I am of opinion that the business specified in your first inquiry is directly within this definition, and that in consequence every individual, partnership or unincorporated association engaged in the business which you specify must obtain from the licensing board,

consisting of the State Treasurer, the Secretary of the Commonwealth and the Commissioner of Banking, a license to engage therein, and must otherwise comply with the provisions of said Act of Assembly, unless such individual, partnership or unincorporated association comes within any of the exceptions expressly enumerated in the 8th Section of the act.

With respect to the second inquiry above enumerated, I am of opinion that those engaged in the sale of railroad or steamship tickets, but who receive no deposits of money for safe keeping, or for the purpose of transmission to another, or for any other purpose, are not within the provisions of said act. The sale of railroad or steamship tickets does not involve the receipt of deposits of money for any purpose; the price paid for the ticket is not a deposit. The transaction specified is one of purchase and sale, whereas the manifest purpose of the act is not to regulate the sale of railroad or steamship tickets, except in those cases in which the individual, partnership, or unincorporated association so engaged are also engaged in the business of private banking, as defined in the said first Section, to wit, in "receiving deposits of money for safe keeping or for the purpose of transmission to another, or for any other purpose."

With respect to the third inquiry above enumerated, I am of opinion that where the individual, partnership or unincorporated association conducting the business of private banking, as defined in said act also in point of fact either directly or indirectly is engaged in the sale of railroad or steamship tickets, such individual, partnership, or unincorporated association are subject to the license requirements of said act. Where the individual, partnership or unincorporated association engaged in said business of private banking, also controls, or participates in, the conduct of the business of selling railroad or steamship tickets, though such latter business be ostensibly carried on by some other individual or individuals, there is, in fact, an engaging directly or indirectly in such railroad or steamship ticket business, within the meaning of the act. The law will regard not merely the form, but the substance of the relation existing between the private banker and the individual or individuals ostensibly carrying on the business of selling railroad or steamship tickets, under such circumstances, and if, in point of fact, it be found in any case that the private banker is directly or indirectly engaging in the sale of railroad or steamship tickets, such banker comes directly within the mischief designed to be remedied by this act, and indeed within the express letter of the act, as contained in the sixth exception enumerated in the 8th Section thereof.

With respect to the fourth inquiry above enumerated, I am of opinion that where the agent of either an express company or a steamship company receives deposits of money for transmission to others,

under circumstances the effect of which is to render either the express company or steamship company, and not the agent, legally liable to the depositor for the safe transmission of such money, in accordance with the terms of the deposit, that then, and in that event, the agent is the mere hand of such express company or steamship company, and the transaction is in point of fact and law, one between the express company or steamship company and the depositor, and not between the depositor and such agent in the latter's independent, individual capacity. Where in any case the facts are as above stated, the agent, whether an individual, partnership or unincorporated association, is not within the purview of this act of assembly, and need obtain no license, for the reason that the business within the meaning of the act, is not being conducted by the agent upon the agent's individual responsibility and liability to the depositor, but by the express company or steamship company, and such express company or steamship company is subject to the act unless it is a corporation.

Concerning the fifth inquiry above enumerated, it will be observed that the act contemplates that either one of two classes of security shall be presented to the Commissioner of Banking along with the application for the requisite license to carry on the specified business. That is to say, the first Section of the act requires:

> "A bond to the Commonwealth of Pennsylvania, executed by the applicant and by the surety or sureties, approved by the board, conditioned upon the faithful holding of all moneys that may be deposited with the applicant in accordance with the terms of the deposit, and the repayment of such moneys so deposited upon the faithful transmission of any money which shall be delivered to such applicant for transmission to another, and in the event of the insolvency or bankruptcy of the applicant upon the payment of the full amount recoverable under the conditions of such bond, etc."

This section then goes on to provide that

> "The penalty of *the bond* shall be a sum fixed by the board, which shall not be more than fifty thousand dollars, nor less than ten thousand dollars,"

and then further provides for the other class of security, i. e.,

> "In lieu of *the aforesaid bond,* the applicant may deposit, and the Commissioner of Banking shall accept, money and securities consisting of bonds of the United States, or of this Commonwealth, or any municipality thereof, or other securities approved by the Board."

The applicant must therefore present with his application either a bond of suretyship, or in lieu thereof, he must deposit either money

or "securities consisting of bonds of the United States or of this Commonwealth, or any municipality thereof, or other securities approved by the Board."

Taking into consideration the whole context of this first Section of the act, I am of opinion that where in any case money or the specified securities, or both, are not offered by the applicant for a license, the latter must present to the Commissioner of Banking one bond of suretyship "to the Commonwealth of Pennsylvania, executed by the applicant and by a surety or sureties, approved by the Board, conditioned according to the terms prescribed by the act," and that the act does not contemplate the presentation by such applicant of several bonds of suretyship aggregating in amount the prescribed sum.

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

STATE BANKS.

The Act of February 9, 1901, P. L. 3, which applies to the increase of the capital stock and indebtedness of all corporations, repeals the 10th Section of the Act of May 13, 1876, P. L. 161, relating to the increase of the capital of banks of discount and deposit, and an authorized increase may be actually made "at such time or times as shall be determined by the directors," though at such time or times the whole amount of the authorized increase be not paid in within one year from the date of the requisite consent to the increase.

Office of the Attorney General,
Harrisburg, Pa., May 6, 1912.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Sir: In your recent letter of inquiry to the Attorney General, by him referred to me, you state that you desire to be advised whether or not certificates for full paid stock of a banking corporation, forming part of an authorized increase of the capital stock of such corporation, may be lawfully issued when a portion only of the total amount of the increase authorized by law has been paid in within one year from the certification of the stockholder's consent to the increase.

It is quite obvious that the purpose of the Act of February 9, 1901, (P. L. 3), was to provide a uniform method or procedure to be pursued, not merely by some, but by *all* corporations, in the matter

of the increase of their capital stock or indebtedness. This is manifest from the express language of the act. It is entitled:

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

It includes and applies to the increase of the capital stock and indebtedeness of all corporations, without exception. Thus it provides in Section 1:

> "Be it enacted, etc., That the capital stock or indebtedness, or both, of *any* corporation created by general or special law may, with the consent of the persons or bodies corporate holding the larger amount in value of its stock, be increased to such an amount in the aggregate of each as it shall deem necessary to accomplish and carry on and enlarge the business and purposes of the corporation,"

and with relation to the time when the actual increase may be made, it expressly provides, in Section 3, that "the increase may be made at such time or times as shall be determined by the directors." Section 4 repeals "all acts or parts of acts inconsistent" with said Act of 1901.

Upon familiar principles, therefore, I am of opinion that so much of Section 10 of the Act of May 13, 1876, (P. L. 161), entitled:

> "An act for the incorporation and regulation of banks of discount and deposit",

as deals with the increase of the capital stock of banking corporations is repealed by the provisions of said Act of 1901, because of inconsistency. Section 10 of said Act of May 3, 1876, provided that:

> "No increase of capital shall be valid unless the same shall be actually paid in within one year from the date of the written consent * * * * * to such increase, and notice of such payment transmitted to the Auditor General,"

whereas the said Act of 1901 not only prescribes, minutely, a uniform system for the ascertainment of stockholders' consent to the increase, in accordance with the Constitution of the Commonwealth and for the certification thereof to the Secretary of the Commonwealth, but, as above pointed out, provides in so many words that "the increase may be made at such time or times as may be determined by the board of directors." The inconsistencey which would result from holding that part of Section 10 of which said Act of 1876, just quoted, is still in force, is thus made manifest.

While not unmindful of the fact that the provisions of Section 9 of the said Act of 1876 which require the payment of fifty per centum of the original capital stock of banking corporations, prior to the

commencement of business, and the remaining fifty per centum at the rate of ten per centum a month thereafter, remain unaffected by the provisions of said Act of 1901, in that the latter relate only to capital stock increase and increase of indebtedness, and, that in consequence, the result as to banking corporations is somewhat anomalous, nevertheless, for the reasons above stated, I feel bound to advise you that the comprehensive Act of 1901 now governs the increase of the capital stock of banking corporations, and not the provisions contained in the 10th Section of said Act of 1876. Accordingly, the authorized increase of the capital stock may be actually made "at such time or times as shall be determined by the directors," even though, at such time or times, the whole amount of the authorized increase be not paid in within one year from the date of the requisite consent to the increase.

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

BANKING CORPORATIONS.

The cashier of a banking corporation organized under the Act of May 18, 1876, P. L. 161, is ineligible to the office of treasurer of a building and loan association.

Office of the Attorney General,
Harrisburg, Pa., June 20, 1912.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Sir: The Attorney General has referred to me your communication of the 5th inst., in which you ask to be advised whether a cashier of a banking corporation, organized under the Act of May 13, 1876, P. L. 161, is eligible to the office of treasurer of a building and loan association.

Section 18 of said Act of May 13, 1876, expressly provides that:

> "No cashier of any corporation under this act shall engage in any other profession, occupation or calling, either directly or indirectly, than that of the duties appertaining to the office of cashier; and if any cashier of such corporation shall, directly or indirectly, engage in the purchase and sale of stocks or in any other profession or calling other than that of his duties as cashier, he shall be guilty of a misdemeanor, and upon conviction thereof in a court of criminal jurisdiction, be sentenced to pay a fine not exceeding five hundred dollars; nothing however in this section shall be construed as

to prevent such cashier from managing his own real estate or private property as heretofore, if such private property be not vested in mercantile, mechanical or manufacturing operations."

In my opinion the above quoted enactment prohibits a cashier of a banking company organized under said Act of 1876 from performing the duties of the office of treasurer of a building and loan association, for the reason that the performance of the duties of the latter office constitutes an engaging in another "profession, occupation or calling," "than that of the duties appertaining to the office of cashier" of such banking company, within the meaning of said act, and a misdemeanor punishable by the fine specified.

Answering your question, therefore, I advise you that the cashier of a banking corporation organized under the Act of 1876 cannot at the same time lawfully perform the duties of the office of treasurer of a building and loan association, and consequently as cashier of said banking company, is ineligible to the office of treasurer of the building and loan association.

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

AMERICAN EXPRESS CO.

One engaged in the business of transmitting money abroad, and not in the sale of railroad or steamship tickets, having conducted the business for seven years prior to the passage of the private bankers Act is within the exception of the act.

One may not conduct the business of private banking pending the disposition of his application for the requisite license.

Office of the Attorney General,

Harrisburg, Pa., September 3rd, 1912.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

My Dear Sir: The Attorney General has referred to me your communication of August 14th, 1912, enclosing copy of communication from the American Express Company, requesting certain advice concerning the requirements of the Private Bankers Act of June 19th, 1911.

As I understand the communication from the Express Company, the inquiry is, whether a person engaged in the business of receiving money for transmission abroad and not engaged in the sale of railroad or steamship tickets in connection with such private banking business, is subject to the license and other requirements of said

act, if he has conducted the business of private banking continuously and in the same locality for a period of seven years prior to the passage of the act.

I advise you in accordance with an opinion previously given, that such person is within the exception of the act.

Answering the further inquiry as to whether a person may lawfully transact the business of private banking as the same is defined by the act, pending the disposition of his application for the requisite license, I advise you that no such person may transact such business until the license has been actually obtained.

Very truly yours,

WM. N. TRINKLE,

Assistant Deputy Attorney General.

PRIVATE BANKS. NO. 3.

Under the Private Banking Act of June 19, 1911, P. L. 1060, a license to one of the members of the partnership will not authorize the conduct of the business by the firm or by all the members, but the partnership must take out a license as a partnership.

Office of the Attorney General,

Harrisburg, Pa., September 3rd, 1912.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

My Dear Sir: Your communication to the Attorney General under date of August 14th has been by him referred to me. Your inquiry, as I understand it, is whether under the provisions of the Private Banking Act of June 19th, 1911, a person may carry on the business of a private banker in partnership with another person who has been duly licensed, without a new license being taken out by the partnership, or whether a license granted to one of a number of co-partners will authorize the conduct of the business of private banking by any or all of the members of the firm.

Although a partnership is not, in contemplation of the common law, a person distinct from the individuals who compose it, and one partner is not merely an agent of, but a co-principal with, all the other members of the partnership and has equal powers as to the conduct and management of the partnership business, nevertheless, from a careful reading of the provisions of the Private Banking Act above mentioned, I am of opinion that the Legislature has therein contemplated a partnership, or unincorporated association, so far as the license requirements are concerned, on the same basis as a single natural person, and that all the members of the partner-

ship or unincorporated association need not be licensed. It is necessary, however, that the partnership, when formed, must take out the license and conduct the business as a partnership. A license to one of the individual members of the partnership will not authorize the conduct of the business by all the members of the partnership.

The procedure governing the obtaining of the license in the case where an individual already licensed desires to take in a partner and the partnership desires to conduct the business of private banking is that expressly provided by the act with reference to the licensing of partnerships.

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

PRIVATE BANKS.

The Private Banking Act of June 19, 1911, P. L. 1060, contemplates that licenses may be granted authorizing an individual, partnership or unincorporated association to carry on business of private banking at more than one place upon giving additional bond or security as provided in its 1st Section.

Office of the Attorney General,

Harrisburg, Pa., November 14, 1912.

Hon. William H. Smith, Commissioner of Banking, Harrisburg, Pa.

Sir: In your letter of the 13th instant, to the Attorney General, and by him referred to me, you state:

> "In the case of an application made by a certain partnership, already licensed to do a private banking business at a designated place, for a further license to do a similar business at another place, a short distance from the location designated in the license already granted, I desire to specify more particularly and to be advised:
>
> First—As to whether the Board has the authority to grant another license to the same partnership at the place designated in the additional application, if such application is in proper form?
>
> Second—Should there be an additional bond prepared for the second license, if granted, or has the Board authority to accept the same bond as is now on file for the license already granted, provided the Board should regard the security named therein as sufficient for both places?"

The fundamental question, upon the proper determination of which both these inquiries depend, is, whether the Act of June 19, 1911, (P. L. 1060) regulating the business of "Private Banking" in this Commonwealth, contemplates that licenses may be granted authorizing an individual, partnership or unincorporated association to carry on the business of private banking at more than one place, or whether the legislative intention and purpose is, by this act, to limit the transaction of such business to a single place, irrespective of the amount of security to be furnished and the provisions for supervision and regulation which, for the protection of depositors, the act prescribes, wherever the business is carried on.

We must gather the legislative meaning and intention from the language of the act, and be careful that we do not consciously or unconsciously obtrude our own opinions as to what we think the legislative public policy and expediency ought to be in the place and stead of the public policy which the legislature has, in fact, declared in the act enacted law concerning the subject matter dealt with.

The precise question put amounts to—whether the Legislature has declared that an individual, partnership or unincorporated association shall not, under any circumstances, hereafter be permitted to carry on, at more than one place, the business of private banking?

The statute is a remedial police regulation passed by the Legislature in the exercise of its police power for the protection of the public against the wide-spread frauds which, prior to the act, were comparatively easy of successful accomplishment by the individuals engaged in this kind of business, when inadequately regulated.

To this end it is provided in the act that, with certain exceptions therein set forth, all private bankers shall be licensed by a specified licensing board created for that purpose, and shall be required to enter security for the faithful performance of their contracts with their depositors before they shall have the right to be permitted to carry on such business at all. This license and security requirement is a curtailment in the interest of the people as a whole of the private rights of the individual under the pre-existing law—a curtailment or restriction which is not to be extended by construction of the language of the statute, beyond that which such language fairly imports, or that which the effectuation of the legislative purpose, expressed thereby, fairly demands.

There is contained in the act no express prohibition against the granting of a license for an additional place to the same individual or partnership who already has a license for another place, and upon examination of the language of the act in its entirety in connection with the subject matter dealt with, and in the light of the elementary rules of construction, I am of opinion that the words employed there-

in ought not to be construed as containing any implied prohibition against the granting to an individual, partnership or unincorporated association already licensed to do a private banking business at one place, a further license to carry on the same business at another place, assuming, of course, that the other conditions prescribed by the act as prerequisites for the granting of such further license have been complied with.

In other words, the board is empowered to grant or refuse the further license for the additional place applied for in the particular case, just as the proper exercise of the discretion conferred upon the board by the act may dictate. In my opinion the act does not prohibit the board from granting such additional license.

As to the second question specified in your letter, I am of opinion that the applicant should file either an additional bond, or money or securities which, as specified in the first Section of the act, are prescribed to be presented to the Commissioner of Banking in connection with the application for a license.

In short, I think the act, when considered in its entirety, contemplates that there shall be presented to the Commissioner of Banking, in addition to the application for the license, the said bond, money or securities, but that if such additional security is furnished and the other requisites prescribed by the act as conditions precedent to the granting of the license have been complied with, that there is nothing in the act to prevent the board from granting the additional license to which you refer.

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

OPINIONS TO THE SECRETARY OF AGRICULTURE.

OPINIONS TO THE SECRETARY OF AGRICULTURE.

AGRICULTURAL SOCIETIES.

The Act of June 13, 1907, P. L. 702, does not repeal the Act of March 29, 1851, P. L. 289.

Office of the Attorney General,

Harrisburg, Pa., June 29, 1912.

Hon. N. B. Critchfield, Secretary of Agriculture, Harrisburg, Pa.

Dear Sir: By your letter of May 4th, 1911, you ask to be advised whether the Act of June 13, 1907 (P. L. 702) "abrogates or in any way invalidates" Section 4 of the Act of March 29, 1851, (P. L. 239).

Section 4 of the Act of 1851 provides as follows:

> "That when any number of individuals shall organize themselves into an agricultural or horticultural society, or any agricultural or horticultural society now organized within any of the counties of this Commonwealth, shall have adopted a constitution and by-laws for their government, elected their officers, and raised annually by the voluntary contribution of its members any sum of money which shall have been actually paid into their treasury for the purpose of being disbursed for the promotion of agricultural knowledge and improvement, and that fact be attested by the affidavit of their president and treasurer, filed with the commissioners of the county, the said county society shall be entitled to receive annually a like sum from the treasurer of their said county: Provided, that said annual payment out of the county funds shall not exceed one hundred dollars: Provided further, That but one such society in any county shall be entitled to receive such appropriation in any one year under this act."

The Act of 1907 provides in Section 1:

> "That the board of county commissioners of the several counties of this Commonwealth, for the purpose of encouraging agriculture and the holding of annual exhibitions of farm products, are authorized and shall pay annually, by warrant drawn upon the county treasurer, the sum of one thousand dollars ($1,000) to the incorporated County Agricultural Association, paying premiums upon exhibits,—exclusive of premiums upon trials of speed,—holding in their county an annual

> agricultural exhibition, in the interests of stock raising, grain, poultry, handiwork, fruits, dairy products, etc., for a period of not less than four consecutive days, * * * * * Provided, That, in case there is more than one claimant in any one year for the said fund, the county commissioners shall apportion and divide said one thousand dollars among the several claimants, according to the amount of premiums on agriculture, stock, fruit, and other exhibits,—exclusive of premiums on speed,—actually paid by each claimant at the last fair held by said claimant * * * * *"

The conditions which entitle an agricultural association to bring itself within the purview of the Act of 1907 are: that it be incorporated; that it hold an annual exhibition of not less than four days and pay premiums upon exhibits on agriculture, stock, fruit, grain, etc., in an amount equal to the amount received by virtue of said act.

The Act of 1856 contains no such requirements. It does not require the agricultural or horticultural society to be incorporated; it does not require a fair or exhibition to be held or premiums of any kind to be offered. Any agricultural or horticultural society which has adopted a constitution and by-laws and has raised money which has been actually paid into the treasury for the purpose of being disbursed for the promotion of agricultural knowledge or improvement, is within the provisions of the Act of 1851.

An incorporated agricultural society which, in addition to holding the fair required by the Act of 1907, raises money by voluntary contribution and holds meetings, or arranges lectures, or otherwise appropriates its money, to the promotion of the agricultural knowledge and improvement, may come within the terms both of the Act of 1851 and the Act of 1907. When such society complies with the provisions of both acts with reference to the filing of affidavits with the county commissioners, as required by the Act of 1851, and the filing of the statement, as required by the Act of 1907, it may be entitled to the one hundred dollars provided by the Act of 1851, and also to the thousand dollars, or proper proportion thereof, provided by the Act of 1907.

I am, therefore, of opinion that the Act of June 13, 1907, above referred to, does not repeal or in any way abrogate the Act of March 29, 1851.

Very truly yours,

WM. M. HARGEST.

Assistant Deputy Attorney General.

NURSERIES

The Act of June 14, 1911, P. L. 922, supplies and repeals so much of the Act of March 31, 1905, P. L. 82, as imposes a duty upon the Secretary of Agriculture with reference to the examination of chestnut trees in any nursery, orchard or public or private ground for the discovery of chestnut tree blight. The Secretary of Agriculture continues to have authority to examine chestnut trees and to give certificates with reference to their freedom from insects or other diseases.

Office of the Attorney General,

Harrisburg, Pa., December 16, 1911.

Hon. N. B. Critchfield, Secretary of Agriculture, Harrisburg, Pa.

Sir: On November 14 you asked to be advised what effect the Act of June 14, 1911, (P. L. 922), has upon the Act of March 31, 1905, (P. L. 82), so far as the latter act relates to the examination of nurseries and the duties of your Department.

Upon the facts disclosed in your communication you were advised that the Act of 1911, to which you referred, repeals the Act of 1905, so far as it imposed any duty upon the Secretary of Agriculture with reference to the examination of chestnut trees "in any nursery, orchard or other public or private ground." Since giving that opinion you have referred to me the letter of the Economic Zoologist, in which he calls attention to the fact that in addition to chestnut tree blight "there are several other diseases, and certainly several important insect pests of the chestnut tree" which he enumerates as "borers, scale insects, chestnut weevil, chestnut burr worm, aphids, insect larvae and other insects, and also leaf spot and other fungus diseases." In view of this information, the opinion heretofore given you must be revised.

The Act of 1905 is entitled:

> "An act to provide for the protection of trees, shrubs, vines and plants, against destructive insects and diseases; providing for the enforcement of this act, the expenses connected therewith, and fixing penalties for its violation."

It provides in Section 1:

> "That no person shall knowingly or wilfully keep any tree, shrub, vine or plant in any nursery, orchard or public or private grounds, in this Commonwealth, nor knowingly or willingly send out from such nursery and tree, shrub, vine or plant, affected with San Jose scale, or other insects or diseases, such as crown-gall, black-knot, or peach yellows, destructive of such tree, vine, shrub or plant."

Section 2 of the Act requires the Secretary of Agriculture

> "To cause an examination to be made, at least once each year, of each and every nursery in this State where trees, shrubs, vines or plants are grown; and he may also, by himself or agent, make inspection of any orchard or other grounds or place, in this State, for the purpose of ascertaining whether the trees, shrubs, vines, or plants therein kept are infested with San Jose scale or other insect pests, or diseases destructive of such trees, shrubs, vines or plants. If, after such examination of any nursery, it be found that the said trees, shrubs, vines or other plants, so examined, are apparently free in all respects from any such dangerously injurious insects or diseases, the Secretary of Agriculture or his duly authorized agent, or other person designated to make such examination, shall thereupon issue to the owner or proprietor of the said stock, thus examined, a certificate setting forth the fact of the examination, and that the stock or trees so examined are apparently free from any and all such destructive insects and diseases."

I understand that it has been the custom of your Department to send experts to every nursery in the State to make examinations provided for in such act, and to issue the certificate as provided in the act, and in carrying out that duty you made examinations of nurseries in which chestnut trees were grown for transplanting, and that you continued such examinations even after the passage of the Act of June 14, 1911, until your attention was called to the apparent conflict between the Act of 1911 and the Act of 1905.

The Act of 1911 is entitled:

> "An act to provide efficient and practical means for the prevention, control, and eradication of a disease affecting chestnut trees, commonly called the chestnut tree blight; providing for the destruction of trees so affected; creating a commission to carry out the purpose of this act; fixing penalties for violation of the provisions hereof; and making an appropriation therefor."

It deals at length, but exclusively, with the subject of chestnut tree blight, and vests in the commission created for that purpose all of the power and authority which was vested in the Secretary of Agriculture by the Act of 1905, with reference to all nursery trees, and much larger powers than given by the Act of 1905 to the Secretary of Agriculture.

It authorizes the examination and destruction of chestnut trees affected with that disease, whether found in nurseries or forests. It contains a complete and comprehensive system to be followed in the destruction of chestnut tree blight.

I am, therefore, of opinion that the Act of June 14, 1911, supplies and repeals only so much of the Act of March 31, 1905, as imposes a duty upon the Secretary of Agriculture with reference to the examination of chestnut trees in "any nursery, orchard, or public or private ground" for the discovery of chestnut tree blight.

Your second inquiry is:

> "If, as appears to be the case, the owner of the nursery referred to is improperly in possession of the certificate issued from this Department, that his nursery stock is 'apparently free from San Jose scale and other dangerously injurious insect pests or diseases" is it the duty of the Secretary of Agriculture to take any action for the prevention of an improper use of said certificate by the owner of said nursery?"

The Act of 1911 took effect on the 14th day of June, the day of its passage. Having repealed the Act of 1905 to the extent of imposing any duty on the Secretary of Agriculture with reference to the examination of chestnut trees for the discovery of chestnut tree blight, it relieved the Secrtary of Agriculture on that date from any further duty in reference to chestnut tree blight.

It did not take away the duty imposed by said act of assembly with reference to an inspection of chestnut trees for any other insects or diseases. The Secretary of Agriculture continues to have authority to examine chestnut trees and to give certificates with reference to the freedom of chestnut trees from insects or other diseases, but such certificate should state upon its face that the certificate is in no sense to be considered as determining the presence or absence of chestnut blight, which is only to be determined by the Chestnut Tree Blight Commission, under the Act of June 14th.

Very truly yours,

WM. M. HARGEST.

Assistant Deputy Attorney General.

OPINIONS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

OPINIONS TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION.

ELECTION OF SCHOOL DIRECTORS.

The election of school directors is to be held in November of even numbered years. A director whose term expires in June, of 1911, holds over until the first Monday of January, 1912.

Office of the Attorney General,

Harrisburg, Pa., March 6, 1911.

Hon. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Dear Sir: By your favor of February 14th, addressed to the Attorney general, you ask to be advised whether the election of school directors will hereafter be held in November, and whether the director whose term of office expires in June, 1911, will hold over.

The February election has, of course, been abolished, and the November election in the year 1911 is the election appropriate to the election of school directors. The Act of Assembly approved March 2, 1911, entitled

> "An act to carry into complete operation the amendments to Sections 8 and 21 of Article IV, Sections 11 and 12 of Article V, Sections 2 and 3 of Article VIII, Section 1 of Article XII, and Sections 2 and 7 of Article XIV, of the Constitution of the Commonwealth of Pennsylvania, adopted November second, one thousand nine hundred and nine, preventing any hiatus in the terms of offices affected thereby, fixing the time when the terms of certain offices shall hereafter begin, validating the official acts of certain officers during their extended terms and defining the term "public officer" as used in this act,"

provides in Section 1:

> "That all public officers holding office at the date of the approval of said amendments not otherwise provided for, whose terms of office expire at any time during the odd numbered year, shall continue to hold their offices until the first Monday in January in the next even numbered year, and that all such officers whose terms expire in an even numbered year shall continue to hold their offices until the first Monday of January in the next even numbered year."

The term "public officer" is defined in the act to include "all officers elected by vote of the people, whether the offices that they fill were created by the Constitution or by special or general Acts of Assembly."

This Act of Assembly answers your inquiry, and you are therefore advised that there will be no vacancy in the office of school directors in June, 1911.

Very truly yours,
WM. M. HARGEST.
Assistant Deputy Attorney General.

DENTAL LICENSES.

The fee of twenty-five dollars paid by an unsuccessful applicant for a license to practice dentistry, should not be returned to him.

Office of the Attorney General,

Harrisburg, Pa., March 21, 1911.

Hon. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Dear Sir: You ask to be advised whether the fee of twenty-five dollars which has been paid by an applicant for a license to practice dentistry, based upon the lawful practice thereof, for not less than ten years shall be returned, if, after investigation or examination, such applicant is rejected.

Section 2 of the Act of May 7, 1907, P. L. 161, provides:

> "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 report of the Board of Dental Examiners that, after due investigation or examination, it finds his or her education and professional attainments and experience to be, together, fully equal to the requirements for license in this Commonwealth."

Section 2 also provides:

> "Any person may present to the Dental Council a written application for a license to practice dentistry, together with a fee of twenty-five dollars, and with proof that he or she is not less than twenty-one years of age, is of good moral character, and has obtained a competent education, etc., * * * * * * * * thereupon the Dental Council may authorize the examination of such person by the State Board of Dental Examiners."

It further provides:

> "All fees provided by this act shall be payable to the Dental Council, and the same shall be disbursed by the Dental Council in payment of the expenses of the Board of Dental Examiners."

The fees are intended to defray the expenses of investigations or examinations. Every applicant contributes in part to the trouble and expense of the examination or investigation.

The labor is the same whether the applicant is licensed or not. There is no provision for any return of fees to a rejected applicant and there is no reason, in the absence of plain legislative direction, why the fee, which is intended to cover the expenses of dental examinations, should be returned to one who has had the benefit of the examination but failed to qualify.

My opinion, therefore, is that you are not required to return the fee of twenty-five dollars paid by applicant for license, based upon the lawful practice of dentistry for not less than ten years.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

SALARIES OF ASSISTANT SCHOOL SUPERINTENDENTS.

The school code, Act of May 18, 1911, (Act No. 191), does not authorize the payment of any part of sums appropriated for school superintendents for the salaries of assistant county superintendents.

While Section 1130 fixes a minimum salary for assistant superintendents, and Section 1121 provides that such salaries shall be paid from appropriations for this purpose or appropriations for public schools, Section 2302 provides that appropriations shall be apportioned and distributed by the Superintendent of Public Instruction, and Section 2303 provides that he shall first deduct from the appropriation all items *specified* in the act, and the salaries of assistant county superintendents hereafter to be elected are no specified in the act, nor does the general appropriation act contain any provision for the payment of salaries to assistant superintendents, for which specific appropriation would be required by the Act of May 11, 1909, P. L. 519.

Office of the Attorney General,

Harrisburg, Pa., June 10, 1911.

Hon. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Dear Sir: Your favor of May 31st, addressed to the Attorney General, was duly received.

You ask to be advised whether there is any appropriation out of which to pay the salaries of assistant county superintendents.

The Act of Assembly recently approved and commonly called the "School Code," provides in Section 1130:

> "The minimum salary of each assistant county superintendent shall be twelve hundred dollars per year, which shall be paid out of the State appropriation for public schools in such payments and manner as the county superintendents are paid."

Section 1121 provides:

> "The salary of assistant county superintendents elected or appointed under the provisions of this act shall be paid by the State from the appropriations made for this purpose or from the appropriations for the public schools."

Section 1128 provides, in part:

> "In all counties entitled to one or more assistant county superintendents, the county superintendents elected in May, one thousand nine hundred and eleven, and the officers of the school directors' associations therein, shall, before the first day of September, one thousand nine hundred and eleven, nominate and confirm the assistant county superintendents to which the several counties in this Commonwealth are entitled."

If there were no other statutory provisions to be considered, these would apparently authorize the election of assistant county superintendents in 1911, and require the payment of the salaries out of the appropriation for public schools.

But Section 2302 provides:

> "All appropriations made for the maintenance and support of the public school system after the approval of this act shall be apportioned and distributed by the Superintendent of Public Instruction as herein provided."

And Section 2303 provides:

> "He shall first deduct from the appropriation all items *specified* in this act and such other amounts as may be required to be deducted by any appropriation bill and the remainder of the appropriation shall be apportioned and distributed as follows."

Is the salary of assistant county superintendent an item "specified in this act?" There are no assistant county superintendents in existence and there were none at the date of the passage of the School Code.

Section 1130 merely fixes the minimum salary to be paid to such assistant county superintendents when elected. It does not specify

the amount in the aggregate to be paid for salaries. The Legislature has not attempted to ascertain the number of counties entitled to elect assistant county superintendents. The salaries of some assistant county superintendents might be fixed at a larger amount than $1,200.00, and if so what amount has been specified to be deducted before the distribution is made to the school districts?

I am of opinion that the salaries hereafter to be fixed, of assistant county superintendents hereafter to be elected, are not items specified in the school act to be deducted from the appropriation to public schools.

I am also of opinion that the salaries of assistant county superintendents are not provided for and cannot be paid out of the general appropriation to public schools.

Section 8 of the General Appropriation Bill, not yet signed, provides an appropriation

> "for the support of public schools and normal schools of this Commonwealth for the two fiscal years commencing on the first day of June, one thousand nine hundred and eleven, the sum of fifteen million dollars."

The bill provides that the city of Philadelphia, in addition to its pro rata, shall be entitled to $72,000.00 for the education of teachers in the Philadelphia Normal School for Girls and the Philadelphia School of Pedagogy for Young Men, and out of the amount received by the City of Philadelphia there shall be paid $3,000.00 to the Teachers' Institute; $10,000.00 to the Philadelphia School of Design; $10,000.00 to the Teachers' Annuity and Aid Association; and that out of the said amount of fifteen million dollars there shall be paid for the education of teachers in the State Normal Schools $600,000.00; for the pay of tuition of pupils who attend high schools outside of their own district, $200,000.00, and for the encouragement of township and borough high schools, $450,000.00.

The bill then provides:

> "That out of the said amount hereby appropriated there shall be set apart the sum of $230,000.00 to be expended on the warrants of the Superintendent of Public Instruction for the payment of the salaries of the county superintendents of public schools two years. The remainder of the amount hereby appropriated shall be paid on warrants of the Superintendent of Public Instruction drawn in favor of the several school districts of the Commonwealth in amounts designated by the State Treasurer and whenever he shall notify the Superintendent of Public Instruction in writing that there are sufficient funds in the State Treasury to pay for the same."

There is no provision for the payment of any part of the sum appropriated for superintendents to the salaries of assistant county superintendents.

The appropriation bill contains the positive direction that after deducting from the fifteen million dollars the specific amounts therein appropriated as above set out, "the remainder of the amount hereby appropriated shall be paid in favor of the several schools of the Commonwealth."

The policy of the law is to require specific appropriations. The Act of May 11, 1909, (P. L. 519), makes it a misdemeanor for any officer of the Commonwealth to authorize the payment of any money or for the State Treasurer to "pay any money out of the State Treasury except in accordance with the provisions of an Act of Assembly setting forth the amount to be expended and the purpose of the expenditure," or to pay any money "in excess of the amount thus specifically appropriated."

There is no specific appropriation for the payment of the salaries of assistant county superintendents and I am unable to find any intention on the part of the Legislature that any part of the general appropriation for public schools should be applied to the payment of assistant county superintendents hereafter to be appointed.

I therefore advise you that there is no appropriation out of which assistant county superintendents can be paid.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

SCHOOL TAX COLLECTORS.

Under the school code of May 18, 1911, (Act No. 191), directors of the second, third and fourth class districts are not authorized to appoint a collector of school taxes where tax collectors have been elected in such districts to collect school taxes along with other taxes.

Section 560 does not prevent the appointment of a person to collect school taxes who has failed to settle his duplicate for years prior to the time the school code went into effect.

A collector elected by the electors of a school district of the second, third or fourth class who has given bond prior to May 18, 1911, or July 1, 1911, is required by Section 550 to give a separate and additional bond to the school district in such an amount as the board of school directors may fix.

Office of the Attorney General,

Harrisburg, Pa., July 19, 1911.

Hon. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Dear Sir: Your favor of July 13th was duly received.

You state several propositions, based upon the new School Code, for the opinion of this Department.

1st. "In districts of the second, third or fourth class in which a tax collector has been elected by the voters thereof to collect taxes, can the school board appoint a different person as the collector of school taxes only?"

Section 546 of the School Code provides:

> "In any school district where the collector of school taxes is also collector of county taxes, the secretary of board of school directors may compute and add the amount of the school taxes to the duplicate furnished by the county commissioners to such tax collector for county purposes."

Section 547 provides:

> "The board of school dircetors in each school district of the second, third and fourth class in this Commonwealth, where a tax collector is not elected to collect school taxes, or where there is a vacancy, or where any tax collector elected refuses to qualify or furnish a bond as herein provided, shall, annually, on or before the first day of June in each year, appoint one or more suitable persons as tax collectors in said school district."

This provides for the appointment by the board of school directors of tax collectors in districts of the second, third and fourth class only where a tax collector is *not* elected to collect school taxes.

I am, therefore, of opinion that where, in such districts, the tax collector has been elected to collect school taxes along with other taxes, the school directors of such districts are not authorized to appoint a different person as the collector of school taxes only, provided the person so elected is not disqualified by reason of any of the other provisions of the School Code.

2nd. "If a tax collector who has been elected by the people fails, at the end of the school year 1910-1911, to settle his duplicate in full with the board, can such board give him the duplicate for the next year to collect the taxes for 1911-1912?"

The School Code was approved May 18, 1911. Section 560 provides:

> "In all school districts of the second, third and fourth class, no tax collector shall be re-appointed, or be authorized to collect any school taxes in any school year, unless he shall first have settled his duplicate in full with the board of school directors for the preceding year, in the manner herein provided."

The language of this section requiring the tax collector to settle the duplicate as provided in the School Code, plainly refers to tax collectors appointed to collect the tax after the School Code goes into operation, and indicates that this section is not intended to have any retroactive effect.

I am, therefore, of opinion that Section 560 does not prevent the appointment of the same person to collect the taxes for the year 1911-1912 merely because he has failed to settle his duplicate for the year 1910-1911 before the Code went into effect.

3rd. "If a collector has been chosen by the electors of the school district of a second, third or fourth class, and if he gave bonds to the court before May 18, 1911, shall the school board require him to give an additional bond for school taxes only? If he gave bond to the court before July 1, 1911, shall the board require him to give an additional bond for the school taxes?"

Section 550 of the School Code provides:

> "Every person appointed or elected collector of school taxes in any school district of the second, third or fourth class in this Commonwealth, in addition to any bonds that he may now be required by law to give, and before receiving his tax duplicate and warrant to collect said school taxes, shall furnish to the school district a proper bond, in an amount to be fixed by the board of school directors, with such surety or sureties as it may approve conditioned upon the faithful performance of his duties as such tax collector."

This section seems to answer your inquiry. It makes no difference whether a collector elected by the people of a second, third or fourth class district has given bond prior to May 18, 1911, or prior to July 1, 1911. Before he can receive his tax duplicate and warrant to collect school taxes, under the provisions of this Code, he must give a separate bond to the school district in such amount as the board of school directors may fix.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

PHILADELPHIA SCHOOL APPROPRIATIONS.

The portion of the State appropriation of May 15, 1909, P. L. 906, applicable for the support of the Philadelphia public and normal schools, according to the custom of more than fifty years, should be paid to the treasurer of the city of Philadelphia and not to the treasurer of the school district of Philadelphia, the provision in Section 2310 of the School Code of May 18, 1911, P. L. 309, directing payment of State appropriations to the treasurers of the respective school districts, being construed as prospective.

Office of the Attorney General,

Harrisburg, Pa., December 1, 1911.

Hon. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

My Dear Sir: I have your communication of November 10th, 1911, as follows:

> "When during the current school year I come to draw the warrants for the payment of the school appropriation due to Philadelphia shall the warants be drawn in favor of the Treasurer of the School District of Philadelphia or in favor of the Treasurer of the City of Philadelphia? Please give me your written opinion for my guidance so that I may draw the warrants in strict accordance with law."

Your inquiry doubtless has reference to that portion of the State's appropriation of $15,000,000, for the support of the public and normal schools to which the city of Philadelphia is entitled under the General Appropriation Act approved May 15th, 1909, (P. L. 906), read in the light of the provisions of the "School Code" of 1911 (P. L. 420).

The said General Appropriation Act, in Section 7 (P. L. 906) provides as follows:

> "for the support of the public and normal schools of this Commonwealth, for the two fiscal years commencing on the first day of June, 1909, the sum of Fifteen Million Dollars ($15,000,000): *provided the city of Philadelphia shall be entitled to a proper portion of this appropriation.* * * * *"

This appropriation by the State is made in pursuance of the mandate of the Constitution (See Article 10, Sec. 1). Indeed, by every Constitution of the Commonwealth the people have imposed upon the Legislature this positive duty of maintaining public schools throughout the State.

It is not essential to your inquiry to review at length the history of the school system of the city of Philadelphia. It is perhaps proper to observe, however, that since the Consolidation Act of February 2nd, 1854,(P. L. 21), the councils of the city of Philadelphia have been vested with authority to raise by taxation the moneys needed for school purposes in the said city—which by the Act of March 13th, 1818, (P. L. 53), was made the first school district of the State. (See Board of Public Education of the First School District of Pennsylvania vs. Ransley, 209 Pa. 51).

Prior to the approval of the Act of April 22, 1905, (P. L. 271) the levying of such a tax by councils for school purposes was in pursuance of and based upon an estimate annually furnished to that body by the controllers of the public schools of the said district (later by the board of education) for the amount which in their judgment was necessary for the support of such schools. (See Section 39 of the Act of February 2, 1854, (P. L. 40); Act of April 16, 1845, (P. L. 502), and Act of March 15, 1870, (P. L. 437), changing the title of the controllers of the Public schools of the first school district of Pennsylvania to "The Board of Education of the First School District of Pennsylvania.")

By the said mentioned Act of April 22nd, 1905, (P. L. 271), relating to the support of the schools in cities of the first class, i. e., Philadelphia, it was provided that:

> "Councils of said city of the first class shall annually appropriate a sum for school purposes which shall not be less than five (5) mills on each dollar of the total assessment of real property of said school district. * *"

Since the said act, the councils of the city have annually included in their tax rate or levy this item of five mills for school purposes and have made an appropriation of a corresponding amount for the support and maintenance of the said schools of the city. Such an appropriation was in fact made by councils for each of the years 1910 and 1911; for which two years the State, as above noted, also made an appropriation by the General Appropriation Act of 1909 above quoted. In substantially similar language such annual State appropriations have in fact been regularly made for more than fifty years, following the passage of the Consolidation Act of 1854 and the Act of May 8th, 1854, (P. L. 617), entitled "An act for the regulation and continuance of a system of education by common schools;" and during all these years the proper portion of such appropriations, to which the city of Philadelphia was entitled, has been annually paid to the treasurer of the said city of Philadelphia.

I come then to the question of the relevancy and materiality of the provisions of the new "School Code" or Act approved May 18th, 1911, (P. L. 309-461).

By Section 2310 of said act (P. L. 421) it is provided:

> "The annual State appropriation, apportioned and distributed by the Superintendent of Public Instruction to any school district in this Commonwealth, shall be paid to the school treasurer of the district, and shall be used by the district, through its board of school directors, for the use of the district for the purposes mentioned in this act."

In the light and in view of this provision, your question now is, shall your warrant be drawn "in favor of the treasurer of the school district of Philadelphia or in favor of the treasurer of the city of Philadelphia?" The general rule, of course, is that Acts of Assembly are to be construed as prospective in their application. This rule is emphasized in this case by the express provisions of Section 2302 of the said "School Code" that:

> "All appropriations made for the maintenance and support of the public school system *after the approval of this act* shall be apportioned and distributed by the Superintendent of Public Instruction as herein provided."

In my judgment, therefore, you should draw your warrant for the proper portion of the State appropriation about which you inquire, to the order of the treasurer of the city of Philadelphia, as heretofore, and not to the order of the treasurer of the school district of Philadelphia.

In so advising you it is proper to add that I do not wish to be understood as expressing or indicating any opinion as to the proper application of such State funds after the payment of the same to the treasurer of the city of Philadelphia, i. e., as to whether the said funds, after payment and receipt of the same by the said treasurer, are properly and legally applicable for the support of the public schools of the city of Philadelphia or for general municipal purposes.

Very truly yours,

JNO. C. BELL,
Attorney General.

12—23—1913

ESCHEATS.

The Sate Board of Educatiou has no right to compel banks or trust companies to account to it for any unclaimed deposits.

Office of the Attorney General,

Harrisburg, Pa., February 26, 1912.

Hon. Nathan C. Schaeffer, Superintendent of Public Instruction, Harrisburg, Pa.

Sir: Some time ago you requested an opinion upon the following question:

> "What right, if any, has the Board of Education, under the School Code, to compel the banks and trust companies to account to it for any deposits remaining unclaimed after a period of seven years."

You point to no section of the School Code which would provide for the escheat to the Commonwealth of the deposits in banks and trust companies unclaimed after a period of seven years, and I have been unable to discover any such provision.

Section 2701 of the School Code provides, among other things:

> "All escheated estates in this Commonwealth, and all other property or money which shall in any way accrue to such fund, whether by act of assembly, devise, gift, or otherwise, shall belong to and constitute a fund, to be known and designated as 'The State School Fund of Pennsylvania,' which is to be maintained as herein provided."

There is no Act of Assembly, so far as I have been able to find, which provides for the escheat of deposits in banks and trust companies unclaimed after a period of seven years. The Act of March 6, 1847. P. L. 22, provides:

> "Banks, savings institutions, loan companies and insurance companies, and each and every other of the companies, institutions or associations incorporated by or under any law of this Commonwealth, and legally authorized to declare and make dividends of the profits amongst the stock-holders thereof, shall" publish every year "all dividends or profits declared, on the capital stock, which, at the date of such settlement, shall have remained unclaimed * * * * * * * for a period of three years then next preceding" and "banks, savings institutions and loan companies, and each and every saving fund society, insurance or trust company, or other company, institution or association, incorporated as

> aforesaid, and legally authorized to receive deposits of money, shall" likewise publish "the names, and, if known, the residence and business of all persons, co-partnerships and corporations who have made deposits therein or have balances due them, and who have not, within three years then next preceding the date of said statement, either increased or diminished the amount of such deposits or balances, or received any interest thereon."

This act also provides that:

> "At the expiration of three years after the first publication of any particular dividend or profits, balance or deposit, with the interest that has accrued thereon, as provided for by the first and second sections of this act, such dividend or profit, balance or deposit, with the interest that has accrued, if not demanded within that time by the rightful owner or owners thereof, or their legal representatives, shall escheat to the Commonwealth, and shall be paid into the treasury thereof."

There is no provision of the School Code, or any other Act of Assembly, that compels banks of trust companies to account to it for any deposits remaining unclaimed for any period of time.

Section 2701 of the School Code above referred to, provides that all escheated estates in the Commonwealth shall go into the State School Fund of Pennsylvania, but before such money can go into the school fund, the estates must first be escheated in the manner provided by law.

Specifically answering your question, therefore, I am of opinion that the State Board of Education has no right to compel banks or trust companies to account to it for any unclaimed deposit.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

OPINIONS TO THE CHIEF OF DEPARTMENT OF MINES.

OPINIONS TO THE CHIEF OF DEPARTMENT OF MINES.

MINE INSPECTORS.

Under the Act of May 6, 1911, P. L. ...., amending the Acts of June 2, 1891, P. L. 176, June 8, 1901, P. L. 535, and May 3, 1909, P. L. 420, relating to mine inspectors, it is not required that members of the boards of examiners to examine candidates for the office of mine inspector should be residents of the district for which the inspectors are elected.

A custom of the judges in making such appointments to select only resident members is not controlling, in the absence of statutory requirement.

Office of the Attorney General,

Harrisburg, Pa., June 21, 1911.

James E. Roderick, Esq., Chief of Department of Mines, Harrisburg, Pa.

Dear Sir: Your favor of the 1st inst., addressed to the Attorney General, was duly received.

You ask to be advised whether the members of the board of examiners to examine candidates for the office of mine inspectors, must be residents of the district for which the inspectors are elected.

The facts, as I understand them, which gave rise to the request for this opinion, are that the president judge of the courts of Susquehanna county, appointed a board of examiners, two members of which are residents of the county of Lackawanna.

Act No. 108, approved May 5, 1911, further amends the Act of June 2, 1891, as amended by the Act of June 8, 1901, and May 3, 1909, by creating a new inspection district in the anthracite coal regions. The district known as the "Eighth District" is composed of the counties of Susquehanna, Wayne and Sullivan. Section 3 of the Act of 1911 provides:

> "In order to fill any vacancy that may occur in the office of Inspector of Mines, by reason of the expiration of term, resignation, removal for cause, or the creation of a new district, or from any other reason whatever, the judges of the court of Lackawanna county shall appoint an examining board for the county of Lackawanna, and the judges of the court of Luzerne county shall appoint an examining board for the counties of Carbon and Luzerne, and the judges of Schuylkill county shall appoint an examining board for the counties of Schuylkill, Northumberland, Columbia and Dauphin, and the judge of the court of Susquehanna county shall

> appoint an examining board for the counties of Susquehanna, Wayne and Sullivan. Whenever, owing to the creation of a new district or for any other reason, an inspection district shall be without a board of examiners the judge or judges of that court in which is vested the appointing power for that district shall appoint a board of examiners for said district as soon as such a vacancy arises. The members of said board or boards shall hold their positions until the first term of said court of the following year, when the successors shall be named as provided by law."

The original Act of June 2, 1891, (P. L. 176), entitled:

> "An act to provide for the health and safety of persons employed in and about the anthracite coal mines of Pennsylvania, and for the protection and preservation of property connected therewith,"

provides in Section 3 of Article 2:

> "In order to fill any vacancy that may occur in the office of Inspector of Mines, by reason of expiration of term, resignation, removal for cause or from any other reason whatever,"

the judges of the courts, as therein defined,

> "shall appoint an examining board."

Article 2, as amended by the Act of June 8, 1901, (P. L. 535), provides, in Section 4:

> "The said board of examiners shall be composed of three reputable coal miners in actual practice and two reputable mining engineers, all of whom shall be appointed at the first term of court in each year, to hold their places during the year. Any vacancies that may occur in the board of examiners shall be filled by the court as they occur."

There is no requirement that the members of the Board of Examiners shall reside in the inspection district, or even a requirement that they shall be residents of Pennsylvania. The only qualification is that three members shall be "reputable coal miners in actual practice" and two shall be "reputable mining engineers."

The Legislature was careful to provide, when it came to the qualifications of mine inspectors, in Section 6, that the person so elected must be a *citizen of Pennsylvania* and must have attained the age of thirty years. "He must have a knowledge of the different systems of working coal mines, and he must produce satisfactory evidence to the board of examiners of having had at least five years practical experience in anthracite coal mines where noxious and explosive gases are evolved."

In Section 15 of the same Act of Assembly it is required that "each of said inspectors shall reside in the district for which he is elected, and shall give his whole time and attention to the duties of his office."

The absence of any requirements as to the residence of the members of the board of examiners, seems to have been intentional.

I have been advised that since 1870 it has been the custom for judges to appoint as members of the examining board persons residing in the counties composing the several districts and that this is the first instance where a judge has appointed members from the counties outside of the district. This custom, however, is not controlling in the absence of any statutory requirement.

I am, therefore, of opinion and so advise you, that the judge of the court of Susquehanna county was legally authorized to appoint upon the board of examiners for the eighth district, composing the counties of Susquehanna, Wayne and Sullivan, residents of Lackawanna county.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

MINE INSPECTORS.

The expenses of moving the household goods of mine inspectors cannot be paid by the Department of Mines.

Office of the Attorney General,

Harrisburg, Pa., December 16, 1911.

Hon. James E. Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: Your favor of the 21st instant, addressed to the Attorney General, is at hand.

You ask to be advised as to whether the expenses of moving the household goods of mine inspectors are properly paid by your Department.

The facts which gave rise to the request for this opinion, I understand to be as follows:

The Act of June 9, 1911, (P. L. 756), which is known as the Bituminous Mine Code, provides in Article XXII, Section 1, as follows:

> "Under this act the bituminous counties of the Commonwealth shall be arranged by the Chief of the Department of Mines into twenty-five inspection districts,

> and it shall be the duty of the Chief of the Department of Mines to assign the inspectors to their respective districts. He shall also designate their places of abode, at points as convenient as possible to the mines of their districts."

Article XIX, Section 5, paragraph 2, provides:

> "After the passage of this act, the Chief of the Department of Mines shall have the right to assign the inspectors to the districts for which, in his opinion, they are best fitted."

Pursuant to these provisions the Chief of the Department of Mines did assign to different districts and designate the places of abode of several inspectors, which required the moving of their household goods, and the question is whether the cost to the several inspectors of moving their household goods is a proper subject of charge to be paid by the Commonwealth.

Article XIX, Section 7, provides, in part:

> "Each inspector may also incur traveling expenses, and such other expenses as may be necessary for the proper discharge of his duties under the provisions of this act."

The appropriation to the Department of Mines made by the General Appropriation Act of 1911 contains no item against which it would be possible, by stretch of language, to charge these expenses, unless it be found in the item "for the payment of the actual traveling expenses of the inspectors and for their office rent, stationery, postage, telegrams, express charges, instruments, typewriters, furniture, and all other actual expenses, two years, the sum of fifty-six thousand three hundred fifty dollars ($56,350.00)."

In the business world the employment of a man at a designated place does not usually, in the absence of an agreement so to do, carry with it the obligation of the employer to pay the expenses of moving the family of the employee to his place of abode. The Act of Assembly above quoted gives the Chief of Department of Mines the right to assign inspectors to different districts, and provides:

> "That each inspector may also incur traveling expenses, and such other expenses as may be necessary, *for the proper discharge of his duties.*"

The Appropriation Act provides:

> "For the payment of the actual traveling expenses of the inspectors * * * * and all other actual and necessary expenses."

This last provision "all other actual and necessary expenses," must be read in connection with Article XIX, Section 7, to mean "other necessary expenses for the proper discharge of their duties." The moving of household goods is not an incident to the discharge of the duties of mine inspector.

I am of opinion that the authority given by the Act of Assembly to the Chief of the Department of Mines, in order to obtain the best service for the Commonwealth, to require the inspectors to live at points as convenient as possible to the mines in their district, does not authorize the payment by the Commonwealth of the cost of moving the household goods of the inspectors to the points of abode designated by the Chief of the Department of Mines.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

HOISTING ENGINEERS.

It is the duty of the Department of Mines to see to the enforcement of the Act of April 29, 1911, P. L. 102, in re hoisting engineers in anthracite mines.

Office of the Attorney General,

Harrisburg, Pa., January 31, 1912.

Hon. James E. Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: Your favor of recent date, addressed to the Attorney General, was duly received.

You ask to be advised whether your Department has the power to enforce the provisions of the Act of April 29, 1911, (P. L. 102). That act is entitled:

> "An act to provide for the safety of persons employed in and about the anthracite coal mines of this Commonwealth, and to limit the hours of labor of hoisting engineers employed at or about the same, and fixing a penalty for the violation of the act."

The first section provides:

> "That on and after the passage of this act no person engaged as hoisting engineer at or about the anthracite coal mines of this Commonwealth, part of whose duties it is to lower men and boys into and hoisting them and coal from, the said mines, shall be engaged for a longer period of eight hours of each day of twenty-four hours."

Section 2 provides that any person violating the provisions of Section 1 shall be guilty of a misdemeanor and upon conviction sentenced to the fine therein mentioned.

This Act of Assembly does not specifically provide that the chief of the Department of Mines shall enforce its provisions. Any citizen may start a prosecution for the violation of this law. However, the Act of April 14, 1903, (P. L. 180), creating the Department of Mines, provides in Section 4 that:

> "It shall be the duty of the chief of the Department to devote the whole of his time to the duties of his office, and to see that the mining laws of the State are faithfully executed."

It therefore follows that it is a part of your duties to see that this act of assembly is not violated.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

BITUMINOUS MINES.

The Act of June 11, 1911, P. L. ...., does not apply to mines working less than ten men within a period of twenty four hours.

Office of the Attorney General,

Harrisburg, Pa., February 2, 1912.

Hon. James E. Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: Some time ago you requested an opinion of the Attorney General as to the proper construction of Section 3, Article 28, of the Bituminous Mine Law, approved June 11, 1911, (P. L. 756).

That section provides:

> "The provisions of this act shall not apply to any mine employing less than ten persons inside the mine in any one period of twenty-four hours."

You ask whether this means that nine men may work in turns of eight hours each, and thus twenty-seven men work within a period of twenty-four hours or whether it means that only one shift of mine men may work in the mine during twenty-four hours without coming within the provisions of the law.

If the Act of Assembly meant to provide that mines employing less than ten persons at a time, although they employed more than ten persons in twenty-four hours, should not come within its provisions, the words "in any one period of *twenty-four hours*" would not have been used. The Act of Assembly fixes the period or unit of time as twenty-four hours, and provides that the employment of more than ten persons within that period or unit of time shall bring such mine within the operation of this act.

I am, therefore, of opinion that a mine employing ten men or more in the whole period of twenty-four hours, regardless of the number at work at any one time, is within the operation of the act.

Your second inquiry is whether "only one shift of nine men may work in the mine within twenty-four hours, without coming under the law." By that I assume you mean whether nine men could work eight hours—or ten hours, as the case may be, provided that during the other sixteen or fourteen hours no men would be at work in the mine.

I am of opinion that such a mine would not be within the provisions of the law, because it does employ less than ten men in the period of twenty-four hours.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

MINE EXAMINERS.

An acting mine foreman is not eligible for appointment as a member of the board to examine applicants for certificates as mine foremen, etc., under the Act of June 9, 1911, Art. XXIV, P. L. 756, providing for the appointment by the court of common pleas of an examining board of three persons, consisting of a mine inspector, an operator or superintendent and a miner.

Office of the Attorney General,
Harrisburg, Pa., April 3, 1912.

Hon. James E. Roderick, Chief of Department of Mines, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of March 13, 1912, asking to be advised whether the appointment of an acting mine foreman, instead of a miner in actual practice, as a member of a board to examine applicants for certificates of qualification as mine foremen, assistant mine formen, and fire bosses, is authorized by existing legislation.

The appointment by these boards by the proper courts of common pleas, is provided for in the 24th Article of the Act of June 9, 1911, P. L. 756, known as the Bituminous Mine Code. Under the code in question the Chief of the Department of Mines is required to arrange bituminous counties of the Commonwealth into twenty-five inspection districts, and to assign the inspectors commissioned by the Governor from the names certified to him by the Mine Inspectors' Examining Board to their respective districts.

By Section 1 of Article 24, (which article provides for the appointment of boards to examine applicants for certificates as mine foremen, assistant mine foremen and fire bosses), it is provided:

> "On petition of the mine inspector the court of common pleas in any county in said district shall appoint an examining board of three persons, consisting of a mine inspector, a miner and an operator or superintendent—which said miner shall have had at least ten years practical experience and be in actual practice in mines of this Commonwealth generating explosive gases—and the members of said examining board shall be citizens of this Commonwealth, and the persons so appointed shall, after being duly organized, take and subscribe before an officer authorized to administer the same,"

an oath, etc.

You ask to be advised whether an acting *mine foreman* may be appointed to serve on this board instead of a *miner* in actual practice.

The code now under discussion is intended to provide a comprehensive system for the protection of the health and safety of persons employed in the bituminous coal mines of Pennsylvania, and for the protection and preservation of property connected therewith.

In so far as the persons referred to in the act are concerned, they are divided into classes designated as operators, superintendents, inspectors, mine foremen, fire bosses, miners, drivers, trip riders, hoisting engineers, etc. Under the definitions contained in the act, the term "operator" means any firm, corporation or individual operating any coal mine or any part thereof. The term "superintendent" means the person who shall have, on behalf of the operator, immediate supervision of one or more mines. The term "mine foreman" means the person whom the operator or superintendent shall place in charge of the inside workings of the mine and of the persons employed therein.

By Article 4 of the code, an operator or superintendent is required to employ a competent and practical mine foreman for every mine where ten or more persons are employed.

The mine foreman is required, under certain conditions, to employ a fire boss, whose competency to act as such shall be evidenced by a

certificate of qualification from the Department of Mines, issued on the recommendation of the examining board, provided for in said Article 24 of the act.

By Section 9 of Article 24 it is provided that it shall be unlawful for any operator, manager or superintendent to employ as mine foreman in any mine, or as assistant mine foreman in any gaseous mine, any person who has not obtained the proper certificate of qualification or service required by the act, and by the same section it is also made unlawful for any operator, manager, superintendent, or mine foreman, to employ as fire boss any person who has not obtained the proper certificate of qualification required by the act.

It therefore clearly appears that there is a definite legislative intent, expressed in the act, to distinguish between the duties and responsibilities of operators, superintendents, mine foremen, fire bosses and miners, and it is equally clear that the board to examine applicants for certificates of qualification as mine foremen, assistant mine foremen, and fire bosses, may legally consist only of "a mine inspector, a miner and an operator or superintendent." The miner must be an experienced miner, for it is provided that he shall have had at least ten years' practical experience and be in actual practice in mines of this Commonwealth generating explosive gases. A mine foreman and a miner belong to distinctly separate and different classes of persons employed in and about bituminous coal mines. To each of these classes the performance of special duties is assigned by the act; for instance, under Article 25 the miner must examine his working place before beginning work, take down all dangerous slate, or otherwise make it safe by properly timbering it, before commencing to mine or load coal, notify the mine foreman of the existence of certain conditions, etc., which duties and responsibilities are entirely separate and distinct from the duties and responsibilities of a mine foreman.

You are therefore advised that in the opinion of this Department an acting mine foreman is not eligible for appointment as a member of the board to examine applicants for certificates of qualification as mine foremen, assistant mine foremen, and fire bosses.

Very truly yours,

JNO. C. BELL,
Attorney General.

OPINIONS TO THE COMMISSIONER OF HEALTH.

13—23—1913

OPINIONS TO THE COMMISSIONER OF HEALTH.

WATERSHED INSPECTOR.

A member of the House of Representatives may be appointed a watershed inspector by the Commissioner of Health.

Office of the Attorney General,

Harrisburg, Pa., December 13, 1911.

Dr. Samuel G. Dixon, Commissioner of Health, Harrisburg, Pa.

Sir: I have your favor of the 5th inst., in which you ask:

> "Would it be legal to appoint a member of the House to the position of watershed inspector in the Department of Health?"

You doubteless are prompted to ask this question in view of Section 6 of Article II, of the Constitution, which provides:

> "No senator or representative shall, during the time for which he shall have been elected, be appointed to any civil office under this Commonwealth," etc.

The meaning of the term "civil office", as used in this section, has been the subject of discussion and definition in an opinion by Attorney General Carson, rendered on July 31st, 1903, and reported in 12 District Reports 587, and by Judge Weand, of the court of common pleas of Montgomery county, in the case of Commonwealth ex rel. vs. Murphey, 25 Pennsylvania County Court Reports 637.

Concurring in the views expressed in these opinions, elaboration is unnecessary. Suffice it to say that there is a legal difference between an "officer", or one who holds such a "civil office" as is referred to in the section quoted, and an employee. Incident to, and involved in the holding of such an office is the idea of tenure, duration, fees, emoluments and the exercise of certain rights, powers and duties—a portion of the sovereign power of the State—in making, interpreting or administering the laws of the State. But an employee, differing from an officer, receives no certificate of appointment, takes no oath of office, has no term or tenure of office, discharges no duties and exercises no powers depending directly upon the authority of law, but merely performs such duties as are required of him by the officer or department employing him, and whose responsibility is limited to such officer or department.

My further opinion is that a watershed inspector of the Department of Public Health is such an employee, to whose employment the above quoted constitutional prohibition is not applicable. Specifically answering your inquiry, therefore, there is no legal reason, in my judgment, why you should not appoint a member of the House of Representatives to the position of watershed inspector in the Department of Health.

Very truly yours,
JNO. C. BELL,
Attorney General.

SEWAGE DISPOSAL.

There is no statutory authority for granting a permit to discharge sewage into the public waters of the State to individuals, private corporations or companies. Where a borough desires to contract with individuals for the construction and operation of a sewage disposal plant, the permit must be taken out in the name of the borough.

Office of the Attorney General,

Harrisburg, Pa., March 20, 1912.

Dr. Samuel G. Dixon, Commissioner of Health, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of March 7th, 1912, stating that the borough of Nazareth, sometime ago, prepared plans for a system of sewerage and sewage disposal and requested the Department of Health to approve the same, with permission to discharge raw sewage, for a short time, into State waters; that pending the consideration of these plans by your Department, the authorities of said borough concluded they would not attempt to construct a municipal sewer system, but granted a franchise to certain citizens of the borough to construct a system of sewers and disposal works, stipulating as one of the conditions of said franchise, that the plans should meet the approval of your department; and that the private citizens to whom said franchise was granted have presented to your Department certain plans for said sewers and disposal works, and have requested your approval thereof.

You now ask to be advised whether your Department has any jurisdiction to approve these plans at the request of said private citizens.

The jurisdiction of your Department over the approval of plans for sewer systems is conferred and defined by the Act of April 22, 1905, (P. L. 260), entitled:

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

The fundamental proposition in this act is that

> "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."

Recognizing the fact that at the date of the enactment of this act many municipalities, private corporations, companies and individuals, were discharging sewage into the waters of the State, the Legislature provided that the act should not apply to the discharge of sewage from any public sewer system, owned and maintained by municipalities, through which sewage was being discharged at the time of the passage of the act, provided, the public authorities having charge by law, of such system, should file a report of the same with you, within four months after the passage of the act; but that no extension of any system then in operation should be permitted, without the approval of the designated authorities. It was also provided that individuals, private corporations and companies discharging sewage into the waters of the Commonwealth, at the date of the passage of the act, might continue such discharge unless notified by you to discontinue the same, because, in your opinion, such discharge of sewage might become injurious to the public health.

By the 5th. Section of the act it is provided that:

> "Upon application duly made to the Commissioner of Health, by the *public authorities* having by law charge of the sewer system of any municipality, the Governor of the State, the Attorney General, and the Commissioner of Health shall consider the case of such sewer system, otherwise prohibited by this act from discharging sewage into any of the waters of the State, and whenever it is their unanimous opinion that the general interests of the public health would be subserved thereby, the Commissioner of Health may issue a permit for the discharge of sewage from any such sewer system into any of the waters of the State, and may stipulate in the permit the conditions on which such discharge may be permitted, etc."

No provision is found in the act for the issuing of permits to individuals, private corporations or companies for the discharge of sewage into the State waters. The discharge of sewage by individuals, private corporations, or companies, is absolutely prohibited, unless such discharge was going on at the date of the enactment of the law in question, in which case the discharge is tolerated until the Commissioner of Health sees fit to direct its discontinuance.

In the opinion of this Department, the Governor, the Attorney General and the Commissioner of Health have no power to authorize

individuals, private corporations or companies, to begin the discharge of sewage into any of the waters of the State. It seems clear that it was the legislative intent, as was expressed in this act, to hold municipalities responsible not only for discharging sewage into State waters, but also for permitting it to be placed therein by any of the inhabitants of the municipality. Distinctive penalties are likewise provided in the act for the discharge of sewage from a public sewer system, and for the discharge of the same by individuals, private corporations or companies.

You are therefore advised, that, if the public authorities of the borough of Nazareth, desire to permit citizens of that borough to construct and operate a sewage system, from which sewage will be discharged into State waters, the said public authorities must make application to you for a permit for the contemplated discharge of sewage into State waters and must be held responsible for the observance of any conditions stipulated in the permit.

Very truly yours,

JNO. C. BELL,
Attorney General.

PAYMENT OF MONEY INTO COURT.

D., a contractor for the Health Department, failed. There being a balance due him on his contract, subcontractors filed claims with the Commissioner of Health. The Commissioner of Health is advised to pay the balance due D. into court under the provisions of the Act of April 22, 1903, P. L. 255.

Office of the Attorney General,

Harrisburg, Pa., November 13, 1912.

Dr. Samuel G. Dixon, Commissioner of Health, Harrisburg, Pa.

Sir: This Department is in receipt of your letter of November 6th, stating, in substance, that, in behalf of the Commonwealth, you awarded a contract to Charles W. Denny for the construction of certain buildings at Mont Alto; that in August, 1911, the said contractor made an assignment for the benefit of his creditors and abandoned the work prior to the completion of the contract; and that at the time the work was abandoned there was a balance of the full contract price remaining in the hands of the State to the amount of $18,569.25. You further state that, exercising your rights under the contract, you proceeded to complete the construction of the buildings at a cost of $10,137.69, leaving a final balance of the contract price in your hands to the amount of $8,421.56, which amount, as I understand your communication, is, under the terms of the contract, due and owing from the State to some one, on account of the

contract between the State and the said Charles W. Denny. I also note from your communication that said Denny has been adjudged a bankrupt, and a trustee appointed for his estate. You also advise this Department that claims have been filed by seven sub-contractors and material men who furnished labor and material to the said Denny, as such claims are directed to be filed against public structures or improvements, under the Act of April 22, 1903, (P. L. 255), which seven claims amount, in the aggregate, to $12,000.

You ask to be advised what disposition should be made, under these circumstances, of the above mentioned balance of $8,421.56, due, as aforesaid, under the contract between the Commonwealth and the said contractor.

In reply you are advised that the said Act of 1903 provides that:

> "When labor or materials are furnished for any structure or other improvement for purely public purposes, in lieu of the lien given by this act, any subcontractor who has furnished labor or materials thereto may give a written and duly sworn notice to the Commonwealth, or any division or subdivision thereof, or any purely public agency thereunder, being the owner of the structure, or other improvement, setting forth the facts which would have entitled him to a lien as against the structure or other improvement of a private owner; whereupon, unless such claim be paid by the contractor, or adequate security be given, or have been given, to protect all such claimants, the Commonwealth, or the division or subdivision thereof, or purely public agency thereunder, shall pay the balance actually due the contractor into the court of common pleas of the county in which the structure, or other improvement, or the principal part thereof, is situate, for distribution to such parties as would be entitled thereto were it paid into court in the case of a private owner, etc."

The contractor in this case is not in a position to pay these claims, or to give the security required by the above quoted act.

You are therefore advised that it is your duty to pay the balance actually due on the contract into the court of common pleas of Franklin county for distribution, according to law. A petition should be presented to said court setting forth all the facts and praying for leave to pay the balance actually due on the contract in question into court. By this method the Commonwealth discharges its duty under the contract and the rights of all the claimants upon the fund now in the hands of the Commonwealth will be protected.

Very truly yours,

JNO. C. BELL,
Attorney General.

OPINIONS TO THE STATE HIGHWAY COMMISSIONER.

OPINIONS TO THE STATE HIGHWAY COMMISSIONER.

AUTOMOBILE REGISTRATION.

Money paid into the State Treasury under the Act of Assembly cannot be refunded without an appropriation; hence, no credit can be allowed or refund made to those who are required to change from the dealers' class to individual registration by reason of the Act of April 21, 1911, amending Section 7 of the Act of April 27, 1909, P. L. 265.

Office of the Attorney General,

Harrisburg, Pa., May 23, 1911.

R. D. Beman, Esq., Deputy State Highway Commissioner, Harrisburg, Pa.

Dear Sir: Your favor of the 1st inst., addressed to the Attorney General, was duly received.

You ask to be advised whether persons who have been registered in the "Dealer's Class" under "An act relating to motor vehicles, regulating their speed upon the public streets and highways of the Commonwealth, and providing for their registration and the licensing of operators by the State Highway Department," etc., approved April 27, 1909, (P. L. 265), and who now desire to register their vehicles separately because of the amendment of Section 7 of that act, approved April 21, 1911, are entitled to credit for the fees paid for registration in the "Dealer's Class" for the year 1911.

The Act of April 27, 1909, above referred to provides for the registration of motor vehicles and the payment of fees therefor, as well as for licenses to operate the same.

Section 7 of that act provides:

> "Motor-vehicles operated by manufacturers or dealers for the purpose of testing, selling, or *hire,* shall be exempt from the necessity of individual registration; provided said manufacturer or dealer registers with the State Highway Department in the 'Dealer's Class.'"

and provides for a fee of five dollars for each certificate and pair of number tags.

Under this provision each vehicle was not separately registered, but the tags were transferred from one machine to another as the dealer desired. This provision permitted dealers to hire machines without the necessity of individual registration.

The Act approved April 21, 1911, eliminates the word "hire," so that all motor vehicles now kept for hire must be individually registered.

I understand that a number of persons since January 1, 1911, when the registration year began, have been registered in the "Dealer's Class" for the purpose of operating vehicles for hire, and because of the change of the law must now register individually such vehicles, and that they claim that the amount paid for registration should be returned or credited, in part, at least, because the year for which the fees were paid and the registration made has not expired.

The money paid upon the registration of motor vehicles under the Act of 1909, is required to be paid into the State Treasury. The amendment of 1911 makes no provision for any credit in case one registered in the "Dealer's Class" desires to withdraw from that class, surrender his registration and individually register a motor vehicle. The money which has been paid into the State Treasury under the Act of 1909 cannot be refunded or paid out of the State Treasury without an appropriation, and inasmuch as there is no legislative provision for refunding to such persons the amount paid, or for crediting the same upon a new license, I am of opinion and so advise you, that no credit can be allowed or refund made to those who are required to change from the "Dealer's Class" to individual registration, by reason of the amendment of April 21, 1911, of Section 7 of the Act of April 27, 1909.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

CASH ROAD TAX.

Calculation of the 50% of road tax to be returned to a township under provisions of law is to be made upon the amount of tax collected, not assessed. Included in this calculation also should be the amount, if any, the county commissioners pay the township for road tax on unseated lands. If road taxes are assessed against lands afterwards purchased by the State, and the tax is paid to the township while land is in the State, such amount may be included in the calculation.

Office of the Attorney General,

Harrisburg, Pa., July 26, 1911.

Hon. E. M. Bigelow, State Highway Commissioner, Harrisburg, Pa.

Dear Sir: Sometime ago R. D. Beman, then Deputy Commissioner, requested of the Attorney General an opinion upon the construction of the second Section of the Act approved April 12, 1905, P. L. 142, an amended by the Act approved May 13, 1909, P. L. 752.

The second Section of the Act of April 12, 1905, provides, inter alia, "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 fifteenth day of March in each year. The said statement shall show the amount of tax assessed, as well as the amount collected."

The Act of May 13, 1909, amending the second section of the Act of 1905, provides, inter alia, "Any township which shall have collected its road taxes in cash shall annually receive from the State fifty per centum of the amount of road tax collected in said township, as shown by the sworn statement of the board of township supervisors, furnished to the State Highway Commissioner on or before the first day of March in each year. * * * * * * Said statement shall show the amount of tax assessed as well as the amount collected, and shall be made upon a blank which shall be furnished by the said Highway Department."

The questions propounded by Mr. Beman are:

First: "In the sworn statement of taxes collected in cash, is it allowable to include not only the amount collected in duplicate for the current year, but also to include amounts collected as delinquent taxes remaining unpaid from the preceding year, providing the township was following the cash system of collection during the preceding year as well as during the current year?"

The Act of Assembly authorizes the payment by the State "of fifty per centum of the amount of road tax collected in said township" in cash. There is no requirement that the amount so collected in cash should be limited to the taxes *assessed* during the year in which the collection is made.

I am of opinion that a township is entitled to fifty per centum of the total amount collected in cash during the year, whether the collections be made of taxes assessed for the year or assessed for the preceding years.

Second: "Is it allowable to include as taxes collected in cash the unseated land tax paid over to the township supervisors by the county commissioners?"

This inquiry is not clear. If the county commissioners pay to the township supervisors a road tax, such amount should be included in the calculation. If the "unseated land tax" referred to in the question, does not include road taxes paid in cash, such amount should not be included.

Third: "Is it allowable to include as taxes collected in cash the moneys paid over by the State Forestry Department to the supervis-

ors of the township in consideration of the State forestry lands contained in such townships?"

The Act of Assembly authorizes the payment to the township of fifty per centum of the amount of *road taxes* collected in said township. I do not understand by what authority townships could assess a road tax against the State forestry lands situate in such townships. If the taxes are assessed against such lands before they were acquired by the State, and paid subsequently, such amounts are properly included in the calculation for which the township is to receive fifty per centum of road taxes collected in cash. If, however, there is in a payment by the State Forestry Department to the supervisors of the townships which is not in the nature of road taxes, or does not specifically include road taxes, such amount ought not to be included in such calculation.

Very truly yours,
JNO. C. BELL,
Attorney General.

STATE HIGHWAYS.

Any works done on State highways after June 1, 1911, under provisions of the second Section of the Act of June 14, 1911, may be paid out of the appropriation carried by said act, but such payment cannot be made until after December 1, 1911, when the act goes into effect.

Office of the Attorney General,

Harrisburg, Pa., September 22, 1911.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Dear Sir: Your favor of the 8th instant, addressed to the Attorney General, was duly received.

You ask to be advised whether "work done by the State Highway Department as required either by the Act of May 13, 1909 (P. L. 752), or by the Act of June 14, 1911, can be paid out of the money appropriated by said Act of June 14, 1911."

The Act of June 14, 1911, is entitled:

> "An act relating to roads; providing for the election and appointment of township supervisors in second class townships; defining their powers duties and limitations; relating to road tax and the expenditures thereof; abolishing work tax; defining certain duties of the clerk of court; fixing penalties for violation of this act and making an appropriation to carry out its provisions."

In Section 2 it is provided:

> "The State Highway Commissioner shall furnish, from time to time, bulletins of instruction to each board of township supervisors for the building, repairing maintenance, and improvement of township roads, and shall furnish any additional information when called upon so to do. The State Highway Commissioner shall also furnish, from time to time, free of charge, standards, plans and specifications for permanent improvements in the building of culverts, establishing of grades, proper drainage, and such other matters as he may deem essential."

This is the precise language which is contained in Section 1 of the Act of May 13, 1909, (P. L. 752), amending Section 2 of the Act entitled "An act providing for the election and appointment of road supervisors in the several townships of the second class of this Commonwealth," etc., approved April 12, 1905, (P. L. 142).

On June 20, 1910, this Department advised the State Highway Department that the cost and expense of performing the work imposed by the section of the Act of 1909 above quoted, was properly payable out of the appropriation made by Section 6 of that act.

The Act of 1911 repeals in terms the original Act of April 12, 1905, (P. L. 142), of which the Act of June 26, 1909, is an amendment, and also contains a provision repealing "all acts or parts of acts, general, special or local, inconsistent herewith or supplied hereby."

Section 16 of the Act of 1911 provides:

> "The provisions of this act shall take effect the first Monday in December, Anno Domini one thousand nine hundred and eleven, when the current fiscal year shall end * * * * * that those sections of this act which provide for the election and appointment of township supervisors shall govern the election of supervisors at the municipal election in the year one thousand nine hundred and eleven."

Section 17 provides:

> "The sum of one million dollars, or so much thereof as may be necessary, is hereby appropriated to carry out the provisions of this act, for the two fiscal years beginning the first day of June, Anno Domini one thousand nine hundred and eleven."

which was approved by the Governor in the sum of five hundred thousand dollars.

It is apparent that the Act of 1911 was intended to provide a system relating to township roads and repeal all other acts upon the subject. Part of the act with reference to the election of township supervisors is in effect; the balance of the act does not go into effect until the first day of December, 1911. If the act does not go into effect, the appropriation carried by the act is not available until the first day of December.

However, the Acts of 1905 and the Amendment of 1909 remain in force until December 1, 1911, and the appropriation in the Act of 1911 in terms provides that it shall be for the two fiscal years beginning June 1, 1911, so that there is no hiatus in the appropriations. It was not the intention of the Legislature that this work should cease for six months.

I am, therefore, of opinion that any work done after June 1, 1911, under the provisions of the second Section of the act hereinbefore quoted, may be paid out of the appropriations contained in the act, but that the payment cannot be made until after December 1, 1911, when the act takes effect.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

STATE HIGHWAYS.

The unpaid balances made prior to June 1st, 1911, for the rebuilding, repair and maintenance of the National road are payable out of the appropriation made by the General Appropriation Act of June 14, 1911.

Office of the Attorney General,

Harrisburg, Pa., October 30, 1911.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: Your favor of the 13th addressed to the Attorney General, was duly received. You ask to be advised as to whether unpaid bills or balances due on contracts made by the State Highway Department for the re-building, repair and maintenance of the National or Cumberland Road prior to June 1st, 1911, can be paid subsequently out of the appropriation made by the Act of June 14, 1911.

The Act of June 14, 1911, to which you refer, is the General Appropriation bill, which appropriates $300,000 to the State Highway Department,

> "for the rebuilding, repair and maintenance of the National or Cumberland road in the counties of Somerset, Fayette and Washington."

Section 1 of that act, which is in the same form as preceding general appropriation acts, provides:

> "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 eleven, 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 eleven, to be paid out of any moneys in the Treasury not otherwise appropriated."

On October 30, 1907, Mr. Todd, then Attorney General, in an opinion to T. A. Crichton, Deputy Auditor General, held:

> "This section is to be construed with the same effect as if it were rewritten 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 employees, 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, 1907, '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."

This opinion was quoted and the conclusion applied in an opinion to John O. Sheatz, State Treasurer, dated July 30, 1909, with reference to the payment of appropriations for the education of students in normal schools.

The opinion of the Attorney General above referred to answers the question which you ask, that is to say, that the unpaid balances on contracts made prior to June 1st, 1911, for the re-building, repair, and maintenance of the National Road are payable out of the appropriation made by the General Appropriation Act of June 14, 1911.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

AUTOMOBILE LICENSES.

The word "chauffeur" in the 5th Section of the Act of April 27, 1909, P. L. 265, providing that "every person desiring to operate a motor-vehicle as a chauffeur or as a paid operator shall first obtain a driver's license," means a person operating a motor-vehicle and receiving compensation therefor as an employment, and it was not the intention of the Legislature to require every operator of a motor-vehicle to obtain a license.

Special licenses, however, are required by Section 4 for all operators under eighteen years of age.

Automobile Licenses, 19 Dist. R. 271, not followed. Com. v. Cooper, 19 Dist. R. 271, followed.

Office of the Attorney General,

Harrisburg, Pa., February 1st, 1912.

Hon. E. A. Jones, Second Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: I have your written request of the 11th ultimo, upon the question therein stated by you, as follows:

> "Whether or not a person or persons employed by a firm or corporation owning and using motor-vehicles in the conduct of their business, and receiving a stated salary from said firm or corporation for services rendered, (not including the operating of said motor-vehicles), shall, under the act approved April 27th, 1909, be required to procure a driver's license to operate the motor-vehicles owned by said firm or corporation?"

The answer to this question depends upon the proper interpretation of the 5th Section of the Act of April 27, 1909, (P. L. 265), to which you refer. This section provides that:

> "Every person desiring to operate a motor-vehicle as a chauffeur, or as a paid operator, shall first obtain a driver's license, etc."

Prior to the enactment of the said Statute of 1909, the Act of April 19, 1905, was the law upon the subject matter of your inquiry, and Section 1 of that act provided plainly:

> "No motor-vehicle, whether propelled by steam, gas, or electricity, shall be operated or driven upon any public street or public highway in any city, borough, county or township in this Commonwealth, until the operator thereof shall have procured a license from the State Highway Department of this Commonwealth, as hereinafter provided."

There can be no doubt that the effect of this language in the Act of 1905 was to require *every operator* of a motor-vehicle upon the public streets or highways of the Commonwealth to first procure a license from the State Highway Department, and this whether such operator happened to be a paid operator or otherwise.

In an opinion of Assistant Deputy Attorney General Hargest given to State Highway Commissioner Hunter on January 6, 1910, the latter was advised that the new Act of April 27, 1909, had for its principal object the protection of the public; that the legislative intention therefore, reasonably deducible from the language of Section 5 of the act, was to require "every person operating a motor-vehicle, excepting the owner," to be licensed—the owner himself being required to procure such license, by the provisions of Section 2 of the act.

The word "chauffeur" in immediate connection with the phrase "or paid operator" in Section 5 of the Act of 1909, was regarded as having been employed by the Legislature in a general comprehensive sense as including all operators of motor-vehicles, whether paid operators or not.

Such construction was, in effect, attributing the same meaning to the somewhat obscure phraseology of Section 5 of the Act of 1909, that must of necessity be given to the unequivocal expression of Section 1 of the prior Act of 1905, above quoted; and this position was also doubtless deemed to be strengthened, to a degree, by the use of the word "operators", without restrictive qualification, in the title of the Act of 1909, the language of such title being:

> "An act relating to motor-vehicles; regulating their speed upon the public streets and highways of the Commonwealth of Pennsylvania; providing for their registration and the licensing of *operators* by the State Highway Department;" etc.

However, in the decided case of Commonwealth v. Cooper, 19 Dist. Rep. 271, the exact question was presented to the court of quarter sessions of Philadelphia county for adjudication, on an appeal from

a summary conviction, and that court held, in an exhaustive opinion by Judge Staake, reviewing the phraseology employed in the legislation of some 38 States, that the Act of 1909 altered the law, that the word "chauffeur" as used in the 5th Section of the Act of 1909 means "a paid operator," i. e., a person "operating a motor-vehicle and receiving compensation therefor" "as an employment," and that it was not the intention of the Legislature to require every operator of a motor-vehicle to obtain a license.

Judge Staake said:

> "There can be no doubt that this was the intention when a comparison is made between Section 5 of the present law and the former motor-vehicle law of Pennsylvania, enacted April 19, 1905, * * * * * If the Legislature had intended that all operators should be licensed under the present law it would have been so specifically provided in the act, and the form of such a provision was at hand at the time, in the first section of the old law then in force. The act would have provided as follows: 'Every person desiring to operate a motor-vehicle shall first obtain a driver's license.'
>
> Under such a provision, all operators would have been required to have been licensed as was required under the old Pennsylvania law. The Legislature, however, qualified the provision of law as follows: 'Every person desiring to operate a motor-vehicle as a *chauffeur,* or as a *paid operator,* shall first obtain a driver's license.'
>
> The use of the words 'as a chauffeur,' 'or as a paid operator,' shows a clear intention to limit the provisions requiring the license. * * * * * 'Chauffeur' is a French word, and it is not unreasonable to asume that this word being used in the act is followed by its defined English equivalent 'as a paid operator.' "

On the authority of the above decision, I therefore advise you, that, under the circumstances stated in your inquiry, the person operating the motor-vehicle is not a *chauffeur,* or *paid operator,* within the meaning of the Act of April 27, 1909, and, consequently, said act does not require such person to procure a driver's license. Of course, if the person described be under eighteen years of age he comes within the express provisions of Section 4 of the act, and must, in such case, obtain from the State Highway Department a special license to operate the motor-vehicle.

Very truly yours,

WM. N. TRINKLE,

Assistant Deputy Attorney General.

MOTOR FIRE APPARATUS.

A municipality owning motor fire apparatus is entitled to receive free of charge a registration certificate and two motor tags for each motor apparatus.

Office of the Attorney General,

Harrisburg, Pa., February 16, 1912.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: In your communication of December 26th, 1911, you state that:

> "In many boroughs and townships of the first class in the State there are fire departments that are maintained in part by contribution from private parties and in part by an appropriation by borough council and township authorities, and which companies have motor fire apparatus."

With relation to such fact you inquire as follows:

> "Are fire companies of this class entitled to have furnished them, free of charge, by the State Highway Department, a registration certificate and two number tags for every such motor apparatus?"

The Act of June 1st, 1911, (P. L. 545), amends the *second* Section of the Act of April 27, 1909, (P. L. 265), so as to require the State Highway Department to furnish, free of charge, "to each municipality owning and using motor fire apparatus or motor ambulances and to every hospital owning and using a motor ambulance," "a registration certificate and two number tags for every such motor apparatus or motor ambulance."

I understand from your letter that the apparatus about which you inquire is motor fire apparatus used by boroughs and townships, maintained in part at least by contribution of such boroughs and townships.

Boroughs and townships are municipalities, within the meaning of the above amendatory act, and if the motor fire apparatus in question is, at all times, under the control of and used by such municipalities, I am of opinion that the conditions prescribed by the act for the furnishing of the registration certificate and tags free of charge are substantially satisfied, in accordance with the actual legislative intention. Any other interpretation of the meaning of the word "owning," as used in the amendatory act would, to my mind, be such an over-strict construction as would, in effect, operate to defeat the real spirit and purpose of the act, and, therefore, I think the courts would hold that a registration certificate and num-

ber tags for this class of motor fire apparatus could properly be required to be issued by the Highway Department, free of charge. Said certificate and tags, however, should not be furnished to fire companies, but to the municipality controlling and using the motor apparatus.

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

ROAD MAPS.

A copyright might be obtained by the State Highway Commissioner upon the road maps prepared by him, subject to the possibility the courts may declare such copyright invalid. A more safe method is to make it unlawful by Act of Assembly for anyone other than the State Highway Commissioner to publish maps showing the road surveys of each county.

Office of the Attorney General,

Harrisburg, Pa., February 16, 1912.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: From your communication of December 7th, 1911, you quote the following provision contained in Section 19 of the State Highway Act of May 31, 1911, (P. L. 468), viz:

> "In addition to his other duties, the State Highway Commissioner shall cause to be made a survey of all the roads in the State * * * * * He shall cause to be published maps showing complete road surveys of each county, which shall be kept on sale in the State Highway Department as cost of publication."

You inquire with reference to this provision in the said Act of 1911, as follows:

> "Should the Highway Department secure from the Federal Government a copyright covering the publication of these county maps? If the copyright cannot be obtained by the State Highway Department, can such copyright be obtained by Hon. E. M. Bigelow, State Highway Commissioner?"

Copyright, in this country, exists only by virtue of the acts of Congress enacted in the exercise of the power conferred by Section 8 of Article I of the Federal Constitution, which provides that:

> "The Congress shall have power * * * * to promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."
> *American Tobacco Co. v. Werckmeister, 207 U. S. 284.*
> *White-Smith Music Co. v. Apollo Co., 209 U. S. 1.*

I doubt very much whether the State Highway Commissioner, who caused the survey maps to be prepared, in accordance with Section 19 of the Act of 1911, above quoted, would be deemed to be an author entitled to copyright, within the meaning of the above provision in the Federal Constitution, or the acts of Congress passed in pursuance thereof.

The situation is similar to that presented by the case of *Banks v. Manchester, 128 U. S. 244,* in which the Supreme Court of the United States held that a judge, who, in his judicial capacity, prepares the opinion or decision of the court, is not the author or proprietor, in the sense of the copyright statutes of Congress, so that the court reporter could obtain a valid copyright for such matter in the name of the reporter "for the State," and for the same reason it was held in the same case that the State could not become the assignee of the judge and take out a valid copyright on such matter.

The reports of the Superior Court of Pennsylvania are copyrighted in the name of the Secretary of the Commonwealth, in accordance with the express provision of the Superior Court Act of 1895, and the reports of the Supreme Court of Pennsylvania are, also, copyrighted in the name of the Secretary of the Commonwealth. So far as I have been able to ascertain, the validity of these copyrights of the court reports has not been judicially determined. Under the decision in *Banks v. Manchester,* above mentioned, they would seem to be of doubtful validity, but the practice in regard to the court reports furnishes a precedent for the copyright of the survey maps to which you refer.

While, therefore, the validity of the copyright of the county maps, in the name of the State Highway Commissioner for the Commonwealth of Pennsylvania, is not free from doubt, there is precedent for such proposed copyright, and the same might be so obtained by the State Highway Commissioner, subject to the possibility of its being declared invalid by the courts, in a case involving the question of its validity.

The whole matter could more safely be dealt with by an act of assembly making it unlawful for any person, other than the State Highway Commissioner, to publish the maps showing the road surveys of each county.

Very truly yours,

JNO. C. BELL,
Attorney General.

HIGHWAY CONTRACTS.

Under given facts, Highway Commissioner is advised a contract was "awarded" to Wm. C. Evans for Lower Oxford Township road.

The amounts paid into the State Treasury by counties, townships and boroughs, under contracts made or awarded prior to the passage of the Act of May 31, 1911, are available to be re-apportioned and used in payment for contracts such as the one to Wm. C. Evans, awarded within the meaning of the Section 40 of the Act of May 31, 1911.

Office of the Attorney General,

Harrisburg, Pa., March 27, 1912.

Hon. Joseph W. Hunter, First Deputy State Highway Commissioner, Harrisburg, Pa.

Sir: Sometime ago you requested an opinion of this Department as to what constitutes an "award," within the meaning of Section 40 of the Act of May 31, 1911, (P. L. 468), and also as to whether the amounts paid into the treasury by the counties, townships, and boroughs, on account of their respective shares of the reconstruction of township roads, are available without being again specifically appropriated.

Your first inquiry—What constitutes an award, within the meaning of Section 40 of the Act of May 31, 1911?—is based upon a concrete case, of which I understand the facts to be:

Bids were asked for the reconstruction of a road in lower Oxford township, Chester county. Upon the opening of the bids it was found that William C. Evans, of Ambler, Pa., had bid $38,229.55. The Highway Department notified the county commissioners that in its opinion the bid was not excessive, and sent, on the 24th day of May, 1911, copies of the agreement to be signed by the Highway Commissioner, commissioners of Chester county, and the supervisors of Lower Oxford township. On the same day the Highway Department notified the supervisors of Lower Oxford township of the bid, and that it had sent copies of the agreement, which the law required to be entered into between the State, county and township authorities, to the county commissioners. On the 27th day of May, 1911, the formal agreement was signed by the State Highway Commissioner, the commissioners of Chester county, and Lower Oxford township.

William C. Evans had previously been advised that he was the lowest bidder, but at the date of the passage of the act of May 31, 1911, no formal written contract had been entered into between the Highway Commissioner and the successful bidder.

Section 40 of the Act of May 31, 1911, (P. L. 468), provides:

> "That any State-aid highway for which plans and specifications have been made, and for which bids have

> been received, and the contract *awarded,* and for which the counties, townships, boroughs, or towns have signed the necessary agreement, contracting to pay to the Commonwealth their several and respective shares of the cost of reconstructing said highway, shall not be affected by the provisions of this act; but the same shall be built, reconstructed, completed, finally settled, paid for, and accepted by the Department, in accordance with the terms and provisions of the act or acts, supplement or supplements, and amendment or amendments thereto, under which said work was commenced or initiated."

The precise question, therefore, is, whether the contract, although it was not reduced to writing, was "awarded," within the meaning of this section.

In Engineering and Architectural Jurisprudence—Law of Construction, 1901, by Wait, Section 132 says:

> "The contracts for all private works of importance, and for nearly all public works, are entered into only after these preliminary negotiations. The invitation to make offers is called the advertisement for proposals; the offer itself is the proposal, tender, or bid; the acceptance of the offer is the *awarding* of the contract. An offer plus an acceptance makes a contract, the obligation of which cannot be escaped."

In the Century Dictionary "award" is defined:

> "To give by judicial determination or deliberate judgment. A decision after examination and deliberation."

The act did not require the contract to be "signed." It only required the contract to be "awarded."

I am of opinion that, under the facts stated, William C. Evans, of Ambler, has been awarded the contract for the building of the road in Lower Oxford township, Chester county, within the meaning of the above quoted section of the said Act of Assembly.

As to your second inquiry, I am advised that there has been paid into the State Treasury a large amount of money by counties, townships and boroughs, on account of their respective shares, on contracts made prior to the approval of the Act of May 31, 1911.

The Act of 1905, (P. L. 505), which first created the State Highway Department, provided for only one method for the improvement of State highways. This method was upon the petition of the county commissioners and the agreement of the county, township or borough, to pay their respective share of the cost of such improvement.

The State Highway Department, under the act, made the contract, and the State first paid the contractor in full for the cost of the work. Subsequently, upon completion of the highway improvement, and

notice from the State Highway Commissioner, the county and township, or boroughs, paid to the State Treasurer their respective shares of the amount expended by the State in carrying out the contract. The payment by the State was, in effect, an advancement to the respective counties, townships and boroughs of the shares due from such counties, townships and boroughs.

Section 9 of said Act of 1905 provides:

> "That the State-aid shall be apportioned among the several counties of the Commonwealth according to the mileage of townships or county roads in said county, but the said amount shall remain in the State Treasury until applied for under the provisions of this act; Provided that if the appropriation, so apportioned by the State, shall not be so applied for before the first day of May in each year, the amount so apportioned and set aside for that county or the amount thereof not applied for, shall be apportioned, as herein provided for, to the counties that had in that year applications requiring the expenditure of a sum greater than the amount of their apportionment."

Section 18 of said act provides in part:

> "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."

It was the apparent intention of the Legislature in appropriating money to carry out the provisions of the Act of 1905, that such appropriation should be only the State's share of such work, because provision is made to enforce the repayment by townships, counties and boroughs. The moneys when repaid under the provisions of the Act of 1905, just quoted, go into the same fund. When the amounts thus advanced were paid back into the fund, such amounts remained for the use of the State in road construction under the said Act of 1905.

In my opinion, therefore, the amounts paid into the State Treasury by counties, townships, and boroughs, under contracts made or awarded prior to the passage of the Act of May 31, 1911, which amounts have not been re-apportioned to the several counties, are now available to be re-apportioned and used in payment for contracts such as the one hereinbefore referred to, awarded within the meaning of Section 40 of the Act of May 31, 1911, which provided that said contracts should not be affected by the provisions of said Act of Assembly.

Very truly yours,

JNO. C. BELL,
Attorney General.

GRADE CROSSING AT PERRYOPOLIS, PA.

The grade crossing authorized by order of Fayette county common pleas is not subject to the 17th Section of the Sproul Act.

Office of the Attorney General,

Harrisburg, Pa., May 3rd, 1912.

Hon. Samuel D. Foster, Chief Engineer, State Highway Department, 2117 Farmers Bank Bldg., Pittsburgh, Pa

My Dear Mr. Foster: I am in receipt of a communication from Mr. David G. Anderson, Assistant Engineer, together with certain papers acompanying the same, relative to the railroad crossing at Perryopolis, Fayette county, Pa., a matter about which we had some conversation this week. I have examined the copy of the order of the court of common pleas of Fayette county in the matter of the petition of the Pittsburgh, McKeesport & Youghioghenny Railroad Co., for permission to establish the said grade crossing, and I am of opinion that this order of court does not conflict with the provisions of the Sproul Act of May 31st, 1911. The above court proceedings were apparently instituted under the provisions of the Act of June 7th, 1901, entitled "An act relating to railroad crossings of highways, and for the regulation, alteration and abolition of grade crossings, except in cities of the first and second classes." The Act of 1911 instead of repealing this statute, expressly provides, on the contrary, that the provisions of said Act of 1911 shall not be construed to repeal any of the provisions of the said Act of 1901.

I understood you to say at our conference this week that at the time the above proceedings were had and consummated in the court of common pleas of Fayette county, the public highway to cross which at grade the authority was given the railroad company, was not adopted by the State Highway Department as part of one of the routes prescribed by the Sproul Act. In view of this fact I think there was no irregularity in the proceedings in the court of common pleas of Fayette county, and that the grade crossing authorized by the court was not subject to the provisions of the 17th Section of the Sproul Act.

In accordance with Mr. Anderson's request I am returning you herewith the papers which accompanied his letter.

Very truly yours,

WM. N. TRINKLE,

Assistant Deputy Attorney General.

STATE-AID HIGHWAYS.

The primary duty of maintaining and repairing all State-aid highways heretofore or hereafter constructed, whether in boroughs or elsewhere, is imposed by the Act of May 31, 1911, P. L. 468, upon the State Highway Department.

The Highway Act of May 31, 1911, P. L. 468, provides for two classes of improved highways: (1) State Highways constructed and maintained by, and at the cost of the Commonwealth, except as hereinafter noted; (2) State-aid highways improved and maintained through State aid extended to counties, townships and boroughs.

State highways constructed under this act within the limits of any borough or incorporated town are to be maintained by the State Highway Department, and 50 per centum of the cost of such maintenance is to be paid by such borough or town, provided that where the paving is of brick or other permanent material, it is to be maintained wholly at the expense of such borough or town. State-aid highways improved under the said act or previously reconstructed by State aid are to be maintained by the State Highway Department, and 50 per centum of the cost thereof is to be paid by the several townships wherein such roads may lie, or by the county, if the road was improved upon the petition of the county without co-operation of the township.

The Act of May 31, 1911, P. L. 468, having failed expressly to impose any liability upon boroughs for the cost of maintenance of State-aid roads constructed therein prior to the said Act of 1911, no part of such cost can be collected from the boroughs unless (and it is the single exception) such State-aid road forms a part or section of a State highway.

Office of the Attorney General,

Harrisburg, Pa., September 11, 1912.

Hon. E. M. Bigelow, State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of two communications from your Department, under dates of June 20 and July 18, 1912, both of which refer to the same subject.

In substance, your Department asks to be advised how fifty per cent. of the cost of maintaining State-aid highways constructed prior to the approval of the Act of May 31, 1911, (P. L. 468), is to be collected when such highway is located (a) in a township or townships, and (b) in a borough or incorporated town.

The answer to this question is found in the provisions of the said Act of 1911.

The Highway Act of 1911 is intended to provide a comprehensive system for the improvement of the principal highways of the Commonwealth. Two separate and distinct classes of improved highways are provided for in this legislation:

1st. *State Highways,* to be constructed, improved and thereafter maintained and repaired by the State Highway Department, at the cost and expense of the Commonwealth (Sections 5 and 11); with the single exception of the liability of a borough or incorporated town to pay, in some cases, fifty per centum, and, in other cases,

the entire amount, of the expense of maintaining any road, street or highway within the limits of such borough or town, and which shall form a part or section of any State highway (Section 10).

2nd. *State-aid Highways,* to be improved and subsequently maintained through State-aid extended, under certain limitations and conditions, to counties, townships and boroughs, severally, or jointly to counties and townships, or counties and boroughs. The State-aid highways constructed under the act are to be maintained at the joint expense of the State and the townships or boroughs in which they are located, or, at the joint expense of the State and a county, where a State-aid highway has been constructed upon the petition of a county without the co-operation of a township or borough.

The method of certifying and paying the cost of the original improvement and subsequent maintenance of State-aid highways constructed under said act, and the method of collecting from the respective counties, townships and boroughs their proportionate shares of the same, are prescribed in the 33rd Section which reads in part as follows:

> "The total cost of the improvement and maintenance of the State-aid highways constructed under the provisions of this act, as provided by the terms of the contract, or otherwise, as herein provided, when properly certified by the State Highway Commissioner, shall be audited by the Auditor General, and when audited and allowed shall be paid out of moneys specifically appropriated for this purpose, by warrants drawn therefor by the Auditor General upon the State Treasurer. The share of the county shall be paid as provided by its contract, and, otherwise, by the provisions of this act, to the State Treasurer by the county treasurer, upon the warrant of the county commissioners, in such sum or sums as shall be certified by the State Highway Commissioner, from time to time, during the performance of the work or contract, or as provided by the contract, and, otherwise, by the provisions hereof, after the same shall be completed. The share of the township or townships, or of any borough or boroughs, or of any incorporated town or towns, shall be paid to the State Treasurer by the township supervisors or commissioners, or by the borough treasurer, or by the town treasurer, as the case may be, in the manner and form as in the case of counties, and as other debts of said township or boroughs are paid, when as demanded by certificate of the State Highway Commissioner during the performance of the work or contract, or, in like manner, after the same shall be completed. Upon the completion of any State-aid highway improvement, or upon the ascertainment of any additional improvement cost, or of any maintenance expense, incurred thereon thereafter by the State Highway Department, the State Highway Commissioner shall

> certify the same to the State Treasurer, and to the county commissioners and township supervisors, or borough or town authorities, as the case may be, the respective shares of said cost or expense for which the county, township, borough, or incorporated town is liable. If the said shares or amounts, so certified by the State Highway Commissioner, of the cost and expense of the improvement, or of the subsequent maintenance thereof, as provided by the contract and the provisions of this act, of the county, township, borough, or incorporated town, or all or either of them, shall not be paid to the State Treasurer within thirty days after being certified, then the said shares of the county, township, borough, or incorporated town, either or all of them, remaining unpaid, shall be charged by the State Treasurer against any funds of said county, township, borough or incorporated town which may be in the hands of the State Treasurer, or which may thereafter come into his hands excepting school funds and may also be recovered by action at law or equity as any other debts of such counties, townships, boroughs or incorporated towns are by law recoverable."

At the time of the approval of the Act of 1911, there were in existence throughout the Commonwealth, many reconstructed highways, which had been improved through State-aid granted under previous legislation, some of these previously constructed State-aid highways being located in townships and others in boroughs. Under the old system the duty of *maintaining* State-aid highways was imposed primarily upon the townships and boroughs in which such highways were constructed. Experience having, however, demonstrated that this was an unwise policy, the Legislature provided, in Section 29 of said Act of 1911, as folows:

> "The work of maintaining and repairing *all* State-aid highways, improved under the provisions of this act, *or which shall have been previously reconstructed by State-aid,* shall be done by the State Highway Department; and fifty (50) per centum of the cost thereof shall be paid by the several *townships* wherein such roads may lie; or by the *county,* when such roads have been improved upon the petition of such county without the co-operation of the township."

Under this section the State is required to maintain and repair all State-aid Highways now in existence, including those built under previous legislation, as well as those constructed under the present act.

Confining the discussion to the State-aid highways, constructed *prior* to the approval of said Act of 1911, it is to be observed that fifty per centum of the present and future cost of maintaining and

repairing such highways is required to be paid by the several townships wherein such roads lie, or when such roads have been improved upon the petition of a county without the co-operation of any township or townships, then by such county. The method of enforcing this liability against townships or counties, as the case may require, is provided by the above quoted 33rd Section of the act. This disposes of your inquiry in so far as the maintenance of State-aid highways constructed previous to the passage of the Act of 1911, upon the joint or several petitions of townships and counties is concerned.

To recapitulate, then, upon the ascertainment of any maintenance expense incurred upon such roads by your department, you should certify to the State Treasurer and to the proper county or township officials, the total amount of said expense and the proportionate shares of the respective counties or townships, observing the provision that where the road was constructed upon the sole petition of a township, or the joint petition of a county and a township, the proper *township* or *townships* are liable for fifty per centum of the cost of maintenance, but where the road was improved upon the sole petition of a county, then the *county* alone is responsible for one-half of the said cost of maintenance. If the said counties or townships do not pay their proportionate share or shares of said cost of maintenance, to the State Treasurer, within thirty days after your certificate, said shares are to be charged by the State Treasurer against any funds of said county or township which may be in his hands, or which may thereafter come into his hands, excepting school funds, and if there be no funds due to said county or township in his hands against which said indebtedness may be charged, actions at law or equity may be instituted by the Commonwealth to recover the amounts due from the respective counties or townships.

Turning now to the question of the liability of *Boroughs,* for any part of the cost of maintaining State-aid highways constructed therein *before* the approval of said Act of 1911, it is to be noted that the above quoted Section 29 of said act contains no reference to boroughs. The primary duty of maintaining and repairing all State-aid highways heretofore or hereafter constructed, whether in boroughs or elsewhere, is imposed by said section upon your department, but the provision in said section for the repayment to the State of fifty per cent. of the cost of such maintenance applies only to *townships* or *counties.* The only reference in the act to the payment by boroughs of a portion of the cost of *maintenance* of State-aid highways constructed prior to the Act of 1911 is found in Section 10. This section to which passing reference is made at the outset of this opinion, relates primarily to State Highways as distinguished from State-aid highways, and after providing that where any road, street or high-

way, within the limits of any borough or incorporated town, shall form a part or section of any State highway and the same is not already improved according to the standards of your Department, you, as State Highway Commissioner, by and with the consent of the borough or town councils, may improve or reconstruct such section of road or street at the expense of the Commonwealth, it is further enacted in said section as follows:

> "The maintenance of any road, street or highway, or of any part or parts thereof, improved or reconstructed as a State Highway in any borough or incorporated town *or the maintenance of any State-aid heretofore improved or reconstructed, and which road forms a part of a State highway in any borough or incorporated town,* shall be done by the State Highway Department; and fifty per centum of the cost and expense of said maintenance shall be paid by the respective borough or incorporated town in which said work is done, as is provided for in the case of the maintenance of State-aid roads."

This section then contains a proviso to the effect that where any road or street has been reconstructed with bricks or other permanent paving material, such road or street shall be maintained wholly by the borough or incorporated town in which such road or street may lie.

Where, therefore, a State-aid highway has been heretofore constructed in a borough, and forms a part of a State highway in said borough, one-half of the cost of maintaining the same (or if it be constructed of bricks or other permanent paving material the entire cost of maintaining the same) is imposed upon the borough by this section.

By the express terms of the section, the method of certifying and collecting the amounts due from such boroughs for maintenance is the same as that provided for in the case of maintenance of State-aid roads. This section has no application to a State-aid road constructed in a *borough,* prior to the approval of the Act of 1911, unless such road forms a part of a State highway in said borough. It follows that in so far as the maintenance of State-aid roads heretofore constructed in boroughs, which roads do not form a part of State highways, is concerned, the State is bound to maintain the same, but there is no express liability imposed upon the boroughs in which such State-aid roads have been constructed to contribute any part of the cost of maintenance.

The liability under discussion being purely statutory, and the statute having failed to expressly impose any liability upon the boroughs in question, you are advised that no part of the expense of maintaining State-aid roads constructed prior to the approval of the

Act of 1911, in boroughs, can be collected from the boroughs unless (and it is the single exception) such State-aid road forms a part or section of a State highway.

Very truly yours,
JNO. C. BELL,
Attorney General.

PAVING.

The Highway Commissioner succeeds to the contract entered into between the township and a street railway company as to paving between the tracks of the railway company and can enforce such contract. Where street railways are not upon the roads before taking over of same by Highway Commissioner, the Commissioner has power to regulate in what manner the roads shall be so occupied.

Office of the Attorney General,
Harrisburg, Pa., September 17, 1912.

Hon. E. M. Bigelow, State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of an inquiry from your Department, under date of August 31, 1912, asking to be advised as to your powers as State Highway Commissioner in the matter of requiring street railway companies to pave that portion of State highways occupied by them with a pavement of the same description and character as that laid by your Department in the improvement of such State highways. You cite the following instance as a typical case:

A portion of the State highway known as Route No. 129 lies between the city of Harrisburg and the borough of Steelton. This portion of said State Highway is about 1,380 feet in length. At the Harrisburg end of this section of State highway it joins a sheet asphalt pavement, and at the Steelton end a wood block pavement.

You state that your Department is desirous of improving the intervening space with brick block or asphalt pavement upon a concrete foundation. You further state that the street car company, at the present time, has paved between its tracks with irregular cobble stones, and you ask to be advised whether your Department can compel the street car company to bring its tracks to the grade designated by your Department, and pave between its line of tracks, and one foot on each side of the outside rail, with the same kind of pavement that your Department has decided to use.

Your powers as State Highway Commissioner are purely statutory, and must be determined by an examination of the language of the Act of May 31, 1911, (P. L. 468), establishing the State Highway Department.

By Section 5 of this act you are authorized to take over the highways designated in the act as State highways, and to construct improve and maintain the same at the expense of the Commonwealth. In this section it is provided:

> "That where an agreement or contract exists between any street railway company, or other firm or corporation, and any county, township, or borough, the terms of which require said street railway company, or other firm or corporation, to maintain any highway which is designated under this act as a State highway, the said agreement shall remain in force and the State shall succeed to and take over to itself all the rights of said county, township or borough existing under said agreement or contract. The said street railway company, or other firm or corporation, shall be bound to carry out all of the requirements, and comply with all the terms and conditions of said agreement with the State, the same as though the said contract or agreement had been originally made between the State and said street railway company, or other firm or corporation."

This section applies only to cases where street railway companies, or other firms or corporations, were, at the date of the approval of the Highway Act, occupying highways which, under the terms of that act, became State highways.

As I understand the facts stated in your letter, it is applicable to the situation now under discussion, and I infer that the street railway company is occupying the portion of the State highway in question under some agreement or arrangement with the township or townships in which said portion of said highway lies, and that there is some agreement between said street railway company and said township or townships with reference to the paving by said street railway company of that portion of such highway which is occupied by its tracks. Under the express terms of the above quoted portion of said section, the State succeeds to the rights of the township or townships under said contract, so that you may compel performance of the contract by said street railway company, but your powers are measured and limited by the terms of that contract. I am speaking, of course, of adverse proceedings against the street railway company. If a satisfactory agreement cannot be reached between the street railway company and yourself, the company can be compelled, at your instance, to perform any contract entered into between it and the township or townships, but cannot be compelled to do more than it has undertaken to do in said contract.

What has been said above applies only to cases where street railway companies are already occupying State highways. By Section 17 of the Act of 1911, it is provided as follows:

> "No railroad or street railway shall *hereafter* be constructed upon any State highway, nor shall any railroad or street railway crossing, nor any gas-pipe, water-pipe, electric conduits, or other piping, be laid upon or in, nor shall any telephone, telegraph or electric light or power poles be erected upon or in, any portion of a state highway, except under such conditions, restrictions, and regulations as may be prescribed by the State Highway Department."

This section gives your Department control of all such matters for the future, in so far as State highways are concerned, and in the matter of State-aid highways you have the power to regulate them, inasmuch as, when an application for State-aid is made, you are authorized, under Section 26 of the act, to examine the highway, and if, in your judgment, the representations contained in the petition with reference to its condition are well founded, you shall determine what changes should be made in the existing highway, what portion of it shall be improved and in what manner, etc.

In the exercise of your powers under this section, you can regulate and control the manner in which railroads, street railways, telephone, telegraph or electric light or power companies may occupy State-aid highways.

Very truly yours,
JNO. C. BELL,
Attorney General.

INJURY TO EMPLOYEE.

The State Highway Department has no power to reimburse an employee who was accidentally injured while in employ of the State.

Office of the Attorney General,

Harrisburg, Pa., October 9, 1912.

Hon. E. M. Bigelow, State Highway Commissioner, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of August 31st, in which you ask to be advised whether the State Highway Department "would be in a position to reimburse an employee who was accidentally injured while in the employ of the State. To what extent and from what appropriation would it be possible to draw such remuneration?"

As I understand your communication, it does not refer to the legality or propriety of carrying a regular employee of the State

upon the pay-roll during temporary illness, or while recovering from injuries received in the course of his employment, but rather to the reimbursement of an employee for expenses, etc., incurred by such employee on account of injuries received while in the employment of the State.

By the Act of May 11, 1909, (P. L. 519), it is provided, inter alia, in substance, that it shall be unlawful for any officer of this Commonwealth to authorize the payment of any money out of the State Treasury, or for the State Treasurer to pay any money out of the State Treasury, except in accordance with the provision of an Act of Assembly setting forth the amount to be expended, and the purpose of the expenditure. An examination of the appropriation made to the Highway Department for the two fiscal years beginning June 1, 1911, discloses no specific appropriation for the purpose stated in your inquiry.

You are therefore advised that, in the absence of a specific appropriation for the purpose of reimbursing employees accidentally injured while in the employ of the State, there is no authority in law for such expenditure by your Department.

Very truly yours,

JNO. C. BELL,
Attorney General.

STATE HIGHWAY DEPARTMENT.

The easement which a gas or water company may have in any of the State highways is subject to the superior right of the State in the surface and soil thereof. The State Highway Department, under the Act of May 31, 1911, P. L. 468, may compel such company to relocate or remove its pipes or other structures whenever their existing location interferes with the safe or convenient construction or improvement of the highway. The company can recover no compensation for expenses incurred or injuries sustained in or about such relocation or removal.

Office of the Attorney General,

Harrisburg, Pa., December 11, 1912,

Hon. E. M. Bigelow, State Highway Commissioner, Harrisburg, Pa.

Sir: A recent communication from you raises the broad and important question, whether the State, through the State Highway Department, has power to compel the re-location or removal of water-pipes, gas- pipes, or other structures in the surface or sub-soil of any of the State highways, where the present location of such structures, by reason the change of grade or re-alignment of any of said highways, or other changed conditions, interferes with the safe or convenient construction or improvement of said highway, in

accordance with the plans and specifications prepared by the State Highway Department, under and pursuant to the provisions of the Act of May 31, 1911, (P. L. 468); and related to this question is the second one, viz: if the State has such power, and exercises it, must compensation be made for the expense of such re-location or removal, or for any injury to property caused thereby?

In my opinion, the first question must be answered in the affirmative; and the second in the negative.

And my reasons briefly are these: The State is the proprietary owner of its highways. Discussing the dominion of the State over the same, Chief Justice Gibson uses the following judicial language:

> "In England, a highway is the property of the king as *parens patriae,* or universal trustee; in Pennsylvania, it is the property of the people, not of a particular district, but of the whole State; who, constituting as they do the legitimate sovereign, may dispose of it by their representatives, and at their pleasure. Highways, therefore, being universally the property of the State are subject to its absolute direction and control."
> *Philadelphia & Trenton R. R. Co., 6 Whar. 25. (p. 43), (1840).*

And he adds, (p. 44):

> "Her (the Commonwealth's) right extends even to the soil, being an equivalent for the six per cent. thrown into every public grant as compensation for what may be reclaimed for roads."

And, herein, the learned Chief Justice referred to the fact that in all the original grants of land made by Penn, or the later proprietaries, or by the Commonwealth, an additional six per cent. of the land conveyed, for which no price or sum of money was paid by the grantees, was invariably included in the grant (six acres added to every hundred) "expressly for the purpose of contributing to the establishing the roads and highways." *(See McCleanchan v. Curwin, 3 Yeates 363, (1802),* and *Jamison v. Cumberland County, 48 Super. Ct. 32, p. 37, (1911),* and cases cited *s. c. 234 Pa. 621, (1912).*

And, it is pertinent to add, that in M'Clenachan v. Curwin, (1802), supra, Shippen, Chief Justice, said:

> "We cannot therefore consider the Legislature's applying a certain portion of every man's land for the purposes of laying out public roads and highways, without compensation, as any infringement of the constitution; such compensation having originally been made in each purchaser's particular grant." (p. 373).

And this judicial view is reiterated in *Wagner v. Salzburg Twp., 132 Pa. 636,* (at p. 647) (1890), and in *Jamison v. Cumberland County,* supra.

The highways, thus, not only belong to the State as proprietary owner, but, to again quote from Chief Justice Gibson, are

> "subject also to the paramount authority of the Legislature in the regulation of their use by carriages, by rail cars or means of locomotion yet to be invented."
> *Phila. & Trenton R. R. Co., 6 Whar. 44. (1840).*

But further, not only does the State own the highways and have paramount authority as to their use, but, as *parens patriae,* her police power is supreme over the same. This power is based upon the maxim: *Salus populi suprema lex,* and extends, inter alia, to the promotion and protection of the public safety, convenience and general welfare of the people. All rights, franchises and property are held subject to its valid exercise. It cannot be contracted, bargained or charter-granted away by the State, nor has it ever been surrendered or transferred to the National Government. It is an inalienable and indefeasible power of the people of the Commonwealth. The present Constitution, in Section 3, Article XVI, declares:

> "The exercise of the police power of the State shall never be abridged or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the State."

But this constitutional provision is largely declaratory. It expresses a basic governmental principle. *(Powell v. Pa., 114 Pa. 265, (1826); s. c. 127 U. S. 683; Pa. R. R. v. Braddock Electric Ry. Co., 152 Pa. 116, (1893); Mugler v. Kansas, 123 U. S. 623, (1887); New Orleans Gas Co. v. Drainage Com. of New Orleans, 197 U. S. 453, (1904); Chicago, Burlington & Quincy R. R. Co. v. People of Ills., 200 U. S. 561, (1905); No. Pacific Ry. Co. v State of Minn., 208 U. S. 583, (1907); Cincinnati &c. Ry. Co. v. City of Connersville, 218 U. S. 336, (1910)).*

It results from what has been said that any franchise or privilege granted to lay gas-pipes, water-pipes or other structures in the surface or sub-soil of any of the State's highways, was, at the time of the grant, is now, and at all times will be, subject to the State's exercise of her police power. This police power is a continuing power. Hence the grantees of such franchises have no vested rights or continuous easements in respect to the location or use of such structures, but such easements are subject always to the superior right of the State to require a change in the location, or in the mode

and manner of the enjoyment of the easement or privilege, at any time, as changed circumstances or conditions may make necessary or proper, in the interest of the public safety, convenience or general welfare. *Scranton Gas & Water Co. v. Scranton, 214 Pa. 586, (1906); New Orleans Gas Co. v. Drainage Com. of New Orleans, 197 U. S. 453, (1904); Chicago, Burlington & Quincy R. R. Co. v. People of Ills., 200 U. S. 561, (1905); Northern Pacific Ry. Co. v. State of Minn., 208 U. S. 583, (1907)).*

And these cases further establish that any resulting injury to the grantees' property, or expenses incurred, or loss or damage suffered, in consequence of this exercise of the reserved police power, is a *damum absque injuria;* and is not a violation of either the Federal or State constitutional guarantee against deprivation of property without due process of law, nor a taking of private property for public use without just compensation.

And this ruling of the courts is equally applicable, whether the police power is exerted to promote the public health or safety, or the public convenience, or general welfare. (*Chicago, etc. R. R. Co. v. People of Ills., 200 U. S. 561, (1905); Scranton Gas & Water Co. v. Scranton, 214 Pa. 586 (1906)).*

In the latter case the court held that:

> "The easment which a gas or water company has in the streets of a municipality, is subject to the superior right of the public both in the surface and the soil beneath the surface.
>
> Where a city changes the grade of a street in order to do away with a railroad grade crossing, and a gas and water company is obliged to move its pipes from the street by reason of the change of grade, the company can recover no damages from the city for the injuries sustained."

Reverting then to your inquiry, and specifically answering the same, it is my opinion that the easement which a gas, or water, or other company, may have in any of the State highways, is subject to the superior right of the State in the surface and soil of such highways, to be enforced through the State Highway Department, which is vested with the power and duty of construction and improvement of such highways, and with exclusive authority and jurisdiction over the same under the said mentioned Act of May 31, 1911, establishing the said Department; and hence, that such company is obliged to re-locate or remove its pipes, or other structures, upon direction of the State Highway Department, whenever the present, existing location of such structures interferes with the safe or convenient construction or im-

provement of such highway by the said Department; and that the company can recover no compensation for the expenses incurred, or injuries sustained, in or about such re-location or removal.

Very truly yours,

JNO. C. BELL,
Attorney General.

OPINIONS TO THE COMMISSIONER OF FISHERIES.

OPINIONS TO THE COMMISSIONER OF FISHERIES.

ERIE HATCHERY.

The Erie hatchery must be rebuilt upon ground owned by the State, and not upon leased ground.

Office of the Attorney General,

Harrisburg, Pa. September 19, 1911.

Hon. N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Si: Your favor of the 6th instant, addressed to the Attorney General, was duly received.

You ask whether, under the appropriation for 1911, a new hatching house may be erected on the ground belonging to the water department of the city of Erie and leased under a nominal lease to the Commonwealth.

The item in the appropriation for 1911 for the Department of Fisheries is "for the building of a new and permanent hatching house at the Erie hatchery, Erie, to replace the present structure, the sum of seven thousand dollars."

I understand the Board of Water Commissioners of the city of Erie desires to have the new hatching house erected on the lake shore front, on grounds that belong to the city of Erie, to be rented to the Commonwealth at a nominal lease. The difficulty with the proposition of the Board of Water Commissioners is the restrictions put upon the appropriation. It is for the building of a new hatching house at the Erie hatchery, and the building for which the appropriation is made is to "replace the present structure."

The State owns and maintains a hatchery on property which belongs to the State. If a hatching house were built on some other property it would not be "at the Erie Hatchery," as described in the appropriation, nor would it "replace" the present structure at the Erie Hatchery.

Aside from the policy that the State ought to own the grounds upon which its hatcheries are located, I am of opinion, and so advise you, that this appropriation is limited to the building of a new and permanent hatching house at the present Erie Hatchery, and cannot be used for building a new and permanent hatching house at another location.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

MOTOR BOAT.

The Commissioner of Fisheries has authority to purchase a motor boat.

Office of the Attorney General,
Harrisburg, Pa., November 9, 1911.

Hon. N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: In your letter of October 6th, you ask whether you are authorized by law to provide yourself with a motor boat for use in field work.

The Appropriation Act of 1911 makes an appropriation of "eight thousand dollars for field work and gathering spawn and incidental expenses thereto two years."

Under this act, I am of opinion that you have the authority to provide yourself with such a boat, at a reasonable cost, to be paid for out of the sum specifically appropriated, as above mentioned, the boat to be used by you in and about the field work contemplated by the act.

When the boat is not required for use by you, I can see no serious legal objection to its being used in the warden's service.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

FISHING DISTANCE FROM DAMS OR FISHWAYS.

Under Section 7 of the Act of May 1, 1909, P. L. 353, it is unlawful to fish with nets or devices other than rods and lines within 400 feet of any dam or fishway, unless the Commissioner of Fisheries determines a greater or less distance, which must be plainly posted upon the fishway or adjacent shores.

Office of the Attorney General,

Harrisburg, Pa., December 13, 1911.

Hon. N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: The office of the Attorney General is in receipt of your communication of the 23rd ult., in which you refer to Section 7 of the Act of May 1, 1909, (P. L. 353), and inquire whether the Commissioner of Fisheries may lawfuly reduce the distance of four hundred feet from any dam or fishway within which, by the provisions of said section, it would be unlawful to fish with nets or devices whatsoever, excepting rods and lines, but beyond which reduced distance—yet within said four hundred feet—it would be possible to fish with such nets or devices other than rods and lines, without violating this statute.

In connection with the above inquiry you call attention to the conditions existing at McCall's Ferry Dam, in the Susquehanna River. The 7th Section of said Act of May 1. 1909, provides:

> "That it shall be unlawful for any person or persons * * * * to fish with nets or devices whatsoever excepting rods and lines, within four hundred feet of any dam or fishway, or such distance as may be determined by the Commissioner of Fisheries, such determination to be plainly posted upon the fishway or adjacent shores."

Has the Legislature by this language prohibited fishing by the devices specified within four hundred feet from the dam or fishway, or such distance as may be determined by the Commissioner of Fisheries, provided it be not less than four hundred feet, or does the section in question also confer upon the Commissioner of Fisheries the power to fix the distance at a less, as well as a greater number than the four hundred feet mentioned? I think the latter is the true construction. That is to say, that the meaning and effect of the 7th Section of this act is to make it unlawful to fish with nets or devices whatsoever excepting rods and lines, within four hundred feet of any dam or fishway, *unless* the Commissioner of Fisheries determines such greater or less distance than the specified four hundred feet as in his judgment or discretion, as the administrator of this law, shall be deemed wisest and best under the circumstances of the particular case.

In accordance with this construction the purpose of specifying the particular distance of four hundred feet in the act itself was to prescribe such specified distance as the effective statutory regulation which should continue to govern the subject matter until or unless, as above stated, the Commissioner of Fisheries should determine the distance otherwise in the particular case. In the latter event it becomes necessary that the distance so especially determined by him, whether greater or less than the four hundred feet from the dam or fishway specified in the act, "be plainly posted upon the fishway or adjacent shores."

If the words "or such distance as may be determined by the Commissioner of Fisheries," etc., mean anything, they mean at least that the Commissioner shall have the power to fix a distance greater than four hundred feet, and I can perceive no reason for holding that the words used restrict him to that, and does not permit him to determine a less distance than the four hundred feet. On the contrary, in prohibiting fishing with nets or devices other than rods and lines, within four hundred feet of such distance as may be determined by the Commissioner of Fisheries, the act does not say "or such greater distance as may be determined by the Commissioner

of Fisheries," nor does it say "or such distance not less than four hundred feet as may be determined by the Commissioner of Fisheries," either of which forms of expression would be the natural appropriate expression of an intention to restrict the power of the Commissioner to the fixing of a distance greater than that specified by the act.

The act provides generally that it shall be unlawful to take the fish in the manner stated within the specified distance of four hundred feet of any dam or fishway, or, in the alternative, and without limitation, that it shall be unlawful so to fish within "such distance as may be determined by the Commissioner of Fisheries."

By this I think is meant any distance so determined, whether greater or less than the specified distance of four hundred feet. In the absence of the determination of the distance by the Commissioner, it is unlawful, under this act, to take the fish with nets or devices other than rods and lines, within the distance of four hundred feet from the dam or fishway, as specified in the act, but the Commissioner has the power to regulate the distance otherwise, and then it is made unlawful by the act to fish within such distance from the dam or fishway which the Commissioner has so determined.

I am, therefore, of opinion that the Commissioner of Fisheries may lawfuly reduce the limit of four hundred feet to a shorter distance and thus permit the taking of fish with nets or devices whatsoever other than rods and lines, beyond such reduced distance.

Very truly yours,

WM. N. TRINKLE,

Assistant Deputy Attorney General.

FISH WARDENS.

Fish wardens for whom salaries are provided by the Act of May 1, 1909, P. L. 353, are not entitled to charge or recover their fees as costs for their own use or the use of the Commonwealth; but a special fish warden who is not paid a "per diem allowance for compensation and reasonable expenses" may charge all legal fees as costs in the case.

Office of the Attorney General,

Harrisburg, Pa., February 22nd, 1912.

Hon. N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: Your favor of recent date, addressed to the Attorney General, was duly received.

You ask to be advised whether the fees of fish wardens can be charged in as part of the costs in cases in which there have been con-

victions for violation of the fish laws. Section 29 of the Act of May 1, 1909, (P. L. 353), provides:

> "The wardens shall enforce all the laws of the Commonwealth, relating to fish and fishing, and the provisions supplementary thereto; and shall have power to execute all warrants and search warrants issued for the violation of the fish laws, and to serve subpoenas issued for the examination, investigation or trial of all offenses against said laws; and said wardens shall be permitted to carry and use arms in the performance of their duties. They shall have power, without warrants, to search and examine any boat, conveyance, vehicle, fish box, basket, bag, coat, or other receptacle for fish, when they have reason to believe that any of the provisions of any law relating to fish have been violated; and said wardens shall seize and take possession of any and all fish which may have been caught, taken or killed at any time, in any manner or for any purpose, or had in possession or under control, or have been shipped or about to be shipped, contrary to any of the laws of this Commonwealth; * * * * and all wardens when in the performance of their duties shall have the power and authority to enter upon any land or water, and they shall have the power to demand and secure proper assistance in case of emergency. That each fish warden, except the chief warden, appointed in accordance with this section, shall receive as compensation for his services seventy-five dollars per month, and such allowance for expenses as may be deemed by the Board of Fishery Commission as just and reasonable."

Section 30 provides, in part:

> "The Commissioner of Fisheries may on the written application of a properly organized fish protective association, or of any association or individual owning or leasing waters, appoint one or more *special fish wardens* for the county in which the application is made; and all such appointments shall expire on the thirty-first day of May of each year: Provided also, That no special fish warden shall be entitled to any salary, or to any expenses or compensation from the Commonwealth, for his services, unless such special fish warden should be detailed for duty by the Commissioner of Fisheries, in which case the Commissioner of Fisheries is authorized to make a per diem allowance for compensation, and reasonable expenses, out of any appropriations which may be made for the payment of wardens. The said allowance being in place of any claim for any part or share of any fine or fines, penalty or penalties, imposed or paid under the provisions of this act."

The 27th Section of said Act of Assembly provided for the trial and sentence by the justice, alderman or magistrate, "to pay the fine or

fines, penalty or penalties, provided in this act for such violation, together with costs of suits."

In the case of *Walsh vs. Luzerne County, 36 Pa. Super. Ct. 425,* it was decided as stated in the syllabus:

> "The public officer who is prevented by statute, or by judicially established principles of public policy, from demanding and collecting for his own use a fee for serving a criminal warrant, cannot demand and collect it for the use of the Commonwealth."

That case arose upon the claim of a member of the State Police to the fees for serving a warrant. A State Policeman was paid a regular salary and the service of the warrant was performed in the course of his duties as imposed by the Act of May 2, 1905, P. L. 361, relating to the State Police.

In an elaborate opinion by the court below, which was adopted by the Superior Court, it is said:

> "That as a salaried police officer of the State, he is not legally entitled to demand these fees for his own use."

And again:

> "That certain salaried officials may collect fees and pay them into the public treasury, is of course true; but in every instance where this is done it is because the express mandate of the law requires it, and not because of any inherent right or duty growing out of the fact that the officer is elected by the people, or appointed by the Governor or some other official through whom the sovereignty of the people is exercised, and is paid a salary out of the public purse."

The court therefore concluded that "John F. Walsh is not entitled to receive the money in question for his own use or that of the Commonwealth."

That case rules the question which you ask, so far as it applies to the salaried fish wardens. In making the arrests and in prosecuting the cases for the violation of the fish laws, they are acting in pursuance of the duty imposed upon them by law, just as the police officer in the case referred to, was acting. They are paid salaries by the Commonwealth, and therefore upon the authority of the case just referred to, are not in my opinion entitled to charge or recover their fees as costs either for their own use or the use of the Commonwealth.

But with reference to the special fish wardens, the situation is different. If the services of special fish wardens are rendered during the time such fish wardens have been detailed for duty by the Commissioner of Fisheries, and for such services the said special fish

wardens are paid a "per diem allowance for compensation and reasonable expenses," as is provided by Section 30 of the Act of May 1, 1909, P. L. 353, above quoted, they are not entitled to charge fees as costs.

If, however, a case is prosecuted by a special fish warden who is not paid such a "per diem allowance for compensation and reasonable expenses" by the Commonwealth, then such fish warden is entitled to charge all legal fees as costs in the case.

Very truly yours,

JNO. C. BELL,
Attorney General.

PRESQUE ISLE PENINSULA.

The appropriation to the Department of Fisheries does not authorize the use of $20,000 for cleaning out the ponds on the Presque Isle Peninsula and opening up the natural channels connecting the ponds with the bay.

Office of the Attorney General,

Harrisburg, Pa., February 17, 1912.

Hon. N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: This Department is in receipt of your communication under date of February 8th, 1912, asking to be advised whether the appropriation to the Department of Fisheries, contained in the General Appropriation Bill of June 14, 1911, at page 234, and reading as follows:

> "For the making of plans, the purchase of machinery, boats, and for other expenses incidental towards the construction of the State fish hatchery on Presque Isle Peninsula, Erie county, authorized by an act of the Legislature, session of one thousand nine hundred and nine, and approved by an act of Congress, session of one thousand nine hundred and ten, two years, the sum of twenty thousand dollars ($20,000)."

can be so construed as to allow the use of the twenty thousand dollars for the cleaning out of certain ponds and opening up the natural channels connecting such ponds with the bay.

The reply to your inquiry necessarily involves a brief review of the circumstances leading up to the making of this appropriation.

Presque Isle Peninsula is a peninsula extending out into Lake Erie, beginning at a point some distance west of the city of Erie and extending in a northeasterly direction, curving around toward

the shore of the lake at a point some distance east of the said city of Erie and forming a harbor for that city, known as Presque Isle Bay.

In the Act of February 4th, 1869, (P. L. 105), it is recited in the preamble that the councils of the city of Erie have so neglected the management and supervision of this peninsula as to prevent any adequate revenue arising therefrom, and it is accordingly provided that Section 14 of the Act of April 2nd, 1863, incorporating the city of Erie, be so far amended as to place the supervison and control of this peninsula in the power of the Board of Directors of the Marine Hospital of Pennsylvania, which hospital was incorporated by the Act of March 22, 1867, (P. L. 538). By subsequent legislation, to wit, the Act of May 11, 1871, (P. L. 731), it was enacted that the said corporation, incorporated under the name of the Marine Hospital of Pennsylvania, should

> "convey to the United States of America, all title it may have to the peninsula of Presque Isle obtained from the State of Pennsylvania by Act of February fourth, Anno Domini one thousand eight hundred and sixty-nine * * * * to be held by the United States as fully as may be in its present condition and only for the purposes of national defense and for the protection of the harbor of Erie, but in all other respects to be subject to the civil and criminal jurisdiction of the State of Pennsylvania."

In and by said Act of Assembly, the consent of the State of Pennsylvania was given to such transfer of title for the purposes and under the limitations above mentioned.

The Act of April 22, 1909, (P. L. 118), entitled:

> "An act providing for the Department of Fisheries of the Commonwealth of Pennsylvania entering upon and occupying, with the approval of the United States, certain lands on the peninsula known as Presque Isle, in Erie county, Pennsylvania, and improving the same and the ponds thereon, and establishing a hatchery thereon for the propagation of game and food fishes; to erect buildings and structures thereon suitable for that purpose, and to make walks and roads on said lands for ingress to and over said premises, and for the proper care and maintenance of the same."

contains a preamble which reads as follows:

> "WHEREAS, There are on the peninsula belonging to the Commonwealth of Pennsylvania and known as Presque Isle, in the county of Erie, Pennsylvania, a large number of ponds suitable for the hatching and propagation of game and food fishes—such as bass, pike

> and muscalonge, some of which cannot be readily hatched by artificial means,—and which ponds were the natural habitat and hatching grounds of said fishes prior to the closure of the connections between said ponds and the waters of the Bay of Presque Isle; AND WHEREAS, by improving said peninsula and cleaning and improving said ponds and stocking them with breeding fish, the Department of Fisheries can utilize these natural breeding grounds to very largely increase the production of game and food fishes."

It is then provided by said Act of 1909:

> "That the Department of Fisheries of the Commonwealth of Pennsylvania is hereby empowered and directed to enter upon and occupy all that part of the peninsula known as Presque Isle, in the county of Erie, Pennsylvania, (here follows a description of a portion of the peninsula) and *improve the said lands and ponds thereon;* and *establish* thereon a fish hatchery for the propagation of game and food fishes; *erect suitable buildings and structures* on said lands therefor; and make suitable walks, roads, docks and approaches thereto and thereon as may be deemed necessary to *establish* said *hatchery;* and care for the ponds and the lands hereby appropriated, and other facilities established and maintained on said peninsula for the propagation of game and food fishes; PROVIDED, however, that all of the rights hereby conferred upon the Department of Fisheries of the Commonwealth of Pennsylvania shall be and are subject to the grant heretofore made to the United States by the Commonwealth of Pennsylvania."

Even a cursory examination of this statute discloses that the preamble and the enacting clause thereof are not in harmony. The mischief referred to in the preamble is that certain ponds located on Presque Isle Peninsula, which were formerly the natural habitat and hatching grounds of certain game and food fishes, have been rendered useless as natural hatching grounds, because the connecting channels between the ponds and the bay have become filled up with sand and debris.

It is further stated in the preamble that some of the game and food fishes referred to therein cannot be readily hatched by artificial means.

It is clear from a reading of the preamble that the appropriate remedy for the mischief therein recited is the cleaning out of the ponds and the opening up of the closed channels. The enacting clause, however, goes much further than this. It not only authorizes the Department of Fisheries to enter upon and occupy, subject to

the rights of the Federal Government, a large portion of the peninsula, and to improve and care for the lands and ponds thereon, but also authorizes the Department of Fisheries to

> "establish thereon a fish hatchery for the propagation of game and food fishes; erect suitable buildings and structures on said lands therefor; and make suitable walks, roads, docks and approaches thereto and thereon as may be deemed necessary to establish said hatchery."

The enacting clause is, therefore, much broader than the preamble. The preamble contemplates only the restoration of the former *natural* hatching grounds, but the enacting clause, in addition to providing for this purpose, and although the preamble recites that some of the fish referred to in the act can not be readily hatched by artificial means, specifically provides for the erection of an *artificial* hatchery.

Your right to expend the appropriation in question, in the manner indicated in your inquiry, depends upon the intent of the Legislature in making the appropriation, but as that appropriation specifically relates to the hatchery authorized by the said Act of 1909, reference must necessarily be had to the legislative intent disclosed in that act.

> "The preamble of a statute has been said to be a good means to find out its meaning and, as it were, a key to the understanding of it, and as it usually states, or professes to state, the general object and intention of the Legislature in passing the enactment, it may legitimately be consulted for the purpose of solving any ambiguity or of fixing the meaning of words which may have more than one, or of keeping the effect of the act within its real scope whenever the enacting part is in any of these respects open to doubt."
>
> *Endlich on Interpretation of Statutes, §62.*
>
> "The same decisions, however, which establish the doctrine above stated, as to the admissibility of the preamble in the construction of a doubtful provision in a statute, also declare, that, when the meaning of the enacting part is clear and free from ambiguity it cannot be controlled, with either enlarging or restraining effect, by the preamble."
>
> *Idem, §64.*
>
> "While the preamble may explain the motives of the Legislature in the enactment, it does not always do so, and it is not to be given greater consideration than other parts of the act. Where the enacting clause is in words free, *per se,* from doubt and the preamble is not referred to therein, an apparent restriction in the preamble will not be given effect in the enactment."

Pepper & Lewis' Digest of Dec., Vol. 20, p. 34954.

Under these general principles relating to the construction of statutes it may be safely concluded that the enacting clauses of the said Act of 1909, which is free from ambiguity, is not restrained or restricted by its preamble, and that the Legislature in and by said act has authorized the Department of Fisheries to enter upon the peninsula in question, and, in addition to improving and caring for the ponds thereon, erect an *artificial* hatchery for the propagation of game and food fishes.

In the year 1910 Congress passed a bill providing, inter alia:

> "That the Department of Fisheries of the State of Pennsylvania is hereby granted the right to enter upon and occupy the following described land of the United States, known as Presque Isle Peninsula, in the county of Erie, State of Pennsylvania, (here follows a description of the land in question), for the purpose of *establishing and maintaining a hatchery* for the propagation of game and food fishes, and in pursuance thereto to improve the lands and ponds and reclaim marsh lands thereon; to construct buildings, houses, sheds, etc."

It is provided in this act of Congress that the occupation and use of the lands shall in no manner affect the right, title and interest of the United States in and to said lands, nor the Government's right of passage over and across the lands so occupied. It is further provided that the United States shall not be liable for any damages that may at any time occur to the improvements of the Department of Fisheries, and that the exercise of the rights granted and the execution of any work on said lands shall be in accordance with such plans and specifications as may be approved by the Secretary of War, and subject to such further stipulations and conditions as he may prescribe.

It is interesting, but not important, in the disposition of your inquiry, to note that this act of Congress refers to the land in question as land of the United States, whilst the said Act of 1909, refers to it as "belonging to the Commonwealth of Pennsylvania."

We are now prepared to consider the exact language of the appropriation in question. It is an appropriation of twenty thousand dollars ($20,000) to your Department, which you are authorized to expend

> "for the *making* of *plans,* the purchase of machinery, boats, and for other expenses incidental towards the *construction* of the *State fish hatchery* on Presque Isle Peninsula, Erie county, authorized by the act of the Legislature, etc."

The Act of 1909 carries no appropriation and the Legislature of 1911 made this appropriation for the payment of expenses incidental toward the construction of the particular hatchery authorized by the previous Legislature of 1909. It is not an appropriation for a new project but for "the *construction of the* State fish hatchery" heretofore authorized. Whilst the purchase of machinery and boats might be incidental to the cleaning out of the ponds which formerly afforded natural hatching grounds, it could hardly be contended that the phrase "making of plans" could be construed as referring to anything other than the construction of an artificial hatchery.

Two projects were authorized by the Legislature of 1909; the one, the restoration of the ponds and channels to their former condition as natural breeding grounds, the other, the construction of an artificial hatchery. The Legislature of 1911 had it within its power to make appropriations to either or both of these projects, but, in the opinion of this Department, the appropriation now under consideration was intended by the Legislature to be expended in the preliminary work incidental to the construction of an artificial hatchery, and not for the purpose of cleaning, reclaiming and restoring ponds and channels as natural breeding grounds.

You are therefore advised that this appropriation cannot be construed as authorizing you to use the said sum of twenty thousand ($20,000) dollars for the cleaning out of the ponds in question and opening up the natural channels connecting these ponds with the bay.

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

FISH IN PRESQUE ISLE BAY.

The Act of April 4, 1907, P. L. 50, relating to fish in boundary lakes of more than 5,000 acres, applies to Presque Isle Bay, connected with Lake Erie.

The State Department of Fisheries, having determined that the carp in Presque Isle Bay have become so numerous that they are injurious to other game and food fishes, is authorized by Section 3 of the Act of April 4, 1907, P. L. 50, to issue licenses to fishermen to take carp alone therefrom by means of gill-nets.

Office of the Attorney General,

Harrisburg, Pa., May 1st, 1912.

Hon. N. R. Buller, Commissioner of Fisheries, Harrisburg, Pa.

Sir: This Department is in receipt of your communication asking to be advised, in substance, whether, under the provisions of the Act

of April 4, 1907, (P. L. 50), you would be justified in issuing licenses authorizing the catching of carp in Presque Isle Bay. The act is entitled:

> "An act to classify the species of fish in such parts of boundary lakes, of more than five thousand acres, as this Commonwealth has jurisdiction over, and in the waters of any peninsula or in any bay adjacent to or connected with such lakes; to declare which fish are game fish, whch fish are food fish, and which are minnows or bait fish; to protect and provide for the maintenance and increase of fish in such lakes; to regulate and provide for the payment of license fees for the catching of fish from such boundary lakes, and to prohibit the unauthorized taking of fish from devices used by authority of such license; to provide penalties and punishments for the violation of any of the provisions of this act; and requiring the county wherein an offense is charged to pay costs of prosecution in certain instances; and repealing all acts inconsistent herewith."

This act relates to the catching of fish in such part or parts of lakes of more than five thousand acres as this Commonwealth has jurisdiction over, and in the waters of any peninsula or in any bay adjacent to or connected with such lake.

Presque Isle Bay is connected with Lake Erie, and the act is applicable to the waters referred to in your communication. The general plan of the act is to specify game fish by name, and to divide all other species of fish into food fish, and minnows or killifish. The catching of fish in the waters referred to in the act, by means of nets, or any devices other than a rod and line having not more than three hooks, or with a hand line having not more than three hooks attached, or with a trolling line with spoon hooks attached, or with a set line with hooks attached, or a spear used for catching carp and suckers only, without a license obtained from the Department of Fisheries, is prohibited. In so far as the general provisions of the act are concerned, licenses may be issued, authorizing the taking of fish by means of nets, under certain regulations, among which regulations is found one to the effect that no net of any description shall be set or fastened within two miles of the entrance to any bay described in the act, nor shall any gill-net be set within three-quarters of a mile of any other portion of the shore of the part of any lake over which this Commonwealth has jurisdiction, nor shall any net or nets other than gill-nets and nets fastened to and supported by poles driven in the ground, be set, fastened, drawn or used within seventeen miles of such entrance to any bay described in this act.

The 3rd Section of the act, however, contains a proviso reading as follows:

> "Provided, That nothing in this section shall be so construed as to prohibit the use of minnow nets for angling or scientific purposes, or to prohibit the Department of Fisheries from catching fish at any time of the year with nets for the purpose of stocking other waters, or for taking spawn, or from removing *by means of nets by contract or* otherwise, any fish which it may deem injurious to other game or food fish."

Notwithstanding, therefore, the general prohibition against the use of nets, even under license, within certain distances of the entrance of Presque Isle Bay, and the shores of Lake Erie, an exception is made in favor of the Department of Fisheries, and that Department is authorized, among other things, to remove, out of any waters, by means of nets, any fish which it may deem injurious to other game or food fishes.

You state in your communication that the Department of Fisheries has determined that the carp in Presque Isle Bay have become so numerous that they are injurious to other game and food fishes. Your Department, therefore, in my opinion, is authorized to remove these carp "by means of nets by contract, or otherwise."

You ask to be advised, whether you can legally issue licenses to fishermen for the taking of carp in Presque Isle Bay by means of gill-nets? In my opinion, the proviso to the 3rd Section, above quoted, is broad enough to justify the issuing of licenses by the Department of Fisheries, to fishermen, to take carp alone, by means of gill-nets, from the waters of Presque Isle Bay.

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

OPINIONS TO BOARD OF PUBLIC GROUNDS AND BUILDINGS.

OPINIONS TO THE BOARD OF PUBLIC GROUNDS AND BUILDINGS.

SUPERINTENDENT OF CONSTRUCTION.

There is no fixed time stipulated by law which a superintendent of construction must put in in order to receive his per diem pay. The Board of Public Grounds and Buildings must determine whether or not he earns his compensation, and he is entitled to same before the contractor is paid.

Office of the Attorney General,

Harrisburg, Pa., May 5, 1911.

Mr. H. D. Jones, Secretary Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa.

Dear Sir: Your favor of April 13th, addressed to the Attorney General, was duly received.

You request an opinion upon two propositions:

1. How much time a Superintendent of Construction should be required to give on a building or work incident to the construction thereof, in order to entitle him to his per diem compensation, and,

2. In event of a commission refusing to pay such superintendent of construction on the grounds that they need all the funds they have for the payment of the contractor, what is the remedy of the superintendent of construction, and what is the duty of the Board of Commissioners of Public Grounds and Buildings.

The Act of July 2, 1895, P. L. 422, requires the Board of Public Grounds and Buildings to employ a superintendent of construction in connection with the expenditure of every fund appropriated by the Legislature for the building of State institutions. This Act of Assembly prescribes the duties of such superintendent and requires him "to give his time and personal supervision to the work under process of construction, in order that the State should receive full value for the amount of the expenditure to be so made." The act does not prescribe how many hours shall constitute a day, but provides that such superintendent shall be paid a per diem salary. The superintendent is required to give as much time as shall be required to carry out the duties imposed upon him by this act. No hard and fast rule can be prescribed as to the number of hours he must work on any particular day, and whether he has performed the duties devolving upon him is a matter for the determination of the Board of Public Grounds and Buildings.

Second, the Act of July 2, 1895, referred to, makes the appointment of such a superintendent of construction obligatory and provides:

> "The superintendent of construction shall be paid a per diem salary, out of the fund appropriated for the improvement which he is to supervise, in like manner as superintendents are now paid out of said fund, by the architect or trustee of the institution so benefitted."

and it gives the Board of Commissioners of Public Grounds and Buildings the right to fix the compensation and the term of office of such superintendent. No commission for the erection of buildings for which funds have been appropriated by the Legislature, has the legal right to expend all the funds for the payment of the contractor. The salary of such superintendent of construction is a fixed charge against such appropriation, and the balance is available for the payment to the contractor.

In the event of an attempt to pay all of the funds so appropriated to a contractor, without payment of the salary of a superintendent of construction the Board of Public Grounds and Buildings should direct the Auditor General and State Treasurer not to honor such warrants. If there is a deficiency the contractor, and not the superintendent of construction, should await a deficiency appropriation.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

VALUE OF MONEY.

The value of the "pound" in the bond of the Secretary of Internal Affairs is $2.66 2 3, and his bond of ten thousand pounds equals $26,666.66 2-3.

Office of the Attorney General,

Harrisburg, Pa., July 17, 1911.

Hon. Samuel B. Rambo, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: By your favor of June 7th, 1911, you request to be advised as to the value in United States money of the bond of 10,000 pounds given to the Commonwealth of Pennsylvania by the Secretary of Internal affairs, for the faithful performance of the duties of his office.

By the Act of April 9, 1871, Laws of Pennsylvania, Vol. 1, p. 529, entitled:

> "An act for establishing a land office and for other purposes mentioned therein"

it is provided in Section 4:

> "* * * * That the Secretary of the Land-Office, Surveyor and Receiver-General, shall, severally, before they are empowered to act, enter into an obligation, before the president of the State, with one or more sufficient sureties, in the sum of ten thousand pounds, to the Commonwealth of Pennsylvania, conditioned for the faithful discharge of their respective offices."

The office of Surveyor-General was abolished and the Constitution of 1874 provided in Article IV, Section 19:

> "The Secretary of Internal Affairs shall exercise all the powers, and perform all the duties, of the Surveyor-General, subject to such changes as shall be made in the law."

No subsequent provision was made for the giving of any different bond by the Secretary of Internal Affairs, and the present incumbent of that office has given a bond in the sum of *ten thousand pounds,* upon which I understand the corporate surety has rendered a bill, based upon the valuation of the present English Pound Sterling.

The Act of 1781 referred to does not require a bond of 10,000 pounds *sterling,* but only a bond of 10,000 pounds. The requirement of the Act of 1781 of a bond of 10,000 pounds can not therefore be held to mean of a value of 10,000 English pounds sterling of the present day. On the contrary, the bond which was required by the Act of 1781 was in the pound then current in the State of Pennsylvania, and the pound having ceased to be currency of the Commonwealth, the value of a bond in the sum of 10,000 pounds must be ascertained as of the time of the passage of the Act of 1781 or when such ceased to be the currency of Pennsylvania.

There seems to be little doubt as to the ultimate value in dollars and cents of the Pennsylvania pound. There is, however, much doubt as to the precise authority which fixed that value.

In Anderson's Dictionary of Law, defining the pounds, it is said:

> "In Pennsylvania currency a pound was equivalent to two dollars sixty-six and two-third cents."

In the Century Dictionary it is said:

> "The pound in New Jersey, Pennsylvania, Delaware and Maryland was equivalent to twelve shillings, or two dollars sixty-six and two-third cents"

and the same information is given in McMaster's History of the United States, Vol. 1, page 23.

In a note by Judge Arnold to the case of Logan vs. O'Neill, 34 W. N. C. 281, the same statement as to the value of the Pennsylvania pound is made.

In the case of McCaraher vs. the Commonwealth, 5 W. & S. 21, an objection was offered to the value of a bond of $4,500, given by the Recorder of Deeds of the city and county of Philadelphia, because the Act of March 14, 1771, directed the Recorder of Deeds to give a bond in the sum of 1,500 pounds, which was equal to $4,000 and not to $4,500, and that the bond of $4,500 was not in conformity with the act and void. $4,000 for 1,500 pounds would be at the rate of $2.66 2-3 per pound.

And in the case of Chapman vs. Calder, 14 Pa. 357, decided in 1850, it was held:

> "In actions of trespass *quare clausum fregit,* the 40 shillings prescribed as the minimum of damages, which will entitle a plaintiff to full costs, is to be reckoned in Pennsylvania currency and not in plain money."

Judge Coulter said:

> "It is probable, but I have not the opportunity at hand to examine, that a regulation was made by the Provincial Governor and Council on the subject of the value of pounds, shillings, and pence, at an early period. Statutes were enacted directly after the Revolution, fixing salaries of officers in pounds and shillings, which were always paid in the Pennsylvania currency. And so penalties were inflicted by statute, at an early period, in pounds, which were always paid according to the Pennsylvania standard. The English statute fixed forty shillings, to wit, the 22nd and 23rd statute of Charles the Second, chap. 9. And so far as the amount of costs in trespass was regulated, that statute was adopted here. But it was adopted, of course, according to our own habits of business and customs. The question then was the value of a shilling. Our courts adopted the value of our own shilling. There was nothing contrary to the statutory rule in this. It was adopted by us according to this value of the shilling, as being the most convenient in practice, and suited to the knowledge of our jurors and courts. I think no practitioner ever heard a court charge a jury that the rule as to costs was forty shillings *sterling* money, and then tell them how much an English shilling sterling was in our own currency. The rule, adopting forty shillings of our own money is more consistent with our independence, our nationality and the habits of our people, and was therefore always commended to our adoption."

It results from what has been said, that the value of the Pennsylvania pound finally became $2.66 2-3. The value of a pound seems to have fluctuated.

The difficulty, however, is in ascertaining when, and by what authority, the value of $2.66 2-3 was fixed. The diligence of the Legislative Reference Bureau of the Department of Archives of the State Library, as well as the search of this Department, have not been rewarded by the discovery of scientifically accurate information.

In the work of Jacob Reese Eckfields (1803-1872) at page 131, it is said:

> "The pound of the colonies was at first the same as the pound sterling of England, being simply a money of account. The relation in process of time became greatly altered in consequence of excessive issue of paper by the colonial authorities."

In the case of Wharton v. Morris, et al., 1 Dallas 125, it is said:

> "The bond is payable in the current money of Pennsylvania; but, I would ask, *what is the current money of Pennsylvania?* For my part, I know of none, that can properly be so called, for current and lawful are synonomous."

The Act of 1777 (Statutes at Large, Vol. IX, Sec. 5, p. 36) provided:

> "That where any person stands bound to pay in sterling money aforesaid, according to the exchange as aforesaid, such creditor shall receive Continental bills of credit of this State in payment and discharge of any such debt, at the rate of one hundred and fifty-five pounds Pennsylvania, for one hundred pounds sterling, if tendered as aforesaid * * * *."

This rate would not figure $2.66 2-3 to the pound.

By the Act of June 25, 1781, Laws of Penna., Vol. 2, page 7, entitled:

> "A supplement to an act for establishing a land office and for other purposes therein mentioned,"

the same act which requires the bond of 10,000 pounds, it is provided in Section 5:

> "That the rate of exchange, at which the Receiver General shall receive the five pounds sterling for every one hundred acres of land, shall and is hereby declared to be at the rate of one hundred and sixty-six and two-thirds of the currency of this State for one hundred pounds sterling."

The Act of Congress of March 3, 1873, Revised Statutes, Sec. 3565, which fixes the value of the sovereign or pound sterling at $4.86\frac{1}{2}$, provided:

> "All contracts made after the first day of January, 1874, based on assumed par of exchange with Great Britain of fifty-four pence to the dollar, or four dollars forty-four and four-ninths cents to the sovereign or pound sterling, shall be null and void."

Some time prior to the Act of Congress of 1873 the value of the English pound sterling was conceived as $4.44 4-9 as mentioned in that act, but such value seems never to have been fixed by statute. Inquiry of the Library of Congress elicited the information from the Chief Biblographer, as follows:

> "According to Beaman's 'Index Analysis of the Federal Statutes, 1789-1873,' the only act adopted prior to 1873, which fixes the value of the pound sterling, is that of July 7, 1842. This act directed that 'in all payments by or to the Treasury, whether made here or in foreign countries, where it becomes necessary to compute the value of the pound sterling, it shall be deemed equal to four dollars and eighty-four cents.'"

However, taking $4.44 4-9 as the value of the pound sterling and basing the rate of exchange of the Colonial of Pennsylvania pound with the pound sterling at $1.66 2-3 of the Pennsylvania pound to one of the pound sterling, as provided in the Act of 1781, brings the value of the Colonial of Pennsylvania pound to $2.66 2-3. The Act of 1781 is the last act upon the subject which I have been able to find.

I am, therefore, of opinion, that the value of the pound in the bond of the Secretary of Internal Affairs is $2.66 2-3 and that his bond of ten thousand pounds equals $26,666.66 2-3, upon which amount a premium should be paid.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

DISTRIBUTION OF DOCUMENTS.

Advice is given as to various questions affecting the distribution by contractors therefor of public documents.

Office of the Attorney General,

Harrisburg, Pa., May 23, 1912.

Hon. Samuel B. Rambo, Superintendent of Public Grounds and Buildings, Harrisburg, Pa.

Sir: Some time ago you requested an opinion of this Department as to whether the report of the Attorney General, made to the General Assembly, dated January 1, 1911, which has been printed and bound since January 1, 1912, and is now ready for distribution, should be distributed by the contractor who now has the contract, or by the contractor who had the contract for such distribution for the year ending the first Monday of June, 1911.

The Attorney General submits a report to the Senate and House of Representatives every two years. He does not report every year, but the schedule upon which bids were received for the year beginning the first Tuesday of June, 1910, and ending the first Monday of June, 1911, contains the following:

> "Item No. 1386. Furnishing suitable boxes, packing, marking and distributing by express, prepaying expressage on same, four hundred annual reports of the Attorney General's Department. All boxes must be made of first class lumber to be approved by the Superintendent of Public Grounds and Buildings * * * * maximum price three hundred dollars."

A proposal was received simply agreeing to make the distribution for a rate per centum below the maximum price "subject to the terms and conditions named in the schedule."

The successful bidder was advised as follows:

> "You are respectfully advised that the contracts for furnishing supplies under our 1910-11 annual schedule were awarded to you as per your proposal, as follows:
>
> DISTRIBUTION OF DOCUMENT SCHEDULE.
>
> Item No. 1386.
>
> Very truly yours,
> Samuel B. Rambo,
> Superintendent."

The schedule is entitled:

> "Schedule containing list of stationery supplies, repairs, etc., for the several departments of the State

> Government of Pensylvania, and for the Senate and House of Representatives, for the year ending the first Tuesday of June, A. D. 1911,"

and under the head of "Instructions to Bidders" it is provided:

> "The quantities given in the schedule are the estimated requirements for the fiscal year ending the first Tuesday of June, 1911, but it is to be distinctly understood that these estimates and places of delivery are given for information only and no obligation is imposed thereby upon the Commonwealth, the right being reserved to order any greater or less quantity, as the interest of the service may require."

This schedule, proposal, and letter of acceptance, taken together, constitute the whole contract.

The same title and the same provisions appear in the schedule for the year ending the first Tuesday of June, 1912. A contract was made in precisely the same way. The Attorney General's Report was dated January 1, 1911, and submitted to the Legislature which convened on the first Monday of January. It was not ready for distribution until after the first of January, 1912.

There is nothing in this contract that required the State to put the report of the Attorney General into the hands of the person who had the contract for distribution covering the period when such report was presented to the Legislature. There is nothing in this contract which binds the State to have the report ready for distribution at any specified time. The contractor agrees, for the amount specified, to distribute the report, but this does not bind the State to deliver them at any particular period.

The Attorney General's Report which is presented biennially, and not annually, could not be distributed by both the contractor for the year ending the first Monday in June, 1911, and also by the contractor for the year ending the first Monday in June, 1912. There were not two reports to distribute, but there were two contracts for such distribution. The mistake in making such contract, or inserting the word "annual" into the schedule, could not have the effect of binding the State to deliver to the contractor a report which was not in existence for delivery.

Moreover, the contract is for a fixed period beginning the first Tuesday of June in one year, and ending the first Monday of June in the next year. The quotation from the schedule above referred to indicates that it was the intention to require the contractor to distribute only such reports as are ready for distribution during that period, no matter when the report happened to be presented to the Legislature.

I am, therefore, of opinion that the distribution of the copies of the Report of the Attorney General which was presented to the Legislature of 1911, is to be made by the contractor who has the contract ending the first Monday of June, 1912, covering the period when such reports were ready for distribution, and not by the contractor who had the contract for distribution at the time when the report was presented to the Legislature, but not ready for distribution.

You also ask to be advised upon two questions growing out of the distribution of the Report of the Commissioner of Health;

1. As to which contractor has the right to make the distribution, and

2. As to whether the present contractor is required, under the contract, to distribute two volumes.

The facts giving rise to this inquiry as I understand them, are these: The schedule for the year ending the first Monday of June, 1911, contained the following item, under the head of "State Department of Health:"

> "Item No. 1383. Inserting gum slips, packing, marking and shipping, fifteen hundred annual copies of the reports of the department, for the year 1909, by express or mail, at such times as may be directed by the Commissioner of the Department * * * * maximum price fifteen hundred dollars,"

and a contract was made therefor.

The report of the Health Department for the year 1909 was not ready for distribution during the contract year 1910-11. The contract having expired on the first Monday of June, 1911, and there having been no distribution, there was inserted in the schedule for the year beginning the first Tuesday of June, 1911, and ending the first Monday of June, 1912, precisely the same item for the distribution of the annual report of the year 1909. A contract for this year was made upon the schedule, proposal and acceptance for the distribution of the Report of the Department of Health for the year 1909 in precisely the same way as that with reference to the distribution of the Reports of the Attorney General hereinbefore referred to.

The bids for the year 1911-12 were received on Tuesday the 6th day of June, 1911. Up to that time the report of the Commissioner of Health was published in one volume. The Legislature, by an act approved on the 9th day of June, 1911, P. L. 754, reciting that

> "The work of the several divisions of the State Department of Health has assumed such proportions as to render the publication of the annual report of the Com-

> missioner of Health in one volume unwieldy, and too large to be properly and durably bound with the binding used for public documents,"

provided:

> "That the Superintendent of Public Printing and Binding is hereby authorized and directed to print and bind the the annual report of the Commissioner of Health in two separate volumes."

The report for the year 1909 has been printed and bound in two volumes, and is now ready for distribution. There was no knowledge on the part of the contractor for the distribution of the copies of the Report of the Commissioner of Health for the year 1909 at the time he made his bid on June 6, 1911, that the report was to be printed in two volumes.

For the reasons given in answering your inquiry as to the distribution of the copies of the Attorney General's Report, I am of opinion that the contractor who has the contract now, when the copies of the report are ready for distribution, is entitled to make such distribution, and that the contractor who had the contract which expired on the first Monday of June, 1911, is not entitled to make such distribution.

Answering the other question, I am of opinion that there was no power in the Legislature to pass an Act of Assembly imposing upon the contractor after the contract was made, the distribution of an additional volume of copies of the report of the Commissioner of Health which was not contemplated at the time of the making of the contract, and inasmuch as it appears that the bid for the distribution of the copies of the Report of the Commissioner of Health for the year 1909 was made when the law authorized the report to be printed in only one volume, and that bid was accepted without notice of any change which would thereafter be made by the Act of June 9, 1911, the contractor is not required by such contract made in the manner hereinbefore set out, to distribute the two volumes for the price bid, under that contract.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

SUPERINTENDENT OF CONSTRUCTION.

It is the duty of the Board of Public Grounds and Buildings to appoint a superintendent of Construction for sanatoria erected by the Health Department.

Office of the Attorney General,
Harrisburg, Pa., May 29, 1912.

To the Board of Commissioners of Public Grounds and Buildings, Harrisburg, Pa.

Gentlemen: I have the letter of your secretary of the date of May 15th, in which you direct my attention to the Act of Assembly approved July 2, 1895, P. L. 422, which makes it the duty of the Board of Public Grounds and Buildings, "in connection with the expenditure of each and every fund appropriated by legislative act for the building of State institutions to employ for each separate construction a capable superintendent of construction, under whose personal supervision such funds shall be expended." You also refer to the Act of Assembly approved May 14, 1907, P. L. 197, which provides for the establishing and maintenance of one or more sanatoria or colonies in Pennsylvania for the free care and treatment of indigent persons suffering from tuberculosis, and authorizes for these purposes the Department of Health, with the approval of the Governor, "to acquire property, erect buildings, equip the same, and do all things necessary to accomplish such work," and further makes an appropriation for this purpose.

You state that it has been the custom of the Board of Commissioners of Public Grounds and Buildings to appoint a superintendent of construction of all State institutions under construction, but that in the case of sanatoria constructed by the Health Department, the Commissioner of Health has also appointed an inspector for such work. You ask where the authority rests in the construction of such buildings—with the inspector appointed by the Department of Health or with the superintendent of construction appointed by the Board of Public Grounds and Buildings.

I reply that nothing contained in the said Act of May 14, 1907, repeals the provision of the Act of 1895, which makes it the duty of the Board of Public Grounds and Buildings to employ a superintendent of construction, under whose supervision the funds appropriated by legislative act for the building of State institutions shall be expended.

I should, however, add that there is nothing in the said Act of 1907 which forbids the Health Department, with the approval of the Governor, from appointing an inspector for the work, if such appointment is deemed necessary in the erection of the buildings and to accomplish the work.

The appropriation for the building of a sanatorium is undoubtedly for the building of a State institution, and this being so, the Act of

1895 makes it mandatory upon your board to employ a superintendent of construction. I can see no necessity, however, for the appointment of two inspectors or superintendents of construction; and hence one appointee ought to be able to do the work satisfactorily to your Board and the Health Department.

Very truly yours,

JNO. C. BELL,
Attorney General.

OPINIONS TO SUPERINTENDENT OF PUBLIC PRINTING AND BINDING.

OPINIONS TO SUPERINTENDENT OF PUBLIC PRINTING AND BINDING.

PRINTING WRAPPERS.

The public printer may charge at the rate per hundred for each name which requires separate composition and letter press work, even though less than one hundred wrappers be printed for such name.

Office of the Attorney General,

Harrisburg, Pa., December 16, 1911.

Hon. A. Nevin Pomeroy, Superintendent of Public Printing and Binding, Harrisburg, Pa.

Sir: Your favor of recent date addressed to the Attorney General, was duly received.

You ask to be advised as to how the charge is to be made by the Public Printer for printing wrappers to be used in sending out the Legislative Journals.

The facts, as I understand them, are that the Act of February 7, 1905 (P. L. 3), contains a schedule of rates, in which schedule is found, pages 21-22, the following:

> "Letter press printing, blanks, cards, and all miscellaneous job work, including composition, as follows * * * * half cap or less, per hundred fifty cents;"

that each Senator is authorized to send fifty or more, and each Member of the House of Representatives nineteen or more, Legislative Journals to their constituents, and that the wrappers referred to in your communication had the names of the persons to whom Legislative Journals were to be sent.

The question arises whether the State Printer has the right to charge for each name which is thus printed on a wrapper. I am advised that the typesetting and the printing for each name is the same, whether one wrapper or one hundred be printed; and the work, with the exception of the press work, is the same whether one wrapper or one hundred be printed.

On September 3, 1909, you were advised by this Department that the item for "printing and tipping seventy titles per one hundred, fifty cents" was to be charged for at the full rate of one hundred, even though only seventy instead of one hundred were printed.

The Act of 1905, with reference to printing, contains units and fixes the price for the unit, in most cases making the unit one hundred. The evident intention of the act is to require payment at the rate of one hundred, although less than one hundred of a particular item be furnished.

I am, therefore, of opinion that each name which requires separate composition and letter press work, may be charged for at the rate per one hundred even though less than one hundred wrappers be printed for such name. Assuming that there were thirty for each of the fifty Senators, that is to say, there would be fifteen hundred separate wrappers upon which there was letter press and composition work, at the rate of fifty cents, and assuming that there were nineteen separate wrappers upon which there was letter press printing and composition for each member of the House of Representatives, making four thousand and twenty-eight of such separate wrappers, they are also chargeable at the rate of fifty cents.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

PUBLIC PRINTING.

State commissions created by law, whose printing is not otherwise provided for may have reasonable and necessary printing done through the Department of Public Printing and Binding at the expense of the State.

Office of the Attorney General,

Harrisburg, Pa., December 20, 1911.

Hon. A. Nevin Pomeroy, Superintendent of Public Printing and Binding, Harrisburg, Pa.

Sir: Some time ago you asked the opinion of this Department as to whether or not commissions to which there had been specific appropriations for expenses were entitled to receive printing.

Section 10 of the Act of February 7, 1905, (P. L. 3), provides, in part:

> "That it shall be the duty of the said superintendent to receive orders for all blanks, blank books and miscellaneous printing and binding that may be needed by the Legislature, or either branch thereof, or any of the Departments of the Commonwealth, or any commission created by an Act of Assembly, not otherwise provided for; have them executed by the contractor or contract-

> ors, and deliver such work to the officers ordering same, he entering in a book kept for that purpose a record thereof. In case any order or orders received from the heads of departments or from commissions shall appear to the Superintendent of Public Printing and Binding as unnecessary or unreasonable, he shall refer it or them to the Governor, for approval or disapproval."

The only language which could be construed to limit the right to furnish printing to such commissions as have no appropriation for expenses are the words "not otherwise provided for" in the part of the section just quoted, but these words refer to all that precedes them; that is to say, it shall be the duty of the superintendent to receive orders for all blank books and miscellaneous printing and binding that may be needed by the Legislature or any of the departments or commissions when such blank books and miscellaneous printing and binding are not otherwise provided for. The words "otherwise provided for" do not refer to commissions only. Construing these words, then, to refer to the Legislature and to the departments of the Commonwealth as well as to commissions, they could not be interpreted simply to mean that the Legislature and the other departments of the Commonwealth could not secure printing through your Department where there was an appropriation for expenses. The conclusion is irresistible that the words "otherwise provided for" mean that "unless the blank books and miscellaneous printing and binding that may be needed" by the Legislature, departments or commissions, shall have been specifically provided for by appropriation or otherwise, the right exists to have the reasonable and necessary printing done through your Department.

I am, therefore, of opinion that the Pennsylvania State Anthracite Mine & Cave Commission to which you refer, which has an appropriation for expenses generally, but no specific appropriation for printing, is entitled to have the reasonable and necessary printing done through your Department.

Hon. William H. Staake, chairman of the commission for the promotion of uniformity of legislation in the United States, has inquired of this Department whether that commission "is entitled to have printing done by the State Printing Department" and he has been advised that the commission, having been created by Act of Assembly, is entitled to have reasonable and necessary printing done.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

PUBLIC PRINTING.

The State Hospital for the Criminal Insane at Farview, Pa., should have its printing done from its maintenance fund, and not through the Department of Public Printing and Binding.

Office of the Attorney General,

Harrisburg, Pa., October 17, 1912.

Hon. A. Nevin Pomeroy, Superintendent of Public Printing and Binding, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of September 17, 1912, stating that as Superintendent of Public Printing and Binding you have received an order from the State Hospital for the Criminal Insane at Farview, Wayne county, for the printing of letterheads, envelopes, blanks, stationery and blank books for the use of said hospital, and asking to be advised whether, under the laws of this Commonwealth relative to the public printing and binding, you should honor said order and furnish said institution with the supplies requested.

In reply to your request you are advised that, under Article III, Section 12 of the Constitution,

> "All stationery, printing, paper and fuel used in the *legislative and other departments of government* shall be furnished * * * * under contract to be given to the lowest responsible bidder, etc."

By the printing act of February 7, 1905, (P. L. 61), Section 10, it is provided, that:

> "It shall be the duty of said superintendent to receive orders for all blanks, blank books and miscellaneous printing and binding that may be needed by the Legislature or either branch thereof, or any of the departments of the Commonwealth, or *any commission* created by an Act of Assembly not otherwise provided for."

The State Hospital for the Criminal Insane was established by the Act of May 11, 1905, (P. L. 400), which authorized the Governor to appoint six commissioners to select the site and build the institution and made an appropriation for that purpose.

By the Act of June 1, 1911, (P. L. 857), all the powers and duties conferred upon the commissioners were transferred as of June 1st, 1912, to a board of nine trustees, to be appointed by the Governor. It is further provide in said Act of 1911 that:

> "Said trustees shall be a body corporate by the name and style of the State Hospital for the Criminal Insane."

Clearly the institution in question is not a "department or government," and in my opinion, it is unnecessary to decide whether the trustees thereof constitute a "commission," within the legislative intent of the said printing Act of 1905. It is clear, however, that it is not a "commission created by an Act of Assembly not otherwise provided for" in so far as the expenses of necessary printing and binding are concerned.

By the Appropriation Act of June 13, 1911, (P. L. 145), entitled "An act making an appropriation to the trustees of the State Hospital for the Criminal Insane at Farview, Wayne county" the sum of fifty thousand dollars, or so much thereof as may be necessary, is appropriated "for the maintenance, treatment and care of one hundred and fifty criminal insane patients or more, for the period of one year beginning June first, one thousand nine hundred and twelve."

It has been the general practice, in the administration of the fiscal affairs of the State, to permit institutions receiving appropriations for maintenance to charge against such appropriations the cost of necessary printing and binding.

In my opinion you should decline to accept or honor the order referred to in your communication, upon the ground that the trustees of said State Hospital for the Criminal Insane should have such printing and binding as may be necessary done wherever they deem best, and charge the cost of the same against the appropriation for maintenance above mentioned.

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

OPINIONS TO THE STATE VETERINARIAN AND STATE LIVESTOCK SANITARY BOARD.

OPINIONS TO THE STATE VETERINARIAN AND STATE LIVESTOCK SANITARY BOARD.

DESTRUCTION OF CATTLE.

One who violates the law in bringing diseased cattle into the State is not entitled to receive compensation for his cattle which were destroyed by the State authorities because of such disease.

Office of the Attorney General,

Harrisburg, Pa., February 27, 1911.

Dr. C. J. Marshall, State Veterinarian, Harrisburg, Pa.

Dear Sir: Your favor of the 8th instant was duly received.

You ask to be advised whether the State Livestock Sanitary Board is under legal or moral obligation to pay J. C. Campbell, Danville, Pa., a sum of money for the destruction of cattle and property.

The facts, as I understand them, are these: J. C. Campbell shipped without a permit nine bulls for breeding purposes from Buffalo into Pennsylvania, which were received at Danville, October 27, 1908. Eight of these bulls were sold at public auction October 29th, and the other was taken to Mr. Campbell's farm. Foot and mouth disease broke out in a few days on seven farms to which these bulls were taken. The foot and mouth disease on these farms was officially recognized by agents of the United States Government, and also by agents of the State, on November 8, 1908, and Mr. Campbell was prosecuted in the Court of Quarter Sessions of Montour county for violating the Act of May 26, 1897, (P. L. 99). He pleaded *nolo contendere,* which, under the circumstances, was in effect a plea of guilty. He was fined fifty dollars, which fine he paid. In accordance with regulations adopted by the United States Government and the State, Mr. Campbell's cattle and some property were appraised and destroyed.

The United States Government pays two-thirds of the loss under such circumstances, and in accordance with that arrangement the United States Governement has paid Mr. Campbell two-thirds of his total loss, which was $843.37. The remaining one-third, $281.12,- has not been paid because he violated the law, as above set forth, and this violation has cost the State an amount of money largely in

excess of the amount due him, and a great amount of hard work on the part of the State Livestock Sanitary Board and its agents, all of which would probably have been avoided had Mr. Campbell complied with the law and had the animals inspected as the law and the regulations require.

The Act of May 26, 1897, (P. L. 99), above referred to provides in Section 1:

> "That the importation of dairy cows and neat cattle for breeding purposes into the Commonwealth of Pennsylvania, is hereby prohibited, excepting when such cows and neat cattle are accompanied by certificate from an inspector whose competency and reliability are certified to by the authorities charged with the control of the diseases of domestic animals in the State from whence the cattle came, certifying that they have been examined and subjected to the tuberculin test and are free from disease."

The act also provides that in lieu of the inspection certificate cattle may be detained at suitable stockyards nearest to the State line on the railroad over which they are shipped and there examined at the expense of the owner, or may be shipped into the State in quarantine to their destination in Pennsylvania and remain in quarantine until properly examined, under restrictions provided by the State Livestock Sanitary Board, and until released by the State Livestock Sanitary Board.

The violation of this act is made a misdemeanor, punishable by fine or imprisonment. It is this act which Mr. Campbell violated and for which violation he was fined. Having violated the law, and by his violation imposed upon the State trouble and expense, he now asks the State to make him whole on account of the loss which his own violation of the law incurred. There is no legal or moral obligation on the part of the State to reimburse Mr. Campbell, and you are therefore advised that the State Livestock Sanitary Board ought not to pay the sum of $281.12, being one-third of the appraised value of his property destroyed as above indicated.

I herewith return the certificate of appraisements of his cattle and property.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

APPROPRIATION.

Payment cannot be made for posting notices from an appropriation which has lapsed, where contract for posting notices was not made or work done prior to lapsing of appropriation.

Office of the Attorney General,

Harrisburg, Pa., July 29, 1911.

Dr. C. J. Marshall, Secretary, State Livestock Sanitary Board, Harrisburg, Pa.

Dear Sir: Your favor of the 8th ultimo, addressed to the Attorney General, was duly received.

You ask to be advised whether or not you can pay for the posting of notices provided by the Act approved May 26, 1897, (P. L. 99), as amended by the Act of April 5, 1905, (P. L. 106), out of the appropriation made to your Department for the two fiscal years, ending May 31, 1911.

I understand the facts to be that about April 15, 1911, notices as required by these Acts of Assembly, intending to notify farmers, breeders and livestock dealers regarding the law in reference to the importation of dairy cows and neat cattle for breeding purposes, were ordered from the State Printer; that on May 18, 1911, an additional supply was ordered, and men were engaged, to be paid from $2.50 to $3.00 per day with allowance for livery hire and other necessary expenses, to post said notices in the counties of Pennsylvania bounding on adjoining States, and similar notices were subsequently published in newspapers; that owing to delays you were unable to obtain the notices until after May 31, and therefore the work for which the men had been engaged could not be done until the fiscal year had ended.

The appropriation made your Department for the two fiscal years ending May 31, 1911, for the cost of enforcing the inspection of animals imported into Pennsylvania, as required by the act above referred to, is contained in the General Appropriation Act of 1909. Section one of that act provides that

> "The following sums, or so much thereof as may be necessary, be and the same is hereby specifically appropriated to the several objects hereinafter named for the two fiscal years commencing the first day of June, 1909, and for the payment of bills incurred and remaining unpaid at the close of the fiscal year ending May 31, 1909."

The Appropriation Act of 1911 contains the same language—"providing for the payment of bills incurred and remaining unpaid at the close of the fiscal year, May 31, 1911."

The work of posting these notices was not done during the fiscal year ending May 31, 1911, and no enforceable contract had been entered into. All that was done was to engage men to do the work when the Livestock Sanitary Board was ready to have it done.

I am, therefore, of the opinion that the payment of these services and the expense in connection with the work, as well as that of publishing the notices in connection therewith, unless such notices were actually published prior to May 31, 1911, cannot be paid out of the balance remaining in the fund appropriated for the fiscal year ending May 31, 1911.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

STATE LIVESTOCK SANITARY BOARD.

A member of the Board may not be appointed its treasurer with compensation for his services.

The deputy State veterinarian may be appointed an assistant to the board with a salary therefor.

Office of the Attorney General,

Harrisburg, Pa., Decmber 27, 1911.

Dr. C. J. Marshall, State Veterinarian and Secretary of State Livestock Sanitary Board, Harrisburg, Pa.

Sir: This Department is in receipt of your communication of December 19, 1911, stating that on February 1, 1911, the State Livestock Sanitary Board organized, by electing the Governor president, the Dairy and Food Commissioner vice-president, the Secretary of Agriculture treasurer, the State Veterinarian secretary, and the Deputy State Veterinarian clerk, and that at a meeting of the board, on August 1, 1911, a resolution, a copy of which is enclosed in your communication, was adopted, providing compensation for services rendered by the treasurer and the clerk.

You ask to be advised whether it would be lawful for the State Livestock Sanitary Board to pay the treasurer thereof $50.00 per month, and the clerk thereof $50.00 per month, provided the board considers such services necessary.

You call attention to Section 6 of the Act of May 21, 1895, establishing the State Livestock Sanitary Board, which section provides, inter alia,

> "that the State Livestock Sanitary Board is hereby empowered to appoint and employ such assistants and agents, and to purchase such supplies and materials as may be necessary in carrying out the provisions of this act," etc.,

also to a paragraph in the General Appropriation Act of June 14, 1911, at page 230, reading as follows:

> "State Livestock Sanitary Board.
>
> For the enforcement of the Acts of May twenty-first, one thousand eight hundred and ninety-five, and March thirtieth, one thousand nine hundred and five, and for the payment of indemnity for animals afflicted with dangerous, contagious or infectious diseases, and for the expenses of detecting, quarantining and disposing of such animals, as provided by law, two years, the sum of two hundred and sixty thousand dollars ($260,000)."

The Act of March 30, 1905, (P. L. 78), referred to in the foregoing appropriation, is an act to further define the duties and powers of the State Livestock Sanitary Board, etc. In and by the resolution of your board, above referred to, it is provided as follows:

> "Whereas, in the organization of the State Livestock Sanitary Board no provisions are made for the remuneration of officers for services rendered, and
>
> Whereas, Hon. N. B. Critchfield, treasurer of the Board, handles each month about $20,000 for the Commonwealth, and signs from fifty to one hundred checks, and is responsible to a large extent for the safe keeping and paying out of this sum of money, and
>
> Whereas, Dr. T. Edward Munce attends to the Board file, records the minutes of the meetings, and has other duties to perform by virtue of his office as clerk to this Board.
>
> Therefore, be it resolved, that the treasurer, Hon. N. B. Critchfield, be required to give a bond of $20,000 for the safe keeping of the funds, and that he be paid a salary of $50.00 per month, beginning August 1st, 1911, for his services as treasurer; and be it further resolved, that Dr. T. E. Munce be paid the sum of $50.00 per month, beginning August 1st. 1911, for services rendered as clerk to the Board."

As I understand your inquiry, it narrows itself down to this proposition. Is there authority in law for paying the Secretary of Agriculture the sum of $50.00 per month for acting as treasurer of the State Livestock Sanitary Board, and for paying the Deputy State Veterinarian the sum of $50.00 per month for acting as clerk to the board, out of the above quoted appropriation of $260,000, upon the

theory that both of these persons are employed as assistants to the board, under Section 6 of the above mentioned Act of May 21, 1895?

Under the act establishing your board, it is provided that the State Livestock Sanitary Board of Pennsylvania shall consist of the Governor of the Commonwealth, the Secretary of Agriculture, the State Dairy and Food Commissioner, and the State Veterinarian. The various persons elected or appointed to fill the above mentioned offices from time to time become ex-officio members of the board. Certain duties are imposed upon them by the act establishing your board, and by subsequent legislation, but the Legislature has not yet seen fit to provide that any members of the board, shall receive any compensation for the performance of their duties as members of the board, in addition to the regular compensation which they are entitled to receive, as Governor, Secretary of Agriculture, State Dairy and Food Commissioner, and State Veterinarian, respectively.

Under the above quoted Section 6 of the Act of 1895, the board is empowered to appoint and employ such assistants and agents as may be necessary in carrying out the provisions of this act, and the appropriation above mentioned is a specific appropriation for the purpose of the enforcement of the Acts of 1895 and 1905.

It is now proposed to employ one of the members of the board, viz: the Secretary of Agriculture, as an assistant to the board in the capacity of treasurer thereof, and to pay him $50.00 per month for the performance of his duties as treasurer.

The resolution of the board seeks to place the Secretary of Agriculture in the dual position of employer and employee. In my opinion, however, a person can not be at one and the same time a member of a board authorized to employ certain assistants, and one of the assistants thus employed.

I am, therefore, of the further opinion, that no part of the appropriation of $260,000, above mentioned, can be used to pay a salary to any member of the State Livestock Sanitary Board for services rendered to the board; and, consequently, that so much of the resolution adopted by the board as provides for the payment of $50.00 per month to Hon. N. B. Critchfield, the present Secretary of Agriculture, is illegal.

And, I am also of opinion, that there is no authority in law for requiring any member of the board to give a bond for the faithful performance of his duties as a member of the board.

But, with reference to the proposed employment of Dr. T. Edward Munce, the present Deputy State Veterinarian, who has been elected clerk of the board, the situation is different. The Deputy State Veterinarian, whoever he may be from time to time, is not a member of the board and has no official connection with the board It may be that it has been and will be found convenient to have the Deputy State Veterinarian act as clerk to the board. It therefore follows,

in my judgment, that, under the above mentioned 6th Section of the Act of 1895, the board is empowered to employ a clerk as an assistant, if necessary, to aid the board in the performance of its duties; and, further, that there is warrant and authority in law for the board to employ Dr. Munce, as an individual, or any other person, as a clerical assistant to the board; and, still further, that the proper compensation for such assistant, as fixed by the board, may legally be paid out of the above mentioned appropriation of $260,000.

In brief, the clerk thus employed will have and hold the same relation to the board, in so far as his employment and compensation are concerned, as that of the thirty or forty other assistants now employed by the board in its various fields of activity.

Very truly yours,

JNO. C. BELL,
Attorney General.

INSPECTION OF CATTLE.

The State may recover from Davis & Lampert the amount paid to the veterinarian for inspecting their cattle and also the amount paid them as indemnity for the diseased cattle.

Office of the Attorney General,

Harrisburg, Pa., January 25, 1912.

Dr. C. J. Marshall, State Veternarian, Harrisburg, Pa.

Sir: Some time ago you requested an opinion concerning the right of the State to recover certain sums of money from Messrs. Davis and Lampert, of Norristown, Pa. The facts, as I understand them, are as follows:

On October 27, 1910, Messrs. Davis and Lampert signed a request for inspection and tuberculin test of a herd of cattle, as follows:

> "I have reason to believe that some of my cattle are afflicted with tuberculosis, and I wish to have my entire herd inspected, and tested with tuberculin, if such test is deemed necessary by your representative, and the diseased animals disposed of according to the rules and regulations of the State Livestock Sanitary Board.
>
> I understand that this inspection and test are to be made at the expense of the Commonwealth and, in consideration thereof, I agree to thoroughly disinfect the premises and correct faulty sanitary conditions and thereafter to observe the precautions and measures and to employ the means recommended by your Board to prevent the reintroduction and redevelopment of tuberculosis in my herd. In particular, I agree to purcahse no cows for

addition to my herd until they have been proven by tuberculin test to be free from tuberculosis, and if 20 per cent. of my present herd shall be found to be tubercular, I will have a retest made under the supervision of your Board, at my own expense, within eight months from the time of the State inspection."

Upon the receipt of such request the State Livestock Sanitary Board employed a veterinarian, who made the inspection of a herd of twenty-seven dairy cattle, of which nine, or 33 1-3% were found to be tuberculous. The Commonwealth paid to said veterinarian the sum of $26.76 for his services in making such inspection and applying the tuberculin test.

In pursuance of this agreement and the condition contained therein, the Commonwealth, through the State Livestock Sanitary Board, agreed to condemn, appraise and dispose of the diseased cattle, and they were accordingly disposed of. The Commonwealth paid to Messrs Davis and Lampert the sum of $194.54.

Messrs. Davis and Lampert did not carry out their part of the agreement which induced the payment of this money, in that they did not have the remaining cattle retested within eight months at their own expense, and did purchase other cows and add them to their herd and sold the eighteen cattle which passed the first test without having them retested.

It appears that the Commonwealth was induced to expend its money upon the promises made in the request for inspection and tuberculin test above quoted, in the interest of the health and the suppression of contagious diseases among cattle, and if these conditions have not been complied with, I am of opinion that the Commonwealth may recover both the amount paid to the veterinarian for the inspection and also the amount paid as indemnity for the diseased cattle.

I herewith return to you the letter of the chief of the Department of Milk Hygiene.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

RULES AND REGULATIONS.

The State Livestock Sanitary Board may adopt rules and regulations requiring domestic animals afflicted with tuberculosis to be branded with the letter "T", and such branding if made in a careful manner would not subject the person making the same under proper authority to a prosecution for cruelty to animals.

Office of the Attorney General,

Harrisburg, Pa., February 1, 1912.

Dr. C. J. Marshall, State Veterinarian, Harrisburg, Pa.

Sir: Some time ago you requested an opinion of this Department as to whether the State Livestock Sanitary Board could adopt rules and regulations requiring domestic animals afflicted with tuberculosis to be branded with the letter "T".

The facts which give rise to this inquiry I understand to be as follows:

It is customary for the agents of the Livestock Sanitary Board to attach to the ears of domestic animals condemned for tuberculosis, by means of a metal ring, a quarantine tag consisting of a small metal plate. These tags are frequently lost or purposely removed. It is then difficult to identify such animals, and the probability of the infection of other animals is thus greatly increased. In order to prevent such possible infection it is proposed to brand the infected animals with the capital letter "T", not less than two inches high and 1½ inches wide, with a mark ¼ of an inch wide.

I understand similar brands are used in other States, and that a bill was passed at the last Legislature providing for such branding, but that it was vetoed by the Governor for reasons which had nothing to do with the method of marking.

Your inquiry is whether the board could adopt a rule requiring such branding without subjecting those who do the branding to prosecution for cruelty to animals.

The Act of May 21, 1895, (P. L. 91), establishing the Livestock Sanitary Board, defines its powers in Section 2, and as that section is amended by the Act of April 1, 1905, (P. L. 100), the powers of the board are enumerated as follows:

> "That it shall be the duty of the State Livestock Sanitary Board to protect the health of the domestic animals of the State; to determine and employ the most efficient and practical means for prevention, suppression, control, or eradication of dangerous, contagious, or infectious diseases among the domestic animals; and for these purposes it is hereby authorized and empowered to conduct scientific investigations in relation to the causes, nature, and prevention of diseases of animals; to establish, maintain, enforce and regulate such quarantine and other measures relating to the *movements and care of animals* and their products, the disinfection of suspected localities and articles, and the destruction of animals, as it may deem necessary; and to adopt, from time to time, all such regulations as may be necessary and proper for carrying out the purposes of this act."

I am of opinion that by virtue of this authority, if the Livestock Sanitary Board determines that branding with the letter "T" as above referred to, is the most efficient and practical means for the prevention or suppression of tuberculosis among domestic animals and a proper regulation or measure relating to the movements and care of such animals and for their proper quarantine, such branding of said animals by an authorized agent of your board, pursuant to such regulation,—providing such branding is made in a careful manner,—would not subject the person acting under such authority to a prosecution for cruelty to animals.

Very truly yours,

JNO. C. BELL,
Attorney General.

SHIPMENT OF CATTLE.

A railroad corporation, its officers, agents, servants or employees who engage in the shipment of dairy cows or neat cattle into the State without the certificate or special permit required by law and the rules and regulations of the State Live Stock Sanitary Board are liable both civilly and criminally for such violation of the Act of Assembly and rules and regulations.

Office of the Attorney General,

Harrisburg, Pa., February 1, 1912.

Dr. C. J. Marshall, State Veterinarian, Harrisburg, Pa.

Sir: I have your communication of the 29th ult.

Your inquiry in substance is whether a railroad company is liable under the law, civilly or criminally, for the shipment of dairy cows or neat cattle for breeding purposes from points outside of the Commonwealth to points of consignment or delivery within the Commonwealth other than "suitable stockyards nearest to the State line on the railroad over which they are shipped," where such cows or cattle are not accompanied by (a) a certificate from a proper inspector in the State from which the cattle came, or (b) a special permit for such shipment, obtained from the State Livestock Sanitary Board under the rules and regulations adopted by it.

The answer to this question is to be found in the Act approved May 26, 1897, (P. L. 99), entitled "An act to protect the health of domestic animals of the Commonwealth of Pennsylvania," and in the rules and regulations of the State Livestock Sanitary Board, made and promulgated in pursuance of the provisions of said act for its enforcement.

The first Section of this act prohibits the importation of dairy cows and neat cattle for breeding purposes, excepting when such cows and neat cattle are accompanied by a certificate from a duly qualified inspector in the State whence the cattle came.

By the second Section of said act it is further provided as follows:

> "That in lieu of an inspection certificate as above required, the cattle may be detained at suitable stock yards nearest to the State line on the railroad over which they are shipped, and there examined at the expense of the owner, or cattle as above specified from points outside of the State may, *under such restrictions* as may be provided by the State Livestock Sanitary Board, be shipped in quarantine to their destination in Pennsylvania, there to remain in quarantine until properly examined at the expense of the owner, and released by the State Livestock Sanitary Board."

The third Section further invests the State Livestock Sanitary Board with authority "to make and enforce rules and regulations governing such traffic as may from time to time be required."

Accompanying your letter is a printed copy of the rules and regulations adopted by the State Livestock Sanitary Board for the enforcement of the act. One of these rules (No. 3) provides as follows:

> "Dairy cows and such other cattle as are for breeding purposes may be brought into Pennsylvania *without previous examination only under the following condition:*
>
> "A special permit for each shipment must be applied for to the State Livestock Sanitary Board, Harrisburg, Pa., and held, and this must accompany the cattle.
>
> "Such cattle shall remain in strict quarantine during transit and after they have arrived at their destination until they have been examined and tested with tuberculin and found to be free from evidence of infectious disease, by an inspector approved by this Board."

It is of course the duty of the board to properly promulgate the rules and regulations adopted by it, *(Commonwealth v. Grube,* No. 3, 20 Dist. Reports 1038), and I gather from your letter that this has been done and that the railroad companies have received due notice of the above quoted rule and regulation of the board.

Advancing a step further in answer to your question, reference must next be had to the fourth Section of the act, which provides "that any person, firm or corporate body violating the provisions of the act shall be deemed guilty of a misdemeanor," and upon conviction in the proper county shall be subject to a fine of not less than $50.00 or more than $100.00, or be punished by imprisonment, as therein provided, either or both, at the discretion of the court.

And in the said section it is further provided that such person, firm or corporate body shall be liable for the whole amount of damages that may result from a violation of the act.

By the express provision of this last quoted section of the act, it is clear that any person, firm or corporate body, shipping dairy cows or neat cattle into the Commonwealth without a certificate from a proper inspector in the State from which the cattle came, as provided in the first Section of the act, or without a special permit for such shipment, as required under the rule and regulation of your board, above quoted, is guilty of a misdemeanor. It is a well settled principle of law that in misdemeanors all who aid or abet in the commission of the crime are principals. And this rule of law, in my judgment is applicable to the railroad company which makes such shipment in violation of the provisions of the act and of the rules and regulations of your board, of which the company has had due notice.

Specifically answering your above stated inquiry, therefore, my opinion is that the railroad corporation making such importation of dairy cows or neat cattle, if unaccompanied by the certificate or special permit therein referred to, and such of the officers, agents, servants, or employees of the company as engage in such shipment, are liable, civilly or criminally, for such importation as a violation of the provisions of said recited Act of Assembly and of the rules and regulations of your board, duly made and promulgated to enforce the said act.

Yours sincerely,
JNO. C. BELL,
Attorney General.

RULES AND REGULATIONS.

The State Livestock Sanitary Board may adopt rules and regulations authorizing its agents to tag animals affected with tuberculosis, and to post notices on the pens containing such animals. The removal of such animals and other violations of the regulations may be punished by indictment for a misdemeanor.

Office of the Attorney General,

Harrisburg, Pa., April 16, 1912.

Dr. C. J. Marshall, State Veterinarian, Harrisburg, Pa.

Sir: Sometime ago you requested an opinion of this Department as to whether the Livestock Sanitary Board had the right to make rules and regulations authorizing its agents to tag animals which, in their opinion, are affected with tuberculosis, or other diseases,

and to post notices upon the gates of the pen containing such animals, and whether the removal of such animals, in violation of such regulations, is punishable, under the provisions of the Act of May 21, 1895, (P. L. 91), and Section 3 of the Act of April 27th, 1909, (P. L. 189), amending Section 3 of the Act of March 30, 1905, (P. L. 79)?

As I understand, the facts which give rise to this request are as follows:

In certain stockyards the agents of your board attach to the ears of animals affected with tuberculosis a Pennsylvania quarantine tag, and, in cases where the owner can be located, serve a written order of quarantine upon him, and require the owner to remove such animals. In some cases it is impossible to ascertain the owner's name, and, consequently no written notice of quarantine can be served on him. Therefore, in such cases, it is desired to post a placard on the gate of each pen containing such tagged and diseased animal, which placard gives notice of the fact that the animal is diseased, marked with a tag, must not be removed without a permit obtained from the Livestock Sanitary Board.

You ask to be advised whether the board can adopt such regulations, and whether a violation of them is punishable under the Acts of Assembly before referred to.

Section 2 of the Act of May 21, 1895, (P. L. 91), establishing the State Livestock Sanitary Board, provides:

> "That it shall be the duty of the State Livestock Sanitary Board to protect the health of the domestic animals of the State, to determine and employ the most efficient and practical means for the prevention, suppression, control or eradication of dangerous, contagious or infectious diseases among the domestic animals, and for these purposes it is hereby authorized and empowered to establish, maintain and enforce and regulate such quarantine and other measures relating to the movements and care of animals and their products, the disinfection of suspected localities and articles ,and the destruction of animals, as it may deem necessary, *and to adopt from time to time all such regulations as may be necessary and proper for carrying out the purposes of this act.*"

Section 5 provides:

> "That any person or persons wilfully violating any of the provisions of this act, *or any regulation of the State Livestock Sanitary Board,* or wilfully interfering with officers appointed under this act, shall be deemed guilty of misdemeanor, and shall, upon conviction, be punished by a fine not exceeding one hundred dollars, or by imprisonment not exceeding one month, or both, at the discretion of the court."

In the case of United States vs. Grimaud, 220 U. S. 506, the Supreme Court of the United States has distinctly determined that Congress can confer upon an officer the right to make regulations, carry out the provisions of a statute, and provide a penalty for the violation of such regulations.

The Act of 1895 distinctly confers the power to make reasonable regulations upon the Livestock Sanitary Board, and just as distinctly provides that any person violating any of those regulations shall be guilty of a misdemeanor. The regulation which you propose to make appears to be, in all respects, a reasonable one to carry out the duties imposed upon the board by Section 2 of the act, as hereinbefore cited.

I am, therefore, of opinion, that such regulations may be adopted by the Livestock Sanitary Board, and, when properly adopted and promulgated, a violation of these regulations can be punished by indictment for a misdemeanor.

It is not necessary, in view of this conclusion, to determine whether the violation of such regulations can be punished under the provisions of the Acts of March 30, 1905, and April 27, 1909, to which you refer, because a complete remedy is given for the violation of such regulations by the Act of May 21, 1895.

Very truly yours,

JNO. C. BELL,
Attorney General.

EXPENSE OF PRINTING AND DISTRIBUTING CIRCULARS.

The expense of printing and distributing circulars, containing necessary information to the public, in re. infectious diseases, inspection of animals shipped into this State, controlling rabies and the quarantine of dogs and meat hygiene service, may be paid out of the various appropriations to the State Livestock Sanitary Board.

Office of the Attorney General,

Harrisburg, Pa., June 18, 1912.

Dr. C. J. Marshall, State Veterinarian, Harrisburg, Pa.

Sir: I have your letter of recent date, in which, after pointing out the desirability of printing and distributing certain valuable information concerning the matters over which your Department has special jurisdiction, you ask to be informed as to whether or not such publications can be legally paid for out of the various appropriations made to the State Livestock Sanitary Board in and by the Act of June 14, 1911, (P. L. 230-231).

Your letter contains five different inquiries, which I shall answer in their order:

1. You inquire whether "the board can legally pay from the fund appropriated for the enforcement of the Acts of May 21, 1895, (P. L. 91), and March 30, 1905, (P. L. 78), for the printing and distribution of a circular to farmers, etc., containing information regarding the eradication and control of dangerous and infectious diseases of animals and to protect milk supplies from contamination."

The said Act of May 21, 1895, (P. L. 91), is entitled:

> "An act to establish the State Livestock Sanitary Board of Pennsylvania, and to provide for the control and suppression of dangerous, contagious or infectious diseases of domestic animals."

The Act of March 30, 1905, (P. L. 78), supplements said act, and is entitled:

> "An act to further define the duties and powers of the State Sanitary Livestock Board; to prevent the spread of dangerous, contagious or infectious diseases among domestic animals; to require reports to be made of the existence of such diseases; to limit the appraisements and payments for animals that it may be necessary to destroy to prevent the spread of disease; to protect milk supplies from contamination," etc.

In Section 2 of the first quoted act it is provided:

> "That it shall be the duty of the State Livestock Sanitary Board to protect the health of domestic animals of the State, *to determine and employ the most efficient and practical means for the prevention, suppression, control or eradication of dangerous, contagious or infectious diseases* among the domestic animals * * * * and to adopt from time to time all such regulations as may be necessary and proper for carrying out the purposes of this act."

The Appropriation Act of June 14, 1911, (P. L. 230), makes a specific appropriation

> "for the enforcement of the Acts of May twenty-first, one thousand eight hundred and ninety-five, and March thirtieth, one thousand nine hundred and five, and for the payment of indemnity for animals afflicted with dangerous, contagious or infectious diseases," etc.

Construing the two acts just quoted establishing the State Livestock Sanitary Board and defining its duties and powers, in connection with the said paragraph of the appropriation bill, and having specially in view the large discretionary power vested in the board "to determine and employ the most efficient and practical means," and to adopt "all such regulations as may be necessary or proper" for carrying out the purposes of the act, I am of the

opinion that the board has authority to print and distribute such a circular as you mention, and to pay for the same out of said appropriation—if such circular relates to and is explanatory of the said acts and the regulations of the board, and, in its judgment, such publication is an efficient and practical means for the prevention, suppression, control or eradication of dangerous, contagious or infectious diseases among domestic animals; or to protect milk supplies from contamination, as provided for in said acts.

2. You further inquire whether the board can lawfully "pay for printing and distributing information relating to the control of interstate shipments from the fund appropriated for the payment of the cost of supervising and enforcing inspection of animals brought from other States into Pennsylvania, as required by the Act of May 26, 1897, (P. L. 99)."

The Act of May 26, 1897, (P. L. 99), is entitled:

> "An act to protect the health of the domestic animals of the Commonwealth of Pennsylvania."

It relates particularly to the importation of dairy cows and neat cattle for breeding purposes into the Commonwealth of Pennsylvania, under certain regulations therein prescribed.

In Section 3 of said act the State Livestock Sanitary Board is

> "authorized and empowered to prohibit the importation of domestic animals into the Commonwealth of Pennsylvania whenever in their judgment such measures may be necessary for the proper protection of the health of the domestic animals of the Commonwealth, and to make and enforce rules and regulations governing such traffic as may from time to time be required."

In Section 5 of said act the said board is

> "charged with the enforcement of this act and is authorized to see *that its provisions are obeyed,* and to make from time to time such rules and regulations as may be necessary and proper for its enforcement."

The Appropriation Act of June 14, 1911, (P. L. 230), contains a specific appropriation "for the payment of the cost of supervising and enforcing the inspection of animals brought from other States into Pennsylvania, as required by the Act of May twenty-sixth, one thousand eight hundred and ninety-seven."

Under a reasonable and proper interpretation of the two acts last referred to, payment, in my opinion, may be lawfully made out of said appropriaiton for the promulgation of the restrictions, rules and regulations adopted by the board, and for printing and distribut-

ing information relative to and explanatory of such restrictions, rules and regulations relating to the importation, control, detention, quarantine and inspection of animals brought from other States into Pennsylvania—if, in the judgment of the board, an expenditure for such purpose is necessary and proper for the enforcement of the said Act of May 26, 1897.

3. You further inquire whether the board can lawfully "pay for printing and distributing information in regard to methods of controlling rabies and the quarantine of dogs, as required by the Act of March 27, 1903, (P. L. 100)."

The said Act of March 27, 1903, is entitled:

> "An act to prevent the spread of the disease known as rabies or hydrophobia; and to authorize the quarantine, restraint, confinement, or muzzling of dogs during outbreaks of this disease; and to empower the State Livestock Sanitary Board to enforce the provisions of this act."

The Act of June 14, 1911, (P. L. 230), contains a specific appropriation to said board "for the control and suppression of rabies and the quarantine of dogs," as required by the Act of March 27, 1903.

A reasonable and proper interpretation of the two acts last referred to would, in my judgment, legally justify payment out of said appropriation for the promulgation of the notices, rules, regulations and orders of the Board and for printing and distributing information relative to and explanatory of such notices, rules regulations and orders, relating to the methods of controlling and preventing the spread of rabies or hydrophobia and the quarantine of dogs—if, in the judgment of the board, an expenditure for such purpose is necessary and proper to enforce the provisions of the said Act of March 27, 1903.

4. You further ask whether the board can lawfully "pay for printing and distributing information concerning the Meat Hygiene Service from the fund appropriated for the payment of expenses of the State Meat Inspection Service, etc., as provided by the Act of May 25, 1907, (P. L. 234)."

The said Act of May 25, 1907, is entitled:

> "An act to protect the public health by providing for the prevention of the preparation and sale of meat and food products which are unsound, unhealthful, unwholesome and otherwise unfit for human food; defining what shall be regarded as meat and meat food products; authorizing the payment of and compensation of local meat inspectors; authorizing the State Livestock Sanitary

Board to enforce the provisions of this act; to make rules and regulations for its enforcement and to appoint agents to assist in its enforcement, and to provide penalties for the violation or perversion thereof."

The Appropriation Act of June 14, 1911, (P. L. 230), makes a specific appropriation to the State Board "for the payment of the expenses of the State Meat Inspection Service, and for the payment of salaries and actual travelling expenses of the agents of the State Livestock Sanitary Board in the Meat Inspection Service, as provided by law."

A reasonable and proper interpretation of the two acts referred to would, in my judgment, legally justify the payment from the said appropriation for the promulgation of the rules, regulations, methods and standards adopted by the board and for printing and distributing information relative to and explanatory of such rules, regulations, methods and standards relating to the Meat Inspection Service—if, in the judgment of the board, an expenditure for such purpose is necessary and proper to enforce the provisions of the said Act of May 25, 1907.

Very truly yours,
JNO. C. BELL,
Attorney General.

MEAT INSPECTOR.

The words "meat inspector", as contained in the Act of March 25, 1903, P. L. 60, applies to a veterinarian. Where the acts of a veterinarian in condemning cattle have been recognized by the appraisement of the meat or carcass and the payment of the owner thereof, the expenses of the meat inspector in the examination of such meat is properly payable out of the appropriation to the State Livestock Sanitary Board.

Office of the Attorney General,

Harrisburg, Pa., July 29, 1912.

Dr. C. J. Marshall, State Veterinarian, Harrisburg, Pa.

Sir: Some time ago you asked to be advised by this Department whether a veterinarian who was not appointed for the purpose, could incur expenses as an agent of the Livestock Sanitary Board, and whether the State Livestock Sanitary Board would be authorized to pay the expenses thus incurred.

The facts which give rise to the inquiry I understand to be these:

Dr. E. S. Moyer, who is a licensed veterinarian engaged in private practice at Perkasie, Bucks county, Pa., and who is approved in respect to his competency and reliability as a veterinarian by the

secretary of the Livestock Sanitary Board, at the solicitation of the owners of certain animals, proceeeded to the premises where the animals were killed, and examined the carcasses, finding them unfit for food because the animals had tuberculosis. The carcasses were then appraised and disposed of and the certificate forwarded to the office of the State Livestock Sanitary Board, and that board paid the value of the carcasses, as shown by the appraisement, to the owner.

Dr. Moyer did not, however, previous to his visit to the premises. notify the State Livestock Sanitary Board, and was not specially authorized to act as agent for the board in those cases. He rendered a bill, which is recognized as reasonable, for services in several cases of this character.

By the Act of March 25, 1905, (P. L. 60), it is provided in Section 1:

> "That whenever it comes to the knowledge of the secretary of the State Livestock Sanitary Board, *or an agent* of that board who is authorized to inspect animals, that a meat-producing animal, killed for food, was found to be infected with tuberculosis, or with a disease resembling tuberculosis, it shall be the duty of the secretary of the State Livestock Sanitary Board, either himself or by deputy, *or of an authorized agent of the State Livestock Sanitary Board,* to make an inspection of the said dead animal and its parts."

Section 2 provides:

> "If it shall be found that the animal * * * * was infected with tuberculosis * * * the said animal carcass or meat shall be condemned, and shall be disposed of by the use of any method that is approved by the State Livestock Sanitary Board. For the guidance of inspectors of animals and meats, and of agents of the State Livestock Sanitary Board, rules of the inspection of the carcasses of meat-producing animals may be promulgated by the State Livestock Sanitary Board, etc."

Section 3 provides:

> "*When it is decided by a meat inspector* approved in respect to competency and reliability by the secretary of the State Livestock Sanitary Board, or by a member or agent of the State Livestock Sanitary Board, and certified by him in writing on an official form that shall be provided for this purpose by the State Livestock Sanitary Board, that the flesh of a meat-producing animal is unfit for use as food, on account of the fact that the animal from which it came was infected with tuberculosis to an injurious degree, the said meat or carcass may be appraised;" etc.

The State Livestock Sanitary Board is empowered by the Act of May 21, 1895, (P. L. 91), with authority to appoint authorized agents, and such agents shall "at all times have the right to enter any premises, farms, fields, pens, abbatoirs, slaughter-houses, buildings, cars or vessels where any domestic animal is at the time quartered, or wherever the carcass of one may be, for the purpose of examining it in any way that may be deemed necessary to determine whether they are or were the subjects of any contagious or infectious disease."

When the carcass of an animal has been condemned pursuant to the Act of 1903, it is paid out of the appropriation made by the General Appropriation Act to the State Livestock Sanitary Board for carrying out the provisions of said act.

If it were not for the language of Section 3 in the said Act of Assembly "where it is decided by a *meat inspector* approved in respect to competency and reliability by the secretary of the State Livestock Sanitary Board, *or by a member or agent* of the State Livestock Sanitary Board," there could be no contention that an unappointed veterinarian could, of his own motion, or at the request of the owner of a dead animal, impose costs upon the Commonwealth. Is the language of Section 3, just quoted, comprehensive enough to permit the imposition of such costs and expenses?

The State Livestock Sanitary Board has no one in its employ except its agents appointed pursuant to the authority vested in it, by the Act of 1895, and the agents appointed by the Governor pursuant to the provisions of the meat inspection Act of May 25, 1907, (P. L. 234).

The Act of 1903 clearly contemplates by the term "meat inspector" a person other than a member or an agent of the State Livestock Sanitary Board, for the language is "where it is decided by a meat inspector * * * * *or* by a member or an agent of the State Livestock Sanitary Board."

Who is such meat inspector? There is no law which specifically creates such a position. No one could so well fit the term as a licensed veterinarian in the absence of any legislation creating such a position. The letter of the secretary of the State Livestock Sanitary Board requesting this opinion, says:

> "Dr. Moyer is a qualified veterinarian and is approved in respect to competency and reliability by the secretary of the State Livestock Sanitary Board."

The State Livestock Sanitary Board, in this instance, noted upon the certificate furnished by Dr. Moyer, and the meat or carcass was appraised and the owner thereof paid by said board.

Assuming that it is a sound principle that the Commonwealth should not be required to pay fees and expenses of every veterinarian who acts at the instance of an owner of an animal or carcass, and without any previous direction or authority of the State Livestock Sanitary Board, yet if the State Livestock Sanitary Board subsequently approves of what such veterinarian has done, by paying the owner of the meat or carcass the amount of the appraisement, and the State thus recognized his act in condemning the carcass, that principle should not apply.

I am, therefore, of opinion that the words "meat inspector" applies to a veterinarian. The State Livestock Sanitary Board should, perhaps, be slow to recognize the voluntary acts of veterinary surgeons performed without the previous direction or authority of that board, but when such acts have been subsequently recognized by the appraisement of the meat or carcass, and the payment of the owner therefor, I am of opinion that the reasonable expenses of such meat inspector in the examination of such meat is properly and legally payable out of the item in the general appropriation bill made to the State Livestock Sanitary Board for carrying out the provisions of the Act of March 25, 1903.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

OPINIONS TO BOARD OF COMMISSIONERS OF NAVIGATION.

OPINIONS TO BOARD OF COMMISSIONERS OF NAVIGATION.

IN RE PENNSYLVANIA PILOTAGE LAWS.

When a vessel has paid its full inward pilotage to Philadelphia, but has been in fact piloted to another port, a tug-boat captain or one not licensed as a pilot under the Act of Feb. 4, 1846, P. L. 30, cannot move the vessel under its own steam from that port to Philadelphia.

Office of the Attorney General,

Harrisburg, Pa., February 24, 1911.

George F. Sproule, Secretary, Board of Commissioners of Navigation, Philadelphia, Pa.

Dear Sir: Your favor of recent date, addressed to the Attorney General, was duly received.

You ask to be advised as to whether a vessel that is subject to pilotage under the laws of Pennsylvania, and which has already paid her full inward pilotage, can be shifted from a port or place within the river Delaware to Philadelphia, under the direction of one "without a license duly granted by the Board of Wardens for the Port of Philadelphia."

I understand your inquiry to be this: When a vessel has paid its full inward pilotage to Philadelphia, but has been in fact piloted to another port, can a tug boat captain, or one who is not licensed as a pilot, go upon the vessel and move the vessel, under its own steam, from that port to which it has been piloted, to Philadelphia?

The Act of February 4, 1846, (P. L. 30), provides:

> "That if any person, from and after the passage of this act, *shall undertake to pilot any vessel in the bay or river Delaware,* (except vessels under seventy-five tons burden), *or shall in any manner exercise or attempt to exercise the profession of pilot in said bay or river* without a license duly granted by the Board of Wardens of the Port of Philadelphia, or after such license has expired, any person so offending shall be imprisoned," etc.

This act is broad and comprehensive in its terms. It provides against any person undertaking to pilot any vessel over seventy-five tons burden in the river Delaware, or in any manner exercising or attempting to exercise the profession of a pilot in that river without a license.

The fact that the vessel has paid its full inward pilotage to Philadelphia does not affect the question which you ask. The pilotage may be paid, but such payment does not permit one acting without a license to actually do the piloting. If a vessel is moved from a port in the river Delaware to Philadelphia under the guidance and direction of one on board and under its own steam, such person is undertaking to pilot such vessel and is exercising to that extent the profession of a pilot, contrary to the provisions of the Act of February 4, 1846.

The 5th Section of the Act of March 24, 1851, (P. L. 229), does not affect this question. That act simply requires "that every vessel arriving from or bound to any foreign port or place, and every vessel of burthen of one hundred tons or upwards, sailing from or bound to any port not within the river Delaware * * * * * * * * shall be obliged to get a pilot."

A strict construction of this act may not require a pilot for a vessel moving from one port in the river Delaware to another port within the river Delaware, but whether it does not so require, if the vessel actually takes on a person for the purpose of piloting from one port within the river Delaware to Philadelphia, such person must have a license duly granted, as provided by the Act of 1846.

I therefore advised you that where a vessel is piloted from a port or place within the river Delaware to Philadelphia, it must be done by one who has a license, as required by said Act of 1846.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

SHIPMENT OF GUN COTTON.

The shipment of nitro cellulose (gun cotton), wet or dry, is within the provisions of the Acts of Assembly of March 28, 1787, and March 16, 1847.

Office of the Attorney General,

Harrisburg, Pa., May 5, 1911.

George F. Sproule, Secretary, Board of Commissioners of Navigation, Philadelphia, Pa.

Dear Sir: Your favor of April 24th, addressed to the Attorney General, was duly received. You ask to be advised whether a shipment of wet nitro cellulose is within the provisions of the Act of March 28, 1897.

I understand that the E. I. DuPont De Nemours Powder Co. requests permission to make a shipment of wet nitro cellulose from Port Richmond to San Francisco via the California-Atlantic S. S. Company's boats.

The Act of March 28, 1787, entitled "An act for securing the city of Philadelphia and neighborhood thereof from damage by gun powder" regulates the shipment of gun powder into and out of the port of the city of Philadelphia, and prohibits its shipment except as provided by said act.

The Act of March 16, 1847, is entitled "An act to provide against damage from gun cotton and extends the Acts of 1787 and 1818 to apply to gun cotton "as if the words gun cotton were inserted in said act."

Gun cotton is a "general name for nitrates of cellulose."—Century Dictionary.

The Act of Assembly does not make any distinction between wet and dry gun cotton. I am, therefore, of opinion, and so advise you, that nitro cellulose, either wet or dry, is within the provisions of the Acts of Assembly above referred to, and its shipment regulated thereby.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

PILOTS.

The Board of Commissioners of Navigation must find the fact that a pilot is a second time intoxicated "while having charge of any ship or vessel" before it is empowered to deprive him of a license and render him "forever thereafter incapable of acting as a pilot in the bay and river Delaware."

Office of the Attorney General,
Harrisburg, Pa., April 17, 1912.

George W. Norris, President, Board of Commissioners of Navigation, Philadelphia, Pa.

Sir: On February 16, 1912, you requested an opinion of this Department as to whether a pilot who has been "the second time intoxicated" makes him "forever thereafter incapable" of acting, and therefore renders the Commissioners of Navigation powerless to reinstate him, even though he has not been twice determined by the board to be guilty of intoxication.

The facts, as I understand them, are as follows:

On April 6th, 1903, the Board of Wardens, which was charged with the supervision of pilots, prior to the creation of the Board of Navigation, suspended the license of Pilot Harry C. Long, upon a charge sustained by proof of being "apparently the worse for liquor," when the pilot presented himself for service upon a British steamer, the captain of which declined to take him on account of his condition.

On December 6, 1909, the Commissioners of Navigation suspended him indefinitely, having reached the conclusion that his habits incapacitated him for efficient service as a pilot, but there does not appear to have been at that time any specific finding as to intoxication.

On June 6, 1910, the board reinstated him with the understanding that he was to abstain from the use of intoxicating liquors, and on August 1st, 1911, the board declined to renew his license because of the fact that on May 21st, preceding, he had, while under the influence of liquor, left an Austrian steamer.

The Act of March 13, 1817, (P. L. 109), provides in the 4th Section:

> "That on satisfactory proof being made to the wardens on oath or affirmation, (which oath or affirmation the master warden is hereby authorized to administer) that *any pilot whilst having charge of a ship or vessel,* was intoxicated with drink, it shall be the duty of the said wardens to suspend such pilot for any term not less than one year * * * * and if any pilot who may have been suspended for the reason aforesaid, shall, by satisfactory proof being made to the wardens, in the manner aforesaid, be *convicted* of being a second time intoxicated with drink *whilst having charge of any ship or vessel,* such pilot shall be deprived of his license, and be forever thereafter incapable of acting as a pilot for the bay and river Delaware."

This section, changed to apply to the Board of Commissioners of Navigation, was re-enacted by Section 4 of the Act of June 8, 1907, (P. L. 469), with the exception that the original act provided:

> "If any pilot who may have been suspended for the reason aforesaid, shall, by satisfactory proof being made to the wardens, in the manner aforesaid, be convicted of being a second time intoxicated with drink," etc.

and the Act of 1907 provides, simply:

> "If a pilot is the second time intoxicated, while having charge of any ship or vessel, such pilot shall be deprived of his license, etc."

By its provisions, if proof is made to the Board of Commissioners of Navigation that any pilot, *while having charge of a ship or vessel, shall be intoxicated,* it is the duty of the board to suspend such pilot.

The Board of Commissioners of Navigation cannot suspend a pilot until satisfactory proof has been made that he was intoxicated "while having charge of a ship or vessel," and although the language of the Act of March 13, 1817, requires that "the pilot be convicted of being a second time intoxicated," and that language is omitted from the Act of 1907, which says, simply: "if a pilot is the second time intoxicated," the effect of the latter act is the same. The Board of Commissioners of Navigation must find the fact that a pilot is a second time intoxicated "while having charge of any ship or vessel" before it is empowered to deprive him of a license and render him "forever thereafter incapable of acting as a pilot in the bay and river Delaware." The character of the proof is left to the discretion of the Board of Commissioners of Navigation. It must be such as will satisfy them, but the proof must nevertheless be made and the fact must be found by the board in both instances, first: that the pilot has been intoxicated "while in charge of a ship or vessel," and secondly: that he has been "the second time intoxicated," while in charge of a ship or vessel, in order to justify the imposition of the penalty, either for the first or second offense, as prescribed by the act.

The reports submitted do not disclose precisely what the action of the Board of Wardens and the Commissioners of Navigation was, nor do such reports state the facts required to be found by the Act of 1907, before depriving the pilot of the right to act as such in the bay and river Delaware. The first action in 1903 was made upon the charge "of being apparently the worse for liquor." There is no finding that at that time the pilot was intoxicated "while having charge of a ship or vessel," although his services were declined on that account. It was apparent that intoxication, at that time, was while he was off duty, and not while on duty.

On December 6, 1909, the commissioners suspended him indefinitely, because of his habits incapacitating him for efficient service, but there is no finding that he was a second time intoxicated "while having charge of any ship or vessel." They reinstated him on June 6, 1910. The board declined to renew his license on August 1st, 1911, because on May 21st, "he had left an Austrian steamer, obviously under the influence of liquor."

This finding may have been intended to meet the language of the Act of 1907, that he was intoxicated while having charge of the Austrian steamer as a pilot, but if that were intended by the finding

of the board it seems to be the first finding, so far as the facts are disclosed, of having been intoxicated while having charge of any ship or vessel.

The Board of Commissioners are not now precluded from finding as a fact pilot Harry C. Long has been twice intoxicated, while in charge of a ship or vessel, and are not precluded from correcting their records to be consistent with the facts, but before rendering him incapable of acting as a pilot such facts should be found and the records of the board should show such finding.

Specifically answering your inquiry, I am of opinion that the record which you submitted, as hereinbefore set out, does not show that proof has been made to the Board of Commissioners of Navigation that Pilot Harry C. Long has been the "second time intoxicated while having charge of any ship or vessel," and that, therefore, without said recorded fact or further finding, the Board of Commissioners of Navigation should not deprive him of his license and render him forever thereafter incapable of acting as a pilot in the bay and river Delaware.

Very truly yours,
JNO. C. BELL,
Attorney General.

PILOTS.

Apprentices who have served four years on board a pilot ship may be examined for licensure as third class pilots.

Office of the Attorney General,
Harrisburg, Pa., June 13, 1912.

George F. Sproule, Secretary, Board of Commissioners of Navigation, Philadelphia, Pa.

Dear Sir: Your favor of recent date, addressed to the Attorney General, was duly received.

You ask to be advised what effect the Act of June 9, 1911, (P. L. 750), has upon the Act of January 7, 1864, (P. L. 1141), and the Act of May 13, 1889, (P. L. 188).

The first Act of Assembly that dealt with the regulations of pilots was the Act of March 29, 1803, (P. L. 542). Section 17 of this act required

> "That every person exercising the profession of a pilot in the bay and river Delaware, shall * * * * apply in person to the Board of Wardens for the port of Philadelphia, for a license to entitle him to follow that occupation,"

and defined the classes as follows:

> "Those of the *first class* to persons capable of piloting ships or vessels of any *practicable draught of water*, those of the *second class* to persons capable of piloting ships or vessels drawing *twelve feet or under*, those of the *third class* to persons capable of piloting ships or vessels drawing *nine feet or under*."

Section 18 provided that

> "No license of the *first class*, shall be granted to any person who at the time of passing this act, shall not be, or within three months previous thereto, have been, a licensed pilot by virtue of the laws of this Commonwealth, or who shall not have served a regular apprenticeship of at least *six years* to a licensed pilot; nor any license of the *second class* except to persons already licensed as aforesaid, or such as shall have served an apprenticeship of at least *five years* in manner aforesaid, nor any license of the *third class* except to persons already licensed as aforesaid, or who shall have served an apprenticeship of at least *four years* in manner aforesaid."

The Act of January 7, 1864, (P. L. 1141), which is entitled:

> "A further supplement to an act to establish a Board of Wardens, for the port of Philadelphia, and for other purposes, approved March twenty-ninth, one thousand eight hundred and three,"

provided:

> "That from and after the passage of this act, *no license* shall be granted to any person to act as pilot, unless he has served a regular apprenticeship of *six years* on board a pilot boat."

The Act of May 13, 1889, (P. L. 188), is also entitled: "A further supplement" to the Act of 1803, and provides in the 6th Section:

> "That each pilot holding a license from the Board of Wardens for the port of Philadelphia at the time of the passage of this act, shall be entitled to demand and receive a license as first class pilot * * * * but 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."

The Act of June 8, 1907, (P. L. 469), entitled "An act to amend Sections four, seventeen, eighteen, nineteen, twenty-one," etc., of

the Act of 1803, amended Section 17 by striking out the words "those of the third class to persons capable of piloting ships or vessels drawing nine feet or under," and left but two classes of pilots and apprentices. This act also amended Section 18 of the Act of 1803 by striking out the provisions requiring a first class pilot to have served an apprenticeship of at least six years, a second class pilot to have served an apprenticeship of at least five years, and a third class pilot to have served an apprenticeship of at least four years, and incorporated the precise language of the Act of 1864 providing that "no license shall be granted to any person to act as pilot in the bay and river Delaware unless he has served a regular apprenticeship of at least six years on board a pilot boat," and added "and unless he has reached the age of twenty-one years."

The Act of June 9, 1911, (P. L. 750), further amended Section 17 by again providing for licenses as follows:

> "Those of the first class, to persons capable of piloting ships or vessels of any practicable draught of water; those of the second class, to persons capable of piloting ships or vessels drawing twenty-three feet of water or under; and those of the third class, to persons capable of piloting ships or vessels drawing fifteen feet of water, or under."

The 18th Section of the Act of 1803, as amended by the Act of 1907, was further amended by the Act of 1911, as follows:

> "No license shall be granted to any person to act as pilot of the *third class* in the bay and river Delaware, unless he has reached the age of twenty-one years, and has served a regular apprenticeship of *four years* on board a pilot boat; nor shall any license of the second class be granted to any person, unless he shall have served at least one year as a third class pilot, and no person shall be eligible for a license of the first class who has not served one year in the third class, and one year in the second class, in the manner aforesaid," etc.

This review suggests a conflict between the Act of 1864, which requires an apprenticeship of six years on board a pilot boat before *any* license can be granted to *any* person, and the 18th Section of the Act of 1907, as amended by the Act of 1911 just quoted, but a careful consideration shows that no such conflict exists.

The Act of 1864 was incorporated into the Act of 1907, which amended the 18th Section of the Act of 1803 in *totidem verbis;* that section dealt with the same subject matter, to wit, a licensing of pilots and the length of time of apprenticeship as the Act of 1864, and having incorporated the whole Act of 1864 into the Act of 1907, the Act of 1864 was therefore necessarily supplied and probably repealed by implication.

However, when the Act of 1911 amended the 18th Section of the Act of 1907 by changing the provisions of the Act of 1907 which had been taken from the Act of 1864, the said Act of 1911 necessarily repealed whatever, if anything, was left of the Act of 1864 to repeal.

Thereafter, in order to become pilots of the third class there was a required apprenticeship of only *four* years, as provided by the Act of 1911, and not of six years as provided by the Acts of 1864 and 1907.

Section 6 of the Act of 1889 limits the number of first class licensed pilots to forty, of second class licensed pilots to ten, and of apprentices, to five. There is no limitation upon the number of third class pilots, which class has been again created by the Act of 1911.

Specifically answering your inquiry, I am of opinion that the Act of 1911 does not affect Section 6 of the Act of 1889, regulating the number of first and second class pilots and apprentices, but must be read in conjunction with it; that Section 18, as amended by the Act of 1911, does repeal the Acts of 1864 and 1907, if the former act were not already repealed by the Act of 1907, and that therefore apprentices who have served an apprenticeship of four years on board a pilot boat, may be examined for licensure as third class pilots.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

SPEED OF VESSELS ON THE RIVER DELAWARE.

There is no statutory authority for the Board of Commissioners of Navigation to regulate the speed of vessels on the Delaware. Concurrent legislation by the States of New Jersey and Pennsylvania is necessary to authorize the adoption of such regulations.

Office of the Attorney General,

Harrisburg, Pa., June 18, 1912.

George F. Sproule, Esq., Secretary, Board of Commissioners of Navigation, Philadelphia, Pa.

Dear Sir: By your letter of June 6th you request to be advised whether the Board of Commissioners of Navigation have authority to make and enforce rules regulating the speed of vessels on the river Delaware.

You call attention to the fact that there is no United States regulation to govern speed in the harbor of Philadelphia, and also call attention to the fact that Hon. M. Hampton Todd, Attorney General, in an opinion dated April 7, 1909, advised the Commissioners that they did not have authority to establish such a regulation under the existing legislation of this State.

The only authority which has been vested in the Commissioners is by the Act of June 8, 1907, (P. L. 496), which creates the Board of Commissioners of Navigation. I entirely concur with the view expressed in the opinion given you on April 7, 1909, that there has been no grant of power to the commissioners by the said act, enabling them to adopt rules regulating the speed of vessels; and I also concur in the suggestion made in that opinion that, in view of the agreement made between the States of New Jersey and Pennsylvania, and ratified by the Act of Assembly of September 20, 1783, (2 Smith's Laws, 437), it would require concurrent legislation by the States of New Jersey and Pennsylvania to authorize the adoption and enforcement of such rules as you suggest for the regulation of the speed of vessels on the river Delaware.

Very truly yours,

JNO. C. BELL,
Attorney General.

OPINIONS TO EASTERN AND WESTERN PENITENTIARIES.

OPINIONS TO EASTERN AND WESTERN PENITENTIARIES.

PAROLE PRISONERS.

"A prisoner whose sentence runs for one year, from January 1 to December 31, cannot be discharged on the said thirty-first inasmuch as the year has not expired until said day has ended.

When a prisoner is arrested and returned, he must serve the amount of his sentence which had not expired on the date of his release on parole. The phrase 'unexpired maximum term,' in the Act of May 10, 1909, P. L. 45, refers to the term of sentence, and does not refer to the time passed on parole.

Although the sentence of a prisoner may be illegal, when it has been imposed by a court of competent jurisdiction, it is not for the penitentiary authorities, but for the court, to pass on its legality, and if illegal, to set the same aside and impose a proper and lawful sentence.

The penitentiary authorities cannot decline to receive a prisoner who has been sentenced to a flat sentence and not to a maximum and minimum sentence as required by the Parole Act of 1909.

Prisoners sentenced under a flat sentence should be held in accordance with such commitment; the legality of their sentence can be tested in habeas corpus proceedings.

When a parole prisoner is sent by virtue of a commitment to serve a new sentence for another crime, he is received under the authority of that sentence which has already begun to run from the day when it was imposed, and it is that sentence which he is serving when received in the penitentiary. He is held by virtue of that sentence until its expiration, at which time he is at once subject to be held for the unexpired maximum term of his first sentence."

Office of the Attorney General.

Harrisburg, Pa., March 15, 1911.

Charles D. Hart, Secretary, Board of Inspectors of Eastern Penitentiary, Philadelphia, Pa.

Dear Sir: Your favor of recent date was duly received. You request an answer to four questions:

First, as to what time of day you may legally discharge a prisoner. You state your question by taking the example of a sentence of one year from January 1st to December thirty-first, and ask whether you can discharge the prisoner at any time on the thirty-first. In my opinion you cannot. It is true, the law does not take cognizance of the fractions of a day, but the year has not expired which ends on December thirty-first until that day has ended.

Second. You ask to be advised how, under the Parole Act of May 10, 1909, P. L. 495, the words "unexpired maximum term" are to be construed when a prisoner violates his parole and is re-arrested and returned; that is to say, whether the unexpired maximum term

means what remains of the maximum sentence at the date when the prisoner was released on his parole or what remains of the maximum sentence at the date when the prisoner is returned. In the latter case the prisoner would have credit for so much of his sentence as he passed out of prison while on parole. Section 14 of said Act of Assembly provides:

> "Whenever a person released on parole shall violate the terms of his or her parole, he or she shall be subject to arrest in the same manner as in the case of an escaped convict. If said prisoner shall have been returned to the penitentiary he or she shall be given an opportunity to appear before its board; and the said board may after such opportunity has been given, or in case said prisoner has not yet been returned, declare such prisoner delinquent; and he or she shall, whenever arrested and returned, be imprisoned in said penitentiary for a period equal to the unexpired maximum term of such prisoner, * * * * * * * * *."

The "unexpired maximum term" refers to the term of sentence and does not refer to the time passed on parole. To construe the words "unexpired maximum term" to give credit to the prisoner for the time passed on parole, as you point out, would permit a prisoner who had committed a crime to take advantage of the time in which he had succeeded in evading arrest. My opinion, therefore, is that when a prisoner is arrested and returned, he must serve the amount of his sentence which had not expired at the date of his release on parole.

Third. You ask further to be advised whether you have legal authority to receive a prisoner who is sentenced to a flat sentence, and not to a maximum and minimum sentence, as required by the Parole Act of 1909, and you refer to the cases of George Jacobs and Harry Jacobs, sentenced by the Court of Quarter Sessions of Perry county. I find that on the 18th day of May, 1910, pursuant to a request addressed to the then Attorney General, an opinion was given you with reference to these two prisoners, in which you were advised that you must hold the prisoners, and that the legality of their sentence could be tested in habeas corpus proceedings.

On October 14th, 1910, you again wrote the Department concerning the same prisoners, and were referred to the opinion delivered on May 18th. In that opinion it is said:

> "There is nothing for the penitentiary to do except to hold the prisoners in accordance with such commitment. If the sentence is improper, such question can be raised by the prisoners upon habeas corpus proceedings, but until raised and disposed of, the prisoners must be held under the commitment."

I find no reason to change or modify that conclusion, but I understand your question goes further, and you ask now to be advised whether the penitentiary can refuse to receive a prisoner who is not sentenced to the minimum and maximum, as provided by the Act of 1909.

It has been decided that "error of fact or law in an order of commitment made by a court having jurisdiction does not render it void, even though it makes it voidable; an imprisonment under such an order is legal until it is set aside." Fleming vs Cincinnatus Bills, 3 Ore. 286.

It may be that such a sentence is illegal, but having been imposed by a court of competent jurisdiction, it is not for the penitentiary authorities, but for the courts, to pass upon its legality, and if illegal, to set the same aside and impose a proper and lawful sentence. I am, therefore, of opinion and advise you that you have no authority to decline to receive the prisoner.

Fourth. You ask to be advised whether a prisoner who has been released on parole and who, having committed another crime is sentenced to a new term, shall serve the new sentence first, or serve the expiration of his first sentence. When a parole prisoner is sent, by virtue of a commitment, to serve a new sentence, he is received under the authority of that sentence which has already begun to run from the day when it was imposed, and it is that sentence which he is serving when received in the penitentiary. He is held by virtue of that sentence until its expiration. After its expiration he is still subject to be held for the unexpired maximum term of his first sentence.

Very truly yours,
JNO. C. BELL,
Attorney General.

COMMUTATION OF SENTENCES.

Section 4 of the Act of May 11, 1901, P. L. 166, provides that the commutation of sentence, gained by good conduct in prison, shall be lost if the prisoner be convicted of any felony between the dates of his discharge and the expiration of the full term for which he was sentenced, is not repealed by the indeterminate sentence Act of May 10, 1909, P. L. 495.

A commutation period, lost by a conviction for felony between the dates of the prisoner's discharge and the expiration of the full term for which he was sentenced, under Section 4 of the Act of May 11, 1901, P. L. 163, must be added to the indeterminate sentence imposed therefor under the Act of May 10, 1909, P. L. 495.

Office of the Attorney General.

Harrisburg, Pa., May 16, 1911.

Hon. John Francies, Warden, Western Penitentiary, Pittsburgh, Pa.

Sir: Your favor of the 6th ultimo was duly received, in which you enclose a letter of John M. Egan, Parole Agent, with reference to the commutation of James Breshnahan, prisoner A-6747. Your first letter has been supplemented by another of the 12th instant, just received.

The facts, as I understand them from the communications, are as follows:

The prisoner was sentenced to the Western Penitentiary for robbery and was discharged April 10, 1909, having earned, under the Act of Assembly approved May 11, 1901, (P. L. 160), 9 months and 11 days commutation. On June 30, 1909, he was sentenced from Erie county to serve, not less than one year nor more than four years, for a felony, to wit: "Breaking and entering a railroad car with felonious intent and larceny;" and he contends that the 9 months and 11 days commutation earned under the Act of 1901 should not be added to his present sentence, which was imposed under the Parole Act of May 10, 1909, (P. L. 495).

The Act of May 11, 1901, under the provisions of which the prisoner earned the commutation of 9 months and 11 days, provides in Section 4:

> "The Governor shall, in commuting the sentences of convicts as provided for in this act, annex a condition to the effect that if any convict so commuted shall, during the period between the date of his or her discharge by reason of such commutation, and the date of the expiration of the full term for which he or she was sentenced, be convicted of any felony, he or she shall, in addition to the penalty which may be imposed for such felony, in the interval as aforesaid, be compelled to serve in the prison, penitentiary or workhouse, in which he or she may be confined for the felony for which he or she is convicted, the remainder of the term, without commutation, which he or she would have been compelled to serve but for the commutation of his or her sentence, as provided for in this act."

The prisoner was released upon the condition expressed in unambiguous terms that if he be convicted of a felony within 9 months and 11 days after his discharge, which, as before observed, was the commutation earned under his former sentence, "he shall in addition to the penalty which may be imposed for such felony * * be compelled to

serve * * * * the remainder of the term, without commutation, which he * would have been compelled to serve," if there had been no commutation.

The Act of 1901 is not repealed by the Act of 1909, so far as it affects the commutation of sentences expiring under that act and the conditions imposed in granting such commutations are in full force.

In my opinion, therefore, the commutation period of 9 months and 11 days must be added to the indeterminate sentence above referred to. It consequently results from what has been said, that the Board of Inspectors has the discretion under the Parole Act of May 10, 1909, of recommending that the prisoner, James Breshnahan, be released on parole at the expiration of the minimum sentence, one year, imposed for his last offense, plus the commutation 9 months and 11 days, first earned and later forfeited, as above recited, viz: at the expiration of the period of 1 year, 9 months and 11 days: or the said board may make such recommendation at any time thereafter, and prior to the expiration of the total term of 4 years, 9 months and 11 days, being the sum or addition of said maximum sentence of 4 years and the commutation period of 9 months and 11 days. Such recommendation of the board should accompany their report to the Governor.

Very truly yours,
JNO. C. BELL,
Attorney General.

PAY OF OVERSEERS.

The overseers of the Western Penitentiary, when duly appointed and qualified according to law, are public officers and are entitled to the compensation of the office, during their continuance in office, notwithstanding they are incapable of performing their duties because of involuntary disability.

Office of the Attorney General.

Harrisburg, Pa., December 7, 1911.

Hon. John Francies, Warden, Western Penitentiary, Pittsburgh, Pa.

Sir: I am in receipt of your communication of November 15, 1911, as follows:

> "Is it legal for the Board of Inspectors of this institution to pay for the time lost by overseers?
>
> The reason for asking your opinion on the subject: A number of our officers have been employed in the institution for many years, (several over forty) and occasionally on account of their physical condition are unable to report for duty. It is the desire of the board in meri-

> torious cases to pay their salary in full at the end of the month, but they want to keep within the law, and therefore, respectfully request your opinion that they may be guided thereby."

The Act of April 23, 1879, Section 8, Article 2, 10 Smith's Laws 446, 3 Purdon's Digest 3492, provides:

> "The warden shall appoint the underkeepers who shall be called the overseers * * * * and dismiss them whenever he thinks proper or the board of inspectors direct him so to do."

Section 8 of Article III of the same statute prescribes the duties of these overseers in detail.

The later Act of April 17, 1905, (P. L. 177), Section 1, 5 Stewart's Purdon's Digest, 5824, 5825, confers the same appointing and dismissing power upon the warden with respect to the underkeepers or overseers.

I am of opinion that these underkeepers or overseers are public officers, and, when duly appointed and qualified, according to law, and so vested de jure with the title to such office, the overseers are entitled to the compensation which is fixed by the Act of May 31, 1844, (P. L. 585), Section 1, 3 Stewart's Purdon's Digest, 3492, during their continuance in office, notwithstanding they are incapable of performing their official duties by reason of involuntary disability.

As stated by Judge Kunkle in the case of Commonwealth ex rel. Vare v. Sheatz, State Treasurer, 36 C. C. 230,

> "The right of a public officer to his salary rests upon his lawful incumbency of the office (Phila. v. Rink, 17 W. N. C. 137) and that as long as he is in office, unless it be otherwise provided, he is entitled to the salary, notwithstanding he is physically disabled from performing his duties. City of Wilkes-Barre v. Meyers, 113 Pa. 395; 23 Am. & Eng. Ency. of Law 398."

The decision in Cox v. Oil City, 157 Pa. 613, is not to the contrary for the reason that the police officer who made claim to the salary in that case had entered upon his employment with a knowledge of a rule of the municipality that policemen should not receive compensation for the time they were not on duty. On account of this special municipal regulation, which the city in that case had the power to make, the officer was held not to be entitled to receive his salary for the time he was off duty by reason of sickness. In cases however, such as the one stated in your communication, where there is no law or regulation authorizing the discontinuance of the statutory compensation during disability, the only remedy is the

removal or dismissal of the officer according to law. Such power of removal or dismissal of the underkeepers or overseers is, by the Act of April 17, 1905, (P. L. 177), Section 1, conferred upon the warden, whose duty it is to "dismiss them whenever he thinks proper, or the board of inspectors direct him so to do."

So long as there is no removal or dismissal of the overseers for physical disability to perform the duties of their office, they must be paid the compensation attached to the office by law.

Very truly yours,

WM. N. TRINKLE,

Assistant Deputy Attorney General.

PENITENTIARY REGULATIONS.

Where a prisoner has been committed under a sentence for a flat or definite term, and not to a maximum and minimum sentence, as required by the Act of May 10, 1909, P. L. 495, he must be received by the penitentiary and held in accordance with the sentence of the court, subject to his right to submit to the court the question of the propriety of the sentence.

The fact that the prisoner pleaded guilty and was sentenced without a bill of indictment under the Act of April 15, 1907, P. L. 62, is immaterial, but in such case he is entitled to the commutation for good behavior provided by the Act of May 11, 1901, P. L. 166.

Penitentiary Regulations, 20 Dist. R. 471, followed.

Office of the Attorney General.

Harrisburg, Pa., February 16, 1912.

Dr. Charles D. Hart, Secretary, Board of Inspectors, Eastern Penitentiary, Philadelphia, Pa.

Dear Sir: I have your letter of the 6th inst., relative to the sentence of one, Edward Barney, B5470, in which you say:

> "Edward Barney was indicted and plead guilty (under the Act of 1907) at June Sessions, 1910, at Luzerne county, Court of Quarter Sessions, and was sentenced to two (2) years flat sentence. We beg here to refer you to Act No. 55, Laws of the State of Pennsylvania, dated April 15th, 1907. It is evident that he was sentenced one year after the Act of 1909, as to indeterminate sentences, became operative."
>
> "What are our duties in regard to holding this prisoner and how should we determine any commutation or parole in this case?"

I find that requests, involving, in my judgment, substantially the same legal question, have been preferred to this Department, on

one or more previous occasions, by the Inspectors of the Eastern Penitentiary. In this connection, therefore, I beg to refer you to an opinion sent you, as secretary of the board, on March 15, 1911, and to the third paragraph therein, in which, having reference to a like flat sentence having been imposed by the court on certain prisoners therein referred to, subsequently to the "Parole Act" of May 10th, 1909, you were advised as follows:

> "It may be that such a sentence is illegal, but having been imposed by a court of competent jurisdiction, it is not for the penitentiary authorities, but for the courts, to pass upon its legality, and, if illegal, to set the same aside and impose a proper and lawful sentence."

It is true that in your request for this opinion, as well as in a similar request, made on October 14, 1910, no reference was made, as in your present communication, to Act No. 55, approved April 15, 1907, entitled: "An act providing that in certain cases defendants may enter pleas of guilty and be sentenced forthwith without a bill of indictment being presented to the grand jury," and I understand, from your letter and the copy of the commitment attached thereto, that the defendant in this case pleaded guilty under this Act of 1907.

In my opinion, however, the provisions of this act, and the fact that the defendant entered his plea of guilty thereunder, are not material and do not in anywise affect or change the duty of the penitentiary authorities to hold the prisoner in accordance with the sentence of the court.

I should add, however, that, having been sentenced, on August 6, 1910, to a year flat sentence, as appears from the copy of the commitment accompanying your letter, the prisoner, in my opinion, would be entitled to the commutation provided in the Act approved May 11, 1901, entitled: "An act providing for the commutation of sentences for good behavior of convicts in prisons, penitentiaries, workhouses, and county jails in this State, and regulations governing the same," with which act you are doubtless familiar.

In accordance with this act, and upon compliance with its terms and conditions, the prisoner "may, if the Governor shall so direct, and with the approval of the Board of Inspectors or Managers, earn for himself * * a commutation or diminution of his * * sentence, as follows, viz: Two months for the first year and three months for the second year," etc., making an aggregate commutation or diminution of the sentence of five months.

Very truly yours,

JNO. C. BELL,
Attorney General.

HUNTINGDON REFORMATORY.

Prisoners—Discharge on probation—Jurisdiction, Q. S.—Act of June 19, 1911. The Court of Quarter Sessions of Philadelphia county is authorized by the Act of June 19, 1911, P. L. 1059, to discharge on parole, under the supervision of a probation officer, a prisoner committed to the Pennsylvania Industrial Reformatory at Huntingdon. This institution is a workhouse within the meaning of the act.

Office of the Attorney General.

Harrisburg, Pa., March 19th, 1912.

Richard W. Williamson, Esq., Solicitor for the Board of Managers of the Pennsylvania Industrial Reformatory, Huntingdon, Pa.

Sir: I am in receipt of your communication of the 16th ultimo, with regard to the discharge on parole from the Pennsylvania Industrial Reformatory, at Huntingdon, of William Holliday, as directed by the order of the Court of Quarter Sessions of Philadelphia county, made January 31st, 1912.

It appears from your letter and the enclosures accompanying the same, that said Holliday was sentenced on December 4th, 1911, upon a charge of larceny; was received at the Reformatory on December 30th, 1911, and that on January 31st, 1912, the said Court of Quarter Sessions of Philadelphia county directed that said Holliday be discharged on parole, in charge of and under the supervision of a male probation officer of Philadelphia county, under the provisions of the Act of Assembly approved June 19th, 1911, (P. L. 1059). Said order is made by the Hon. Horace Heydt, P. J., specially presiding in said court on January 31st, 1912, and is approved and recommended by the Hon. Mayer Sulzberger, who as trial judge sentenced the prisoner to the reformatory on December 4th, 1911. You state that said Holliday is being held pending an opinion from the Attorney General as to whether he should be discharged in accordance with the said order of court.

The Act of June 19th, 1911, (P. L. 1059), entitled:

> "An act extending the powers of judges of courts of quarter sessions and of oyer and terminer, in relation to releasing prisoners in jails and workhouses on parole."

expressly provides:

> "That the judges of the courts of quarter sessions and the courts of oyer and terminer of the several judical districts of the Commonwealth are authorized, after due inquiry, to release on parole any convict confined in the county jail or workhouse of their respective districts, and place him or her in charge of and under the supervision of a designated probation officer."

I am of opinion that "The Pennsylvania Industrial Reformatory at Huntingdon" is a county workhouse of the district, within the true intent and meaning of the said Act of Assembly, while the Act of April 28th, 1887, (P. L. 63), provides that the said institution *"shall be known* as 'The Pennsylvania Industrial Reformatory at Huntingdon,'" Sections 10 and 11 of the said Act of 1887 make it clear that, notwithstanding the matter of names, the essential nature and character of the said institution is such that it is a "workhouse" within the meaning of that term, as used, comprehensively and generically, in the said Parole Act of June 19th, 1911, P. L. 1059, above referred to, under the provisions of which, as stated in the order of court, the release of the said Holliday is directed.

Moreover, it is manifest, from the order of release, that such is the judgment of the Court of Quarter Sessions of Philadelphia county, viz: that said Parole Act of June 19th, 1911, applies to convicts confined in the Pennsylvania Industrial Reformatory at Huntingdon. I can perceive no ground upon which I could properly advise you that this order of court releasing said Holliday upon parole, as therein expressly provided, should not be carried out.

Very truly yours,

JNO. C. BELL,
Attorney General.

WESTERN PENITENTIARY.

Advising the inspectors of the Western Penitentiary as to how different items of expense shall be charged.

Office of the Attorney General.

Harrisburg, Pa., June 29, 1912.

To the Board of Inspectors of the Western Penitentiary.

Gentlemen: This Department is in receipt of the communication addressed to it by the warden of the Western Penitentiary, under authority of your board, asking to be advised with reference to the proper manner of charging certain expenses. Your inquiry contains six questions which will be answered in their order:

Your first inquiry is as follows: "The passage of the Act of March 30th, 1911, P. L. 32, providing for the erection of buildings for the Western Penitentiary, makes necessary the providing of a residence for the warden of the Western Penitentiary at the site selected for the new penitentiary in Centre county. In view of the fact that the now warden of the Western Penitentiary is also superintendent of construction for the building of said penitentiary, and in view of the

fact that the now warden of the Western Penitentiary will be required in his official capacity as warden to provide quarters for the handling of prisoners transferred from the Western Penitentiary for work on the new prison, how shall the expenses for help, supplies, maintenance, etc., of the Centre county residence of the warden of the Western Penitentiary be charged, that is, shall these expenses be charged to the respective counties from which convicts have been sent to said penitentiary or to the appropriation made by said Act of 1911?"

In reply to this inquiry you are advised as follows: Under the terms of the Act of March 30th, 1911, P. L. 32, entitled "An act providing for the selection and purchase or appropriation from the State forest reserves of a tract of land and the erection thereon of buildings for the Western Penitentiary; making an appropriation therefore; authorizing the removal thereto of the inmates of said penitentiary; and directing the sale of the site now occupied by said penitentiary and the buildings and materials thereon," it is provided, inter alia, that upon the acquisition of a proper tract of land your board "shall transfer as many able bodied male convicts from said penitentiary as they may deem necessary and advisable to assist in any work connected with the improvement of the said tract, or the construction of the said buildings and improvements appurtenant thereto, with the necessary guards, and shall provide temporary quarters for safe keeping and accommodation of said convicts."

It is stated in your communication, and it is apparent, that it will be necessary for the warden to have a residence at the site of the new penitentiary, to the end that the provisions of the act above quoted may be carried out. You now ask to be advised whether the expenses for help, supplies, maintenance, etc., of the residence of the warden at the site of the new penitentiary shall be charged to the respective counties from which convicts have been sent to said penitentiary, or to the appropriation made by said Act of 1911.

Under the ninth Section of the Act of April 23, 1829, P. L. 353, the expenses of maintaining and keeping the convicts, in the penitentiaries of this Commonwealth are to be borne by the respective counties in which they shall be convicted. As distinguished from the expense of maintaining and keeping the convicts, the Legislature makes biennial appropriations for the payment of the salaries of officers, including the warden, the making of repairs, the payment of insurance, the cost of hospital equipment, books and stationery for prisoners, and the payment of the sums designated by law to be paid to convicts at the time of their discharge. At the legislative session of 1911 the Legislature made an appropriation of $218,158 "for salaries of officers and parole work" for the two fiscal years commencing June 1st, 1911, and other appropriations for the above enumerated objects.

The above mentioned Act of 1911, providing for the erection of a new Western Penitentiary, contains a provision that the construction of contemplated buildings, together with the cost of the tract of land upon which they are to be erected, shall involve a total expenditure not exceeding $1,250.00, and by Section five of this act it is provided as follows: "To enable said board to purchase the said tract of land, procure the preparation of said plans and specifications and proceed with the work as hereinbefore provided until the next session of the General Assembly, the sum of $300,000, or so much thereof as may be necessary, is hereby specifically appropriated, etc."

Under the method of managing the Western Penitentiary as now located in the county of Allegheny the cost of providing and maintaining a residence at that penitentiary for the warden is treated as part of the cost of maintaining and keeping the convicts and is charged to the respective counties. Under the provisions of the said Act of 1911 a number of convicts will be transferred to the site of the new penitentiary and must be maintained and kept there. As an incident to their maintenance and keeping, a residence for the warden at the new site must be provided and the expenses for help, supplies, maintenance, etc., of this residence should, in my opinion, be charged to the proper counties as a part of the expenses of maintaining and keeping the convicts which may be transferred to Centre county. In so far as the respective counties are concerned, the place at which their convicts are maintained is immaterial.

Your next inquiry is as follows: "The Board of Inspectors of the Western Penitentiary, in the performance of their duties, will be required to visit the new prison from time to time, thereby incurring legitimate expenses. How shall these expenses be charged?"

The Governor of the Commonwealth appoints the Board of Inspectors, which consists of five members, who are required to be taxable citizens residing in the city of Pittsburgh or county of Allegheny, and the members of this board "serve without any pecuniary compensation." By the said Act of 1911 the duty of selecting a site and providing for the construction of the necessary buildings is imposed upon the Board of Inspectors of the Western Penitentiary. No express provision is contained in said act for the payment of any compensation to said inspectors for the performance of the duties placed upon them by the act, nor even for the reimbursement to them of the necessary expenses incurred by them in the performance of these duties. In view of the fact that it will be absolutely necessary for these inspectors, residing in Allegheny county and serving without compensation of any kind, to travel from time to time to the site of the new penitentiary in Centre county, you are advised

that their actual and necessary traveling expenses should be paid out of the appropriation made by said Act of 1911, to enable the board to purchase the tract of land, procure the preparation of plans and specifications, and proceed with the work of erecting the new penitentiary.

In the third place, you state that, "Under the provisions of the Act of March 30th, 1911, hereinabove referred to, it will be necessary to have overseers or guards on the ground to control prisoners, to prevent escapes, etc.," and you ask to what appropriation the salaries of such guards shall be charged?

By the third Section of the Act of 1911 your board is authorized to employ such persons as it may deem necessary to secure the speedy and economical construction of the building, their compensation to be fixed by the board and approved by the Governor. Because it is also provided that "so far as practicable the work shall be performed by the inmates of the Western Penitentiary" additional overseers and guards will be necessary. You are therefore advised that the compensation for overseers, or guards, employed at the site of the new penitentiary, when fixed by your board and approved by the Governor, should be charged to the appropriation made in said Act of 1911.

Your fourth inquiry is: "How shall the cost of maintaining prisoners at the new prison be charged?"

This inquiry is substantially answered in the reply to your first question, and you are advised that this cost should be charged to the proper counties.

You ask in the fifth place: "How shall the cost of transportation of prisoners from the old to the new prison be charged?"

Inasmuch as the transfer of prisoners from the old to the new prison is directed and required by said Act of 1911, the cost of transportation should be charged against the appropriation carried by the act.

Your sixth and last inquiry is as follows: "Shall that portion of the products, crops, etc., from the farms not used at the new prison be converted to the use of the old prison while the new one is in course of construction, and shall all moneys received from the sale of such products, crops, etc., be turned into the treasury of the Board of Inspectors of the old prison, to be used in defraying the cost of operation?"

I reply to this question in the affirmative.

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

21—23—1913

COMMUTATION OF SENTENCES.

Section 4 of the Act of May 11, 1901, P. L. 166, providing that the commutation of sentence gained by good conduct in prison, shall be lost if the prisoner be convicted of any felony between the dates of his discharge and the expiration of the full term for which he was sentenced, is not repealed by the Indeterminate Sentence Act of May 10, 1909, P. L. 495.

Office of the Attorney General.

Harrisburg, Pa., July 17, 1912.

Charles D. Hart, M. D., Secretary, Board of Inspectors, Eastern Penitentiary, Philadelphia, Pa.

Dear Sir: In your recent communication of June 5th, 1912, you requested the opinion of the Attorney General upon the following question:

> "In the case of a prisoner who served a term under the former commutation act and who was granted his commutation time for good behavior while in prison and who, after his release and during the interval between the date of his release under commutation and the final expiration of his sentence, committed another crime for which he was sentenced under the new indeterminate act, would or would not such prisoner be still liable, as formerly, to serve his commutation time as under the former commutation act?"

Under date of June 28th, 1912, more complete factual data from the records in relation to this question was given the Attorney General, in substance, as follows:

The prisoner was sentenced September 12th, 1899, from the county of Northampton to a term of sixteen years for the crimes of burglary, larceny, and assault and battery with intent to kill. Without commutation this term would not have expired, therefore, until September 15th, 1915.

By reason of commutation, pursuant to the provisions of the Act of May 11th, 1901, P. L. 166, the said term was commuted to the extent of six years and one month and the prisoner discharged on August 12th, 1909.

On March 8th, 1910, the prisoner was again found guilty, as indicted, of the crimes of burglary, larceny and receiving stolen goods and thereupon sentenced by the Court of Oyer and Terminer and General Jail Delivery of the county of Montgomery, to a term, in the Eastern Penitentiary, not exceeding ten years and not less than two years and six months from said date of March 8th, 1910.

The 4th Section of the Commutation Act of May 11, 1901, P. L. 166, provides that:

> "The Governor shall, in commuting the sentence of convicts as provided for in this act, annex a condition to the effect that if any convict so commuted shall, during the period between the date of his or her discharge by reason of such commutation and the date of the expiration of the full term for which he or she was sentenced, be convicted of any felony, he or she shall, in addition to the penalty which may be imposed for such felony committed in the interval, as aforesaid, be compelled to serve in the prison, penitentiary or workhouse in which he or she may be confined for the felony for which he or she is convicted, the remainder of the term without commutation, which he or she would have been compelled to serve but for the commutation of his or her sentence as provided for in this act."

The discharge of the prisoner on March 8th, 1910, was thus not an absolute discharge of the prisoner after serving the full term of the sentence first mentioned but a discharge upon the condition set forth in said 4th Section of the Commutation Act above quoted.

Subject to the pardoning power, the legal status of the prisoner, with regard to the term of imprisonment he was obliged to undergo for the conviction of the crimes first mentioned, was determined by the sentence of the Court of Northampton county as modified only by the provisions of the Commutation Act.

By reason of his having been convicted of a felony on March 8, 1910, which date was "during the period between the date of his discharge by reason of such commutation and the date of the expiration of the full term for which he was sentenced" upon conviction of the first crimes above mentioned the said Commutation Act imperatively requires that the prisoner shall, in addition to the penalty imposed, upon the conviction of the felony or felonies on March 8, 1910, "be compelled to serve in the * * * * penitentiary * * * * in which he * * * * may be confined for the felony for which he * * * * is convicted, the remainder of the term without comutation which he * * * * would have been compelled to serve but for the commutation" of his first sentence above mentioned, i. e., the remainder of the full term expiring September 12th, 1915.

While the Act of May 10, 1909, P. L. 495, purports to institute certain changes in the penal law of the Commonwealth, and repeals "all acts or parts of acts, general, special or local, inconsistent" therewith, there is nothing in the language employed in that act to indicate any intention on the part of the Legislature to repeal or change the law as prescribed by Section 4 of the said Commutation Act applicable to the prisoner as above stated.

The said Act of May 10, 1909, has, during the present month, been adjudged unconstitutional by President Judge Sulzberger in Commonwealth ex rel. Harry Bates vs. Robert J. McKenty, Warden of the Eastern Penitentiary, Court of Quarter Sessions for the county of Philadelphia, June Sessions 1909, No. 385, according to which decision the prisoner would seem to have been improperly sentenced by the Montgomery County Court, under said void Act of 1909. Whether, however, the Act of May 10, 1909, is constitutional or unconstitutional the question submitted is not affected thereby. The prisoner must, by reason of having violated the conditions prescribed by the 4th Section of the Commutation Act of 1901, serve the remainder of the first sentence expiring September 12th, 1915, imposed by the Northampton county Court in addition to whatever may be the lawful sentence imposed by the Court of Montgomery county following the conviction for the commission of the second felony.

Very truly yours,

WM. N. TRINKLE,

Assistant Deputy Attorney General.

WESTERN PENITENTIARY.

As to gratuities to be paid to discharged convicts.

Office of the Attorney General.

Harrisburg, Pa., October 9, 1912.

Hon. John Francies, Warden, Western Penitentiary, Pittsburgh, Pa.

Sir: This Department is in receipt of your communication of August 28th, asking, in substance, to be advised what gratuities are to be paid to prisoners discharged from custody at the site of the new Western Penitentiary located in Centre county.

In reply you are advised that by the Appropriation Act of June 13, 1911, (P. L. 148), the sum of $19,000.00, or so much thereof as may be necessary, was appropriated by the Legislature for the purpose of paying during the two fiscal years commencing June 1, 1911, to "each discharged convict from the city of Pittsburgh, North Side, or whose residence is within fifty miles thereof, the sum of five dollars ($5.00), and for each discharged convict whose residence is over fifty miles from the penitentiary, the sum of ten dollars ($10.00), and for clothing for each discharged convict, a sum not to exceed ten dollars ($10.00)."

This Appropriation Act was intended to provide the gratuities therein mentioned to prisoners discharged from the Western Peniten-

tiary located on the North Side of the city of Pittsburgh. The purpose of the gratuities is of course to furnish discharged prsioners with clothing and means of transportation to their respective homes. At the same session of the Legislature, the purchase of a new site for the Western Penitentiary was provided for by the Act of March 30, 1911, (P. L. 32). Pursuant to the provisions of this act, a site was purchased in Centre county, and by the 4th Section it is provided that:

> "Upon the acquisition of the tract aforesaid, the board shall transfer as many able bodied male convicts from said penitentiary as they may deem necessary and advisable, to assist in any work connected with the improvement of the said tract or construction of the said buildings and improvements appurtenant thereto, with the necessary guards, and shall provide temporary quarters for the safe-keeping and accommodation of said convicts."

You state in your communication that there is now erected on said site for the new Western Penitentiary, a stone building which has been converted into a temporary prison, and that the terms of imprisonment of certain prisoners now confined in said temporary prison will expire in a short time.

In my opinion, the two acts above referred to, should be construed together, and if the residence of a convict discharged from the temporary prison in Centre county is within fifty miles of that prison he is entitled to receive the sum of five dollars, but if his residence be over fifty miles from said temporary prison, he is entitled to receive the sum of ten dollars, and each convict, in addition to his gratuity for transportation, is entitled to receive the sum of not more than ten dollars for clothing.

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

OPINIONS TO THE BOARD OF PUBLIC CHARITIES.

OPINIONS TO THE BOARD OF PUBLIC CHARITIES.

BOARD OF PUBLIC CHARITIES.

Charitable institutions, open to the general public, maintained without State aid, as church homes and fraternal societies, are within the provisions of the Act of April 24, 1869, P. L. 90, creating the board of public charities, and the board has the power to inquire into their management and require reports from them.

Office of the Attorney General.

Harrisburg, Pa., January 13, 1912.

Mr. Bromley Wharton, General Agent and Secretary Board of Public Charities, 714 Bulletin Building, Philadelphia, Pa.

Dear Sir: Some time ago you requested an opinion of this Department as to whether the Board of Public Charities has the right of inquiry into the management of, and to demand reports from institutions such as church homes,—homes that are maintained and managed under the direct supervision of churches and fraternal societies,—and which do not receive State aid.

The Act of April 24, 1869, (P. L. 90), entitled "An act to create a Board of Public Charities," provides, in Section 4:

> "The general agent and secretary of the board of public charities shall hold his office for three years, unless sooner removed; he shall be a member of the board ex-officio, and it shall be his duty, subject to the control and direction of said board, to keep a correct record of its proceedings, perform such clerical services as it may require, oversee and conduct its out-door business, *visit all charitable and correctional institutions in the State at least once in each year,* except as hereinafter provided, and as much oftener as the board may direct, examine the returns of the several cities, counties, wards, boroughs and townships in relation to the support of paupers therein, and in relation to births, deaths, and marriages; and he shall prepare a series of interrogatories, with the necessary accompanying blanks, *to the several institutions of charity,* reform and correction *in the State,* and to those having charge of the poor in the several counties thereof, or any subdivision of the same, with a view to illustrate, in his annual report, the causes and best treatment of pauperism, crime, disease and insanity; * * * * * *."

In Section 5 it is provided:

> "The said commissioners shall have full power, either by themselves or the general agent, at all times, to look into and examine the condition *of all charitable,* reformatory or correctional institutions *within the State,* financially and otherwise, to inquire and examine into their methods of instruction, the government and management of their inmates, the official conduct of trustees, directors and other officers and employees of the same, the condition of the buildings, grounds and other property connected therewith, and into all other matters pertaining to their usefulness and good management; and for these purposes they shall have free access to the grounds, buildings and all books and papers relating to said institutions; and all persons now or hereafter connected with the same are hereby directed and required to give such information and afford such facilities for inspection as the said commissioners may require * * * * * *."

In Section 12 it is provided:

> "The board of public charities shall annually prepare and print, for the use of the Legislature, a full and complete report of all their doings during the year preceding, stating fully in detail all expenses incurred, all officers and agents employed, with a report of the general agent and secretary, embracing all the respective proceedings and expenses during the year, and showing the actual condition of *all charitable and correctional institutions within the State,* with such suggestions as the board may deem necessary and pertinent; * * * * *."

On January 15, 1890, Hon. W. S. Kirkpatrick, then Attorney General, rendered an opinion to Craig Biddle, Esq., General Agent and Secretary of the Board of Public Charities, (Reports of Attorney General 1887-1896, p. LXXVIII), in which he considered at length the question as to whether Christ Church Hospital, which is an institution of the Episcopal church, was a pubilc charity and in the class of institutions which by the Act of 1869 the Board of Public Charities have the power to examine, and from which the board may require reports.

The then Attorney General said:

> "I am of the opinion that Christ Church Hospital is a public charity within the meaning of that term as it is technically used in the law. It is a charity, and none the less so, because it benefits a particular religious denomination. It is a public charity, not being established for private ends, and being open to the indefinite public of a specified class. * * * * * *"

After quoting the language of Judge Green in the case of Burd Orphan Asylum v. School District, 90 Pa. St. 35, he continued:

> "That the charity is administered by a private corporation does not deprive it of its character as a public charity. Whether the trustee, administering the charity, be a corporation or a private individual, is immaterial, provided the objects concern the public or an indefinite portion of the public. This is the test by which the right to exemption from taxation, under a general law exempting institutions of purely public charity, is determined. * * * *"
>
> "Christ Church Hospital is certainly a charitable institution. It will be noticed that the terms of Sections four and five of the Act of 1869 are general and comprehensive, and are not confined to State institutions or to institutions receiving financial assistance from the State. By reference to Section six and other sections of the act it will be seen that the Legislature made certain provisions exclusively relating to institutions receiving State aid, and they are so referred to in express language.
>
> "The general expression 'all charitable institutions in the State,' as used in Sections four and five, therefore, are to be regarded as much more comprehensive, and must embrace institutions of the class of which Christ Church Hospital is a fair specimen."

This Department is entirely in accord with the opinion expressed by the then Attorney General Kirkpatrick.

No legal distinction can be properly drawn between a Church Hospital and a Church Home, or between a Church Home and the Home of a fraternal society, so as to affect the question as to whether or not the Church Home or the Home of a fraternal society is a charitable institution.

I am, therefore, of opinion that the homes maintained by religious denominations and fraternal societies, are within the provisions of the Act of 1869, and the Board of Public Charities have the power to inquire into the management of, and to demand reports from such institutions.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

JUVENILE COURT INSTITUTIONS.

An institution erected by an association for the care of children committed under the Juvenile Court Act of April 23, 1903, P. L. 274, as amended by the Acts of June 1, 1911, P. L. 543, and June 15, 1911, P. L. 959, is not a "county prison"

within the Act of April 5, 1872, P. L. 42, providing for the submission of plans to the board of public charities, and the plans for such juvenile institution do not require the approval of the board; but, after its erection, it is a correctional institution within the meaning of Section 5, of the Act of April 24, 1869, P. L. 90, and subject to the visitorial powers of the board.

Office of the Attorney General.

Harrisburg, Pa., February 22nd, 1912.

Mr. Bromley Wharton, General Agent and Secretary, Board of Public Charities, 714-715 Bulletin Bldg., Philadelphia, Pa.

Dear Sir: Your favor of recent date was duly received.

You state that the Juvenile Court Association of Allegheny county recently incorporated, "are building a juvenile home in which to care for prisoners convicted and committed in Juvenile Court. They have secured the land, put up some temporary buildings, and are now preparing the plans for permanent and extensive buildings."

You ask to be advised whether such an institution is within the supervision of the Board of Public Charities, and whether, under the 5th Section of the Act of April 24, 1869, (P. L. 90), the Act of April 5, 1872, (P. L. 42), the plans of such institution must first be submitted and approved by your board.

The Act of April 23, 1903, defines the powers of the several Courts of Quarter Sessions, with reference to the care, treatment and control of dependent, neglected, incorrigible and delinquent children, under the age of sixteen years.

Section 4 of that act as amended by the Act of June 15, 1911, (P. L. 959), provides, in part:

> "At the hearing, the judge or judges holding such session of the court shall determine, after an inquiry into the facts, what order for the commitment and custody and care of the child, the child's own good and the best interests of the State may require; and may commit such child to the care of its parents, subject to the supervision of a probation officer, or to some suitable institution, or to the care of some reputable citizen of good moral character, or to the care of some training school, or to an industrial school, *or to the care of some association willing to receive it.*"

Section 6 of the said act, as amended by the Act of June 1, 1911, (P. L. 543), repeats in effect the same language with reference to the commitment and care of the child, and concludes:

> "Or the Court may commit the child to a suitable institution for the care of delinquent children, or to any society, duly incorporated, having for one of its objects the protection of dependent or delinquent children."

Section 4 of the Act of April 5, 1872, (P. L. 42), which is a supplement to the Act of April 24, 1869, (P. L. 90), provides:

> "That before any *county prison or county almshouse* shall be erected within this Commonwealth, the plan of construction of such prison or almshouse, drawn sufficiently in detail for clear comprehension thereof, shall be submitted by the commissioners of the county in which the same is to be built, to the board of public charities, and shall be inspected and approved by said board, and so certified by the secretary of said board upon the plan, a copy of which shall be furnished by the commissioners at the time of their submitting the original as aforesaid, and shall be signed by the secretary of said board, and shall be filed and remain in the office of the Secretary of the Commonwealth; and that so much of the first Section of the Act of April 8th, one thousand eight hundred and fifty-one, as requires the report of plans of county prisons to be made to and approved by the Secretary of the Commonwealth, be and the same is hereby repealed."

The 5th Section of the Act of 1869, above referred to, provides:

> "The said commissioners shall have full power, either by themselves or the general agent, at all times, to look into and examine the condition of all charitable, reformatory or correctional institutions within the State, financially and otherwise, to inquire and examine into their methods of instruction, the government and management of their inmates, the official conduct of trustees, directors and other officers and employees of the same, the condition of the buildings, grounds and other property connected therewith, and into all other matters pertaining to their usefulness and good management; and for these purposes they shall have free access to the grounds, buildings and all books and papers relating to said institutions; and all persons now or hereafter connected with the same are hereby directed and required to give such information and afford such facilities for inspection as the said commissioners may require."

The institution which the Juvenile Court Association of Allegheny county has erected, or intends to erect, for the care of children committed by an order of court under the Juvenile Court Act, is not in my opinion a "county prison" within the meaning of the Act of April 5, 1842.

Section 7 of the Juvenile Court Act of 1903 provides that pending a hearing no child shall be committed *"to any county or other jail,* police station, or any institution to which adult convicts are sentenced," and the policy of the law, as developed in the Juvenile Court Act, is against the commitment of a delinquent child to what might be called a prison or jail.

I am, therefore, of opinion that the buildings erected, or to be erected by the Juvenile Court Association of Allegheny county, are not such buildings, the plans of which are first to be submitted to and approved by the Board of Public Charities.

On the other hand, after such institution has been erected, it is, in my opinion, a correctional institution within the meaning of the fifth Section of the Act of 1869, and its method of instruction, government, management, the official conduct of its trustees, directors, officers and other employees, and the condition of the buildings and other property connected therewith, are subject to the visitorial powers conferred by said Act of Assembly upon the Board of Public Charities.

Very truly yours,
JNO. C. BELL,
Attorney General.

FEEBLE MINDED.

The trustees of the Eastern Pennsylvania State Institution for Feeble Minded and Epileptic have the power to require any parent or guardian to pay the whole amount of the cost of maintaining a patient, where the estate of such patient is abundantly able to pay the same, or to fix the proper proportion which the estate of such person is able to pay. The board has power to adopt rules and regulations, and in certain cases a requirement of a bond for the payment of $330.00 per annum in monthly payments of $27.50 is not unreasonable.

Office of the Attorney General.

Harrisburg, Pa., July 30, 1912.

Bromley Wharton, Esq., Secretary of the State Board of Public Charities, Philadelphia, Pa.

Dear Sir: Sometime ago you asked to be advised "if it is entirely proper for institutions wholly supported by the State to render bills to parents, guardians and other persons having legal authority over inmates committed to the various State institutions, and to attempt to collect such bills."

This inquiry is too general and comprehensive to permit of an accurate and definite reply.

However, in the same letter you refer to the case of the Eastern Pennsylvania State Institution for Feeble Minded and Epileptic, and cite an instance, in which the trustees of that institution before admitting a patient, required a bond guaranteeing payment of the sum of $330.00 per annum, in monthly instalments of $27.50, and you suggest that such a restriction often precludes the immediate admittance of proper persons to the institution.

Confining your inquiry to the rights and duties of the trustees of this institution, I have to advise you that the same are defined by the Act of May 15, 1903, (P. L. 446), which created the institution. The said Act of Assembly provides in Section 12 as follows:

> "Any parent or guardian who may wish to have a child admitted to said institution for treatment or improvement, and pay all expenses of such care, may do so under the *terms, rules and regulations prescribed* by the superintendent and approved by the trustees."

Sections 11 and 13 provide for the adoption by the trustees of forms of application for admission into the institution; Section 13 prescribing the regulations for the admission of "feeble minded children, residents of this State, under the age of twenty years, who shall be incapable of receiving instruction in the common schools of this State;" and Section 14 for "adults who may be determined to be feeble-minded, and who are of such inoffensive habits as to make them proper subjects for classification and discipline in an institution for the feeble-minded."

Section 15 provides as follows:

> "The board of commissioners or directors of the poor of a county, in approving an application for the admission of a person to said institution, shall state whether or not such person *has an estate of sufficient value,* or a parent or parents of *sufficient financial ability,* to defray the *expense in whole or in part* of supporting such person in said institution, and, if there be such means of support in part only, then the *amount per month* which the parents or parent or the legal guardian of such child may be *able to pay;* and the person or persons who make the application for such admission shall therein make statement, under oath, as to such means of support. *Said Board of Trustees,* in accepting an application for the admission of any person, *shall fix the amount, if any, which shall be paid for such support, according to the ability of the parent or parents of the person, or according to the value of such person's estate, if any, and shall require payment for such support so far as there may be ability to pay, as a condition to the admission or retention of said person.* Said account may at any time be changed by said trustees, according to their information concerning such means of support. Where the indigence of the child or its family is such as to entitle it to admission upon the full beneficiary fund of the State, the ascertainment of the facts shall be as hereinbefore stated, and the support at the institution shall be provided for by annual appropriations, at such per capita rate as shall be appropriated by the Legislature, on the application of the trustees."

Construing these sections together, it is clear that the trustees of this institution have the power to require any parent or guardian to pay the whole amount of the cost of maintaining a patient where the estate of such patient is abundantly able to pay the same, or to fix the proper proportion which the estate of such person is able to pay.

The Board has power to adopt all reasonable rules and regulations, and in many instances the requirement of a bond would be reasonable. In some instances it might be unreasonable but I am not prepared to say that the requirement of the bond in the case to which you refer is not a reasonable regulation.

Very truly yours,

JNO. C. BELL,
Attorney General.

MISCELLANEOUS OPINIONS.

MISCELLANEOUS OPINIONS.

COSTS.

Members of the State Police cannot tax as costs the fees for serving and executing warrants of arrest.

Office of the Attorney General.

Harrisburg, Pa., April 12, 1911.

Capt. John C. Groome, Superintendent of State Police, Harrisburg.

Sir: The letter of George F. Lumb, Deputy Superintendent, addressed to the Attorney General, dated March 31, 1911, was duly received.

You request an opinion of this Department as to the right to tax as costs the fees for serving an executing warrants of arrest for taking recognizances, etc., in cases in which these services were performed by officers of the State Police.

The case of Walsh vs. Luzerne county, reported in 36 Super. Ct. 425, settles, beyond any doubt, that an officer of the State Police cannot tax as costs the fees for executing warrants and other process which would be properly taxable, if such warrant and other process were executed by the constable, and I therefore advise you that in the case to which you refer such fees cannot be legally taxed.

The letter of Norman T. Boose, Esq., which accompanies your letter and which is herewith returned, in addition to the fees for serving process, refers also to witness fees. As to the right of the officers of the State Police to witness fees, I now express no opinion.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

SALARIES.

The Act of March 1st, 1911, providing aditional officers and employees of the General Assembly, fixes their compensation for the session, and their salaries therefore commence with the beginning of the session and continue until the day of adjournment.

Office of the Attorney General.

Harrisburg, Pa., May 4, 1911.

Hon. John F. Cox, Speaker of the House of Representatives, Harrisburg, Pa.

Sir: Your favor of the 25th ultimo was duly received. You ask to be advised whether Harry F. Kennedy, appointed a clerk of the Judiciary Special Committee of the House of Representatives, under an act approved March 1st, 1911, entitled:

> "An act to abolish the position of Assistant Chief Clerk of the Senate and providing for additional officers and employees of the General Assembly, defining their duties and fixing their compensation, also fixing the compensation of certain other officers now authorized by law,"

is entitled to compensation from the beginning of the session of the Legislature, or from March first, the date of the approval of the act.

This act of assembly creates other clerkships to committees—five in all—in the Senate and the House, and also provides for the election by the House of two additional transcribing clerks and two assistant sergeant-at-arms. What is said herein applies to all of these officers and employees.

Section 3 of the act provides in part:

> "all other officers and employees herein authorized shall be paid the same compensation and mileage for sessions and as returning officers as is now paid to similar officers."

You will note the act does not fix a per diem for each day's service, but provides for the payment of "the same compensation and mileage for sessions * * * as is now paid to similar officers."

The compensation paid to "similar officers" is fixed by the Act of April 12, 1905, (P. L. 148), entitled:

> "An act fixing the number, compensation, mileage and duties of the officers and employees of the General Assembly, and providing for their election, or appointment, and manner of filling vacancies."

Section 2 of this act provides, inter alia, that:

> "transcribing clerks, clerks to committees, sergeants-at-arms and assistants * * * and postmasters, shall each receive seven dollars per diem for each regular biennial, special or extraordinary session."

Passing upon this recited provision of the act, as applicable to the case of W. H. Heath, postmaster of the House of Representatives—who was sworn in on January 21, 1909, for the session of 1909, which began January 4,—former Attorney General Todd, in an opinion rendered to T. A. Crichton, Deputy Auditor General, held that the said postmaster was entitled to compensation to be reckoned at seven dollars per diem from the session, i. e., from the beginning of the session until the day of adjournment, and not only from the day when he was sworn in, until such adjournment. This opinion, which is hereby adopted, is decisive of the question you ask. (See Heath's Case, 36 Pa. C. C. 147, also McConnell's Case, Id. 148).

I therefore advise you that Harry F. Kennedy and the other officers or employees above mentioned are entitled to compensation at the rate of seven dollars per diem from the beginning of the session until the day of adjournment.

Very truly yours,
JNO. C. BELL,
Attorney General.

PLYMOUTH ARMORY.

The armory board is advised as to the policy to be pursued in obtaining title to the Plymouth armory.

Office of the Attorney General.

Harrisburg, Pa., May 31, 1911.

Benjamin W. Demming, Esq., Secretary Armory Board, Harrisburg, Pa.

Dear Sir: Some time ago you requested an opinion of this Department concerning the proper method of acquiring title to the Plymouth Armory, and you ask further to be advised concerning the suggestion of Hon. F. W. Wheaton, that the property might be acquired through a lease of nine hundred and ninety-nine years.

This property was vested in five trustees by deed dated April 28, 1890, and the trusts were:

(a) To execute two mortgages for $11,000.00, the principal whereof should be payable in ten years, or sooner;

(b) To erect a suitable building for use as a hall, opera house or armory with the proceeds of the bonds secured by mortgage;

(c) To rent the property with the improvements thereon to Company I of the Ninth Regiment of the National Guard of Pennsylvania, or its successor, or to any other person or persons who may desire to rent the same either permanently or temporarily, and

to collect the rents due therefrom and pay out of the same, first, the taxes, the insurance and repairs, second, the interest on bonds, and third, the excess, if any, in redemption of the bonds.

(d) To hold the property in trust for Company I, Ninth Regiment National Guard, or its successor in said National Guard, by whatever name called, and

(e) If Company I, or its successor, does not continue in existence then for a public library for the borough of Plymouth or such other public use as a majority in point of interest of the bond holders at the time of the redemption of the bonds shall deem most expedient.

At the time of the examination of this title in 1909 I recommended that this sale should be made to the Commonwealth pursuant to the authority given to the trustees by the Court of Luzerne county.

I have before me the opinion of Hon. F. W. Wheaton, given to Gen. C. Bow Dougherty, concerning the best method of acquiring this property. Judge Wheaton suggests:

> "By a proceeding under the Price Act of 1853 a good title could be made to the Commonwealth divested of at least all the contingent trusts expressed in the deed of April 28th, 1890; but since the price to be paid by the Commonwealth, as compared with the value of the property is so small, it would be impossible to have such a sale privately, and upon public sale bidders might come in and perhaps render the proceeding valueless."

He also suggests that the contingent and shifting uses are void, and that:

> "A proceeding might be devised and instituted whereby adjudication of the Court could be had, and such adjudication, in my judgment, would be that these contingent trusts which I have referred to, are absolutely void. If that were done then the only people interested in the property would be the donor of the trust, the present trustees and Company "I" of the National Guard of Pennsylvania, Ninth Regiment, and upon that, with the consent of those parties, the trust might easily be dissolved and a conveyance made by the donor of the trust, to whom the property would revert, directly to the Commonwealth, and I believe that such title would be entirely good. To bring about this situation, however, would require time, legal proceedings and expense."

Judge Wheaton then suggests that the easiest method is to lease the property to the Commonwealth for nine hundred and ninety-nine years.

Whether the board shall adopt either of these three suggestions, is a matter of policy. It is probably within the power of the Armory Board to make a lease for nine hundred and ninety-nine years, but such lease would not vest the title in the Commonwealth, and the

property would still be charged with the trust mentioned in the deed. The Commonwealth ought to acquire the full title to armories, and the fact that it may be cheaper and less troublesome to lease the property than to purchase it outright ought not, in the opinion of this Department, to determine the question in favor of a lease. Either the first or second suggestion of Judge Wheaton should be adopted—either a proceeding under the Price Act of 1853 to have the property sold, divested of all the contingent trusts and purchased, or the second suggestion, to devise and institute a proceeding whereby the Court would adjudicate these contingent trusts void so that with the consent of the donor the present trustees and Company "I" of the Ninth Regiment National Guard, the trust could be dissolved and a conveyance then made directly to the Commonwealth.

If the property can be acquired by the latter method, I am of opinion that it ought to be done, notwithstanding it will require time, legal proceedings and expense. If this cannot be done, I am of opinion that the first suggestion of bringing the property to a sale under the Price Act should be followed, even though the Commonwealth must pay more for the property than by a lease for nine hundred and ninety-nine years.

I return herewith the brief of title and all the letters and papers submitted in connection with this matter.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

ARMORIES.

The armory board has the power and authority to rent armories.

Office of the Attorney General,
Harrisburg, Pa., June 1, 1911.

Benjamin W. Demming, Secretary, Armory Board of Pennsylvania, Harrisburg, Pa.

Dear Sir: Your favor of the 20th ult., addressed to the Attorney General, asking to be advised whether the Armory Board has power to rent or lease property to be used as armories, was duly received.

The Armory Board derives its authority in this respect from the Act of May 11, 1905, (P. L. 442). Section 2 of that act provides:

> "That the Armory Board, as appointed, is hereby empowered and directed to erect or provide, anywhere within the limits of this Commonwealth, upon such terms and

conditions as shall be decided upon by said Armory Board as most advantageous to the Commonwealth, armories for the use of the National Guard of Pennsylvania, which armories shall be used for drill, meeting and rendezvous purposes by the organization of the National Guard occupying the same," etc.

The board is given authority "to erect or provide" armories. These words are used throughout the whole act. There can be no doubt that the language just quoted is sufficiently comprehensive to confer upon the Armory Board the power to rent armories. The only doubt which could arise from a construction of this act might be found in Section 4, wherein it is provided that the Armory Board "shall have full authority to purchase ground in the various localities throughout the Commonwealth, where it shall be deemed necessary to provide armories."

It might be thought that the words "to provide" when taken in connection with the language of the 4th Section, limited the power of the Armory Board to provide such armories only as were erected on land purchased by the board.

We have given this suggestion its full weight and are of opinion that the power contained in Section 2, as above quoted, does not confine the Armory Board to providing armories by the purchase of land and the erection of buildings thereon, but that the Armory Board is empowered to provide armories "upon such terms and conditions" as it may determine by leasing or renting property suitable for such purpose.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

FACTORY INSPECTION.

The constitutionality of the factory inspection Act of May 3, 1909, P. L. 417, having been sustained by the Supreme Court, it is the duty of the factory inspector to enforce the act without inquiry as to whether publication of intention to introduce it into the Legislature had been made in accordance with Constitution, Art. III, § 8, and the Act of Feb. 12, 1874, P. L. 43.

Office of the Attorney General,
Harrisburg, Pa., June 2, 1911.

Hon. John C. Delaney, Chief Factory Inspector, Harrisburg, Pa.

Dear Sir: Your favor of the 31st ult., addressed to the Attorney General, was duly received.

You ask to be advised whether you can enforce the Act of May 3, 1909, (P. L. 417), entitled:

> "An act for the safety of persons from fire or panic in certain buildings not in cities of the first and second class by providing proper exits, fire escapes, fire extinguishers and other preventives of fire, by vesting jurisdiction for the enforcement of this act in the Department of Factory Inspection; and by providing proper penalties for any violation of the same."

You refer to the case of the A. L. Roumfort Company vs. John C. Delaney, Chief Factory Inspector, in which the constitutionality of this act was tested, and which case was decided by the Supreme Court on January 3, 1911. The Supreme Court held the act, although local, to be constitutional, relying upon the presumption that what the Constitution requires with reference to the publication of notice of intention to introduce local bills had been complied with.

Whether a local law has in fact been advertised is a matter into which the courts will not inquire after the approval of the law.

In Perkins vs. Philadelphia, 156 Pa. 554, in which the Act of May 24, 1893, entitled:

> "An act to abolish commissioners of public buildings and to place all public buildings heretofore under control of such commissioners, under the control of the Department of Public Works in cities of the first class."

was attacked on the ground that it was a local law, it was said:

> "As to the averment that the act also violates Section 8, Article III, because notice of the proposed legislative action was not published in Philadelphia at least thirty days before the introduction of the bill, we can only say it is not our duty to go behind the law to inquire whether all the precedent formalities have in fact been complied with. The evidence that notice has been published is to be exhibited to the general assembly; it is not directed to be entered upon the journals. The law before us is certified by both houses and approved by the Governor. We must presume the requirement as to notice was complied with; to this effect are all the authorities of numerous adjudicated cases on the same question."

In the case of Roumfort vs. Delaney, the Supreme Court said:

> "The Act of 1909, although local for the reasons stated, was a proper subject for legislative action, provided notice was given by publication as required by the Constitution. The presumption is that what the Constitution requires as to publication was done."

A presumption which controls the Court in determining the constitutionality of an act of assembly is equally controlling upon the officer charged with the enforcement of the act.

However, the Supreme Court itself, in construing this Act of Assembly, assumed that it would be enforced, for the Court said, in answering the argument that the act was an unreasonable exercise of the police power of the State:

> "The act should be enforced in a spirit not to destroy the usefulness of property or to place undue burdens upon the owner, but only as a protection to such an extent as may be required in view of the situation of the building, having regard to use made of it. When so enforced there can be no valid objection on the ground of its requirements being unreasonable. That it will be so enforced will be presumed."

It follows that the decision of the Supreme Court affirming the constitutionality of this Act of Assembly, is sufficient warrant for its enforcement.

I am of opinion that it is your duty to enforce the law as you find it, without inquiry as to whether the fact that it was to be presented to the Legislature was previously published or not.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

DAMS IN DELAWARE RIVER.

The compact between the States of New Jersey and Pennsylvania for concurrent jurisdiction over the Delaware River being continued in force, the Pennsylvania Water Supply Commission, created by the Act of May 28, 1907, P. L. 299, has no jurisdiction to approve plans for a dam over the river Delaware.

Acts of Sept. 20, 1783, 2 Sm. Laws 77, Sept. 25, 1786, 2 Sm. Laws 388, March 23, 1803, 4 Sm. Laws 20, Feb. 21, 1815, P. L. (1814-16) 187, March 29, 1819, P. L. 261, April 23, 1829, P. L. (1828-29) 312, May 22, 1889, P. L. 261, May 8, 1907, P. L. 193, May 28, 1907, P. L. 299, and May 1, 1909 P. L. 309, relating to jurisdiction over the river Delaware and the construction of dams in navigable waters, considered.

Office of the Attorney General,

Harrisburg, Pa., July 26, 1911.

Thomas J. Lynch, Secretary, State Water Supply Commission, Harrisburg, Pa.

Sir: Your favor of March 16th, 1911, requesting an opinion as to the right of the Commission to grant permission to build a dam across the Delaware River, was duly received.

I understand that the Delaware River Improvement Company, a corporation of the State of New Jersey, chartered for the generation of water power, filed August 10, 1910, in the office of the Secretary of the Commonwealth of Pennsylvania, a statement of the location of its office, as required by the Act of April 22, 1874, relative to foreign corporations doing business in Pennsylvania; that on October 27, 1910, this corporation made application to the Water Supply Commission of Pennsylvania for permission, under the Act of May 28, 1907, (P. L. 299), to construct a dam across the Delaware River opposite Belvidere, N. J.

The Act of 1907 provides that "no dam, wall, wing-wall, wharf, pier, embankment, abutment, projection, or other obstruction" "in or along any public or navigable river, or stream heretofore declared a public highway," shall be built until complete maps, plans, profiles and specifications shall have been submitted to, and approved by, the Water Supply Commission.

The question which arises is, whether the Water Supply Commission has any jurisdiction to approve plans for a dam over the river Delaware.

The Act of September 20, 1783, *Pennsylvania Laws, Volume 2, page 77; Statutes at Large, Volume 11, page 151,* entitled:

> "An act to ratify and confirm an agreement made between the commissioners appointed by the Legislature of the State of New Jersey, and commissioners appointed by the Legislature and the State of Pennsylvania, for the purpose of settling the jurisdiction of the river Delaware, and islands within the same,"

ratifies an agreement which is recited therein, and provides that the Delaware river

> "in the whole length and breadth thereof, is and shall continue to be and remain a common highway, equally free and open for the use, benefit and advantage of the said contracting parties,"

This agreement also provides:

> "That each State shall enjoy and exercise a concurrent jurisdiction within and upon the water, and not upon the dry land, between the shores of said river."

The act provides:

> "The aforesaid agreement, and every article, clause, matter and thing, therein contained, shall be and the same is hereby, fully and amply ratified and confirmed, and shall be, and ever hereafter remain, in force, agreeably to the true tenor and extent thereof."

By the Act of September 25, 1786, jurisdiction upon the river Delaware was given to the counties of Northampton, Bucks, Philadelphia and Chester, which border thereon, "as far as the same shall be consistent with the agreement hereinbefore recited made between the States of Pennsylvania and New Jersey."

The Act of 1801, *Laws of Pennsylvania, Volume 5, page 389,* passed over the Governor's veto, entitled:

> "An act to authorize any person or persons owning lands adjoining navigable streams of water, declared public highways, to erect dams upon such streams, for mills and other water works,"

specifically excepts the rivers "Delaware, Lehi and Schuylkill."

On February 21, 1815, the Legislature of Pennsylvania, (P. L. 1814-16, page 187), passed a resolution reciting the agreement of 1783, and the evil consequences "likely to result from an infraction of said agreement" by the passage of an Act of Assembly authorizing certain persons "to erect a wing dam in the river Delaware," and protested against the passage and operation of said Act of the Legislature of the State of New Jersey.

The Act of March 29, 1819, (P. L. 261), entitled:

> "An act to prevent the continuance or establishment of obstructions to navigation in the Delaware River,"

recites the compact of 1783 between the States of New Jersey and Delaware, and provides:

> "That no bridge, floating stage or other device, in the nature of a bridge, no dam, wing or other device creating, drawing off or using a water power, or taking fish, shall hereafter be erected, placed or dug in any part of the river Delaware, between New Jersey and Pennsylvania, without a view first had by three skillful and respectable freeholders in each State, residing near the spot where it may be intended to erect such bridge, stage, dam, wing, or device, appointed by the court of quarter sessions. And a specific report by them or a majority of them respectively, in each State, to the court of quarter sessions of the county by whom appointed, showing distinctly the bridge, stage, dam, wing or device intended, and stating that it will not impede or injure the navigation of said river. And such report being approved of and confirmed by each court of quarter sessions and unappealed from, to the Supreme Court of either State, during one year after it shall have been so approved of shall be final."

Section 2 provides for the appointment by the Governor of commissioners who shall act with the commissioners appointed by the

Governor of New Jersey "to report to the Legislature of each State such an act on the subject as they may jointly agree to recommend, to be concurrently adopted for the purpose of enforcing all proper removals, alterations and restrictions."

On the 23rd of April, 1829, an act entitled:

> "An act appointing commissioners for effecting an arrangement between the States of Pennsylvania and New Jersey for the mutual use of the waters of the river Delaware, for canal and other purposes,"

was passed, and provided for the commissioners

> "to meet commissioners that have or may be appointed on the part of the State of New Jersey * * * * * * and take all necessary measures to ascertain and determine in what manner and at what places the waters of the Delaware may be most advantageously taken, for the purpose of feeding canals and creating water-power, and to make and conclude an agreement respecting the same between said States, taking care, in such agreement to guard from injury in the best manner, the shad fisheries and navigation of said river."

On May 22, 1889, (P. L. 261), an Act of Assembly for the protection of shad and game fish in the river Delaware, was approved. A similar act was the same year passed by the Legislature of New Jersey.

On the 8th day of May, 1907, (P. L. 193), the Legislature of Pennsylvania provided for the creation of a commission to co-operate with the States of New Jersey, New York and Delaware, for the adoption of concurrent laws relating to fishing in the river Delaware, and on the first day of May, 1909, an Act of Assembly (P. L. 309), was passed reciting that by a joint resolution passed by the Legislature of New Jersey, a commission of that State was appointed to meet with the commission provided by the joint resolution of 1907 above referred to, and that the commissioners of Pennsylvania and New Jersey "in joint meeting held for that purpose have agreed to provide an act providing uniform laws to encourage the propagation of fish," etc., and the uniform law adopted by both commissions is incorporated in the said Act of May 1, 1909.

From what has been said, it clearly appears that the compact between New Jersey and Pennsylvania for concurrent jurisdiction over the Delaware river, continues in force. The erection of a dam by a corporation of the State of New Jersey, or by a corporation of the State of Pennsylvania, would violate the agreement. The Water Supply Commission is not vested with power to abrogate this agreement by approving plans for the construction of a dam in the river Delaware. While this agreement remains in force the only method by which permission could be legally secured to dam the Delaware river, would be by the concurrent legislative action of both States.

I am, therefore, of opinion that the Water Supply Commission has no jurisdiction to pass on an application for the construction of the proposed dam across the Delaware River at Belvidere, New Jersey.

Very truly yours,

JNO. C. BELL,
Attorney General.

EVITTS CREEK WATER COMPANY.

The Water Supply Commission is advised to approve the application for incorporation of the Evitts Creek Water Company.

Office of the Attorney General.

Harrisburg, Pa., August 25, 1911.

Thomas J. Lynch, Esq., Secretary Water Supply Commission of Pennsylvania, Harrisburg, Pa.

Sir: This Department is in receipt of your communication under date of August 1st, 1911, stating that the Water Supply Commission of Pennsylvania, at its meeting held July 25th 1911, directed you to refer to this Department for its opinion and advice the matter of the jurisdiction of said Water Supply Commission of Pennsylvania in disposing of an application for the incorporation of the Evitts Creek Water Company.

In your communication you call attention to the fact that the applicants for a charter state that the proposed corporation is to be formed for the purpose of "supplying water to the public in the township of Cumberland Valley, county of Bedford, and State of Pennsylvania," but that the engineering division of the Water Supply Commission of Pennsylvania, after a careful examination of the territory affected by the proposed charter, has reported that the population in the township of Cumberland Valley does not appear to require such an extensive source of supply, nor would the township be warranted in making any expenditure for a municipal water works. You further state that the applicants for the charter admitted, upon hearing, that while it was the intention of the proposed corporation to supply water in Cumberland Valley township, Bedford county, Pennsylvania, the real purpose for seeking incorporation is to supply water from a proposed storage basin to the city of Cumberland in the State of Maryland. I note that you enclose a copy of the application for charter, maps showing the source of supply, pipe lines, etc., the report of your engineering division and a protest filed by certain citizens and taxpayers of the city of Cumberland, Maryland.

From an examination of the papers and records before me, I understand that Cumberland Valley township, in Bedford county, Pennsylvania, is in the southern part of the State, and its southern boundary is the line dividing the States of Pennsylvania and Maryland. Through the southern part of said township runs Evitts Creek, whose waters pass southward in their flow and empty into the Potomac River. The city of Cumberland, Maryland, takes its present water supply from the Potomac River. It is alleged that the present water supply of that city is so polluted that it has become necessary for the proper municipal authorities to seek a different source of supply. The Evitts Creek Water Company, if incorporated, proposes to build a dam across Evitts Creek in said Cumberland Valley township, Bedford county, Pennsylvania, about two miles north of the line dividing Pennsylvania and Maryland. The water supply thus obtained will, it is admitted, be in excess of that which is necessary to supply the needs of the inhabitants of Cumberland Valley township, and, after supplying the public living in said township, it is proposed to allow the city of Cumberland, Maryland, to take, conduct and use a part of the water supply thus obtained for municipal purposes, instead of returning the surplus into the channel of Evitts Creek. It is stated in the papers before me that the waters of Evitts Creek would pass between the location of the proposed dam and the boundary line between Pennsylvania and Maryland in about two hours. Thereafter those waters would, so far as Pennsylvania is concerned, have passed entirely beyond its jurisdiction and the service of its citizens, and, after having passed the boundary line, could be used by the city of Cumberland for municipal purposes. On account of the topography of the portions of the State of Pennsylvania and Maryland under discussion, it is considered impracticable to secure a water supply for the city of Cumberland under a gravity system from a dam located south of the boundary line between Pennsylvania and Maryland, hence the proposition to incorporate a water company in Pennsylvania, with the ultimate object of securing a water supply for the city of Cumberland. It is argued that the plan now proposed does not divert any water from the State of Pennsylvania nor lessen the water supply of any citizen or municipal subdivision of Pennsylvania.

You ask to be advised with reference to the matter of the jurisdiction of the Water Supply Commission of Pennsylvania in approving or withholding approval from the pending application for a charter.

Your commission was created by the Act of May 14, 1905, (P. L. 385), and it is provided by the 5th Section of this act that:

> "Hereafter no letters patent shall be issued to any company desiring to be incorporated for the purpose of supplying water to the public, in any community in the

> Commonwealth, until said application is first submitted to and has received the approval of a majority of the said Water Supply Commission."

Again, it is provided in and by the first Section of the Act of June 7, 1907 (P. L. 455):

> * * * That from and after the passage of this act, no application for a charter for a corporation for the supply of water for the public, or for the supply, storage and transportation of water and water-power for commercial and manufacturing purposes, or for any other water or water-power company, shall be approved by the Governor, nor shall letters patent be issued thereon, unless said application is first submitted to, and has received the approval of, a majority of the members of the Water Supply Commission of Pennsylvania; nor unless said application shall contain, in addition to the statements now required to be made, the name of the river, stream, or other body of water, from which it is proposed to take or use water or water-power, and, as near as may be, the points on said river, stream, or other body of water, between which said water or water-power is proposed to be taken or used."

Under the act creating your commission, it is its duty to adopt such ways and means of utilizing, conserving, purifying and distributing the water supply of Pennsylvania that the various communities of the State shall be fairly and equitably dealt with in such distribution. Whether the incorporation of the Evitts Creek Water Company, under all the circumstances known to your commission, would interfere in any way with the proper conservation and distribution of the water supplies of Pensylvania, is a question within the exclusive jurisdiction of your commission, and must be considered and disposed of by it, in the exercise of the discretion vested in it by the act of assembly under which it is created. This Department has neither the right nor inclination to attempt to advise your commission with reference to the decision of this question.

It is, however, the duty of this Department to advise your commission upon questions of law arising in the discharge of its duties.

As I view the matter, but one question of law arises in this case. The application for the charter is in due form. Three persons propose to associate themselves for the purpose of the formation of a corporation; the charter of the intended corporation is subscribed by the three petitioners, one of whom is a citizen of this Commonwealth. There is nothing on the face of the application indicating any intention to furnish a water supply to the city of Cumberland. It is stated that the purpose of the corporation is that of "Supplying

water to the public in the township of Cumberland Valley, county of Bedford, State of Pennsylvania." The name of the stream from which it is proposed to take the water and the point of location of the proposed dam are set forth in the following language:

> "The water is to be taken from Evitts Creek at a point about 9,250 feet north of the Pennsylvania and Maryland State line where a masonry dam will impound in the valley about 1,400,000,000 gallons of water. All the lands to be flooded by the proposed lake, and the land on both banks of Evitts Creek from the dam to the Pennsylvania and Maryland State line, are the property of the parties making this application; no other parties have riparian rights, below the dam, in the water of Evitts Creek, in the State of Pennsylvania."

Notwithstanding the regularity of the papers, a protest has been filed, alleging, inter alia, that the real purpose for which said corporation is to be formed "is notoriously and undeniably to supply water to the public in the city of Cumberland and county of Allegheny, State of Maryland." In support of this contention, it is pointed out that one of the proposed incorporators, George C. Young, who has subscribed for 248 of the 250 shares of the capital stock of the proposed corporation, is the present mayor of the city of Cumberland, and that Thomas Footer, a subscriber for one share of stock, is a property holder and tax payer in said city, and that the remaining subscriber, Charles R. Mock, of Bedford, is counsel for the proposed corporation.

It is further shown that the General Assembly of the State of Maryland passed a law, duly approved April 13, 1910, intended to authorize the securing of a water supply by the city of Cumberland. By this legislation the city was authorized, after an election, to issue bonds to the amount of $500,000 for the construction of water works and to subscribe for and take stock in any water company formed under the laws of Maryland, or any other State, which has for its object the furnishing and supplying of water to the city of Cumberland. It is alleged that the above mentioned subscribers to the capital stock of the proposed Pennsylvania corporation will turn their stock over to the city after the company is incorporated.

It is further asserted in the protest, that the amount of the capital stock set out in the application for incorporation, to wit, $25,000, is inadequate for the purpose stated, and that the treasurer of the proposed corporation, D. Lindley Sloan, being a resident of Cumberland, Maryland, is ineligible, under the laws of Pennsylvania, to fill said office.

From this brief outline of the situation it is not difficult to see that a number of interesting and intricate legal questions may arise

if the proposed Pennsylvania corporation should attempt to carry into effect the designs credited to it by the protestants. With many of these questions, however, we have no concern at the present time. The amount of the capital stock is adequate, under the practice relative to the granting of charters to water companies in Pennsylvania, and the protestants have cited no Act of Assembly of this Commonwealth which requires the treasurer of a Pennsylvania corporation to be a resident of this State, nor has this Department any knowledge of any Act of Assembly containing this requirement.

As I view the matter, only one legal question now arises, which may be stated as follows:

If it be conceded, upon the application for incorporation of a water company in Pennsylvania, that it is proposed to supply a large part of the water which will be under the control of the proposed corporation for use outside of the territory described in the application, should a charter be refused upon such application?

Or, with more particular reference to the present case, the legal question may be thus stated:

If it be conceded, upon the application for a charter to a corporation for supplying water to the public in the township of Cumberland Valley, Bedford county, Pennsylvania, that the corporation, if incorporated, will attempt to supply a large quantity of water for use as a water supply for the city of Cumberland, Maryland, should the proper authorities in Pennsylvania refuse to grant the charter applied for?

The question involved in this case relates not necessarily to the right of a Pennsylvania water company to conduct its operations outside of the territory for which it is incorporated, but to its right to supply water within the territory for which it has been incorporated for use outside of that territory. As a general proposition, it may be stated that the Act of April 29, 1874, limits the authority of a water company incorporated under its provisions to the municipal or quasi-municipal division in which it is located, and that a provision in the certificate of incorporation granting power to supply water in adjacent territory is inoperative. Bly vs. White Deer Mountain Water Co., 197 Pa. 80.

It must be recalled, however, that in the case just cited the defendant companies were digging ditches and trenches and laying mains and pipes in municipalities, boroughs and townships outside of the territory for which they were incorporated for the purpose of supplying water to such municipalities, boroughs and townships.

As was stated in Bland vs. Tipton Water Company, 222 Pa. 285, in distinguishing the Bly case from the first mentioned case, what was enjoined in the Bly case "was the taking of the waters of White Deer Creek for the purpose of directly supplying the same to the

public in townships and municipalities other than the one in which the water company was authorized to supply the same." In the case of Bland vs. Tipton Water Company, supra, our Supreme Court held:

> "Where a water company has the undoubted right or franchise to supply water to the public within the limits of a designated township, a riparian owner on a stream from which the water company takes some of its supply, has no standing to maintain a bill in equity under the Act of June 19, 1871, (P. L. 1360), to restrain the water company from delivering water to a railroad company within the limits of the township, although it appears that the railroad company after receiving the water from the pipes of the water company carries the water in its own pipes beyond the limits of the township. If in such a case it appears that the water company is misbehaving itself in the exercise of its franchise, the remedy is a proper proceeding at the instance of the Commonwealth."

In this case the Tipton Water Company was incorporated to supply water to the public in Antis township, Blair county, Pennsylvania, and to such persons, partnerships and corporations residing or located therein as may desire the same. An effort was made to enjoin this company from taking the waters of a certain run because, after conveying them into Antis township, it there sold and delivered to the Pensylvania Railroad Company as one of its customers, large quantities of water which that company conveyed out of the township for the supply of its engines, stations and shops. In the course of the opinion, Mr. Justice Brown said:

> "In the present case no pipe of the water company runs outside of Antis township, and it is not undertaking to deliver water to anyone, much less to the public, at any point beyond the limits of that township. The supply and delivery of which the appellant complains are within the township, and to a single customer of the water company. If the pipe of this customer connecting with that of the water company should not extend beyond the lines of Antis township, it would hardly be pretended that the supply of the water would not be entirely lawful, and we can recognize no difference, because, after the supply and delivery of the water to the railroad company are complete within the township, that company, under no arrangement between it and the water company, carries the water for its own corporate purposes beyond the line of the township."

Under these authorities, I am not prepared to say that the Evitts Creek Water Company, if incorporated, would not have the right

to supply water within the territorial limits of Cumberland Valley township, Bedford county, Pennsylvania, although the water thus supplied should be conveyed beyond the limits of said township and used to supply the said city of Cumberland, Maryland.

In view of these considerations, I see no legal obstacle to the granting of the charter now applied for. If, after incorporation, the Evitts Creek Water Company should, in any manner, or by any device, exceed or attempt to exceed the powers, privileges and franchises acquired under its charter, the Commonwealth will have an adequate remedy. Under its charter the defendant corporation will acquire certain well defined rights, powers, privileges and franchises and no more. We have no right to assume that it will attempt to violate or exceed the powers and privileges conferred upon it by the Commonwealth of Pennsylvania, but if it should, the Commonwealth can confine its operations within the limits prescribed by law.

You are therefore advised that there is no legal objection to the granting of the charter applied for, and that the question of the propriety of approving this application is to be disposed of by your commission, through the exercise of the discretion vested in it by law.

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

GETTYSBURG BATTLEFIELD.

The Gettysburg Memorial Commission is not limited to the advertising for competitive bids as the only method of determining the lowest and best bid for sculpture on the Gettysburg Battlefield, but may accept a private bid.

Office of the Attorney General,

Harrisburg, Pa., October 11, 1911.

General Henry S. Huidekoper, President, Gettysburg Battlefield Memorial Commission, Philadelphia, Pa.

Sir: I am in receipt of your letter of the 9th instant, in which you state that the Gettysburg Battlefield Memorial Commission unanimously resolved at a meeting of the commission held at Gettysburg on October 7, 1911, to accept the offer of the Van Amringe Granite Company of Boston, Mass., to have modeled by not less than four, nor more than eight sculptors, out of a list submitted by said company to the commission, 8 portrait statues of the following men, to wit: President Abraham Lincoln, Governor Andrew Curtin, Generals Meade, Hancock, Reynolds, Pleasanton, Birney and Gregg, and to cast in bronze and place said statues in position on

the Pennsylvania State Memorial at the Gettysburg battlefield, for a consideration of $34,000.00, and that the commission resolved to enter into contract with said Van Amringe Granite Company for this work, provided the commission has the lawful power and authority to make such contract without previously advertising for competitive bids.

It appears from your letter and enclosure accompanying the same, that the Van Amringe Granite Company has had great experience in work of this character, and that the commission has satisfied itself that the performance of such a contract as that proposed can best and most satisfactorily be done by this company.

The Act of June 14, 1911, provided:

> "That the sum of $40,000, or so much thereof as may be necessary, be and the same is specifically appropriated to the Gettysburg Battlefield Memorial Commission for the purpose of having made and placed in the niches on the monument or memorial now on the Gettysburg battlefield and which was dedicated September twenty-seventh, one thousand nine hundred and ten, eight bronze statues—one each of President Lincoln, Governor Curtin, Major Generals Meade, Reynolds, Hancock, Birney, Pleasonton, and Gregg," etc.

This act, by clear implication, confers upon the commission the power to make such contract or contracts as may be necessary to carry out the purpose for which the appropriation was made by the Legislature, and there is no provision in said act indicating that the power and discretion so vested in the commission to make contracts for this purpose is conditional upon previous advertising for competitive bids.

By the Act of June 13, 1907, pursuant to the provisions of which "The Gettysburg Battlefield Memorial Commission" was established, it is provided that said commission "shall have full power to make contracts" for the construction of a monument, or such other memorial structure, as the commission shall determine to commemorate the services of the soldiers of Pennsylvania in the battle of Gettysburg.

Similarly, by the amendatory Act of February 11, 1909, it is provided that the commission "shall have full power to make contracts" for the construction and erection of this memorial. Neither the Act of 1907 nor the Act of 1909 is the "full power to make contracts" qualified by the condition that the contracts are to be made only after there has been advertising for competitive bids to determine the lowest and best bidder.

The Appropriation Act of June 14, 1911, above referred to made the appropriation of $40,000 for the statues which are to be placed

"in the niches on the monument or memorial" which has been erected by the commission, pursuant to the provisions of the said Acts of June 13, 1907, and February 11, 1909, and dedicated on September 27, 1910. The eight statues are thus to be made a part of the memorial. It is plain that the three acts of assembly upon this same subject matter are in *pari materia,* and the provisions in each are to be read and interpreted in the light of the provisions contained in the others.

I am of opinion, therefore, that the commission is not limited to advertising for competitive bids as the only method of determining the lowest and best bidder for work of this character, and that these three acts confer upon the Memorial Commission full power to make the contract referred to in your letter with the Van Amringe Granite Company, the commission having satisfied itself, after proper investigation, that the interests of the State will best be subserved thereby.

Very truly yours,
JNO. C. BELL,
Attorney General.

EXPENSES OF FACTORY INSPECTORS.

No allowance should be made for payment of the meals of inspectors while at their place of residence.

Office of the Attorney General,

Harrisburg, Pa., October 18, 1911.

Hon. J. C. Delaney, Chief Factory Inspector, Harrisburg, Pa.

Dear Sir: Your favor, addressed to the Attorney General, asking to be advised as to whether you are authorized to permit an allowance for meals to Deputy Factory Inspectors in cities of the first and second class, was duly received.

With your letter you enclose a letter received from John D. Boston, a resident of the city of Philadelphia, who complains that such an allowance is illegal.

The Act of May 2, 1905, (P. L. 352), referring to the appointment and pay of Deputy Factory Inspectors, provides in Section 27 that:

> "The Governor shall appoint, by and with the advice and consent of the Senate * * * * thirty-nine Deputy Factory Inspectors, five of whom shall be women, at a salary of twelve hundred dollars each, per annum, and their necessary traveling expenses."

The General Appropriation Act of 1911 provided in bulk "for the payment of the salaries of forty-one deputy factory inspectors," the sum equivalent to fifteen hundred dollars per year for each.

The said General Appropriation Bill also contains an item "for the payment for two years of the incidental and traveling expenses of the Chief Factory Inspector and his deputy factory inspectors," etc. There is no provision in the law, in terms, providing for an allowance to deputy factory inspectors for meals.

The cost of meals is properly included in traveling expenses in such cases only where the deputy factory inspector is required to be absent from his own city or town. The noonday meal, or luncheon, of a deputy factory inspector, eaten, for the sake of convenience, elswhere than at his own home, but in his own city, could not in any sense be considered a traveling expense.

I am, therefore, of opinion that the Act of 1905, and the Appropriation Act of 1911, do not contemplate any allowance for meals to inspectors while performing their duties in the place of their residence.

I return herewith the letter of John D. Boston.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

MIDWIVES.

The Act of May 18, 1893, creating the Medical Council is repealed by the Act of June 3, 1911. It is the duty of the Medical Council to grant licenses to midwives as provided by the Act of 1893, until it goes out of existence on January 1, 1912.

Office of the Attorney General,

Harrisburg, Pa., October 25, 1911.

Dr. Nathan C. Schaeffer, Secretary and Treasurer, Medical Council, Harrisburg, Pa.

Sir: Your favor of September 20th, 1911, addressed to the Attorney General, was duly received.

You ask to be advised as to the effect which the Act of June 3, 1911, P. L. 639, has upon the Act of June 14, 1911, P. L. 928.

The Act of June 14th is an act regulating the practice of midwifery as performed by midwives. This act of assembly provides that the Medical Council of the State of Pennsylvania shall issue licenses to all persons except practicing physicians, who shall be entitled to

practice midwifery in this State, and provides for penalties for such persons who practice without first obtaining the prescribed license.

The Act of June 3, 1911, regulates the practice of medicine and surgery, and provides for a Bureau of Medical Education and Licensure. It goes into effect on the first day of January, 1912. It repeals the Act of May 18, 1893,(P. L. 94), which established the Medical Council, and the amendment thereto of April 27, 1909. It nowhere provides that the duties of the Medical Council imposed on it by the Act of June 14th hereinbefore referred to should be performed by the Bureau of Medical Education and Licensure. It follows that after January 1, 1912, there will be no Medical Council to license practioners in midwifery, and no other body authorized by law to perform that duty.

The Act of June 14 went into effect immediately upon its passage, and is in force until January 1, 1912, so far as it imposed the duty of licensing upon the Medical Council.

I am therefore of opinion that it is encumbent upon the Medical Council to perform the duties imposed by the Act of June 3, 1911, above referred to, until that council goes out of existence, as provided by the Act of June 14, 1911.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

STATE HOSPITAL FOR INJURED PERSONS AT HAZLETON.

The hospital is devoted first to the reception, care and treatment of persons injured about the mines, workshops and railroads, and all other laboring men, and secondarily to the treatment of other persons.

Office of the Attorney General,

Harrisburg, Pa., September 6, 1911.

Dr. Wiliam C. Gayley, Hazleton, Pa.

Dear Sir: Returning from my summer holiday, I find your letter of the 19th ult. awaiting me.

The question which you propound is, in my judgment, determined by a reference to the provisions of Sections 9 and 10 of the Act approved the 14th of June, 1887 (P. L. 399), entitled: "An act to provide for the selection of a site and erection of a State Hospital for injured persons, to be located at or near Hazleton, in the county of Luzerne, to be called the State Hospital for Injured Persons of the

Middle Coal Field, and for the management of the same, and making an appropriation therefor. The said Sections 9 and 10 provide as follows:

> "Section 9. That this hospital shall be specially devoted to the reception, care and treatment of persons injured in and about the mines, workshops and railroads, and all other laboring men: *Provided, however,* That no patient shall be admitted for treatment in said hospital to the exclusion of the classes herein stated, and who have not contracted injuries in or at the coal mines embraced within the territorial limits of the fourth inspection district of the anthracite coal fields of Pennsylvania.
>
> Section 10. The trustees of said hospital may, from time to time, charge any patient, other than the classes named in Section nine of this act, an amount sufficient to cover the cost of treatment."

The plain meaning of the above quoted sections of the act is that the hospital shall be specially devoted, in the first instance to the reception, care and treatment of persons injured in and about the mines, workshops and railroads, and all other laboring men. As emphasizing the prior right of such persons to care, and treatment in the hospital, there is the further provision that no patient shall be admitted for treatment in said hospital at the *exclusion* of the classes herein stated, which means that the classes mentioned shall always have a prior right of reception, care and treatment, but that, subject to such prior right, other persons, who have not contracted injuries in or about the coal mines, may be received, cared for and treated in the hospital. And this meaning is made clear beyond a doubt by the express language of Section 10, which section also, expressly authorizes that the trustees "may, from time to time, charge any patient, other than the classes named in Section nine of this act, an amount sufficient to cover the cost of treatment."

Yours sincerely,

JNO. C. BELL,
Attorney General.

GAME COMMISSION.

Payments made by game wardens under advice of counsel of the Game Commission should be returned to them.

Office of the Attorney General,
Harrisburg, Pa., November 20, 1911.

Dr. Joseph Kalbfus, Secretary Board of Game Commissioners, Harrisburg, Pa.

Sir: On September 25th you addressed a communication to the Attorney General, which was supplemented by one of October 31st, in which you complain of the conduct of certain lawyers in Armstrong county, and apparently desire to be advised as to what proceedings, if any, should be had in the premises.

As I gather the facts from your communication, they are as follows:

Two of your agents, Scott and Crawford, with an assistant by the name of Gensemar, obtained from a justice of the peace in Armstrong county, a search warrant authorizing them to search the premises of a person named therein, "and others." The officers, in executing this warrant, searched the premises of persons other than the one named in the warrant. These officers acting under the provisions of the act permitting a person charged with a violation of the law, to sign an acknowledgement of the offense committed and pay the game protector the penalty in full, received fines from certain aliens, who, in violation of the Act of May 8, 1909, had guns in their possession. Among those who paid the officers the fines were the persons whose premises were searched pursuant to the warrant above mentioned. The fines, or so much thereof as under the law were payable to the State, were then sent, as the law required, to your Department, and by your Department turned into the State Treasury. The guns seized, with the exception of two, were sent to your office and disposed of according to law, and the money realized from the sale turned into the State Treasury.

Your agents were arrested, charged with numerous offenses, but indicted of extortion only, and on the trial of the case, the Court finding that the search warrant was void, also ruled that the men had no right to accept the money in the field and left the question to the jury as to whether or not the taking of money in the field was an evidence of fraud. Defendants complained about the refusal of the Court to permit certain evidence, and were convicted of extortion in one case, and sentenced to pay a fine and undergo imprisonment.

Your officers were represented by counsel unknown to this Department. After the conviction they were told by counsel for the prosecutors that a warrant either was or had been issued for the arrest of

Dr. Kalbfus, and an officer by the name of Hummelbaugh, and that five or six more prosecutions were pending against Scott and Crawford, but that if they would pay the costs and fine imposed and pay back the money collected from the plaintiffs, and pay the attorney's fees of the plaintiffs' they would be released, otherwise they would push the untried cases to a conclusion. It appears that the attorney of your agents advised this settlement, and stated, after the settlement was made, in a communication, a copy of which you have forwarded to me: "I have done absolutely the best possible in this affair and could not keep them out of the workhouse and save further serious prosecution in any other manner. I hope this will be satisfactory, as it is absolutely everything that could be done."

From the statements of fact contained in your letter, it does not appear that anything can now be done.

It is a case of locking the stable after the horse is stolen. We have several times before suggested to your Department, and other departments, that if counsel in various parts of the State were selected or at least recommended by this Department, and this Department gave supervisory control of such cases, many situations similar to this would not arise.

It appears from your recital of the facts that the judge trying the case may have acted erroneously in the execution of testimony and in his construction of the law; if that was so why was not an appeal taken and the matter promptly and legally determined? In cases where the game wardens are arrested in the performance of their duties, the Game Commissioner, if satisfied that the wardens have acted in accordance with their duties, should stand back of them, and see that they have a fair trial, and if there is an unfair trial, or improper rulings are made upon the trial, the cases should be appealed, or at least the question should be submitted to this Department for consideration in time to take appropriate action, if deemed advisable.

There was no appeal taken in this case, and after a conviction it seems that a hard bargain was driven, but it was made with the distinct approval of their counsel. It cannot be said that there was any extortion or conspiracy in the settlement of these cases, with the knowledge, advice and approval of counsel for the defendants and in the hope of preventing further prosecutions.

If these aliens continue to violate the law by having shot guns or rifles in their possession, arrests can be made upon proper warrants and the aliens prosecuted, but no prosecution could be successfully maintained now upon the same state of facts which once appeared before the court.

These payments were made by the game wardens under the advice of counsel. The money which they originally collected, as was required by law, has gone into the Treasury of the Commonwealth.

The game wardens should not be required to stand the loss of the return of this money, and if there is any contingent or other fund out of which the money can be returned to them by your Department, such return should be made.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

UNDERTAKERS LICENSE.

One who has had two years practical experience continuously with an undertaker, he and the undertaker being employees of a corporation which conducted an undertaking business, is entitled to an examination for a license by the State Board of Undertakers.

Office of the Attorney General,

Harrisburg, Pa., December 2, 1911.

Mr. Charles W. Naulty, Secretary, State Board of Undertakers, N. E. Corner 3rd & Vine Sts., Philadelphia, Pa.

Sir: Your letters of October 19th and 22nd, addressed to the Attorney General, were duly received.

You state the folowing facts: A corporation doing an undertaking business has in its employ, at a stated salary, S. M. Nickel, who is a licensed undertaker. They also have in their employ one Chauncey Parkinson, who receives a salary from the corporation. Said Chauncey Parkinson has applied to your board for an examination for license, claiming to have worked under the said S. M. Nickel, but was paid by the furniture and undertaking corporation, and not by the licensed undertaker.

You ask to be advised whether the said Parkinson can be examined for license in view of the fact that he "was not employed by a licensed undertaker."

The Act of April 25, 1905, (P. L. 299), in Section 2, which amends Section 6 of the act creating your board, approved June 7, 1905, provides, 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 * * * * * such person or persons, or person comprising or representing such corporations, shall apply to said board for a license to practice the same, and shall accompany such application with a fee of ten dollars; whereupon the applicant, as aforesaid, shall present himself or herself before the said board, at

a time and place to be fixed by said board. If the board shall find, upon due examination, *that the applicant or applicants are of good moral character, possessed of skill and knowledge of the said business of undertaking, and have a reasonable knowledge of sanitation, preservation of the dead, disinfecting the body of deceased persons, the apartment, clothing and bedding in cases of death from infection or contagious diseases, and have had practical experience in the business of undertaking for two years continuously, with an undertaker or undertakers,* the board shall issue to said applicant or applicants, upon payment of a fee of twenty-five dollars, a license to practise said business of undertaking, and shall register such applicants or applicant as duly licensed undertakers."

Aside from the moral and mental qualifications set out in the above act, the applicant is required to have had "practical experience in the business of undertaking for two years continuously with an undertaker or undertakers." There is nothing in the act which requires him to be paid by a licensed undertaker; he is required to have had two years experience.

If S. M. Nickel were a licensed undertaker and Chauncey Parkinson has continuously worked at the undertaking business with S. M. Nickel, he has, in the language of the statute, "had practical experience in the business of undertaking for two years continuously, with an undertaker," and if he had the moral character and skill and knowledge which the act also requires, he has all the qualifications which are demanded.

I am of opinion, and therefore advise you, that if you find the facts to be as stated, the said Chauncey Parkinson is entitled to an examination for a license, notwithstanding that he has been in the employ of and paid by a corporation which is doing an undertaking business.

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

PHOSPHORUS MATCHES.

Matches containing phosphorus are not within the purview of "poisons" as that term is used in the Act of May 24, 1887, P. L. 189.

Office of the Attorney General,
Harrisburg, Pa., January 24, 1912.

Lucius L. Walton, Secretary, State Pharmaceutical Examining Board, Williamsport, Pa.

Dear Sir: Some time ago you requested an opinion of this Department as to whether matches prepared from phosphorus are "poison" within the meaning of the Act approved May 24, 1887, (P. L. 189).

This Act of Assembly is entitled:

> "An act to regulate the practice of pharmacy and sale of poisons, and to prevent adulterations in drugs and medical preparations, in the State of Pennsylvania."

It is in part as follows:

> "Whereas, The safety of the public is endangered by want of care in the sale of poisons, whether to be used as such for legitimate purposes, or employed as medicines and dispensed on the prescription of physicians;
>
> And whereas, the ability of physicians to overcome disease depends greatly on their obtaining good and unadulterated drugs and properly prepared medicines;
>
> And whereas, The person to whom the preparation and sale of drugs, medicines, and poisons properly belong, known as apothecaries, chemists and druggists or pharmacists, should possess a practical knowledge of the business and the science of pharmacy in all its relations, therefore,
>
> Section 1. Be it enacted, etc., That hereafter no person whomsoever shall open or carry on as manager, in the State of Pennsylvania, any retail drug or chemical store, nor engage in the business of compounding or dispensing medicines, or prescriptions of physicians, or of selling at retail any drugs, chemicals, poisons, or medicines, without having obtained a certificate of competency and qualification so to do from the State Pharmaceutical Examining Board, and having been duly registered as herein provided."

The balance of the act with the exception of Section 10 hereinafter referred to applies only to the State Pharmaceutical Examining Board, its duties and the duties of apothecaries and qualified assistants in the conduct and operation of drug stores.

Section 6 provides:

> "That no person shall hereafter engage as manager in the business of an apothecary, or pharmacist, or of retailing drugs, chemicals and poisons, or of compound-

ing and dispensing the prescriptions of physicians, either directly or indirectly, without having obtained such certificate as aforesaid. But nothing contained in this act shall in any manner whatever interfere with the business of any practitioner of medicine, nor prevent him from administering or supplying to his patients such articles as to him may seem fit and proper, nor shall it interfere with the making and dealing in proprietary remedies, popularly called patent medicines, nor prevent store keepers from dealing in and selling the commonly used medicines and poisons, if such medicines and poisons conform in all respects to the requirements of Section nine: Provided, The provisions of Section ten of this act be fully complied with."

Section 10 provides:

"Poisons. A poison in the meaning of this act shall be any drug, chemical or preparation, which, according to standard works on medicine or materia medica, is liable to be destructive to adult human life, in quantities of sixty grains or less.

No person shall sell at retail any poisons, except as herein provided, without affixing to the bottle, box, vessel or package containing the same, a label, printed or plainly written, containing the name of the article, the word 'poison', and the name and place of business of the seller, nor shall he deliver poison to any person without satisfying himself that such poison is to be used for legitimate purposes.

It shall be the further duty of any one selling or dispensing poisons, which are known to be destructive to adult human life in quantities of five grains or less, before delivering them, to enter in a book kept for this purpose the name of the seller, the name and residence of the buyer, the name of the article, quantity sold or disposed of, and the purpose for which it is said to be intended, which book of registry shall be preserved for at least two years, and shall at all times be open to the inspection of the coroner or courts of the county in which the same may be kept.

The provisions of this section shall not apply to the dispensing of physicians prescriptions, specifying poisonous articles, nor to the sale to agriculturists of such articles, as are commonly used by them as insecticides. Any person failing to comply with the provisions of this section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than five nor more than fifty dollars for each every offense."

It is apparent from the preamble and the body of the Act, that it relates to the qualifications and business of apothecaries or pharmacists, and to the sale of such drugs and poisons as are usually sold or dispensed in drug stores.

While the definition of poison in the first part of Section 10 is broad enough to cover phosphorus, as it is described in the "National Standard Dispensatory," yet the act nowhere indicates that it is intended to apply to merchants who are not dealing in drugs or medicines, and who may have articles such as matches which contain poison, but which are not intended to be eaten or used for medical purposes, or drugs.

If this act were construed to apply to phosphorus contained in articles of merchandise not intended or used as drugs or medicines, it might then be said with great force that it would violate Section 3 of Article 3 of the Constitution of Pennsylvania, which provides:

> "No bill except general appropriation bills, shall be passed containing more than one subject *which shall be clearly expressed in its title,*"

because there is no notice in the title of the intention to regulate the sale of such articles of merchandise.

I am, therefore, of opinion that matches containing phosphorus are not within the purview of "poisons" as that term is used in the Act of May 24, 1887, (P. L. 189).

Very truly yours,
WM. M. HARGEST,
Assistant Deputy Attorney General.

SALARY DEPUTY SUPERINTENDENT STATE POLICE.

The Deputy Superintendent of State Police is not entitled to the increase of pay of five dollars per month provided by law for members of the troop from the grades of private up to and including captain who are serving their third continuous enlistment.

Office of the Attorney General,

Harrisburg, Pa., February 1, 1912.

Major John C. Groome, Superintendent of State Police, Harrisburg, Pa.

Sir: Some time ago you requested an opinion of this Department as to whether the Deputy Superintendent was entitled to have the increase of salary which is provided by the Act of June 1, 1911, (P. L. 555).

I understand the fact to be that the present Deputy Superintendent joined the State Police at the time of its organization, as a 1st Sergeant, served an enlistment of two years, re-enlisted, and was serving under the second enlistment, having been successively promoted to

Lieutenant and Captain, respectively, when on January 1, 1908, he was appointed as Deputy Superintendent. Had he continued to serve as Captain, his second enlistment would have expired December 14, 1909.

By the Act of May 2, 1905, (P. L. 361), creating the Department of State Police, it is provided in Section 2 thereof that the Superintendent "is authorized to appoint a deputy at a salary of $2,000.00 per annum." This Section was amended by the Act of June 1, 1911, (P. L. 551), which reads: "He is authorized to appoint a deputy superintendent, at a salary of $2,500.00 per annum."

And Section 3, of the Act of May 2, 1905, was also amended as follows:

> "Section 3. He (i. e., Superintendent) is also authorized to appoint the State Police Force, which shall consist of four troops, each consisting of a captain, at a salary of eighteen hundred dollars per annum; a lieutenant, at a salary of fifteen hundred dollars per annum; a first sergeant, at a salary of twelve hundred dollars per annum; four sergeants, each at a salary of eleven hundred dollars per annum; four corporals, each at a salary of nine hundred and fifty dollars per annum; one blacksmith with rank of corporal, at a salary of nine hundred and fifty dollars per annum; and forty-five privates, each at a salary of nine hundred dollars per annum.
>
> *The members of the State Police Force shall be enlisted for a period of two years; and each member of said State Police Force shall receive an increase in pay of five dollars per month during a second continuous enlistment, and an additional increase in pay of five dollars per month during a third continuous enlistment.*
>
> No applicant shall be appointed to the State Police Force until he has satisfactorily passed a physical and mental examination, based upon the standard provided by the rules and regulations of the police force of the cities of the first class; in addition to which each applicant must be a citizen of the United States, and of sound constitution, able to ride, of good moral character, and between the ages of twenty-one and forty years."

This section provides for the salaries of the enlisted men, beginning with the captain, and enumerating the various members of the Force, including privates. It provides as to them:

> "Each member of said Police Force shall receive an increase in pay of five dollars per month during a second enlistment, and an additional increase in pay of five dollars per month during a third continuous enlistment."

It will be noted that in providing for the appointment of a Deputy Superintendent the act does not require that he shall be a member

of the Force, or an enlisted man. A Deputy Superintendent may be promoted from the Force, or may be appointed without reference to the personnel of the Police Force.

The salary of the Deputy Superintendent is fixed by Section 2 of the act, at the sum of $2,500.00.

I am, therefore, of opinion that the provision with reference to an increase in pay of five dollars a month for the second continuous enlistment, and an additional increase of pay of five dollars per month during the third continuous enlistment, applies only to members of the troop from the grades of private up to and including the grade of captain.

Moreover, the present Deputy Superintendent is not serving during a third continuous enlistment. Having been appointed a Deputy Superintendent on January 1, 1908, while serving as Captain, he did not continue to perform the duties or receive the salary of captain, and since that time has not been an enlisted captain. He is, therefore, not within the provisions of the act providing for "an additional increase in pay of five dollars per month during a third enlistment."

Very truly yours,

JNO. C. BELL,
Attorney General.

APPROPRIATION, DAIRY AND FOOD DIVISION.

The Department of Agriculture cannot withdraw from the State Treasury money paid in for license fees, fines, penalties and costs without an appropriation for that purpose.

Office of the Attorney General,

Harrisburg, Pa., May 8, 1912.

Hon. James Foust, Dairy and Food Commissioner, Harrisburg, Pa.

Sir: I am in receipt of your communication of recent date, stating that the appropriation for the Dairy and Food Division of the Department of Agriculture is at present overdrawn, and will be entirely exhausted by the ordinary expenses of the Division before the end of the appropriation term, and asking whether you may use the license fees and fines and costs collected in the prosecutions brought under the Act of May 29, 1901, (P. L. 327). You inform me that these fees, penalties and costs are paid into the State Treasury by you and that if possible, you desire to draw upon them under the provisions of the 12th Section of the Act of May 9, 1901, (P. L. 334), which are:

> "The money paid into the Treasury under the provisions of this act shall constitute a special fund, *for the use of the Department of Agriculture* in enforcing this

law, and may be drawn out upon warrants signed by the Secretary of Agriculture and approved by the Auditor General, subject, however, to the payment of any citizen commencing and successfully prosecuting a proceeding for any violation of this act, under the last preceding section, of one-half of the penalty or fine so recovered in such proceeding and paid into the State Treasury."

The later Act of 25th of May, 1907, (P. L. 259), provides that the various State officers, including the Secretary of Agriculture and Dairy and Food Commissioner, "shall pay daily into the State Treasury for the *use of the Commonwealth,* all fees, license fees, penalties, commissions, costs and all moneys received or collected on behalf of the Commonwealth from any source whatever."

This latter act, in effect, repeals the 12th Section of the Act of May 29, 1901, above quoted; and that such was the legislative intent is evidenced by the fact, of which you make mention in your letter, that, beginning with the session of 1907, the Legislature has uniformly provided for the expenses of the Dairy and Food Division in the General Appropriation Acts.

I am therefore of opinion that, since the passage of the Act of May 25, 1907, the Department of Agriculture cannot draw out from the State Treasury moneys arising from the payment of license fees, fines, penalties and costs for the expenses of the Dairy and Food Division without an appropriation for that purpose.

Very truly yours,

JNO. C. BELL,
Attorney General.

SOLICITOR, VALLEY FORGE PARK COMMISSION.

The Valley Forge Park Commission has the implied power to employ a solicitor whenever it is necessary so to do.

Office of the Attorney General,

Harrisburg, Pa., May 28, 1912.

Hon. John W. Jordan, Secretary Valley Forge Park Commission, 1414 South Penn Square, Philadelphia, Pa.

Sir: I am in receipt of your communication of May 4th, in which you call attention to the fact that the Valley Forge Park Commission has hitherto employed a solicitor, paying him no fixed salary, but giving him appropriate fees when he renders legal services. You state that the question has arisen whether or not you have the right to employ a solicitor in this manner, and ask for my opinion thereon.

The Valley Forge Park Commission was created by Act of May 30, 1893, (P. L. 183); and while this act and supplemental acts do not

specifically grant the commission the right to employ a solicitor, nevertheless duties are imposed upon the commission by that act, which are of such nature that for the successful performance thereof it is obvious that the services of an attorney would be required. For instance, in the proceedings imposed by the Act of 1893 as necessary, in order to ascertain the value of the land taken by the State, a jury of disinterested freeholders is to be appointed by the Court of Quarter Sessions of the county in which said grounds lie, who shall assess the damages for the land taken, their award to be reviewed and enforced in the same manner as now provided by law in the taking of land for the opening of roads in said county, the services of an attorney would be essential.

Similarly, the scope of the powers and functions of the commission is widened by the Act of 30th of March, 1911, (P. L. 28), so as to permit it to accept in trust any fund created for the benefit or improvement of the Valley Forge Park, by deed, bequest, devise, grant, decree or otherwise; to enter into agreements with township supervisors or other officials, providing for the location or relocation of any public road or highway within the limits of Valley Forge Park, and for grading, widening, narrowing, elevating or depressing the same; and to consent to the location, relocation, construction, reconstruction, widening, narrowing, elevating, depressing, grading, ornamenting or improving any street railway, electric railway, elevated railway, subway, tunnel, railroad or other means of travel upon such terms and conditions as the said commissioners may impose for the advantage of said park, with the approval of the Governor.

In Section 1 of the Appropriation Act, Session of 1911, (page 305), the sum of $25,000 was appropriated to the Commission, among other things for "legal expenses."

It is clear that the contingencies requiring the legal services of a solicitor may occasionally arise. I therefore advise you that the Valley Forge Park Commission has the implied power to employ the services of a solicitor whenever it is necessary so to do, in order that the powers conferred and the duties imposed upon said commission may be properly exercised and performed.

Very truly yours,

JNO. C. BELL,
Attorney General.

UNDERTAKERS.

The administratrix of a deceased licensed undertaker may continue the business by passing an examination for a license, or by employing an undertaker who has been duly licensed.

Office of the Attorney General,
Harrisburg, Pa., June 14th, 1912.

Charles W. Naulty, Esq., Secretary State Board of Undertakers, 3rd and Vine Streets, Philadelphia, Pa.

Sir: You ask my opinion upon the question whether an administratrix of the estate of a deceased licensed undertaker may conduct the business of said decedent without a license.

I am of opinion that the terms of the Act of June 7, 1895, (P. L. 168), as amended by the Act of April 24, 1905, (P. L. 300), prohibit the administratrix from engaging in the business of undertaking without a license from your board.

I call your attention to an opinion given to your board by former Attorney General Elkin, November 12, 1895, *17 County Court Reports 103,* upon substantially the same question. In this opinion your board were advised as follows:

> "A widow may carry on the business of a deceased husband, but she must employ some competent person to do the practical work as an undertaker, and this person must be licensed by your board, or if she chooses to do the work of an undertaker herself, I see no reason why your board should not give her an examination and if found competent and qualified, grant an undertaker's license in her own right and name."

I am in accord with that conclusion, and therefore advise you that the administratrix may by your board be given an examination for a license to carry on the business of an undertaker herself, or she may carry on such business of her deceased mother by employing an undertaker who has been duly licensed.

Very truly yours,
WM. N. TRINKLE,
Assistant Deputy Attorney General.

SUPERVISIONS OF SEALERS OF WEIGHTS AND MEASURES.

The chief of the bureau of standards not clothed with any supervision over county or city inspectors other than that of comparing, testing and regulating the weights and measures used by them and certifying to the correctness thereof.

Office of the Attorney General,
Harrisburg, Pa., June 19, 1912.

Hon. James Sweeney, Chief of Bureau of Standards, Department of Internal Affairs, Harrisburg, Pa .

Sir: You ask to be advised whether the Chief of the Bureau of Standards is invested with any authority giving him "supervision over sealers of weights and measures who may be appointed by county commissioners or mayors of cities," and I am informed that this request is prompted by repeated calls upon you for information and advice from local inspectors of weights and measures.

The Bureau of Standards, of which you are the Chief, was created by the Act of June 23, 1911 (P. L. 1118).

The Bureau is required to have a complete set of State Standards of legal weights and measures which conform with the original standards of weights and measures adopted by Congress, and verified by the National Bureau of Standards, "and to assist in securing the enforcement of laws relating to sealers of weights and measures, now in force or that may hereafter be enacted."

Section 2 of that act provides for the appointment of a Chief of the Bureau of Standards

> "whose duty it shall be to have custody of the State standards of weights and measures; shall compare, test and regulate all weights and measures of all city and borough sealers now in office, or who may hereafter be appointed, in the Commonwealth of Pennsylvania, with the State standards when presented at his office for that purpose; shall certify to their correctness by affixing his official stamp thereto, with his name and date of examination clearly marked theron; shall preserve in his office an appropriate record of services rendered and work performed by him, or under his direction, in pursuance of this act; shall file in his office annual and other reports received from the local sealers."

The Act of May 11, 1911, (P. L. 275), provides for the appointment of county inspectors by the county commissioners, and city inspectors by the mayors of the several cities.

Section 2 provides:

> "That all county and city inspectors so appointed shall be supplied, at the expense of their respective counties and cities, with standard tests of weights and measures, in conformity with those established by the Government of the United States or the Bureau of Standards of

the State and the laws of this Commonwealth; and to ensure the accuracy of these tests they shall be compared with the standard tests to be purchased by the Secretary of Internal Affairs; and, when so compared, and their correctness established, they shall be so stamped or marked in such manner as may be established by the rules and regulations, hereinbefore referred to, to be put in force by said Secretary of Internal Affairs and approved by the Governor of the Commonwealth."

The above are the only provisions of the acts which impose any duty upon the Chief of the Bureau of Standards with reference to the local sealers or inspectors of weights and measures. Further provisions require the inspectors of local weights and measures to submit their tests of weights and measures to the Secretary of Internal Affairs, and, when compared, the Chief of the Bureau of Standards is then required to certify to their correctness by affixing his official stamp with his name and the date of the examination clearly marked thereon.

In my opinion, therefore, the Chief of the Bureau of Standards is not clothed with any supervision over county or city inspectors other than that of comparing, testing and regulating the weights and measures hereinbefore referred to, and certifying to the correctness of the same.

Very truly yours,
JNO. C. BELL,
Attorney General.

FIELD WORKER, STATE HOSPITAL FOR THE INSANE.

There is no authority in law for the board of trustees, State Hospital for the Insane at Norristown, Pa., to pay the traveling expenses and maintenance of a "Field Worker."

Office of the Attorney General,
Harrisburg, Pa., October 4, 1912.

J. M. Hackett, President, Board of Trustees, State Hospital for the Insane, Norristown, Pa.

Dear Sir: I have before me your letter of recent date, in which you ask whether or not your institution can legally pay the traveling expenses and maintenance of a field worker for the district covered by the State Hospital for the Insane at Norristown.

From the correspondence, I learn that the duties of the proposed field worker are: first, to collect data in regard to the family history and antecedents of such patients in the institution as show evidence of having bad heredity, and second, to visit patients who are out on parole and advise with them and their families as to how they can best keep well, and also to report to the hospital authorities the condition of the paroled patients.

I have no doubt as to the practical value of such proposed field worker, and the object is laudable to a high degree, but I am unable to discover any legal authority vested in your board for the employment and maintenance of such employee.

The Act of May 11, 1909, (P. L. 519), makes it a misdemeanor for any officer of this Commonwealth to authorize to be paid, or for the State Treasurer to pay any money out of the State Treasury except in accordance with the provisions of an Act of Assembly specifying the amount and purpose of the expenditure, etc. The Act of June 13, 1911, (P. L. 64), is entitled "An act making an appropriation to pay for the care, treatment and maintenance of the indigent insane in the State and semi-State hospitals for the insane of the Commonwealth, for the two years ending May 31, 1913."

The act last cited contains the only authority in law and provides the only fund available for the payment of the proposed field worker. Lest there should be any doubt as to the legal construction of the words "care, treatment and maintenance," employed in the act, a proviso is appended thereto which explicitly declares that the words "care, treatment and maintenance, used in this act shall be construed to mean medical and surgical treatment, nursing, food and clothing and absolutely necessary repairs to existing buildings, hospitals and asylums."

It cannot be claimed that the employment and maintenance of a field worker properly falls under any of the specific designations contained in the Act of 1911, and there is no recourse to any other act.

I therefore advise you that there is no authority in law for your board to pay the traveling expenses and maintenance of the proposed field worker.

Very truly yours,
JNO. C. BELL,
Attorney General.

WATER SUPPLY COMMISSION.

Under the Act of May 28, 1907, P. L. 299, amending the Act of May 4, 1905, P. L. 385, the Water Supply Commission has jurisdiction over (1) all public rivers; (2) all private rivers which are in fact navigable, although not declared public highways by acts of assembly; and (3) all private streams which have been declared public highways.

The Water Supply Commission of Pennsylvania may have jurisdiction, under certain conditions, over purely private non-navigable streams under Section 1 of the Act of May 28, 1907, P. L. 299, providing that no person, corporation or municipality shall "in any manner change or diminish the course, current or cross-section of any such river or stream" without the approval of the commission.

Streams, creeks, private rivers, public or navigable rivers, defined.

Office of the Attorney General,

Harrisburg, Pa., November 12, 1912.

T. J. Lynch, Esq., Secretary Water Supply Commission of Pennsylvania, Harrisburg, Pa.

Dear Sir: This Department is in receipt of your inquiry of October 11th, 1912, in which you state, in substance, that the Water Supply Commission requests an official opinion as to its jurisdiction under the Act of May 28, 1907, (P. L. 299), entitled:

> "An act to provide that no dam, wall, wing-wall, wharf, pier, embankment, abutment, projection, or other obstruction, nor any addition thereto, shall be constructed, erected or built in or along any public or navigable river, or stream heretofore declared a public highway, within this Commonwealth; nor shall the course, current, or cross-section thereof be changed or diminished without the approval of the Water Supply Commission of Pennsylvania; and to require maps, plans, profiles, specifications, information and data relating thereto to be submitted to the said Commission."

You ask, in substance, to be advised whether the jurisdiction of the Commission extends to, first, all public rivers; second, all navigable rivers, and, third, all streams heretofore declared public highways; or whether it is confined to streams which have been declared public highways by an Act of Assembly.

The language of the act is that:

> "No person or persons, corporation, county, city, borough, or township, shall construct, erect or build, *in or along any public or navigable river, or stream heretofore declared a public highway,* within this Commonwealth, any dam, wall, wing-wall, wharf, pier, etc., * * * * unless and until the said person or persons, corporation county, city, borough or township, shall have submitted to the Water Supply Commission of Pennsylvania complete maps, plans, profiles, etc., * * * * and a majority of the members of the said Water Supply Commission of Pennsylvania shall have approved the same."

You illustrate your inquiry by citing the fact that the Western Maryland Railroad Company has recently constructed a new line along the Youghiogheny and Cassleman rivers, from New Haven southward to the State line, and has made numerous encroachments on these streams. In so far as the Youghiogheny river is concerned, you state that the corporation has made application to the Commission for its approval of such encroachments, but refuses to make application with respect to the Cassleman river, upon the ground that

the Cassleman river has not been declared a public highway, and therefore does not come within the jurisdiction of the Commission.

The Commission, by the express language of the act, is given jurisdiction for the purposes specified in the act, over "any public or navigable river, or stream heretofore declared a public highway."

You state in your communication that it is contended by counsel for several corporations that the phrase "heretofore declared a public highway" relates to and modifies the words "any public or navigable river," as well as the word "stream," and that the Commission therefore has no jurisdiction over any river or stream unless such river or stream has been declared a public highway by an act of assembly. Your Commission was created by the Act of May 4, 1905, (P. L. 385), and authorized, inter alia, to adopt ways and means of utilizing, conserving, purifying and distributing the water supplies of this State in such a way that the various communities of the State shall be fairly and equitably dealt with in such distribution. The powers conferred by the above cited Act of 1907, are in additon to the general powers conferred by the act creating the Commission, and the general purpose in conferring these additional powers is to protect the rights of the public in the rivers and streams of the Commonwealth from encroachments by individuals, private corporations and municipalities. It therefore becomes necessary for us to ascertain as accurately as possible what is meant by, and included within, the descriptions "public river," "navigable river," and "stream heretofore declared a public highway," and to investigate the rights of the public in these different classifications of the waters of the Commonwealth. There is no difficulty in distinguishing between a public river and a private river. In the case of Coovert vs. O'Connor, 8 Watts 470, it is said that:

> "All rivers, lakes and streams comprehended within the charter bounds of the province, passed to William Penn in the same manner as the soil. In grants of tracts of vacant lands by him or his successors during the proprietary times, and by the Commonwealth since, streams not navigable falling within the lines of a survey, were covered by it and belonged to the owner of the tract, who might afterwards convey the body of the stream to one person and the adjoining land to another."

Such streams are properly described as "private rivers" and it is held in the case cited, and in other cases, that when a grant or survey is bounded by such river or creek, the title of the grantee extends to the middle of the stream. The phrase "not navigable" in the foregoing quotation, is evidently used in a limited and qualified sense and is intended by the author to distinguish the streams therein referred to from large navigable streams.

On the other hand, it is held in the case of the Barclay Railroad and Coal Company vs. Ingham, 36 Pa. 194, that "in respect to the great rivers of the State, such as are navigable by nature and therefore public highways by the common law"—that these rivers are, properly speaking, public rivers, the soil of which has never been granted to private owners either by William Penn, his successors or the Commonwealth. With respect to such rivers the following language is used in the above cited case:

> "The rivers and the beds of the rivers belonged to the Commonwealth and constituted part of the eminent domain. Private surveys bounding on them were stopped at low water mark."

Thus far the distinction is plain. A river navigable by nature, the ownership of the bed of which remains in the Commonwealth, is a public river, and a public highway at common law. Speaking of such rivers, Chief Justice Tilghman, in Shrunk vs. Schuylkill Navigation Company, 14 S. & R. 71, said:

> "It is unnecessary to enumerate at this time the rivers which may be called principal, but that name may be safely given to the Ohio, Monongahela, Youghiogheny, Allegheny, Susquehanna, and its north and west branches, Juniata, Schuylkill, Lehigh and Delaware."

A river, the title of the bed of which has been granted by the Commonwealth to private owners, whether navigable in fact or not, is a private river. If such private river is navigable in fact, the public has an easement therein for purposes of transportation and commercial intercourse. The word "navigable" is elastic and somewhat indefinite in its meaning. As stated in Barclay Railroad and Coal Company vs. Ingham, supra, it may mean: "an ascending, as well as descending navigation by boats of considerable burden—or merely a descending navigation by arks and rafts at all seasons—or by arks and rafts in seasons of freshets."

Under the English common law only such streams as were affected by the ebb and flow of the tide were deemed navigable streams. This criterion never obtained in America, as appears from the decision of our Supreme Court in the above cited case of Barclay Railroad & Coal Company vs. Ingham. In the course of the opinion in that case, Mr. Justice Woodward said:

> "In England those streams only are called navigable in which the tides ebb and flow, but with us all our public rivers, whether fresh or salt, are navigable; and hence, a very erroneous idea has sprung that such rivers only are public highways, and that in the lesser streams, granted by the Commonwealth to purchasers, the public have no rights until they are declared by law to be highways."

It also appears from the opinion in that case, that even in England, from the days of Magna Charta the public had an easement in navigable streams above the points at which they were affected by the ebb and flow of the tide, and the following language is quoted from Lord Hale:

> "All rivers above the flow of tide water are, by the common law, prima facie private; but when they are naturally of sufficient depth for valuable floatage, the public have an easement therein for the purposes of transportation and commercial intercourse; and, in fact, they are public highways by water."

It is therefore clear that in our State there is a classification of streams which may accurately be described as "private navigable rivers."

Referring to the foregoing quotation from Lord Hale, Mr. Justice Woodward said, in the course of his opinion in the case cited:

> "This, I apprehend, is an exact definition of our creeks and smaller rivers; such as have been granted by warrant and survey. They are private property, but if of sufficient capacity, at any stages of water, to be used for transportation of lumber or other goods, they are held subject to that public easement which our English ancestry guarded with great jealousy, as numerous old statutes subsequent to Magna Charta abundantly attest. When, therefore, our legislatures declare such streams to be public highways, the act is merely declaratory of the common law," etc.

The third class of streams referred to in the Act of 1907 may be described as "streams declared public highways by Acts of Assembly." Acts declaring streams public highways have, as a rule, been confined to private streams where there was some doubt as to whether they were in fact navigable. As we have seen, if a private stream is in fact navigable, it is a public highway, whether so declared by statute or not. In so far as your Commission is concerned, the practical effect of an act declaring a private stream a public highway, is to relieve the Commission of any inquiry as to whether or not the stream is in fact navigable. The effect of such acts is defined in Coovert vs. O'Connor, supra, in the course of the opinion in which case it is said that declaring a stream a public highway

> "does not divest the property previously acquired by a grant from the Commonwealth as between these parties, but leaves to the owner his right to the soil covered with the water to the middle of the stream, as well as every other right he purchased, not inconsistent with the public use of the stream as a highway; which is all in the case of streams not by nature large rivers or principal

> streams of the Commonwealth, that the Commonwealth may be considered as tacitly reserving this at the time of the grant, whenever the public benefit should hereafter require a legislative declaration to be made."

It is apparent from these definitions that the Legislature in passing the Act of 1907 used accurate and discriminating language in describing the waters over which your Commission should have jurisdiction for the purposes mentioned in the act, and it is clear that your Commission by said act is given jurisdiction over, first, all public rivers; second, all private rivers which are in fact navigable, although not declared public highways by Acts of Assembly, and, third, all private streams which have been declared public highways.

Applying these conclusions to the illustration mentioned in your communication, you are advised that if the Cassleman river is in fact navigable, within the definition above given, your Commission has jurisdiction to regulate all encroachments in or along the same.

Although not necessarily involved in your inquiry, it may be advisable to point out that in the opinion of this Department your Commission may have jurisdiction under certain conditions over purely private non-navigable streams. It is provided by the Act of 1907, not only that no obstructions shall be constructed in or along a public or navigable river or stream, heretofore declared a public highway, but also that no person, corporation or municipality shall "in any manner change or diminish the course, current or cross-section of any such river or stream" without the approval of the Commission.

If the construction of a dam or other obstruction in a purely private non-navigable stream would have the effect of changing or diminishing the course, current or cross-section of any public or navigable river, or stream heretofore declared a public highway, the Commission, under the terms of said act would, in the opinion of this Department, have jurisdiction to regulate the construction of such dam or other obstruction.

In reply to contention of the counsel for the corporations referred to in your letter, it may be observed that the construction herein placed upon the language of the act in question is in harmony with the general rule of construction to the effect that a limiting clause or phrase following several expressions to which it might be applicable, is to be limited to the last antecedent.

Under this general rule or construction, the phrase "heretofore declared a public highway" should be limited to the last antecedent "stream".

Very truly yours,

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

APPROPRIATIONS, DEPARTMENT OF FORESTRY.

The appropriation of the State Forest Academy, for the purchase of lands to be set aside for forest reserves, for the payment of fixed charges of forest reserves to townships and school districts, and for the payment of expenses and services of fire wardens may be included in the general appropriation bill.

Office of the Attorney General,

Harrisburg, Pa., December 11, 1912.

Hon. Robert S. Conklin, Commissioner of Forestry, Harrisburg, Pa.

Sir: This Department is in receipt of your inquiry of November 27th, asking, in substance, to be advised whether the following appropriations made at the session of 1911 by separate acts of assembly, could, hereafter, properly be included in that portion of the General Appropriation Bill which relates to the Department of Forestry.

You refer in the first place, to the appropriation to the State Forest Academy, which, at the session of 1911, was made under a separate act of assembly, entitled:

> "An act making an appropriation to the State Forest Academy at Mont Alto, Franklin county, Pennsylvania." *Appropriation Acts, Session of 1911, (P. L. 297).*

This academy was erected under the provisions of the Act of May 13, 1903, (P. L. 373), which directed the Commissioner of Forestry under the advice of the State Forestry Commission, to purchase suitable buildings and land adjacent to the Mont Alto State Forestry Reservation, or to erect buildings on said reservation for the purpose of providing practical instruction in forestry, etc. The said Act of 1903 carried an appropriation to be paid by warrant drawn by the Auditor General upon resolution of the State Forestry Reservation Commission.

The appropriations subsequently made have been made for the payment of the salaries of instructors, matrons, cooks, etc., and the general maintenance of the academy. As the expenditure of the appropriations for the maintenance of the academy is under the control of your department, future appropriations to the academy may legally be included in the General Appropriation Bills.

The purpose of the General Appropriation Bill is "to provide for the ordinary expenses of the Executive, Judicial and Legislative Departments of the Commonwealth, interest on the public debt, and the support of the public schools, etc.," and your Department is a Department of the State Government created by the Act of February 25, 1901, (P. L. 11), entitled:

> "An act to establish a Department of Forestry; to provide for its proper administration; to regulate the ac-

quisition of land for the Commonwealth and to provide for the control, protection and maintenance of forestry reservations by the Department of Forestry."

I am further of opinion that the following appropriations heretofore made under separate acts of assembly may hereafter be legally included in General Appropriation Bills, namely, the appropriations for the purchase of lands to be set aside for forest reserves, limited by the Act of April 15, 1903, (P. L. 201), to not more than $300,000 per year; the appropriations for the payment of the fixed charges of forest reserves to townships and school districts; and the appropriations for the payment of the services and expenses of fire wardens, provided for by the Act of May 13, 1909, (P. L. 781).

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

BOROUGH INSPECTORS.

There is nothing in the Act of May 11, 1911, relating to the appointment of borough inspectors, or the regulation of weights and measures, hence said Act does not supply or repeal Section 2 of Article XII of the Act of 1851, P. L. 320.

Office of the Attorney General,

Harrisburg, Pa., December 8, 1911.

James Sweeney, Esq., Chief of the Bureau of Standards, Harrisburg, Pa.

Sir: Your favor of November 16th addressed to the Attorney General, was duly received.

You ask to be advised as to whether the Act of May 11, 1911, (P. L. 275), repeals Section 2 of Article XII of the Act of 1851, (P. L. 320).

The latter act is entitled "An act regulating boroughs," and is known as the "Borough Law."

Section 2 defines the powers of boroughs, inter alia, as follows:

> "The power of the corporation shall be vested in the corporate officers designated in the charter. They shall have power; * * * * * *
>
> XII. To regulate annually the scales, weights, and measures within the borough according to the standard of the Commonwealth."

The Act of May 11, 1911, (P. L. 275), is entitled:

> "An act to provide for the appointment of county and city inspectors of weights and measures; providing for their compensation and expenses; prescribing their duties; prohibiting vendors from giving false or insufficient weights; and the fixing of the penalties for the violations of the provisions thereof."

Section 1 provides:

> "That the several boards of county commissioners and the mayor of the several cities of the Commonwealth may, and are hereby authorized to, appoint such number of competent persons as inspectors of weights and measures as they may deem proper to protect the public from the use of false weights and measures, and whose duty is shall be to faithfully execuate and enforce the laws of the Commonwealth now in existence or which may hereafter be enacted with reference to weights and measures."

It provides that county inspectors shall have no authority in cities, nor city inspectors in counties, outside of their respective territory.

Section 2 provides:

> "That all county and city inspectors so appointed shall be supplied at the expense of their respective counties and cities, with standard tests of weights and measures," etc.

There is nothing in the act relating to the appointment of Borough Inspectors or the regulation of weights and measures in boroughs. The act seems to have been studiously drawn to exclude boroughs. Not having legislated upon the subject of weights and measures in boroughs, it does not supply, and therefore by implication cannot repeal Section 2 of Article XII of the Act of 1851, above referred to.

Very truly yours,

WM. M. HARGEST,

Assistant Deputy Attorney General.

APPENDIX.

SCHEDULE A.—FORMAL HEARINGS BEFORE THE ATTORNEY GENERAL.

Allemania Fire Insurance Co., et al.,	In equity,	Use of name of Commonwealth allowed. Bill filed in Allegheny county.
Ralph N. Warner, Jr., Justice of the Peace, Montgomery county,	Quo warranto,	Use of name of Commonwealth allowed. Suggestion filed in Montgomery county.
Johnstown Water Co.,	Quo warranto,	Order filed suspending present proceedings until determination by Supreme Court of appeal now pending involving practically the same matter.
The Delaware County 1st Society of the New Jerusalem Church,	In equity, Act of May 23, 1895.	Permission granted by the Attorney General to institute proceedings in Delaware county.
Estate Matthias Hutchinson, dec'd,	Under Act of April 26, 1855, Section 10,	Permission given by Attorney General to institute proceedings in Philadelphia county.
P. W Finn Construction Co.,	Quo warranto,	Allowed. Suggestion filed in Allegheny county.
Cumberland Valley Telephone Co., et al.,	In equity,	Proceedings abandoned.
Fayetteville Water Co.,	Quo warranto,	Proceedings discontinued upon request of petitioners.
John E. Shields, Sheriff of Westmoreland county,	In equity,	Petition refused.
Suburban Water Company of the village of Cranberry,	Quo warranto,	Allowed.
Athracite Water Company,	Quo warranto,	Allowed. Suggestion filed in Schuylkill county.
Susquehanna Boom Co.,	Quo warranto (two applications),	Allowed.
Shickshinny Water Co.,	Quo warranto,	Allowed.
Spangler Brewing Co.,	In equity, under Act of May 7, 1887,	Proceeding continued indefinitely.
Manufacturers Electric Co. of Reading,	Quo warranto,	Allowed.
Sharon Hill and Upper Darby Ry. Co.,	Quo warranto,	Allowed.
Prospect Park Ry. Co.,	Quo warranto,	Allowed.
Tinicum & Sharon Hill Ry. Co.,	Quo warranto,	Allowed.
Monarch Silk Co., now Pennsylvania Textile Corporation,	Quo warranto,	Case continued indefinitely.
Philadelphia & Erie R. R. Co.,	Quo warranto,	Refused.
John T. Dyer Quarry Co.,	In equity.	Use of name of Commonwealth allowed.
Charles F Wall,	In equity,	Use of name of Commonwealth refused.
Frankstown Club,	Quo warranto,	Case continued indefinitely.

Federation & Protective Union of Laborers, of Allegheny county	Quo warranto,	Case continued indefinitely.
East Pittsburgh Athletic Club,	Quo warranto,	Case continued indefinitely.
Highland Republic Club,	Quo warranto,	Case continued indefinitely.
Mercury Singing Society,	Quo warranto,	Case continued indefinitely.
E. Lewis, Beneficial Club,	Quo warranto,	Case continued indefinitely.
Bennett Club,	Quo warranto,	Case continued indefinitely.
Greenville Water Co.,	Quo warranto,	Case continued indefinitely.
Buffalo & Lake Erie Traction Co., Erie Electric Motor Co. & Erie City Passenger Ry. Co.,	Quo warranto,	Case continued indefinitely.
Henry A. Fuller, President Judge of the 11th District,	Quo warranto,	Refused.
Strawbridge & Clothier,	In equity,	Pending.
Saucona Gas Co.,	Quo warranto,	Proceedings discontinued.
20th Century Quakers Society, No. 1,	Quo warranto,	Allowed. Suggestion filed in Philadelphia county.
Bellevernon Bridge Co.,	Quo warranto,	Allowed.
Louis Ritzert,	In equity,	Use of name of Commonwealth allowed.
Chester & Rockdale Electric Ry. Co.,	Quo warranto,	Allowed.
Lit Brothers,	In equity,	Hearing postponed indefinitely.
Uniontown, Brownsville & West Side Ry. Co.,	Quo warranto,	Allowed. Suggestion filed in Fayette county.
Progressive League of Erie, Pennsylvania,	Quo warranto,	Proceedings abandoned.
Borough of Homestead and School District of said Borough,	In equity,	Application refused.
Vandergrift Coal Co.,	Quo warranto,	Allowed.

SCHEDULE B.

INSURANCE COMPANY CHARTERS APPROVED.

Bankers Mutual Fire Insurance Company, of Lancaster, Pa., Harrisburg,	April 6, 1911.
Colonial Mutual Fire Insurance Company, Philadelphia.	January 27, 1911.
Commonwealth Beneficial Association, Philadelphia,	May 11, 1911.
Cosmopolitan Mutual Fire Insurance Company, of Pennsylvania, Lansdowne,	June 7, 1911.
Enterprise Mutual Fire Insurance Company, of Williamsport, Pa., Harrisburg,	May 12, 1911.
Economical Mutual Fire Insurance Company of Erie, Pa., Harrisburg,	May 12, 1911.
Elk County Mutual Fire Insurance Company, Patrons of Husbandry, St. Marys,	June 27, 1911.
Granite Mutual Fire Insurance Company, of York, Pa., Harrisburg,	April 6, 1911.
Household Mutual Fire Insurance Company, of Reading, Pa., Harrisburg,	April 6, 1911.
Hope Mutual Fire Insurance Company, of West Chester, Pa., Harrisburg,	May 12, 1911.
Hide & Leather Mutual Fire Insurance Company of Pennsylvania, Philadelphia,	May 3, 1911.
Imperial Mutual Fire Insurance Company, Philadelphia,	January 5, 1911.
John Harris Mutual Fire Insurance Company, of Harrisburg, Pa., Harrisburg,	April 6, 1911.
Lehigh Valley Mutual Fire Insurance Company, of Allentown Pa., Harrisburg,	April 6, 1911.
Lackawanna Mutual Fire Insurance Company, Clarks Summit,	December 20, 1911.
Lincoln Fire Insurance Company, Chambersburg,	March 11, 1912.
North Branch Fire Insurance Company, Sunbury,	April 29, 1911.
Potter Count Grange Mutual Fire Insurance Company, Coudersport,	August 23, 1911.
Prudential Mutual Fire Insurance Company, Wilkes-Barre,	December 20, 1911.
Railroad Mutual Insurance & Inspection Company, Philadelphia,	May 16, 1911.
Susquehanna Valley Mutual Fire Insurance Company of Pennsylvania, Williamsport,	April 19, 1912.
Sterling Mutual Fire Insurance Company, Reading,	October 23, 1912.
Wyoming Valley Mutual Fire Insurance Company, of Scranton, Harrisburg,	May 12, 1911.

BANK CHARTERS APPROVED.

LOCATION.	APPROVED.
Citizens State Bank (The), Williamsport, Pa.,	September 28, 1911.
Conemaugh Deposit Bank, East Conemaugh, Pa.,	November 7, 1912.
Dime Bank of Lansford, Pa., (The), Lansford, Pa.,	April 19, 1912.
Darby Bank (The), Darby, Pa.,	July 16, 1912.
Farmers State Bank of Hellam (The), Hellam, Pa.,	January 19, 1911.
Farmers State Bank of Dalmatia, Dalmatia, Pa.,	April 23, 1912.
Farmers Bank of Parkesburg, Parkesburg, Pa.,	June 17, 1912.
First Russian Slavish Bank, Philadelphia, Pa.,	September 3, 1912.
Freeburg State Bank, Freeburg, Pa.,	June 25, 1912.

SCHEDULE B—Concluded.

BANK CHARTERS APPROVED.

LOCATION.	APPROVED.
Fulton County Bank, McConnellsburg, Pa.,	October 31, 1911.
Germantown Avenue Bank (The), Philadelphia, Pa.,	May 6, 1911.
Glen Lyon Bank, Glen Lyon, Pa.,	September 22, 1911.
Hanover Bank of Wilkes-Barre (The), Wilkes-Barre, Pa.	July 10, 1911.
Hurwitz Deposit Bank, Wilkes-Barre,	May 14, 1912.
Marion Bank (The), Marion, Pa.,	March 2, 1911.
Merchants & Mechanics Bank (The), Brackenridge, Pa.	February 24, 1911.
Merchants Bank, Pittsburgh, Pa.,	March 3, 1912.
Mercer County State Bank (The), Sandy Lake, Pa.,	June 13, 1911.
Mill Hall State Bank (The), Mill Hall, Pa.,	June 22, 1911.
New Enterprise Bank (The), New Enterprise, Pa.,	August 8, 1911.
Peoples State Bank (The), East Berlin, Pa.,	March 16, 1911.
Ridge Avenue Bank, Allentown, Pa.,	May 23, 1912.
Roths' State Bank, Pittsburgh, Pa.,	September 1, 1911.
State Bank of Parkers Landing, Pa., City of Parker,	November 28, 1911.
State Bank of Renovo (The), Renovo, Pa.,	December 22, 1911.
Slavonic Deposit Bank (The), Wilkes-Barre, Pa.,	August 7, 1912.
West Philadelphia Bank, Philadelphia, Pa.,	October 27, 1911.

SCHEDULE C.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Matheson Automobile Company,	Bonus,	Judgment for defendant.
Louis Walther Manufacturing Company.	Bonus,	Pending.
Pittsburgh Fire Insurance Company,	Bonus,	Submitted to the Court. Pending.
Industrial Cold Storage and Warehouse Company.	C. S. 1906,	Submitted to the Court. Pending.
Industrial Cold Storage and Warehouse Company.	C. S. 1907,	Submitted to the Court. Pending.
New York and Pennsylvania Company.	C. S. 1908,	Judgment in favor of the Commonwealth. Paid.
Pittsburgh, McKeesport, and Youghiogheny Railroad Company.	Loans 1910,	Submitted to the Court. Pending.
American District Telegraph Company.	C. S. 1910,	Paid.
Penn Gas Coal Company,	C. S. 1909,	Pending.
Miller Mutual Fire Insurance Company.	Gross premiums, 1910.	Pending.
Girard Trust Company,	Tax on shares 1911	Paid.
Linden Land & Building Company,	C. S. 1909,	Pending.
G. W. Ellis Company,	Bonus 1910,	Pending.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Equitable Life Assurance Society of United States.	Gross premiums, 1910.	Judgment for the defendant. Reversed by Supreme Court on appeal. Now pending in United States Court on appeal.
Clymer-Jones Lithograph Company, ..	Bonus 1910, ...	Appeal discontinued.
Monongahela Bridge Company, Brownville.	.C. S. 1910, ...	Paid.
Philadelphia Manufacturers Mutual Fire Insurance Company.	Gross premium, 1910 (6 mo.)	Pending.
Black Creek Coal Company, ...	L. 1910, ...	Paid.
Morris Run Coal Company, ...	C. S. 1910, ...	Paid.
Philadelphia Mortgage & Trust Company.	L. 1910, ...	Paid.
Allentown Gas Company, ...	L. 1910, ...	Paid.
Midvalley Coal Company, ...	C. S. 1909, ...	Paid.
Lehigh & Wilkes-Barre Coal Company.	C. S. 1909, ...	Paid.
Tonopah & Goldfield Railroad Company.	L. 1910, ...	Pending.
Pennsylvania Gas Company, ...	Bonus, ...	Verdict for defendant.
Allentown Electric Light & Power Company.	C. S. 1910, ...	Paid.
Atlantic Crushed Coke Company, ...	C. S. 1910, ...	Judgment for defendant.
Erben-Harding Company, ...	L. 1910, ...	Paid.
Adam Scheidt Brewing Company, ...	C. S. 1910, ...	Paid.
Daterson Publishing Company, ...	L. 1909, ...	Verdict for defendant.
Pressed Steel Car Company, ...	L. 1910, ...	Pending.
J. G. Curtis Leather Company, ...	Bonus 1910, ...	Pending.
Aluminum Cooking Utensil Company,	C. S. 1910, ...	Paid.
Bethlehem & Nazareth Passenger Railway Company.	C. S. 1910, ...	Pending.
Lyric Theatre Company of Allentown, Pennsylvania.	L. 1909, ...	Paid.
Lyric Theatre Company of Allentown, Pennsylvania, ...	L. 1910, ...	Paid.
Masonic Hall Association of Carnegie, Pennsylvania.	C. S. 1910, ...	Appeal discontinued.
Masonic Hall Association of Carnegie, Pennsylvania.	L. 1910, ...	Appeal discontinued.
Pittsburgh Gas & Coal Company, ..	Bonus, ...	Pending.
American Coke & Gas Construction Company.	Bonus, ...	Submitted to the Court. Pending.
Wilkes-Barre & Eastern Railroad Company.	C. S. 1910, ...	Paid.
Pittsburgh, Bessemer & Lake Erie Railroad Company.	C. S. 1908, ...	Paid.
Pittsburgh, Bessemer & Lake Erie Railroad Company.	C. S. 1909, ...	Paid.
Erie Land & Improvement Company,	C. S. 1910, ...	Paid.
New York, Susquehanna & Western Coal Company.	C. S. 1910, ...	Paid.
Baldwin Locomotive Works, ...	L. 1910, ...	Paid.
Nippano Railroad Company, ...	C. S. 1910, ...	Paid.
New York, Lake Erie & Western Railroad Company.	C. S. 1910, ...	Paid.
Jefferson Railroad Company, ...	C. S. 1910, ...	Paid.
Pennsylvania Coal Company, ...	C. S. 1910, ...	Paid.
Blossburg Coal Company, ...	C. S. 1910, ...	Paid.
Hillside Coal & Iron Company, ...	C. S. 1910, ...	Paid.
Northwestern Mining & Exchange Company.	C. S. 1910, ...	Paid.
Buffalo, Bradford & Pittsburgh Railroad Company.	C. S. 1910, ...	Paid.
Columbus & Erie Railroad Company,	C. S. 1910, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Sulzberger Oppenheim Company, Ltd.	Bonus, ...	Verdict for defendant.
South Fork Coal Mining Company,	C. S. 1910, ...	Paid.
West Liberty Improvement Company,	L. 1905-9, ...	Paid.
McCreery & Company, ...	C. S. 1910, ...	Paid.
Thomas E. Coale Lumber Company,	Bonus, ...	Verdict for defendant.
Autocar Service Company of New Jersey.	Bonus 1910, ...	Paid.
Autocar Service Company of New Jersey.	C. S. 1910, ...	Paid.
Imperial Pneumatic Tool Company, ..	Bonus, ...	Pending.
Pure Oil Company, ...	L. 1910, ...	Pending.
H. W. Johns-Manville Company, ..	C. S 1910, ...	Paid.
Oliver McClintock Company, ...	C. S. 1910, ...	Paid.
Washburn-Crosby Company, ...	C. S. 1910, ...	Paid.
Whitall Tatum Company, ...	L. 1910, ...	Paid.
Joseph M. Adams Company, ...	Bonus 1910, ...	Paid.
Sorosis Shoe Company of Philadelphia	Bonus, ...	Pending.
Sorosis Shoe Company of Philadelphia	C. S. 1910, ...	Paid.
Sorosis Shoe Company of Pittsburgh,	C. S. 1910, ...	Paid.
Sorosis Shoe Company of Pittsburgh,	Bonus, ...	Pending.
Parish Manufacturing Company, ..	Bonus 1910, ...	Paid.
Standard Gas & Electric Company, ..	L. 1910, ...	Verdict for defendant.
National Tube Company of New Jersey.	C. S. 1910, ...	Paid.
National Car Wheel Company, ...	L. 1910, ...	Pending.
Florala Sawmill Company, ...	C. S. 1910, ...	Pending.
Republic Connellsville Coke Company.	C. S. 1910, ...	Paid.
American Natural Gas Company, ..	C. S. 1910, ...	Submitted to the Court. Pending.
Philadelphia Mortgage & Trust Company.	Tax on shares, 1911	Paid.
St. Clair Terminal Railroad Company.	C. S. 1910, ...	Paid.
National Mining Company, ...	C. S. 1910, ...	Pending.
Sharon Coke Company, ...	C. S. 1910, ...	Paid.
Diamond Rubber Company of New York.	Bonus 1910, ...	Pending.
Red Bank Oil Company, ...	L. 1910, ...	Paid.
The Pullman Company, ...	C. S. 1910, ...	Paid.
John Baizley Iron Works, ...	L. 1910, ...	Verdict for defendant.
Adams Express Company, ...	C. S. 1910, ...	Paid.
Phoenix Silk Manufacturing Company.	L. 1910, ...	Pending.
Borough of Jeanette, ...	Penalties, ...	Pending.
Magnesia Covering Company, ...	C. S. 1910, ...	Paid.
Clairton Land Company, ...	C. S. 1910, ...	Paid.
Carnegie Land Company, ...	C. S. 1910, ...	Paid.
Lehigh Valley Railroad Company, ..	L. 1910, ...	Judgment in favor of the Commonwealth. Pending in the Supreme Court.
Ambler Electric Light, Heat and Motor Company.	C. S. 1910, ...	Paid.
Producers Oil Company, Ltd.,.....	C. S. 1909, ...	Pending.
Felix Isman Company, ...	C. S. 1910, ...	Discontinued.
Central Railroad Company of New Jersey.	C. S. 1910, ...	Paid.
Alden Coal Company, ...	C. S. 1910, ...	Paid.
Provident Life & Trust Company of Philadelphia.	C. S. 1910, ...	Paid.
Ford Collieries Company, ...	L. 1910, ...	Paid.
Philadelphia Life Insurance Company.	C. S. 1910, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Southern Pipe Line Company, ...	C. S. 1909, ...	Paid.
National Transit Company, ...	C. S. 1909, ...	Paid.
South West Pennsylvania Pipe Line Company.	C. S. 1909, ...	Paid.
Fairmount Park Transportation Company.	C. S. 1910, ...	Paid.
Allegheny Water Company, ...	L. 1910, ...	Paid.
Jacob Ulmer Packing Company, ...	C. S. 1910, ...	Paid.
Pittsburg-Buffalo Company, ...	L. 1910, ...	Paid.
Harbison-Walker Refractories Company.	L. 1910, ...	Paid.
Dents Run Coal Company, ...	C. S. 1910, ...	Paid.
Lehigh Valley Railroad Company, ..	Bonus, ...	Pending.
Lehigh Coal and Navigation Company.	L. 1910, ...	Submitted to the Court. Pending.
Glen Alden Coal Company, ...	C. S. 1910, ...	Paid.
Lewis Coal Company, ...	C. S. 1910, ...	Paid.
Consolidated Water Company, ...	C. S. 1910, ...	Paid.
Philadelphia Securities Company, ...	C. S. 1910, ...	Paid.
Philadelphia Warehousing & Cold Storage Company.	C. S. 1910, ...	Paid.
Locust Mountain Water Company, ..	C. S. 1910, ...	Pending.
Phoenix Glass Company, ...	L. 1906, ...	Pending.
Phoenix Glass Company, ...	L. 1907, ...	Pending.
Phoenix Glass Company, ...	L. 1908, ...	Pending.
Phoenix Glass Company, ...	L. 1909, ...	Pending.
Phoenix Glass Company, ...	L. 1910, ...	Paid.
Philadelphia & Reading Terminal Railroad Company.	L. 1910, ...	Pending.
Catawissa Railroad Company, ...	L. 1907, ...	Pending.
Shamokin, Sunbury & Lewisburg Railroad Company.	L. 1910, ...	Pending.
Reading & Columbia Railroad Company.	L. 1910, ...	Pending.
Perkiomen Railroad Company, ...	L. 1910, ...	Pending.
Northern Pennsylvania Railroad Company.	L. 1910, ...	Pending.
Reading Belt Railroad Company, ..	L. 1910, ...	Pending.
Reading Company, ...	L. 1910, ...	Pending.
New York Short Line Railroad Company.	L. 1910, ...	Pending.
Northern Electric Street Railway Company.	L. 1910, ...	Paid.
Peoples Light Company Pittston, ...	L. 1910, ...	Paid.
Wilkes-Barre & Wyoming Valley Traction Company.	C. S. 1910, ...	Verdict in favor of the Commonwealth.
Wilkes-Barre & Wyoming Valley Traction Company.	L. 1910, ...	Paid.
Allegheny Valley Water Company, ..	L. 1907-10, ...	Verdict in favor of the Commonwealth. Partly paid.
Rosenbaum Company, ...	C. S. 1910, ...	Paid.
Bethlehem Consolidated Gas Company.	L. 1910, ...	Paid.
Dunmore Gas & Water Company, ...	C. S. 1910, ...	Paid.
Distoa Water Company, ...	C. S. 1910, ...	Paid.
Berwick Water Company, ...	C. S. 1910, ...	Paid.
West Branch Coal Company, ...	C. S. 1910, ...	Pending.
Pennsylvania, New York Telephone and Telegraph Company.	C. S. 1910, ...	Verdict for defendant.
Consolidated Real Estate Company, ..	C. S. 1910, ...	Paid.
Black Creek Improvement Company,	C. S. 1910, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Lehigh Coal & Navigation Company,	C. S. 1910, ...	Pending.
Clearfield Bituminous Coal Corporation	L. 1910, ...	Paid.
Northern Coal & Iron Company, ...	C. S. 1910, ...	Paid.
Penn Traffic Company, ...	C. S. 1910, ...	Judgment in favor of the Commonwealth.
West Philadelphia Passenger Railway Company.	C. S. 1910, ...	Paid.
Pocono Mountain Ice Company, ...	C. S. 1910, ...	Pending.
Peoples Street Railway Company of Nanticoke & Newport.	C. S. 1910, ...	Paid.
Wayne Brewing Company, ...	C. S. 1910, ...	Paid.
Youghiogheny Northern Railway Company.	C. S. 1910, ...	Paid.
Altoona & Logan Valley Electric Railway Company.	C. S. 1910, ...	Verdict for defendant.
Harrisburg Gas Company, ...	C. S. 1910, ...	Pending.
13th & 15th Streets Passenger Railway Company of the city of Philadelphia.	C. S. 1910, ...	Paid.
Pennsylvania & New York Canal Railroad Company.	C. S. 1910, ...	Paid.
Pennsylvania & New York Canal Roalroad Company.	L. 1910, ...	Submitted to the Court. Pending.
Beech Creek Extension Railroad Company.	C. S. 1910, ...	Paid.
Beech Creek Extension Railroad Company.	L. 1910, ...	Paid.
Carnegie Natural Gas Company, ...	C. S. 1910, ...	Paid.
Lehigh Valley Transit Company, ...	L. 1910, ...	Paid.
Mingo Coal Company, ...	C. S. 1910, ...	Paid.
Diamond Coal Land Company, ...	C. S. 1910, ...	Paid.
Lehigh Valley Coal Company, ...	L. 1910, ...	Pending.
West Berwick Water Supply Company.	L. 1910, ...	Paid.
Bethlehem Steel Company, ...	L. 1910, ...	Paid.
Johnstown Water Company, ...	L. 1910, ...	Pending.
Pencoyd & Philadelphia Railroad Company.	C. S. 1910, ...	Paid.
New York, Chicago & St. Louis Railroad Company.	L. 1910, ...	Pending.
Ray Coal Company, ...	C. S. 1910, ...	Paid.
Archbald Water Company, ...	C. S. 1910, ...	Paid.
John Hancock Ice Company, ...	C. S. 1910, ...	Paid.
Hostetter Connellsville Coke Company.	C. S. 1910, ...	Paid.
Doylestown & Willow Grove Railway Company.	L. 1910, ...	Judgment for defendant.
Coudersport & Port Allegheny Railroad Company.	C. S. 1910, ...	Paid.
Walnut Run Coal Company, ...	C. S. 1910, ...	Paid.
Union Steel Company, ...	C. S. 1910, ...	Paid.
Philadelphia & Bristol Water Company.	C. S. 1910, ...	Paid.
Westinghouse Air Brake Company, ..	C. S. 1910, ...	Pending.
Truman N. Dodson Coal Company,	C. S. 1910, ...	Paid.
New York & Middle Coal Field Railroad Company.	C. S. 1910, ...	Paid.
Madeira Hill Coal Mining Company,	C. S. 1910, ...	Paid.
Dickson City Water Company, ...	C. S. 1910, ...	Paid.
Western Union Telegraph Company,	C. S. 1910, ...	Paid.
Tunnel Supply Company, ...	C. S. 1910, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Keystone Coal & Coke Company, ...	C. S. 1910, ...	Pending.
Keystone Coal & Coke Company, ...	L. 1910, ...	Paid.
Delaware, Susquehanna & Schuylkill Railroad Company.	C. S. 1910, ...	Paid.
Dodson Coal Company, ...	C. S. 1910, ...	Paid.
Philadelphia Warehousing & Cold Storage Company.	L. 1910, ...	Verdict for defendant.
Shanferoke Coal Company, ...	C. S. 1910, ...	Paid.
Colonial Collieries Company, ...	C. S. 1910, ...	Pending.
Pine Run Company, ...	C. S. 1910, ...	Paid.
Beech Creek Railroad Company, ...	C. S. 1910, ...	Paid.
Beech Creek Railroad Company, ...	L. 1910, ...	Paid.
Union Railroad Company, ...	C. S. 1910, ...	Paid.
Buffalo & Susquehanna Coal Company.	C. S. 1910, ...	Paid.
Olyphant Water Company, ...	C. S. 1910, ...	Paid.
Union Supply Company, ...	C. S. 1910, ...	Paid.
Donora Southern Railroad Company,	C. S. 1910, ...	Paid.
Real Estate Holding Company, ...	C. S. 1910, ...	Paid.
Philadelphia & Garret Ford Street Railway Company.	L. 1910, ...	Paid.
H. C. Frick Coke Company, ...	C. S. 1910, ...	Paid.
Philadelphia & West Chester Traction Company.	C. S. 1910, ...	Paid.
Philadelphia & West Chester Traction Company.	L. 1910, ...	Paid.
Equitable Illuminating Gas Light Company.	L. 1910, ...	Paid.
Charles J. Webb & Company, Inc.,	C. S. 1910, ...	Paid.
Pond Creek Coal Company, ...	C. S. 1910, ...	Paid.
West Pittsburgh Realty Company, ..	C. S. 1910, ...	Paid.
Schuylkill County Light & Fuel Company.	L. 1910, ...	Paid.
Lehigh & Wilkes-Barre Coal Company.	C. S. 1910, ...	Paid.
Central District Printing & Telegraph Company.	C. S. 1910, ...	Paid.
Potter Gas Company, ...	C. S. 1910, ...	Pending.
Potter Gas Company, ...	L. 1910, ...	Paid.
Kingston Coal Company, ...	C. S. 1910, ...	Paid.
Atlas Portland Cement Company, ..	C. S. 1910, ...	Paid.
Nineveh Coal & Coke Company, ...	C. S. 1910, ...	Paid.
Geneva, Corning & Southern Railroad Company.	L. 1910, ...	Pending.
Thomas Meehan & Sons, Inc., ...	C. S. 1910, ...	Paid.
Huntingdon & Broad Top Mountain Railroad & Coal Company.	L. 1910, ...	Paid.
West Philadelphia Passenger Railway Company.	L. 1910, ...	Paid.
13th & 15th Streets Railway Company of the city of Philadelphia.	L. 1910, ...	Paid.
Industrial Coal & Warehousing Company.	C. S. 1908, ...	Pending.
Lake Shore & Michigan Southern Railway Company.	C. S. 1910, ...	Pending.
Midland Coal Company, ...	C. S. 1910, ...	Paid.
Schwarzschild & Sulzberger Company of America.	Bonus, ...	Submitted to the Court. Pending.
United Cigar Stores Company, ...	Bonus, ...	Submitted to the Court. Pending.
The Delaware & Hudson Company, ..	C. S. 1910, ...	Paid.
New York Central & Hudson River Railroad Company.	C. S. 1910, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Carbon Coal & Mining Company, ...	C. S. 1910, ...	Pending.
Hudson Coal Company, ...	C. S. 1910, ...	Pending.
Schuylkill Coal & Iron Company, ..	C. S. 1910, ...	Paid.
Buck Run Coal Company, ...	C. S. 1910, ...	Paid.
Hollenback Coal Company, ...	C. S. 1910, ...	Pending.
C. Schmidt Brewing Company, ...	C. S. 1910, ...	Paid.
Lackawanna & Montrose Railroad Company.	C. S. 1910, ...	Paid.
Nescopec Coal Company, ...	C. S. 1910, ...	Submitted to the Court. Pending.
Midvalley Coal Company, ...	C. S. 1910, ...	Pending.
Johnstown Passenger Railway Company,	L. 1910, ...	Paid.
Johnstown Passenger Railway Company,	C. S. 1910, ...	Paid.
Manufacturers' Water Company, ...	L. 1910, ...	Paid.
Manufacturers' Water Company, ...	Loans 1910, ...	Paid.
Merchants Coal Company of Pennsylvania.	C. S. 1910, ...	Paid.
Tionesta Valley Railway Company, ..	C. S. 1910, ...	Paid.
Slate Belt Electric Railway Company.	C. S. 1910, ...	Pending.
Scranton & Pittston Traction Company.	C. S. 1910, ...	Paid.
Buffalo & Lake Erie Traction Company.	Loans 1910, ...	Paid.
Upper Lehigh Coal Company	C. S. 1910, ...	Paid.
Scranton & Carbondale Traction Company.	Loans 1910, ...	Verdict for defendant.
Heckton Coke Company, ...	Loans 1909-10, ...	Paid.
Winton Water Company, ...	C. S. 1910, ...	Pending.
Rettig Brewing Company, ...	C. S. 1910, ...	Paid.
A. Overholt & Company, ...	C. S. 1910, ...	Pending.
Deppen Brewing Company, ...	C. S. 1910, ...	Paid.
Logan Coal Company, ...	C. S. 1910, ...	Pending.
Manufacturers Gas Company, ...	C. S. 1910, ...	Pending.
Towanda Water Works Company, ..	Loans 1910, ...	Pending.
Scranton Gas & Water Company, ..	C. S. 1910, ...	Paid.
Williamsport Passenger Railway Company.	C. S. 1910, ...	Paid.
Edison Electric Illuminating Company (Lebanon).	C. S. 1910, ...	Pending.
Edgeworth Water Company, ...	Loans 1910, ...	Paid.
Allegheny County Light Company, ..	Loans 1910, ...	Discontinued.
Southern Heat, Light & Power Company.	Loans 1910, ...	Discontinued.
Monongahela Light & Power Company.	Loans 1910, ...	Discontinued.
United Coal Company, ...	C. S. 1910, ...	Paid.
Lake Shore & Michigan Southern Railway Company.	Loans 1910, ...	Pending.
Lehigh Valley Coal Company, ...	C. S. 1910, ...	Pending.
Central Pennsylvania Lumber Company.	C. S. 1910, ...	Paid.
Lackawanna Coal & Coke Company,	C. S. 1910, ...	Paid.
Standard Real Estate Improvement Company.	Loans 1910, ...	Paid.
P. E. Sharpless Company, ...	C. S. 1910, ...	Paid.
Pittsburgh Steel Company, ...	Loans 1910, ...	Pending.
Clarion Gas Company, ...	C. S. 1910, ...	Paid.
South Side Gas Company, ...	Loans 1910, ...	Discontinued
Union Gas Company of McKeesport,	Loans 1910, ...	Discontinued
Penn Gas Coal Company, ...	C. S. 1910, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Easton Transit Company, ...	C. S. 1910, ...	Paid.
Lehigh Valley Railroad Company, ...	C. S. 1910, ...	Pending.
Great Southern Lumber Company, ..	Loans 1910, ...	Paid.
Harrisburg Gas Company, ...	Loans 1910, ...	Paid.
Delaware, Lackawanna & Western Railroad Company.	C. S. 1910, ...	Paid.
McKeesport Connecting Railroad Company.	C. S. 1910, ...	Paid.
Mauch Chunk Heat, Light & Electric Light Company.	C. S. 1910, ...	Paid.
Pennsylvania Heat, Light & Power Company.	C. S. 1910.	Paid.
Jamestown, Franklin & Clearfield Railroad Company.	Loans 1910, ...	Paid.
Upper Lehigh Supply Company, Ltd.	C. S. 1910, ...	Paid.
D. J. Kennedy Company, ...	Loans 1910, ...	Paid.
The United Gas Improvement Company.	C. S. 1910, ...	Paid.
Manor Gas Coal Company, ...	C. S. 1910, ...	Paid.
Susquehanna & New York Railroad Company.	C. S. 1910, ...	Paid.
State Line & Sullivan Railroad Company.	C. S. 1910, ...	Paid.
Scranton Railway Company, ...	C S. 1910, ...	Paid.
Jersey Shore Electric Street Railway Company.	C. S. 1910, ...	Paid.
Standard Ice Manufacturing Company.	Loans 1910, ...	Paid.
Pennsylvania Water & Power Company.	C. S 1910, ...	Paid.
Pennsylvania Water & Power Company.	Loans 1910, ...	Verdict for defendant.
Keystone Telephone Company of Philadelphia.	C. S. 1910, ...	Paid.
Tobyhanna Creek Ice Company, ...	C. S. 1910, ...	Paid.
Trout Lake Ice Company, ...	C. S. 1910, ...	Paid.
Annex Hotel Company, ...	Loans 1910, ...	Paid.
Sharon Water Works Company, ...	C. S. 1910, ...	Pending.
Philadelphia & Willow Grove Street Railway Company.	Loans 1910, ...	Paid.
Market Street Elevated Passenger Railway Company.	Loans 1910, ...	Paid.
Continental Passenger Railway Company.	C. S. 1910, ...	Paid.
Continental Passenger Railway Company.	Loans 1910, ...	Paid.
Catherine & Bainbridge Streets Passenger Railway Company.	C. S. 1910, ...	Judgment for defendant.
Peoples Passenger Railway Company,	Loans 1910, ...	Paid
Darby, Media & Chester Street Railway Company.	Loans 1910, ...	Judgment for defendant.
Bethlehem Water Company, ...	C. S. 1910, ...	Paid.
Bethlehem Water Company, ...	Loans 1910, ...	Paid.
Cambria Inclined Plane Company, ..	C. S. 1910, ...	Paid.
Empire Passenger Railway Company,	Loans 1910, ...	Judgment for defendant.
Pittsburgh Incline Plane Company, ..	Loans 1910, ...	Discontinued.
Washington & Canonsburg Railway Company.	Loans 1910, ...	Discontinued.
Monongahela Street Railway Company.	Loans 1910.	Discontinued.
Pittsburg, Canonsburg & Washington Railway Company.	Loans 1910, ...	Discontinued.
Pittsburg & Charleroi Street Railway Company.	Loans 1910, ...	Discontinued.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Pittsburgh Railways Company, ...	Loans 1910, ...	Discontinued.
Mount Washington Street Railway Company.	Loans 1910, ...	Discontinued.
Pittsburgh & Birmingham Traction Company.	Loans 1910, ...	Discontinued.
West Braddock Bridge Company, ..	Loans 1910, ...	Discontinued.
Philadelphia Company, ...	Loans 1910, ...	Discontinued.
Glenwood Highway Bridge Company-	Loans 1910, ...	Discontinued.
Overgrade Bridge Company, ...	Loans 1910, ...	Discontinued.
17th Street Incline Plane Company,	Loans 1910, ...	Discontinued.
Ft. Pitt Traction Company, ...	Loans 1910, ...	Discontinued.
Central Traction Company, ...	Loans 1910, ...	Discontinued.
Millvale, Aetna & Sharpsburg Street Railway Company.	Loans 1910, ...	Discontinued.
Citizens Traction Company.	Loans 1910, ...	Discontinued.
Federal Street & Pleasant Valley Passenger Railway Company.	Loans 1910, ...	Discontinued.
Duquesne Traction Company, ...	Loans 1910, ...	Discontinued.
Suburban Rapid Transit Street Railway Company.	Loans 1910, ...	Discontinued.
United Traction Company of Pittsburgh.	Loans 1910, ...	Discontinued.
Pittsburgh Traction Company, ...	Loans 1910, ...	Discontinued.
Ardmore Street Railway Company, ..	Loans 1910, ...	Discontinued.
Morningside Elevated Street Railway Company.	Loans 1910, ...	Discontinued.
Allegheny, Belleview & Perrysville Railway Company.	Loans 1910, ...	Discontinued.
West Liberty & Suburban Street Railway Company.	Loans 1910, ...	Discontinued.
Beaver Valley Traction Company, ..	Loans 1910, ...	Discontinued.
Gimbel Brothers, Inc., ...	C. S. 1910, ...	Judgment for Commonwealth.
Hooverhurst & Southwestern Railroad Company.	C. S. 1910, ...	Paid.
Schuylkill & Lehigh Valley Railroad Company.	C. S. 1910, ...	Paid.
Bell Telephone Company of Pennsylvania.	C. S. 1910, ...	Paid.
W. Z. Graves Company, ...	C. S. 1910, ...	Paid.
Locust Mountain Coal & Iron Company.	C. S. 1910, ...	Paid.
Mountain Coal Company, ...	C. S. 1910, ...	Paid.
Southwest Pennsylvania Pipe Line Company	C. S. 1910, ...	Paid.
Southern Pipe Line Company, ...	C. S. 1910, ...	Paid.
National Transit Company, ...	C. S. 1910, ...	Paid.
Henriette Coal Mining Company, ..	Loans 1910, ...	Paid.
Pittsburgh & Lake Erie Railroad Company.	C. S. 1910, ...	Paid.
Producers & Refiners Oil Company, Ltd.	C. S. 1910, ...	Paid.
Eastern Pennsylvania Railways Company.	C. S. 1910, ...	Pending.
Pittsburgh Dry Goods Company, ...	C. S. 1910, ...	Pending.
Lehigh Valley Cold Storage Company.	C S. 1910, ...	Pending.
United States Pipe Line Company, ..	C. S. 1910, ...	Pending.
Electric Traction Company, ...	Loans 1910, ...	Paid.
Philadelphia Traction Company, ...	Loans 1910, ...	Paid.
Union Traction Company of Philadelphia.	Loans 1910, ...	Paid.
Citizens Passenger Railway Company.	Loans 1910, ...	Judgment for defendant

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Frankfort & Southwark Philadelphia City Passenger Railway Company,.	C. S. 1910, ...	Paid.
Philadelphia & Gray's Ferry Passenger Railway Company.	C. S. 1910, ...	Paid.
Mountain Supply Company.	C. S. 1910, ...	Pending.
Industrial Cold Storage & Warehouse Company.	C. S. 1910, ...	Pending.
Philadelphia City Passenger Railway Company.	C. S. 1910, ...	Paid.
Philadelphia City Passenger Railway Company.	Loans 1910, ...	Paid.
Union Passenger Railway Company,	C. S. 1910, ...	Paid.
Union Passenger Railway Company,	Loans 1910, ...	Paid.
Lehigh Valley Transit Company, ...	C. S. 1910, ...	Paid.
Hestonville, Mantua & Fairmount Passenger Railway Company.	Loans 1910, ...	Paid.
Robisonia Ice Company, Ltd., ...	C. S. 1910, ...	Paid.
22nd Street & Allegheny Avenue Passenger Railway Company.	C. S. 1910, ...	Paid.
Germantown Passenger Railway Company.	C. S. 1910, ...	Paid.
Philadelphia Rapid Transit Company	Loans 1910, ...	Paid.
International Navigation Company, ..	C. S. 1910, ...	Paid.
Ft. Pitt Hotel Company, ...	C. S. 1910, ...	Submitted to the Court. Pending.
Spreckels Sugar Refining Company,	C. S. 1910, ...	Pending.
Franklin Sugar Refining Company,	C. S. 1910, ...	Pending.
West Penn Steel Company, ...	Bonus, ...	Submitted to the Court. Pending.
Coxe Brothers & Company, Inc., ...	C. S. 1910, ...	Paid.
Altoona & Logan Valley Elevated Railway Company.	Loans 1910, ...	Paid.
Standard Steel Works Company, ...	Loans 1910, ...	Paid.
John B. Stetson Company, ...	C. S. 1910, ...	Submitted to the Court. Pending.
Cambria Steel Company, ...	C. S. 1910, ...	Paid.
Buffalo & Lake Erie Traction Company.	C. S. 1910, ...	Paid.
Delaware County Elevated Railway Company.	Loans 1910, ...	Paid.
United Traction Company, ...	C. S. 1910, ...	Pending.
Merion & Radnor Gas & Illuminating Company.	Loans 1910, ...	Paid.
Lackawanna Iron & Steel Company,	C. S. 1910, ...	Paid.
Bethlehem Steel Company, ...	C. S. 1910, ...	Submitted to the Court. Pending.
Bethlehem Steel Bridges Company, ..	C. S. 1910, ...	Paid.
Bessemer & Lake Erie Railroad Company.	C. S. 1910, ...	Paid.
Potter Gas Company, ...	Bonus, ...	Verdict for defendant.
A. H. Gueting Company, ...	Bonus on increase	Pending.
Imperial Window Glass Company, ..	Bonus 1910, ...	Submitted to the Court. Pending.
Erie Railroad Company, ...	C. S. 1910, ...	Paid.
Standard Underground Cable Company.	C. S. 1910, ...	Pending.
International Text Book Company, ..	C. S. 1910, ...	Pending.
Pleasant Valley Coal Company, ...	C. S. 1910, ...	Paid.
Erie & Wyoming Valley Railroad Company.	C. S. 1910, ...	Paid.
Union Traction Company of Philadelphia.	C. S. 1910, ...	Paid.
Peoples Traction Company.	C. S. 1910, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Electric Traction Company, ...	C. S. 1910, ...	Paid.
Philadelphia Traction Company, ...	C. S. 1910, ...	Paid.
Philadelphia Rapid Transit Company,	C. S. 1910, ...	Paid.
Scranton Railway Company, ...	C. S. 1911, ...	Paid.
Scranton Railway Company, ...	Loans 1911, ...	Paid.
Easton Gas & Electric Company, ..	C. S. 1910, ...	Pending.
Beck Engraving Company, Inc., ...	C. S. 1903 to 10, .	Verdict for defendant.
Cornwall & Lebanon Railroad Company.	C. S. 1910, ...	Paid.
Philadelphia Electric Company, ...	C. S. 1910, ...	Paid.
Westinghouse Electric & Manufacturing Company.	C. S. 1910, ...	Pending.
Upper Lehigh Coal Company, ...	C. S. 1909, ...	Paid.
United Traction Street Railway Company.	C. S. 1910, ...	Paid.
Pennsylvania & Maryland Street Railway Company.	C. S. 1909, ...	Pending.
The Quigg Company, Inc., ...	Bonus, ...	Pending.
The Quigg Company, Inc., ...	C. S. 1911, ...	Pending.
Pittsburgh Home Building Company,	C. S. 1907 to 09, .	Pending. Company in hands of receiver.
	Loans 1904 to 09,.	
Delaware, Lackawanna & Western Railroad Company.	Bonus, ...	Submitted to the Court. Pending.
Speck Marshal Company, ...	C. S. 1910, ...	Pending.
	C. S. 1911, ...	Pending.
Highspire Distillery Company, Ltd.,	Bonus, ...	Judgment for defendant. On appeal reversed by Supreme Court.
Girard Trust Company, ...	Tax on shares, 1912,	Paid.
Collieries Supply & Equipment Company.	Bonus, ...	Verdict for defendant
Susquehanna Boom Company, ...	C. S. 1911, ...	Paid.
Philadelphia Manufacturers Mutual Fire Insurance Company.	Gross premiums, 1911,	Pending.
Autocar Sales & Service Company, ..	C. S. 1911, ...	Paid.
Millers Mutual Fire Insurance Company.	Gross premiums, 1911,	Pending.
New York Central & Hudson River Railroad Company.	C. S. 1911, ...	Paid.
Nevada Wonder Mining Company, ..	L. 1911, ...	Pending.
Whitall Tatum Company, ...	L. 1911, ...	Paid.
Consolidated Dressed Beef Company,	C. S. 1910, ...	Paid.
C. Schmidt & Sons Brewing Company.	C. S. 1911, ...	Paid.
Westmoreland Coal Company, ...	Interest on bonus	Pending.
Fairmount Park Transportation Company.	C. S. 1909, ...	Paid.
Fairmount Park Transportation Company.	C. S. 1911, ...	Paid.
Welsbach Company, ...	L. 1900-1-2-3-4-6-8-9-10-11.	Paid.
Mountain Springs Ice Company, ...	C. S. 1910, ...	Discontinued.
Mountain Springs Ice Company, ...	C. S. 1911, ...	Discontinued.
Union Supply Company, ...	C. S. 1911, ...	Paid.
St. Clair Terminal Railroad Company.	C. S. 1911, ...	Paid.
Sharon Coke Company, ...	C. S. 1911, ...	Paid.
National Mining Company, ...	C. S. 1911, ...	Paid.
Carnegie Natural Gas Company, ...	C. S. 1911, ...	Paid.
Carnegie Land Company, ...	C. S. 1911, ...	Paid.
Pittsburgh, Bessemer & Lake Erie Railroad Company.	L. 1911, ...	Pending.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Peale, Peacock & Kerr, Inc., ...	C. S. 1910, ...	Paid.
Russell Coal Mining Company, ...	C. S. 1909, ...	Paid.
Russell Coal Mining Company, ...	C. S. 1910, ...	Paid.
Blossburg Coal Company, ...	C. S. 1911, ...	Verdict for defendant.
Buffalo, Bradford & Pittsburgh, Railroad Company.	C. S. 1911, ...	Verdict for defendant. Paid.
Columbia & Erie Railroad Company,	C. S. 1911, ...	Verdict for defendant.
Erie Land & Improvement Company,	C. S. 1911, ...	Paid.
Erie & Wyoming Valley Railroad Company.	C. S. 1911, ...	Pending.
Jefferson Railroad Company, ...	C. S. 1911, ...	Paid.
Jefferson Railroad Company, ...	L. 1911, ...	Pending.
Nippano Railroad Company, ...	C. S. 1911, ...	Paid.
New York, Lake Erie & Western Coal & Railroad Company.	C. S. 1911, ...	Paid.
New York, Susquehanna & Western Railroad Company.	L. 1911, ...	Pending.
New York, Susquehanna & Western Coal Company.	C. S. 1911, ...	Paid.
Northwestern Mining & Exchange Company.	C. S. 1911, ...	Paid.
Wilkes-Barre & Eastern Railroad Company.	C. S. 1911, ...	Paid.
Crucible Coal Company, ...	L. 1911, ...	Verdict for defendant.
Pittsburgh Crucible Steel Company,	L. 1911, ...	Verdict for defendant.
William Baeder & Company, ...	C. S. 1911, ...	Pending.
M. Klein & Company, ...	C. S. 1911, ...	Pending.
M. Klein & Company, ...	Bonus, ...	Pending.
A. H. Geuting Company, ...	C. S. 1911, ...	Discontinued.
National Tube Company of New Jersey.	C. S. 1911, ...	Paid.
Hostetter, Connellsville Coke Company.	C. S. 1911, ...	Paid.
Parish Manufacturing Company, ..	Bonus 1911, ...	Verdict for defendant.
Penmont Coal Mining Company, ...	C. S. 1911, ...	Paid.
Philadelphia Mortgage & Trust Company.	Tax on shares, 1912.	Pending.
Clearfield Bituminous Coal Corporation.	L. 1911, ...	Paid.
Cambria Incline Plane Company, ...	C. S. 1911, ...	Paid.
Cascade Coal & Coke Company, ...	C. S. 1911, ...	Paid.
American Dredging Company, ...	C. S. 1911, ...	Paid.
Colonial Collieries Company, ...	C. S. 1911, ...	Pending.
American Ice Company of New Jersey.	C. S. 1911, ...	Pending.
Brothers Valley Coal Company, ...	C. S. 1911, ...	Pending.
Cardiff Coal Company, ...	C. S. 1911, ...	Paid.
Dunmore Gas & Water Company, ...	C. S. 1911, ...	Paid.
Enterprise Transit Company, ...	C. S. 1911, ...	Pending.
Hollenback Coal Company, ...	C. S. 1911, ...	Pending.
Pure Oil Pipe Line Company, ...	G. R. 1912, 6 mo.	Pending.
Central Railroad Company of New Jersey.	C. S. 1911, ...	Paid.
Federal Coal Company of Philadelphia.	C. S. 1911, ...	Pending.
Keystone Watch Case Company, ...	C. S. 1911, ...	Paid.
Gallitzin Water Company, ...	C. S. 1911, ...	Paid.
Juragua Iron Company, ...	C. S. 1911, ...	Paid.
Eastern Pennsylvania Power Company.	C. S. 1911, ...	Paid.
Eastern Pennsylvania Power Company.	L. 1911, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Jersey Shore Electric Street Railway Company.	C. S. 1911, ...	Paid.
Irvona Coal & Coke Company, ...	C. S. 1911, ...	Verdict for defendant.
Lancaster Water Filtration Company.	L. 1911, ...	Paid.
Penn Oil & Supply Company, Ltd.,	C. S. 1911, ...	Paid.
Pottsville Water Company, ...	Tax on excess net annual income, 1911.	Pending.
Standard Mirror Company, ...	C. S. 1910, ...	Paid.
Standard Mirror Company, ...	C. S. 1911, ...	Paid.
Wm. H. Horstmann Company, ...	L. 1911, ...	Verdict for defendant.
New York, Pittsburgh & Chicago Railroad Company.	C. S. 1911, ...	Pending.
Industrial Cold Storage & Warehouse Company.	C. S. 1911, ...	Pending.
John Wanamaker, Philadelphia, ...	C. S. 1911, ...	Paid.
Standard Talking Machine Company,	C. S. 1911, ...	Paid.
Winton Water Company, ...	C. S. 1911, ...	Pending.
South Fork Coal Mining Company, ..	C. S. 1911, ...	Pending.
Big Bend Coal Mining Company, ..	C. S. 1911, ...	Pending.
Pressed Steel Car Company, ...	L. 1911, ...	Pending.
Pure Oil Company, ...	L. 1911, ...	Pending.
Louis Walther Manufacturing Company.	Bonus 1911, ...	Pending.
National Car Wheel Company, ...	L. 1911, ...	Pending.
Imperial Pneumatic Tool Company,	Bonus 1911, ...	Pending.
Logan Valley Store Company, ...	C. S. 1911, ...	Pending.
Phoenix Silk Manufacturing Company.	L. 1911, ...	Pending.
Kansas Natural Gas Company, ...	L. 1911, ...	Verdict for defendant.
Renovo Fire Brick & Clay Manufacturing Company.	C. S. 1911, ...	Pending.
National Transit Company, ...	C. S. 1911, ...	Paid.
Lehigh Coal & Navigation Company,	C. S. 1911, ...	Pending.
Hudson Coal Company, ...	C. S. 1911, ...	Pending.
Keystone Coal & Coke Company, ...	L. 1911, ...	Paid.
New York & Middlefield Railroad & Coal Company.	C. S. 1911, ...	Paid.
Ford Collieries Company, ...	L. 1911, ...	Paid.
Buffalo & Susquehanna Railroad Company.	C. S. 1911, ...	Paid.
Buffalo & Susquehanna Railroad Company.	L. 1911, ...	Paid.
Delaware, Lackawanna & Western Railroad Company.	C. S. 1911, ...	Paid.
Allentown Electric Light & Power Company.	C. S. 1911, ...	Paid.
Pennsylvania & New York Canal & Railroad Company.	C. S. 1911, ...	Paid.
Pennsylvania & New York Canal & Railroad Company.	L. 1911, ...	Pending.
Buffalo & Susquehanna Railroad Company.	C. S. 1911, ...	Paid.
Buffalo & Susquehanna Railroad Company.	L. 1910, ...	Paid.
Erie Railroad Company, ...	C. S. 1911, ...	Paid.
International Navigation Company,	C. S. 1911, ...	Paid.
Dill & Collins Company, ...	Interest on bonus	Verdict for defendant.
Lake Shore & Michigan Southern Railway Company.	C. S. 1911, ...	Pending.
Central District Printing & Telegraph Company.	C. S. 1911, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Wayne Brewing Company, ...	C. S. 1911, ...	Paid.
Bethlehem Steel Company, ...	L. 1911, ...	Pending.
Consolidated Real Estate Company, ..	C. S. 1911, ...	Paid.
Easton Transit Company, ...	C. S. 1911, ...	Paid.
Alden Coal Company, ...	C. S. 1911, ...	Paid.
Schuylkill & Lehigh Valley Railroad Company.	C. S. 1911, ...	Paid.
Philadelphia & Garrettford Street Railway Company.	L. 1911, ...	Paid.
Slate Belt Electric Street Railway Company.	C. S. 1911, ...	Pending.
Kingstown Coal Company, ...	C. S. 1911, ...	Paid.
Bethlehem Steel Company, ...	C. S. 1911, ...	Pending.
Delaware, Susquehanna & Schuylkill Railroad Company.	C. S. 1911, ...	Paid.
Philadelphia Warehouse & Cold Storage Company.	C. S. 1911, ...	Paid.
Fort Pitt Hotel Company, ...	C. S. 1911, ...	Submitted to the Court, Pending.
State Line & Sullivan Railroad Company.	C. S. 1911, ...	Paid.
Lackawanna Iron & Steel Company,	C. S. 1911, ...	Paid.
Packer Coal Company, ...	C. S. 1911, ...	Paid.
The Equitable Illuminating Gas Light Company of Philadelphia.	L. 1911, ...	Paid.
Lehigh Valley Railroad Company, ..	C. S. 1911, ...	Pending.
Diamond Coal Land Company, ...	C. S. 1911, ...	Paid.
Locust Mountain Water Company, ..	C. S. 1911, ...	Pending.
Jamestown, Franklin & Clearfield Railroad Company.	L. 1911, ...	Pending.
Penn Gas Coal Company, ...	C. S. 1911, ...	Paid.
Berwick Water Company, ...	C. S. 1911, ...	Paid.
Robesonia Iron Company, Ltd., ...	C. S. 1911, ...	Paid.
Lehigh Valley Railroad Company, ..	L. 1911, ...	Pending.
Lehigh Valley Coal Company, ...	C. S. 1911, ...	Pending.
Lehigh Valley Coal Company, ...	L. 1911, ...	Pending.
Lehigh Coal & Navigation Company,	L. 1911, ...	Pending.
Lehigh & Wilkes-Barre Coal Company.	L. 1911, ...	Paid.
Westmoreland Coal Company, ...	C. S. 1911, ...	Paid.
Coxe Brothers & Company, Inc., ...	C. S. 1911, ...	Pending.
Mountain Supply Company, ...	C. S. 1911, ...	Pending.
Scranton Gas & Water Company, ..	C. S. 1911, ...	Paid.
The Bell Telephone Company of Pennsylvania.	C. S. 1911, ...	Paid.
Millers Mutual Fire Insurance Company.	Gross premiums, 1912, 6 mo.	Pending.
John Wanamaker, Philadelphia, ...	C. S. 1910, ...	Paid.
Delaware County Electric Company,	L. 1911, ...	Paid.
Buck Run Coal Company, ...	C. S. 1911, ...	Paid.
Nineveh Coal & Coke Company, ...	C. S. 1911, ...	Paid.
Dodson Coal Company, ...	C. S. 1911, ...	Paid.
Brothers Valley Coal Company, ...	C. S. 1911, ...	Pending.
Philadelphia & West Chester Traction Company.	C. S. 1911, ...	Paid.
The Autocar Company, ...	L. 1911, ...	Paid.
Baldwin Locomotive Works, now Philadelphia Locomotive Works.	C. S. 1910, ...	Paid.
Beck Engraving Company, Inc., ...	Bonus 1911, ...	Verdict for defendant
Union Electric Company, ...	C. S. 1911, ...	Paid.
Madeira Hill Coal Mining Company,	C. S. 1911, ...	Paid.
Sterling Coal Company, ...	C. S. 1911, ...	Pending.
Parish Coal Company, ...	C. S. 1911, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Mountain Coal Company,	C. S. 1911,	Paid.
Midvalley Coal Company,	C. S. 1911,	Pending.
Lackawanna Coal & Coke Company,	C. S. 1911,	Paid.
Lehigh & Wilkes-Barre Coal Company.	C. S. 1911,	Pending.
Nescopec Coal Company,	C. S. 1911,	Paid.
Plymouth Coal Mining Company,	C. S. 1911,	Paid.
Morris Run Coal Mining Company,	C. S. 1911,	Pending.
Philadelphia Securities Company,	C. S. 1911,	Verdict for defendant
Eastern Securities Company,	C. S. 1911,	Paid.
Pocono Mountain Ice Company,	C. S. 1911,	Pending.
Du Bois, South Western Railroad Company.	C. S. 1911,	Paid.
Philadelphia Brewing Company,	L. 1911,	Paid.
Manufacturers' Water Company,	C. S. 1911,	Pending.
Philadelphia & West Chester Traction Company.	L. 1911,	Pending.
N. Z. Graves Company,	C. S. 1911,	Paid.
Geneva, Corning & Southern Railroad Company.	L. 1911,	Pending.
Olyphant Water Company,	C. S. 1911,	Paid.
Robert Smith Ale Brewing Company,	C. S. 1911,	Paid.
Du Bois South Western Railroad Company.	C. S. 1910,	Paid.
Manufacturers Electric Company of Philadelphia.	C. S. 1911,	Pending.
Philadelphia Life Insurance Company,	C. S. 1911,	Paid.
Hooverhurst & South Western Railroad Company.	C. S. 1911,	Pending.
Beech Creek Railroad Company,	L. 1911,	Pending.
Bethlehem City Water Company,	L. 1911,	Paid.
Altoona & Logan Valley Electric Railway Company.	L. 1911,	Pending.
Keystone Coal & Coke Company,	C. S. 1911,	Pending.
Potter Gas Company,	L. 1911,	Paid.
Harrisburg Gas Company,	L. 1911,	Paid.
Wilkes-Barre & Wyoming Valley-Traction Company.	C. S. 1911,	Pending.
Easton Gas & Electric Company,	C. S. 1911,	Pending.
Peale, Peacock & Kerr, Inc.,	C. S. 1911,	Paid.
Lehigh Valley Transit Company,	L. 1911,	Pending.
Edison Electric Illuminating Company.	C. S. 1911,	Pending.
Shanferoke Coal Company,	L. 1911,	Verdict for defendant.
Lebanon Valley Street Railway Company.	C. S. 1911,	Pending.
Lehigh Valley Transit Company,	C. S. 1911,	Paid.
United Traction Company,	C. S. 1911,	Pending.
Eastern Pennsylvania Railways Company.	C. S. 1911,	Pending.
Manufacturers Gas Company,	C. S. 1911,	Pending.
Wilkes-Barre Railway Company,	C. S. 1911,	Pending.
Warren & Chatauqua Gas Company,	C. S. 1911,	Pending.
Lehighton Water Company,	L. 1911,	Pending.
Schenley Distilling Company,	C. S. 1911,	Pending.
Hillside Coal & Iron Company,	C. S. 1911,	Judgment for the Commonwealth.
Potter Gas Company,	C. S. 1911,	Pending.
Lake Shore & Michigan Southern Railway Company.	L. 1911,	Pending.
The Hoover & Smith Company,	Bonus 1910,	Submitted to the Court. Pending.
Pennsylvania Coal Company,	C. S. 1911,	Judgment for the Commonwealth.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Bethlehem & Nazareth Passenger Railway Company.	C. S. 1911, ...	Pending.
Consolidated Water Supply Company,	C. S. 1911, ...	Paid.
Spring Brook Water Supply Company.	C. S. 1910, ...	Paid.
Annex Hotel Company, ...	L. 1911, ...	Paid.
Sharon Water Works Company, ...	C. S. 1911, ...	Pending.
Eastern Pensylvania Light, Heat & Power Company.	C. S. 1911, ...	Pending.
Philadelphia & Western Railway Company.	L. 1911, ...	Paid.
H. C. Frick Coke Company, ...	C. S. 1911, ...	Paid.
Union Railroad Company, ...	C. S. 1911, ...	Paid.
Bessemer & Lake Erie Railroad Company.	C. S. 1911, ...	Paid.
Spring Brook Water Company, ...	C. S. 1911, ...	Paid.
Pittsburgh, McKeesport & Youghiogheny Railroad Company.	L. 1911, ...	Pending.
Philadelphia & Reading Terminal Railroad Company.	L. 1911, ...	Pending.
Shamokin, Sunbury & Lewisburg Railroad Company.	L. 1911, ...	Pending.
Catawissa Railroad Company, ...	L. 1911, ...	Pending.
Reading & Columbia Railroad Company.	L. 1911, ...	Pending.
Perkiomen Railroad Company, ...	L. 1911, ...	Pending.
Northern Pennsylvania Railroad Company.	L. 1911, ...	Pending.
Reading Belt Railroad Company, ..	L. 1911, ...	Pending.
Reading Company, ...	L. 1911, ...	Pending.
New York Short Line Railroad Company.	L. 1911, ...	Pending.
Saltsburg Coal Mining Company, ..	C. S. 1911, ...	Paid.
Tionesta Valley Railway Company, ..	C. S. 1911, ...	Pending.
Susquehanna & New York Railroad Company.	C. S. 1911, ...	Paid.
Buffalo & Lake Erie Traction Company.	C. S. 1911, ...	Paid.
Pennsylvania Railroad Company, ...	L. 1911, ...	Pending.
Black Creek Improvement Company,	C. S. 1911, ...	Paid.
Atlantic Consolidated Coke Company,	C. S. 1911, ...	Paid.
Beech Creek Extension Railroad Company.	L. 1911, ...	Pending.
Pennsylvania Water & Power Company.	L. 1911, ...	Paid.
Scranton, Dunmore & Moosic Lake Railroad Company.	C. S. 1911, ...	Paid.
Penn Traffic Company, ...	C. S. 1911, ...	Pending.
Buffalo & Susquehanna Coal & Coke Company.	C. S. 1911, ...	Paid.
Dentz Run Coal Company, ...	C. S. 1911, ...	Pending.
John B. Stetson Company, ...	C. S. 1911, ...	Pending.
Bethlehem Steel Products Company,	C. S. 1911, ...	Paid.
Johnstown Passenger Railway Company.	C. S. 1911, ...	Paid.
Johnstown Passenger Railway Company.	L. 1911, ...	Paid.
Peoples Street Railway Company of Nanticoke & Newport.	C. S. 1911, ...	Paid.
Philadelphia Locomotive Works, ...	L. 1911, ...	Paid.
Walnut Run Coal Company, ...	C. S. 1911, ...	Paid.
Standard Ice Manufacturing Company.	L. 1911, ...	Paid.

SCHEDULE C.—Continued.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Standard Steel Works Company, ...	L. 1911, ...	Paid.
F. A. Poth & Sons, Inc., ...	C. S. 1911, ...	Paid.
Gimbel Brothers, Inc., ...	C. S. 1911, ...	Pending.
American District Telegraph Company of Pennsylvania.	C. S. 1911, ...	Paid.
Sayre Electric Company, ...	C. S. 1911, ...	Pending.
Upper Lehigh Supply Company, Ltd.	C. S. 1911, ...	Paid.
Goodyear Lumber Company, ...	C. S. 1910, ...	Paid.
Goodyear Lumber Company, ...	C. S. 1911, ...	Paid.
Trout Lake Ice Company, ...	C. S. 1911, ...	Paid.
Clarion Gas Company, ...	C. S. 1911, ...	Pending.
Logan Coal Company, ...	C. S. 1911, ...	Pending.
A. Overholt & Company, ...	C. S. 1911, ...	Pending.
Delaware River Railroad & Bridge Company.	L. 1911, ...	Pending.
Connecting Railway Company.	L. 1911, ...	Pending.
Harrisburg to Portsmouth, Mt. Joy & Lancaster Railroad Company.	L. 1911, ...	Pending.
Columbia & Port Deposit Railway Company.	L. 1911, ...	Pending.
Bellevedere Railroad Company, ...	L. 1911, ...	Pending.
Philadelphia & Baltimore Central Railroad Company.	L. 1911, ...	Pending.
Western New York & Pennsylvania Railway Company.	L. 1911, ...	Pending.
Cambria & Clearfield Railway Company.	L. 1911, ...	Pending.
Philadelphia to Baltimore & Washington Railroad Company.	L. 1911, ...	Pending.
Pittsburgh & Lake Erie Railroad Company.	C. S. 1911, ...	Paid.
Northern Central Railway Company,	L. 1911, ...	Pending.
Lehigh Valley Cold Storage Company,	C. S. 1911, ...	Pending.
Union Natural Gas Corporation, ...	L. 1903, ...	Submitted to the Court. Pending.
Union Natural Gas Corporation, ...	L. 1907, ...	Submitted to the Court. Pending.
Union Natural Gas Corporation, ...	L. 1908, ...	Submitted to the Court. Pending.
Union Natural Gas Corporation, ...	L. 1909, ...	Submitted to the Court. Pending.
Union Natural Gas Corporation, ...	L. 1910, ...	Submitted to the Court. Pending.
Union Natural Gas Corporation, ...	L. 1911, ...	Submitted to the Court. Pending.
Delaware, Lackawanna & Western Coal Company.	Bonus 1911, ...	Verdict for defendant.
Delaware, Lackawanna & Western Coal Company.	C. S. 1909, ...	Paid.
Delaware, Lackawanna & Western Coal Company.	C. S. 1910, ...	Paid.
Delaware, Lackawanna & Western Coal Company.	C. S. 1911, ...	Paid.
Buffalo & Lake Erie Traction Company.	L. 1911, ...	Paid.
Great Southern Lumber Company, ..	L. 1911, ...	Paid.
York Sanitary Milk Company, ...	C. S. 1911, ...	Paid.
Westinghouse Air Brake Company,	C. S. 1911, ...	Pending.
Carbon Coal & Mining Company, ...	C. S. 1911, ...	Paid.
Indiana Telephone Company, ...	L. 1911, ...	Pending.
Hunt & Clearfield Telephone Company.	L. 1911, ...	Pending.
Scranton & Binghamton Railroad Company.	L. 1911, ...	Pending.

SCHEDULE C.—Concluded.

LIST OF TAX APPEALS FILED SINCE JANUARY 1, 1911.

Name.	Nature of Claim.	Remarks.
Pittsburgh Dry Goods Company, ...	C. S. 1911, ...	Pending.
Tobyhanna Creek Ice Company, ...	C. S. 1911, ...	Paid.
National-Ben Franklin Fire Insurance Company.	C. S. 1911, ...	Paid.
Hector Coke Company, ...	L. 1911, ...	Pending.
Keystone Telephone Company of Philadelphia.	C. S. 1911, ...	Pending.
Ohio River Passenger Railway Company.	C. S. 1911, ...	Pending.
Beaver County Light Company, ...	C. S. 1911, ...	Pending.
Beaver County Light Company, ...	L. 1911, ...	Pending.
Pitsburgh & Butler Street Railway Company.	L. 1911, ...	Pending.
Hunt & Clearfield Telephone Company.	C. S. 1911, ...	Pending.
United States Pipe Line Company, ..	C. S. 1911, ...	Pending.
Consolidated Telephone Companies of Pennsylvania.	L. 1911, ...	Discontinued.
United Telephone & Telegraph Company.	L. 1911, ...	Pending.
United Telephone & Telegraph Company.	C. S. 1911, ...	Pending.
Commercial Union Telephone Company.	L. 1911, ...	Pending.
Erie & Western Transportation Company.	L. 1910, ...	Pending.
Philadelphia Ship Repair Company,	C. S. 1909, ...	Submitted to the Court. Pending.
Bellefonte Lime Company, ...	C. S. 1911, ...	Paid.
United Traction Street Railway Company.	C. S. 1911, ...	Pending.
Bethlehem Electric Light Company,	C. S. 1911, ...	Pending.
Pennsylvania Light, Heat & Power Company.	C. S. 1911, ...	Paid.
Philadelphia Manufacturers Mutual Fire Insurance Company.	Gross premiums, 1906, 6 mo.	Pending.
Atlantic Crushed Coke Company, ..	L. 1911, ...	Paid.
Philadelphia Electric Company, ...	C. S. 1911, ...	Paid.
Chapman Slate Company, ...	C. S. 1911, ...	Paid.
Huntingdon & Broad Top Mountain Railroad & Coal Company.	C. S. 1911, ...	Paid.
Cumberland Valley Telephone Company of Pennsylvania.	C. S. 1911, ...	Verdict for defendant.
Cambria Steel Company, ...	C. S. 1911, ...	Paid.
A. & P. Roberts Company, ...	C. S. 1911, ...	Paid.
Johnstown Water Company, ...	L. 1911, ...	Pending.
Western Coal Company, ...	C. S. 1910, ...	Paid.
Standard & Underground Cable Company.	C. S. 1911, ...	Pending.
Altoona & Logan Valley Electric Railway Company.	C. S. 1911, ...	Paid.

SCHEDULE D.

LIST OF CASES ARGUED IN THE SUPREME COURT OF PENNSYLVANIA DURING THE YEARS 1911 AND 1912.

R. C. Dotson, President of the Eastern Provision Company, a corporation of the State of Pennsylvania vs. James Foust, Dairy and Food Commissioner of the State of Pennsylvania, Appellant, Mandamus. Reported in 233 Pa. 88, ...Appeal dismissed.

Commonwealth of Pennsylvania ex rel. Norris S. Barratt, Appellant, vs. Robert McAfee, Secretary of the Commonwealth of Pennsylvania, Mandamus. Reported in 232 Pa. 36, ...Affirmed.

Sidney T. Isett vs. William E. Meehan, Commissioner of Fisheries et al. Reported in 232 Pa. 504, ...No Judgment.

Commonwealth of Pennsylvania vs. John H. Sanderson, Joseph M. Huston, James M. Shumaker, William P. Snyder, and William L. Mathues, Appellants. Appeal of Joseph M. Huston from the judgment of the Superior Court. Reported in 232 Pa. 209, ...Affirmed.

Commonwealth of Pennsylvania vs, Excelsior Brick & Stone Co., Appellant. Reported in 233 Pa. 84, ...Affirmed.

Commonwealth of Pennsylvania vs. Independence Trust Co., Appellant. (2 appeals). Reported in 233 Pa. 92, ...Reversed.

Commonwealth of Pennsylvania, Appellant, vs. Buffalo & Lake Erie Traction Co. Reported in 233 Pa. 79, ...Affirmed.

Commonwealth of Pennsylvania vs. Christian Pflaum, Jr., Appellant. Appeal from the judgment of the Superior Court. Reported in 236 Pa. 294, ...Affirmed.

Commonwealth of Pennsylvania ex rel. John C. Bell, Attorney General, vs. Tradesmen's Trust Co. of Philadelphia, Appellant. Reported in 237 Pa. 316. .....Affirmed.

Commonwealth of Pennsylvania ex rel. Heber McDowell, Appellant, vs. Robert McAfee, Secretary of the Commonwealth of Pennsylvania. Reported in 237 Pa. 320, ...Affirmed.

Commonwealth of Pennsylvania vs. Mint Realty Co., Appellant, Non-prosd.

Commonwealth of Pennsylvania, Appellant, vs. G. W. Ellis Co. Reported in 237 Pa. 328, ...Affirmed.

Commonwealth of Pennsylvania, Appellant, vs. Curtis Publishing Co. Reported in 237 Pa. 333, ...Affirmed.

The Pennsylvania Railroad Co., Appellant, vs. Nathaniel Ewing et al., constituting the Pennsylvania Railroad Commission. Reported in 241 Pa. 581, ...Affirmed.

Commonwealth of Pennsylvania vs. Philadelphia Mortgage & Trust Co., Appellant, ...Discontinued.

Commonwealth of Pennsylvania, Appellant, vs. Union Trust Co. of Pittsburgh, (2 appeals). Reported in 237 Pa. 353, ...Reversed.

Commonwealth of Pennsylvania, Appellant, vs. Equitable Life Assurance Society of the United States. Reported in 239 Pa. 288, ...Reversed.

George E. Etter vs. Robert McAfee, Secretary of the Commonwealth of Pennsylvania et al. Reported in 237 Pa. 557, ...Affirmed.

Commonwealth of Pennsylvania vs. Meyer Gross, Appellant,.....Non-prosd.

SCHEDULE D.—Concluded.

LIST OF CASES ARGUED IN THE SUPERIOR COURT OF PENNSYLVANIA DURING THE YEARS OF 1911 AND 1912.

Commonwealth of Pennsylvania, Appellant, vs. Christian Pflaum, Jr. Reported in 48 Pa. Superior Court 370, ...Reversed.

LIST OF CASES ARGUED IN THE CIRCUIT COURT OF THE UNITED STATES.

Henry Heide et al., vs. James Foust and Harry P. Cassidy, ...Bill dismissed.

LIST OF CASES NOW PENDING IN THE SUPREME COURT OF THE UNITED STATES.

Joseph Patsone, Plaintiff in Error, vs. the Commonwealth of Pennsylvania, Defendant in Error. No. 314 October Term, 1912. Appeal from the judgment of the Supreme Court of Pennsylvania. Reported in 231 Pa. 46.

LIST OF CASES NOW PENDING IN THE SUPREME COURT OF PENNSYLVANIA.

Trustees of the State Hospital for the Insane at Danville, Pa., Appellant, vs. County of Lycoming.

Trustees of the State Hospital for the Insane at Danville, Pa., Appellant, vs. County of Northumberland.

SCHEDULE E.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1911 AND 1912.

Name of Defendant.	Nature of Claim.	Remarks.
Safety Banking and Trust Company of Philadelphia.	Tax on shares, 1910.	Judgment for Commonwealth. Execution. Sheriff returns nulla bona.
Lewis H. Zimmerman, late Recorder of Deeds of Lackawanna County, and United States Fidelity and Guarantee Company, his surety.	Suit on official bond.	Paid.
Cove Coal and Mineral Company, ...	C. S. 1904-1909.	Verdict in favor of Commonwealth.
Potter-Graham Timber Company, ...	C. S. 1907, ...	Sheriff's return of nihil habet.
Taylor Burner & Electro-plating Company.	C. S. 1903-1908, and penalty.	Suit discontinued.
Hamilton Apartment Realty Company.	C. S. 1908, ...	Defunct.
Anthracite Brewing Company, ...	C. S. 1909, ...	Paid.
Allegheny Brewing Company, ...	C. S. 1908, 1909, L. 1909, ...	Judgment in favor of Commonwealth. Company in hands of receiver.
Artificial Limb Manufacturing Company.	C. S. 1903-1909. ..	Judgment in favor of Commonwealth.
Franklin Homestead Loan & Trust Company.	C. S. 1903-1909, ..	Paid.
Black Lick Mining Company, ...	C. S. 1908, 1909,..	Judgment in favor of Commonwealth. Execution. Paid.
Glen Olden Real Estate and Improvement Company.	C. S. 1909, ...	Paid.
Brunswick Refrigerator Company, ..	C. S. 1909, ...	Sheriff returns nihil habet.
Squirrel Hill Land Company, ...	C. S. 1908, 1909, .	Paid.
Kane & Elk Railroad Company, ...	C. S. 1908, 1909, . L. 1908, 1909, ... G. R. 1909, 1910,	Judgment in favor of Commonwealth. Execution. Paid.
James Brothers Lumber Company, ..	C. S. 1895, 1908, 1909,	Judgment in favor of Commonwealth. Execution. Paid.
McKees Rocks Manufacturing & Foundry Company.	C. S. 1909, ...	Judgment in favor of Commonwealth. Company in hands of Receiver.
C. B. Baird Company, ...	C. S. 1903-1909, ..	Taxes resettled and stricken off. Judgment satisfied.
Carbo Smokeless Coal Company, ...	C. S. 1907-1909, .. L. 1909, ...	Tax paid.
Pennsylvania Land and Improvement Company.	C. S. 1903-1909, .. L. 1902-1909, ...	Judgment in favor of Commonwealth. Company defunct.
Saxonburg Mineral Springs Company.	C. S. 1909, ... L. 1909, ...	Company in hands of receiver.
Chester Land Improvement Company,	C. S. 1906-1909, ..	This company is defunct and insolvent.
Cheswick Land Company, ...	C. S. 1901-1909, .. L. 1901-1909, ...	Judgment in favor of Commonwealth.
Cheat River Lumber Company, ...	C. S. 1907-1909, ..	Judgment in favor of Commonwealth. Execution. Sheriff's return of nulla bona.
Citizens Merchandise Company, ...	C. S. 1907-1909, ..	Judgment in favor of Commonwealth. Execution. Sheriff's return of nulla bona.

SCHEDULE E.—Continued.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1911 AND 1912.

Name of Defendant.	Nature of Claim.	Remarks.
R. & W. Jenkinson Company, ...	C. S. 1903, 1905, 1906, 1907, 1908, 1909.	Paid.
Catasauqua Casting Company, ...	C. S. 1909, ...	Paid.
Trenton, New Hope & Lambertville Street Railway Company.	C. S. 1909, ... L. 1908, 1909, ... G. R. 1908-1910.	Paid.
Pittsburgh & Western Coal and Coke Company.	C. S. 1898-1899, ..	Sheriff returns writ nihil habet.
Clearfield Quarrying Company, ...	C. S. 1904-1909, L. 1904-1908,	Tax resettled. Paid.
Clinton Falls Coal Company, ...	C. S. 1909, L. 1908-1909.	Paid.
Clearfield Steel & Iron Company, ...	C. S. 1907-1909, L. 1907-1908.	Paid.
Conemaugh Teaming Company, ...	C. S. 1906-1909, ..	Judgment in favor of Commonwealth. Sheriff's return of nulla bona to execution.
Cunningham Piano Company, ...	C. S. 1905-1909, L. 1905-1909.	Tax resettled and stricken off.
Cumru Township Electric Light, Heat & Power Company.	C. S. 1908-1909. G. R. 1907-1910.	Paid.
Diamond Prospecting and Drilling Company.	C. S. 1005-1909. L. 1905-1909.	Company defunct.
Citizens Water Company of Confluence.	C. S. 1909. L. 1909	Paid.
Diamond Mirror Company, ...	C. S. 1903-1909. L. 1902-1909.	Judgment in favor of Commonwealth. Defunct.
Hooper Brothers Company, Incorporated.	C. S. 1903-1908. L. 1903-1906.	Verdict in favor of Commonwealth. Paid.
Hirsch-Baskin Company, ...	C. S. 1908-1909. L. 1908-1909.	Paid.
Howley Construction Company, ...	C. S. 1907-1909. ..	Judgment in favor of Commonwealth. Execution. Sheriff returns nulla bona.
Imperial Company, ...	C. S. 1909, ...	Tax paid.
Pittsburgh Storage & Transfer Company.	C. S. 1907-1909, ..	Judgment in favor of Commonwealth. Company defunct and insolvent.
Middletown Telephone Company, ...	C. S. 1909. L. 1909.	Paid.
Moran Phelan Contracting Company.	C. S. 1907-1909. L. 1907-1909.	Judgment in favor of Commonwealth.
Monongahela Traction Company, ...	C. S. 1897-1909. Penalties.	Suit discontinued.
Mound Brick Company, ...	L. 1906-1909	Tax resettled and stricken off.
Mount Penn Knitting Company, ...	L. 1905-1909	Paid.
United States Asbestos Company, ...	L. 1907-1908, ...	Resettled tax and stricken off.
United States Builders Company of Pittsburgh.	C. S. 1906-1908-1909. L. 1906-1908-1909.	Sheriff returns N. E. I.
Newtown & Yardley Street Railway Company.	C. S. 1909. G. R. 1909 (6 mo.) 1901.	Sheriff returns nihil habet
New Castle Steel Company, ...	C. S. 1901-1909, ..	Sheriff returns nihil habet
National Case & Carton Company, ..	C. S. 1902-1909, ..	Judgment in favor of Commonwealth.

SCHEDULE E.—Continued.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1911 AND 1912.

Name of Defendant.	Nature of Claim.	Remarks.
Newtown & Hatboro Street Railway Company.	C. S. 1904-1909, ..	Judgment in favor of the Commonwealth. Execution. Sheriff returns nulla bona.
Pennsylvania & Maryland Street Railway Company.	L. 1909, ...	Paid.
Neshaminy Stone Quarry Company, ..	C. S. 1905-1909, ..	Tax resettled and stricken off.
North Pittsburgh Telephone Company,	C. S. 1907-1908. L. 1907, 1909. G. R. 1907-1910.	Paid.
Penn Smelting & Refining Works Company.	C. S. 1908-1909, ..	Paid.
Parsons Silk Throwing Company, ...	L. 1907-1909, ...	Paid.
Pennsylvania Marble & Granite Company.	Loans 1909 (6 mo.)	Paid.
Pennsylvania Carbon & Graphite Company.	C S 1908-1909, ..	Tax resettled and stricken off.
Oakland Realty Company, ...	C. S. 1906-1909. L. 1906-1909.	Judgment in favor of Commonwealth. Execution. Sheriff returns nulla bona.
Penn Park Athletic Association, ...	C. S. 1902-1909, ..	Pending.
Black Diamond Distilling Company, ..	C. S. 1909, ...	Paid.
Adena Mining Company, ...	C. S. 1908-1909. L. 1908-1909.	Tax resettled and paid.
Hostetter Coke Company, ...	C. S. 1907-1909. L. 1907-1909.	Sheriff returns N. E. I.
Henry Hess Brewing Company, ...	C. S. 1908-1909. L. 1908-1909.	Tax resettled and paid.
John Wood Manufacturing Company,	L. 1907-1908.	Paid.
Johnson Brewing Company, ...	C. S. 1908-1909. L. 1908-1909.	Paid.
Johnstown Theatre Company, ...	C. S. 1907. L. 1907-1908.	Tax resettled and paid.
Kittanning Hotel Company, ...	C. S. 1905-1909. L. 1905-1909.	Sheriff returns nihil habet.
Keystone Land Company, ...	C. S. 1909. L. 1909.	Paid.
Keystone Valve & Manufacturing Company.	L. 1903-1909.	Judgment in favor of Commonwealth. Defunct.
Jeannette Planing Mill Company, ...	C. S. 1905-1909. ..	Paid.
Jacob Cartun Company, Incorporated	C. S. 1907-1908-1909.	Paid.
Liberty Coal Company, ...	C. S. 1905-1909. L. 1905-1909.	Sheriff returns nihil habet.
Latrobe Gas Company, ...	C. S. 1899-1900, 1905-1909. L. 1899-1900, 1905-1909.	Sheriff returns nihil habet.
Lizard Creek Brick and Sand Company.	C. S. 1905-1908. L. 1906-1909.	Tax resettled and paid.
Nay Aug Stone Company, ...	C. S. 1908-1909, ..	Tax resettled and stricken off.
Nay Aug Coal Company, ...	C. S. 1908-1909, ..	Paid.
Natural Ice Company, ...	C. S. 1905, 1907, 1908.	Tax resettled and stricken off.
Maple Hill Land Company, ...	C. S. 1909. L. 1908-1909.	Paid.
Kittatinny Hotel Company, ...	C. S. 1905-1909. L. 1905-1909.	Pending.
McAvoy Vitrified Brick Company, ...	C. S. 1901-1909, ..	Tax resettled and paid.
Manheim & Mt. Joy Electric Light Company.	C. S. 1907-1909. G. R. 1907-1909.	Paid.

SCHEDULE E.—Continued.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1911 AND 1912.

Name of Defendant.	Nature of Claim.	Remarks.
McKean County Lumber Company,	C. S. 1907-1909.	Judgment in favor of Commonwealth. Execution. Sheriff returns. nulla bona.
Pittsburgh Watch Company, ...	C. S. 1907-1908. ..	Paid.
Deer Creek Water & Water Power Company.	C. S. 1908-1909. L. 1908-1909.	Judgment in favor of Commonwealth.
Middletown Shale Brick Company, ..	C. S. 1906-1909. ..	Tax resettled and paid.
Millener Drug Company, ...	C. S. 1909, ...	Paid.
Pittsburgh Fire Extinguisher Company.	C. S. 1906-1909, ..	Paid.
A. G. Breitweiser Company, ...	C. S. 1908-1909, ..	Judgment in favor of Commonwealth. Partly paid.
Union Oil & Gas Company, ...	C. S. 1904-1909, ..	Sheriff returns nihil habet.
W. C. Wolfe vs. The Commonwealth of Pennsylvania.	Suit to recover claim for damages.	Judgment in favor of Plaintiff. Paid.
Oakdale Land Improvement Company.	C. S. 1909. L. 1909.	Paid.
East Lebanon Iron Company, ...	L. 1898.	Judgment in favor of Commonwealth. Company defunct.
United States Lead Corporation, ...	Penalties.	Pending.
Youghiogheny Bridge Company, ...	C. S. 1908, ...	Tax resettled and paid.
Charles Beck Manufacturing Company, Limited.	C. S. 1905-1909, ..	Company defunct.
McKinley, Horn & Company, Ltd.,	C. S. 1899-1910, ..	Verdict for defendant.
Manufacturers Natural Gas Company,	C. S. 1896-1909, ..	Judgment for Commonwealth.
Warthman Dressed Beef & Provision Company.	C. S. 1903-8-1900	Sheriff returns nihil habet.
Angelo Myers Distillery Company, Inc.	C. S. 1909, ...	Tax resettled and paid.
A. & J. Rosenblat Company, Inc.,	C. S. 1906-1909, ..	Sheriff returns nihil habet.
Allentown Crockery Company, ...	C. S. 1905-1909. ..	Paid.
Altoona, Hollidaysburg & Bedford Springs Railway Company.	C. S. 1908-9, ..	Sheriff returns nihil habet.
Anthracite Lumber Company, ...	C. S. 1907-8, ...	Paid.
Ambridge Borough Light, Heat & Power Company.	C. S. 1908-9, ...	Paid.
Athens Realty & Investment Company.	C. S. 1908-9, ...	Judgment in favor of the Commonwealth.
Auburn Water Company, ...	C. S. 1909. L. 1909.	Paid.
Allegheny Lumber & Manufacturing Company.	C. S. 1905-9.	Judgment in favor of the Commonwealth.
American Union Coal Company, ...	C. S. 1905-9.	Sheriff returns nihil habet.
American Warming & Ventilating Company.		Tax resettled and stricken off.
American Home Supply Company, ..	C. S. 1909. L. 1909.	Paid.
American School of Art & Photography.	C. S. 1905-9. L. 1905-9.	Paid.
American Publishing Company of Ligonier.	C. S. 1906-9, ...	Tax resettled and stricken off.
American National Match Corporation	C. S. 1902-9, ...	Judgment in favor of the Commonwealth.
American Box Company, ...	C. S. 1906-9, ...	Insolvent.
Atlas Brewing Company, ...	C. S. 1907-9, ...	Defunct.
Allegheny Oil Company, ...	C. S. 1909, ...	Paid.
Allegheny Furniture & Carpet Company.	C. S. 1902-3-5-7-9. L. 1905, 6, 7, 9.	Insolvent.

SCHEDULE E.—Continued.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1911 AND 1912.

Name of Defendant.	Nature of Claim.	Remarks.
American Porcelain Company, ...	1896, 1897, 1898, ..	Tax resettled and stricken off.
Allentown & Reading Traction Company.	G. R. 1910(12 mo.)	Paid.
Cherry Tree Iron Works Company,	C. S. 1906-8, ...	Paid.
Altoona Foundry & Machine Company.	C. S. 1910, ...	Pending.
Apollo Fuel Gas Company, ...	C. S. 1897 to 1910	Pending.
A. T. Bornot Brothers Company, ...	C. S. 1910, ...	Paid.
Anchor Glass Company, ...	C. S. 1907 to 09,	Judgment for Commonwealth. Defunct.
H. F. Potter Company, ...	C. S. 1906 to 09,	Judgment for Commonwealth. Defunct.
Griffith Novelty Company, ...	C. S. 1909, ...	Judgment for Commonwealth. Execution. Sheriff returns nulla bona.
Safety Banking & Trust Company, Philadelphia.	Tax on shares, 1911.	Judgment for Commonwealth. Execution. Sheriff returns nulla bona.
Germania Brewing Company of Johnstown.	C. S. 1909. Loans 1909.	Paid.
Graemer Hotel Company, ...	C. S. 1910, ...	Paid.
Indiana Real Estate & Investment Company.	C. S. 1909, ...	Pending.
Imperial Coal Mining Company, ...	C. S. 1909, ...	Pending.
Hummelstown Consolidated Water Company.	C. S. 1909-1910. Loans 1909-1910.	Pending.
Halifax Water Company, ...	C. S. 1908-09. Loans 1908-09.	Pending.
Highspire Water Company, ...	C. S. 1909-10. Loans 1909-10.	Pending.
Red Jacket Water Company, ...	C. S. 1905 to 09, ..	Paid.
Dickson Mill & Grain Company, ...	Loans 1905 & 09, ..	Paid.
Allegheny Valley Oil & Gas Company,	C. S. 1908 & 09, ..	Judgment in favor of the Commonwealth. Execution. Sheriff returns nulla bona.
Indiana Coal Company, ...	C. S. 1908 & 09, .. Loans 1908 & 09,..	Partly paid.
Chestnut Ridge Coal Company, ...	C. S. 1909, ... Loans 1909.	Paid.
Homestead Amusement Company, ..	C. S. 1909. Loans 1909.	Judgment for Commonwealth. Defunct.
Hodgson Realty Company, ...	C. S. 1909.	Claim withdrawn by Auditor General.
Koos Drug Company, ...	C. S. 1908 & 09,..	Paid.
H. F. Bright Lumber Company, ...	C. S. 1909, ...	Paid.
Longstreth Motor Car Company, ...	C. S. 1907 to 09, ..	Paid.
Doubleday Hill Electric Company,	C. S. 1906-7-09, ..	Paid.
High House Brewing Company, ...	C. S. 1909-10, ...	Defunct.
Greensburg Trading Company, ...	O. S. 1910, ... Loans 1910,.	Paid.
Mutual Ice Company, ...	C. S. 1909, Loans 1909.	Pending.
Mount Equity Coal & Coke Company,	C. S. 1908-09, ..	Partly paid.
Dunlo Light, Heat & Power Company.	Gross receipts, 1905-6-7.	Paid.
Cambria Concrete Construction & Supply Company.	C. S. 1905-6-7, ..	Pending. Insolvent.
H. Washbers York City Laundry Company.	O. S. 1910, ...	Paid.
Steelworkers Land Company, ...	C. S. 1906, 1909,..	Paid.

SCHEDULE E.—Continued.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1911 AND 1912.

Name of Defendant.	Nature of Claim.	Remarks.
Indiana Woolen Mills Company, ...	Loans 1907-08, ...	Paid.
Homestead Real Estate Company, ...	C. S. 1909-10, Loans 1910.	Judgment in favor of Commonwealth. Execution.
J. G. Armstrong Son & Stone Company, Ltd.	C. S. 1890 & 91, ..	Sheriff returns nihil habet
J. Zimmerman & Company Ltd., ...	C. S. 1899 to 1910	Discontinued.
Jessup Livery & Undertaking Company, Ltd.	C. S. 1905 to 1910	Sheriff returns non est inventus.
Hausman & Wimmer Company, ...	C. S. 1908 & 09,..	Paid.
James Manufacturing Company, ...	C. S. 1905-09, .. Loans 1905-09.	Judgment for Commonwealth.
Real Estate & Mortgage Company, Ltd.	C. S. 1906 to 09,..	Judgment for Commonwealth. Execution.
Susquehanna River & Western Railroad Company.	C. S. 1909. Loans 1909. G. R. 1910 (6 mo.)	Paid.
Stewartstown Railroad Company, ...	C. S. 1907 to 09, .. G. R. 1907 to 10,.	Paid.
Logan Valley Water Company, ...	C. S. 1904 & 06,..	Paid.
John Seibert & Sons Company, ...	C. S. 1911, ...	Paid.
Curwensville Electric Company, ...	G. R. 1900, 6 mo.	Judgment for the Commonwealth.
Curwensville Electric Company, ...	G R. 1902, 12 mo.	Judgment for the Commonwealth.
Curwensville Electric Company, ...	G. R. 1903, 6 mo.	Judgment for the Commonwealth.
Curwensville Electric Company, ...	G. R. 1904, 12 mo.	Judgment for the Commonwealth.
Curwensville Electric Company, ...	G. R. 1905 12 mo.	Judgment for the Commonwealth.
Curwensville Electric Company, ...	G. R. 1906, 12 mo.	Judgment for the Commonwealth.
Curwensville Electric Company, ...	G. R. 1907, 12 mo.	Judgment for the Commonwealth.
Curwensville Electric Company, ...	G. R. 1908, 6 mo.	Judgment for the Commonwealth.
Curwensville Electric Company, ...	G. R. 1909, 6 mo.	Judgment for the Commonwealth.
Instalment Real Estate Company, Ltd.	C. S. 1907-10, ..	Judgment in favor of the Commonwealth. Sheriff's return of nulla bona to execution.
Greenway Real Estate Company, ...	L. 1908, ...	Paid.
Glen Manufacturing Company, ...	C. S. 1907-9, L. 1907-9-10.	In hands of receiver.
Dale Light, Heat & Power Company,	C. S. 1909-10.	Paid.
Dale Light, Heat & Power Company,	L. 1908-9-10.	Paid.
Dale Light, Heat & Power Company,	G. R. 1909 6 mo.	Paid.
Dale Light, Heat & Power Company,	G. R. 1911 12 mo.	Paid.
Pennsylvania Iron Works Company,	L. 1905-9, ...	Paid.
Old Homestead Food & Chemical Company.	C. S. 1909, ...	Sheriff's return nihil habet.
Nay Aug No. 4 Coal Company, ...	C. S. 1909, ...	Paid.
Nicholson Stone Company, ...	C. S. 1909-10,	Paid.
Nicholson Stone Company, ...	L 1908-9-10.	Paid.
Norton Machinery & Iron Company, Ltd.	C. S. 1906-10, ...	Sheriff's return N. E. I.
Mosaic Wood Working Company, ...	C. S. 1907-9-10,..	Tax resettled and stricken off.
Lansdale Mushroom Company, Ltd.,	C. S. 1907-9, ...	Paid.
Lancaster Automobile Company, ...	C. S. 1910.	Paid.
Lancaster Automobile Company, ...	L. 1910.	Paid.

SCHEDULE E.—Continued.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1911 AND 1912.

Name of Defendant.	Nature of Claim.	Remarks.
Keith Kerr Carriage Company, ...	C. S. 1910. L. 1909-10.	In hands of receiver.
Locust Laundry Company, formerly Laundry Company of America.	C. S 1909, ...	Judgment in favor of the Commonwealth.
Magnet Furniture Company, ...	C. S. 1908. L. 1908.	Sheriff's return N. E. I.
Kittanning Company, Ltd., ...	C. S. 1908-9-10,..	Paid.
McKillip & Company, Inc., ...	C. S. 1910. L. 1910.	Paid.
Norristown Iron & Steel Company,..	C. S. 1910-11,....	Paid.
N. C. Lane Company, Ltd., ...	C. S. 1905-10, ...	Paid.
The Borough of Greenville, Mercer County.	Penalty imposed by State Commissioner of Health.	Pending.
Borough of Tarentum, Allegheny County.	Penalty imposed by State Commissioner of Health.	Pending.
Borough of Sharon, Mercer County,	L. 1909-10, ...	Paid.
Provident Realty Company, ...	C. S. 1906-09, ...	Paid.
The Borough of Summerhill, ...	Penalties imposed by State Commissioner of Health.	Suit discontinued.
Warren County Traction Company, ..	C. S. 1909-11. L. 1909. G. R. 1911, 12 mo. and interest.	Sheriff's return N. E. I.
York Haven Water & Power Company.	C. S. 1910, ...	
Cambridge Springs Realty Company,	C. S. 1908-9, ...	Sheriff returns nihil habet.
Pittsburgh & Cross Creek Railroad Company.	C. S. 1905-6-7, ..	Sheriff returns nihil habet.
Dean Adjustible Steel Pilot Company.	C. S. 1908-9, ...	Paid.
New Kensington Distilling Company,	C. S. 1909, ...	Resettled. Pending.
Mont Clare Brick Company, ...	C. S. 1907-9. L. 1907-9.	Paid. Paid.
Spartansburg Telephone Company, ..	C. S. 1906.	Judgment for the Commonwealth. Execution.
G. L. Whitehead Coal Company, ...	C. S. 1909-11.	Judgment for Commonwealth. Execution.
Torrence Land Company, ...	Bonus on increase	Pending.
Jerome Hotel Company, ...	C. S. 1907-9, ...	Paid.
Paxtang Consolidated Water Company.	C. S. 1909-10, ...	Pending.
Paxtang Consolidated Water Company.	L. 1909-10.	Pending.
Middletown & Swatara Consolidated Water Company.	C. S. 1909-10. L. 1909-10.	Pending. Pending.
Eastmere Water Company, ...	C. S. 1909-10-11,..	Pending.
Lay & Balcom Manufacturing Company.	C. S. 1905-6-8-10. L. 1910. Bonus.	Sheriff returns nihil habet.
Sutton Peck Chemical Company, ...	C. S. 1905-9, ...	Sheriff returns nihil habet.
Chambers Window Glass Company, ..	C. S. 1906-9,.....	Judgment for Commonwealth.
Reeser, Kessler & Wieland Company.	C. S. 1905-7-9, ..	Paid.
Philadelphia & Ardmore Land Company.	C. S. 1907-10. L. 1907.	Sheriff returns nihil habet.

SCHEDULE E.—Concluded.

ACTIONS IN ASSUMPSIT INSTITUTED IN THE COMMON PLEAS OF DAUPHIN COUNTY DURING THE YEARS 1911 AND 1912.

Name of Defendant.	Nature of Claim.	Remarks.
Keystone Indemnity Company, ...	C. S. 1909-10-11. G. R. 1909-11.	Judgment for Commonwealth. Partly paid.
Black Diamond Slate Company, ...	C. S. 1908-11, ...	Pending.
Witch Hazel Coal Company, ...	C. S. 1904-9, ...	Paid.
Carrick Amusement Company, ...	C. S. 1909, ...	Judgment for the Commonwealth.
The Directors of the Poor of Blakely Township, Lackawanna County.	Claim for maintenance for indigent insane.	Judgment for the Commonwealth.
Pennsylvania Iron Works Company,	C. S. 1905-7,	Paid.
	L. 1910.	Paid.
United Ice & Coal Company, ...	C. S. 1911, ...	Verdict for defendant.
Pittsburgh Gas & Coke Company, ...	Bonus, ...	Pending.
Ellwood Sand Company, ...	C. S. 1911, ...	Tax resettled and stricken off.
Escee Company, ...	C. S. 1911.	Paid.
	L. 1911.	Paid.

SCHEDULE F.

MANDAMUS PROCEEDINGS.

Name of Party.	Action Taken.
R. C. Dotson, President Eastern Provision Company, a corporation of the State of Pennsylvania, vs. James Foust, Dairy and Food Commissioner of the State of Pennsylvania.	Peremptory mandamus awarded. On appeal, case dismissed by Supreme Court.
Martha M. Brown and Mary Chew, vs. John C. Bell, Attorney General of the State of Pennsylvania.	Alternative mandamus awarded. Judgment in favor of plaintiffs.
Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General, vs. Baltimore & Ohio Railroad Company.	Alternative mandamus awarded. Proceeding discontinued.
Commonwealth of Pennsylvania, ex rel. Norris S. Barratt, vs. Robert McAfee, Secretary of the Commonwealth of Pennsylvania.	Alternative mandamus awarded. Petition dismissed. On appeal judgment of lower court affirmed.
Commonwealth of Pennsylvania, ex rel. Heber McDowell, vs. Robert McAfee, Secretary of the Commonwealth of Pennsylvania.	Alternative mandamus awarded but subsequently vacated. Affirmed by Supreme Court on appeal.
The Estate of C. E. Aughinbaugh and John L. L. Kuhn, trading and doing business under the style and title of C. E. Aughinbaugh, vs. A. E. Sisson, Auditor General.	Writ of alternative mandamus awarded. Opinion of Court filed but no judgment entered.
Commonwealth of Pennsylvania, ex rel. Edward E. Moselein, vs. Robert McAfee, Secretary of the Commonwealth.	Peremptory writ refused.

SCHEDULE G.

LIST OF EQUITY CASES.

Name of Party.	Action Taken.
The Pennsylvania Railroad Company, vs. Nathaniel Ewing, Charles N. Mann, and Milton J. Brecht, constituting the Pennsylvania State Railroad Commission.	Bill filed in Dauphin county. Decree entered dismissing bill. On appeal dismissed by Supreme Court.
The Delaware & Hudson Company, vs. Nathaniel Ewing, Charles N. Mann, and Milton J. Brecht, constituting the Pennsylvania State Railroad Commission.	Bill and answer filed in Dauphin county. Proceedings abandoned.
Philadelphia & Reading Railroad Company, vs. Nathaniel Ewing, Charles N. Mann, and Milton J. Brecht, constituting the Pennsylvania State Railroad Commission.	Bill and answer filed in Dauphin county. Proceedings abandoned.
Delaware, Lackawanna & Western, vs. Nathaniel Ewing, Charles N. Mann, and Milton J. Brecht, constituting the Pennsylvania State Railroad Commission.	Bill and answer filed in Dauphin county. Proceedings abandoned.
Baltimore & Ohio Railroad Company, vs. Nathaniel Ewing, Charles N. Mann, and Milton J. Brecht, constituting the Pennsylvania State Railroad Commission.	Bill and answer filed in Dauphin county. Proceedings abandoned.
Lehigh Valley Railroad Company, vs. Nathaniel Ewing, Charles N. Mann, and Milton J. Brecht, constituting the Pennsylvania State Railroad Commission.	Bill filed in Dauphin county.
Erie Railroad Company, vs. Nathaniel Ewing, Charles N. Mann, and Milton J. Brecht, constituting the Pennsylvania State Railroad Commission.	Bill and answer filed in Dauphin county.

SCHEDULE G.—Continued

LIST OF EQUITY CASES.

Name of Party.	Action Taken.
The Provident Life and Trust Company of Philadelphia, Complainant, vs. Blakely D. McCaughn and H. Gilbert Cassidy, Assessors, and Simon Gratz, D. Newlin Fell, Jr., and John Wesley Durham, Members of the Board of Revision of Taxes for the City and County of Philadelphia, Respondents.	Bill filed. Preliminary injunction awarded in Philadelphia.
Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General, Plaintiff, vs. Allemania Fire Insurance Company et al.	Bill filed in Allegheny county. Decree filed granting injunction against certain specified practices, etc.
Vincenzo Abruzzio, Joseph DiBlasi, Messino Melchiorri, and Luigi Melchiorri, trading as Melchiorri Bros., Plaintiffs, vs. Charles F. Wright, State Treasurer, Robert McAfee, Secretary of the Commonwealth, and William H. Smith, Commissioner of Banking, their agents and employees, Defendants.	Bill and answer filed in Philadelphia county. Bill dismissed.
Commonwealth of Pennsylvania, vs. Allegheny Water Company.	Bill and answer filed in Blair county. Permanent injunction awarded.
George E. Etter, vs. Robert McAfee, Secretary of the Commonwealth of Pennsylvania, Isaac F. Hoffman, Samuel S. Miller and John H. Eby, Commissioners of the County of Dauphin, and D. Frank Lebo, Clerk of said Commissioners, and Harry C. Wells, Sheriff of the County of Dauphin.	Bill and demurrer filed; bill dismissed; affirmed by Supreme Court on appeal.
The Philadelphia School for Nurses, a corporation organized under the laws of the State of Pennsylvania, Plaintiff, vs. William S. Higbie, Albert E. Blackburn, Roberta M. West, Alice M. Seabrook, and Ida F. Giles, acting as and claiming to be the Pennsylvania State Board of Examiners for Registration of Nurses, Defendants.	Bill filed in Philadelphia county Pending.

SCHEDULE G.—Concluded.

LIST OF EQUITY CASES.

Name of Party.	Action Taken.
Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General, vs. Borough of Mars and J. A. Criswell, Burgess, and C. W. Crawford, O. W Fiske, John Dunlap, Warren Archer, J. J. Sherradin, A. C. Zeigler, and C. L. Norton, Defendants.	Bill and answer filed in Butler county. Decree entered sustaining the contention of the Commonwealth.
The Provident Life & Trust Company of Philadelphia, Complainant, vs. John H. Klemmer and H. Gilbert Cassidy, Assessors, and Simon Gratz, D. Newlin Fell, Jr., and John Wesley Durham, Members of the Board of Revision of Taxes of the City and County of Philadelphia, Respondents.	Bill and answer filed in Philadelphia county. Pending.
Commonwealth of Pennsylvania, ex rel. John C. Bell, Attorney General, Plaintiff, vs. Borough of Tarentum and Henry Zimmerman, Burgess, Wm. H. Norris, et al, Members of the Council of said Borough of Tarentum, Defendants.	Bill and answer filed in Allegheny county. Pending.

SCHEDULE H.

QUO WARRANTO PROCEEDINGS.

Name of Party.	Action Taken.
The Keystone Guard,	Allowed. Decree of dissolution. Receiver.
The Keystone Guard,	Allowed. Proceedings discontinued.
Suburban Water Company of the village of Cranberry.	Allowed. Decree of ouster.
Manufacturers Electric Company, Reading, Pa.	Allowed. Decree of ouster.
Sharon Hill & Upper Darby Railway Company.	Allowed. Decree of ouster.
Prospect Park Railway Company,	Allowed. Decree of ouster.
Tinicum & Sharon Hill Railway Company.	Allowed. Decree of ouster.
German Trust Company of Pittsburgh,	Allowed. Decree of Dissolution.
The Reliance Safe Deposit & Trust Company of Pittsburgh.	Allowed. Suggestion and answer filed. Pending.
Interstate Trust Company of Philadelphia.	Allowed Decree of Dissolution.
Real Estate Trust Company of Franklin,	
Business Men's Co-operative Banking Association of Philadelphia.	Allowed. Proceedings discontinued.
State Insurance and Trust Company of Philadelphia.	Allowed. Proceedings discontinued.
Paulton Water Company,	Allowed. Decree of ouster.
Hyde Park Water Company,	Allowed. Decree of ouster.
Allegheny Township Water Company,	Allowed. Decree of ouster.
Business Men's Co-operative Banking Association of Philadelphia.	Allowed. Decree of Dissolution.
Eastvale Water Company,	Allowed. Pending.
Abington Water Company,	Allowed. Decree of ouster.
Albion Water Company,	Allowed. Decree of ouster.
Altamonte Water Supply Company,	Allowed. Decree of ouster.
Beaver Valley Water Company,	Allowed. Decree of ouster.
Bradenville Water Company,	Allowed. Decree of ouster.
Bright Run Water Company,	Allowed. Decree of ouster.
Buck Township Water Company,	Allowed. Decree of ouster.
Citizens Water Company of Hyndman,	Allowed. Decree of ouster.
Coalport Water Company,	Allowed. Decree of ouster.
Coal Centre Water Company,	Allowed. Decree of ouster.
California Water Company,	Allowed. Decree of ouster.
Cresson Water Company,	Allowed. Decree of ouster.
Cook Township Water Company,	Allowed. Pending.
Delaware Water Company,	Allowed. Pending.
Eastern Water Power Company,	Allowed. Decree of ouster.
8th Ward Water Company of Johnstown,	Allowed. Pending.
Falls Creek Water Company,	Allowed. Decree of ouster.
Fairview Water Company,	Allowed. Pending.
Forward Water Company,	Allowed. Decree of ouster.
Flat Rock Water Company,	Allowed. Decree of ouster.
Greencastle Water Company,	Allowed. Decree of ouster.
Glenn Water Company,	Allowed. Decree of ouster.
Iroquois Water & Power Company,	Allowed. Decree of ouster.
Lenap Water Supply Company,	Allowed. Decree of ouster.
Logansville Water Company,	Allowed. Decree of ouster.
Lilly Water Company,	Allowed. Decree of ouster.
Ligonier Township Water Company,	Allowed. Decree of ouster.
Mahantango Water Power Company,	Allowed. Decree of ouster.
Martin's Creek Water Supply Company,	Allowed. Decree of ouster.
Masontown Water Supply Company,	Allowed. Decree of ouster.
Monroe Township Water Company,	Allowed. Pending.
Northwestern Water Power Company,	Allowed. Pending.
New Hope Water Company,	Allowed. Decree of ouster.
New Berlin Water Company,	Allowed. Decree of ouster.

SCHEDULE H.—Continued.

QUO WARRANTO PROCEEDINGS.

Name of Party.	Action Taken.
New Cumberland Water Company, ...	Allowed. Decree of ouster.
Orbisonia Water Company, ...	Allowed. Decree of ouster.
Peoples Light Company, Turtle Creek,..	Allowed. Decree of ouster.
Pike Water Power Company, ...	Allowed. Decree of ouster.
Pleasant Gap Water Company, ...	Allowed. Pending.
Quaker City Water Company, ...	Allowed. Decree of ouster.
Ringtown Water Company, ...	Allowed. Decree of ouster.
Rutherglen Water Power Company, ...	Allowed. Decree of ouster.
Royalton Water Company, ...	Allowed. Decree of ouster.
Sand Run Water Company, ...	Allowed. Decree of ouster.
Saucon Springs Water Company, ...	Allowed. Decree of ouster.
Shavertown Water Company, ...	Allowed. Decree of ouster.
Sides Water Company, ...	Allowed. Decree of ouster.
Slippery Rock Water Company, ...	Allowed. Decree of ouster.
Stowe Water Company, ...	Allowed. Decree of ouster.
Standard Water Company, ...	Allowed. Decree of ouster.
Salisbury Water Company, ...	Allowed Decree of ouster.
Spragueville Water Supply Company, ..	Allowed. Decree of ouster.
South Abington Water Company.	Allowed. Decree of ouster.
Springs Run Water Company, ...	Allowed. Decree of ouster.
Tatamy Water Company, ...	Allowed. Decree of ouster.
Union Township Water Company of Union County.	Allowed. Decree of ouster.
Upper Darby Water Company, ...	Allowed. Decree of ouster.
Walnutport Water Company, ...	Allowed. Decree of ouster.
Watts Power & Water Company, ...	Allowed. Decree of ouster.
West Lansdale Improvement Water Company.	Allowed. Pending.
Willow Grove Water Company, ...	Allowed. Pending.
Wilmore Water Company, ...	Allowed. Decree of ouster.
Wyncote Water Company, ...	Allowed Decree of ouster.
Willow Grove Water Supply Company, ..	Allowed. Decree of ouster.
Chester & Rockdale Street Railway Company.	Allowed. Decree of ouster.
Ambridge Water Company, ...	Allowed. Decree of ouster.
Florida Water Company, ...	Allowed. Decree of ouster.
East End Water Company, ...	Allowed. Decree of ouster
Martic Water & Power Company, ...	Allowed. Decree of ouster.
Town Water Company, ...	Allowed. Decree of ouster.
Blair Water Power Company, ...	Allowed. Pending.
Carbondale Citizens Water Company, ..	Allowed. Decree of ouster.
Center Water Company, ...	Allowed Decree of ouster.
Clymer Water Company of White Township.	Allowed. Decree of ouster.
Deep Rock Water Company, ...	Allowed. Decree of ouster.
Trout Creek Water Supply Company, ..	Allowed. Decree of ouster.
Philadelphia & Eastern Railroad Company.	Allowed. Suggestion filed in Dauphin county. Pending.
Dempsey & Company, ...	Allowed. Suggestion filed in Dauphin county. Pending.
Eastern Provision Company, ...	Allowed. Pending.
Western Water Supply Company, ...	Allowed. Pending.
Turkeyfoot Water Company, ...	Allowed. Decree of ouster.
Bellevernon Bridge Company, ...	Allowed. Decree of ouster.
J. E. Shields, County Commissioner of Westmoreland county.	Allowed. Suggestion filed in Westmoreland county. Proceedings discontinued.
Bankers Corporation Company, ...	Allowed. Suggestion filed. Pending.
Vandergrift Coal Company, ...	Allowed. Decree of ouster.

SCHEDULE I.

PROCEEDINGS INSTITUTED AGAINST INSURANCE COMPANIES, BUILDING AND LOAN ASSOCIATIONS, BANKS AND TRUST COMPANIES.

Name.	Result.
Peoples Bank of Danville, ...	Dissolved. Receiver.
National Health and Accident Insurance Company.	Dissolved. Receiver.
Lehighton Building & Loan Association of Lehighton, Pa.	Dissolved. Receiver.
Lehighton Building & Loan Associaton No. 2 of Lehighton, Pa.	Dissolved. Receiver.
Twelfth Ward Union Building & Loan Association of Pittsburgh.	Dissolved. Receiver.
The Colonial Mutual Fire Insurance Company.	Dissolved.
Schuylkill Mutual Fire Insurance Company.	Dissolved.
The Integrity Mutual Fire Insurance Company.	Dissolved.
The Fairmount Mutual Fire Insurance Company.	Dissolved.
The Imperial Mutual Fire Insurance Company.	Dissolved.
The Metropolitan Mutual Fire Insurance Company.	Dissolved.
The Columbia Mutual Fire Insurance Company.	Dissolved.
The George Washington Mutual Fire Insurance Company.	Dissolved.
The Loyal Mutual Fire Insurance Company.	Dissolved.
The Peoples Mutual Fire Insurance Company.	Dissolved.
The Mercantile Mutual Fire Insurance Company.	Dissolved.
Tradesmens Trust Company of Philadelphia.	Dissolved. Receiver.
Eureka Manufacturers Mutual Fire Insurance Company, of Indiana Pa.	Dissolved.
Invincible Building & Loan Association of Philadelphia.	Dissolved.
William Penn Fire Insurance Company,	Dissolved.
Independent Order Sons of Jacob, ...	Dissolved.
Consolidated Mutual Fire Insurance Company.	Dissolved.
Modern Protective Association, (Sayre),	Allowed. Dissolved.
Citizens Life Insurance Company of America.	Decree of dissolution.
American Fraternal Association, ...	Dissolved.
Tri-County Banking Company, ...	Proceedings dismissed.
Fort Pitt Fire Insurance Company of Pittsburgh.	Sheriff's return N. E. I.
Flood City Mutual Fire Insurance Company.	Dissolved.
Lahaska Insurance Company, ...	Dissolved.
People's Health & Accident Insurance Company of Philadelphia.	Dissolved.

SCHEDULE J.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
1911			
Jan. 3,	Philadelphia Coach Material Company:		
	Interest on capital stock, 1908,	$3 79	
	Fees of office,	2 25	
			$6 04
3,	Keystone Indemnity Company:		
	Capital stock, 1904,	$40 11	
			40 11
3,	James H. Worden, Prothonotary, docket costs, $3 each in 119 cases adjusted since November 15, 1910,		357 00
4,	Black Creek Improvement Company:		
	Capital stock, 1909,	$250 00	
	Fees of office,	12 50	
			262 50
5,	Atlantic Portland Cement Company of Pennsylvania:		
	Capital stock, 1907,	$100 00	
	Loans, 1907,	100 20	
	Fees of office,	10 57	
			210 71
5,	Fall Brook Coal Company:		
	Capital stock, 1909,	$950 00	
	Fees of office,	47 50	
			997 50
5,	Philadelphia & Western Railway Company:		
	Capital stock, 1909,	$150 00	
	Fees of office,	7 50	
			157 50
5,	United Gas Improvement Company:		
	Capital stock, 1909,	$5,000 00	
	Fees of office,	250 00	
			5,250 00
5,	Bethlehem Steel Company:		
	Loans, 1909,	$4,850 00	
	Fees of office,	242 50	
			5,092 50
6,	Dunmore Gas & Water Company:		
	Capital stock, 1909,	$530 00	
	Fees of office,	26 50	
			556 50
6,	Dickson City Water Company:		
	Capital stock, 1909,	$175 00	
	Fees of office,	8 75	
			183 75
6,	Olyphant Water Company:		
	Capital stock, 1909,	$525 00	
	Fees of office,	26 25	
			551 25
6,	Archbald Water Company:		
	Capital stock, 1909,	$400 00	
	Fees of office,	20 00	
			420 00
9,	Monongahela Valley Telephone Company:		
	Capital stock, 1906-07-08,		82 50
9,	Real Estate Trust Company of Philadelphia:		
	Tax on shares to June 20, 1907,	$15,769 03	
	Fees of office,	500 00	
			16,269 03
9,	Bethlehem Steel Company:		
	Capital stock, 1909,	$53 20	
	Fees of office,	2 66	
			55 86
9,	Delaware & Hudson Company:		
	Capital stock, 1909,	$500 00	
	Fees of office,	25 00	
			525 00

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
9,	Lehigh Coal & Navigation Company:		
	Capital stock, 1909,	$13,750 00	
	Fees of office,	687 50	
			14 437 50
9,	James Brothers Lumber Company:		
	Capital stock, 1906 to 1907, incorporated.		
	Balance,	$947 89	
	Interest,	375 47	
	Fees of office,	147 98	
			1,471 34
10,	Monongahela Valley Telephone Company:		
	Capital stock, 1906-07-08,		
	Fees of office,	4 12	
			4 12
10,	Bell Telephone Company of Pennsylvania:		
	Capital stock, 1909,	$28,500 00	
	Fees of office,	962 50	
			29,462 50
10,	Pennsylvania Coal & Coke Company:		
	Capital stock, 1908,	$500 00	
	Fees of office,	25 00	
			525 00
	Capital stock, 1909,	500 00	
	Fees of office,	25 00	
			525 00
	Loans, 1908,	53 33	
	Fees of office,	3 15	
			66 49
10,	Coxe Brothers & Company, Incorporated:		
	Capital stock, 1909,	$2,250 00	
	Fees of office,	112 50	
			2,362 50
10,	Estate of Sara C. Woodruff, for maintenance of said decedent who was an alleged indigent patient in the Hospital for the Insane at Danville,		375 43
10,	Amount of money restored to the State Treasury pursuant to decree entered against H. Burd Cassel, et al.,		200,000 00
10,	Amount of meny restored to the State Treasury pursuant to a decree entered against Frank G. Harris, et al.,		1,100,000 00
12.	American Ice Company of New Jersey:		
	Capital stock, 1909,	$500 00	
	Fees of office,	25 00	
			525 00
13,	Alden Coal Company:		
	Capital stock, 1909,	$375 00	
	Fees of office,	18 75	
			393 75
16,	Mortgage Trust Company of Pennsylvania:		
	Taxes on shares, 1908,	$2,500 00	
	Fees of office,	125 00	
			2,625 00
17,	Beech Creek Railroad Company:		
	Capital stock, 1909,	$3,525 00	
	Fees of office,	176 25	
			3,701 25
	Loans, 1909,	50 00	
	Fees of office,	2 50	
			52 50
17,	Beech Creek Extension Railroad Company:		
	Loans, 1909,	$133 00	
	Fees of office,	6 65	
			139 65
17,	Geneva, Corning & Southern Railroad Company:		
	Capital stock, 1909,	$500 00	
	Fees of office,	25 00	
			525 00

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year	Name.		Amount.
17,	Columbus & Erie Railroad Company:		
	Capital stock, 1909,	$350 00	
	Fees of office,	17 50	
			367 50
			1,388,587 28
18,	New York & Middle Coal Field Railroad and Coal Company:		
	Capital stock, 1909,	$1,000 00	
	Fees of office,	50 00	
			1,050 00
19,	Delaware & Schuylkill Railroad Company:		
	Capital stock, 1909,	$1,500 00	
	Fees of office,	75 00	
			1,575 00
23,	Mutual Benefit Telephone Company:		
	Interest on capital stock, 1905 and 1906,	$3 09	
	Interest on gross receipts, 1906, to Dec. 31,	1 81	
			4 90
	Fees of office,		4 08
23,	Montgomery Cemetery Company:		
	Capital stock, 1907 and 08,	$110 00	
	Interest,	1 57	
	Fees of office,	5 50	
			117 07
23,	Sheppard & Myers Company:		
	Interest on $250.00,	$12 50	
	Fees of office, on account,	12 50	
			25 00
24,	Huntingdon & Broad Top Mountain Railroad & Coal Company:		
	Capital stock, 1909,	$500 00	
	Fees of office,	25 00	
			525 00
	Loans, 1909,	$16 87	
	Fees of office,	84	
			17 71
26,	York Haven Water & Power Company:		
	Loans, 1909,	$3,675 00	
	Fees of office,	183 75	
			3,858 75
	Capital stock, 1909,	1,500 00	
	Fees of office,	75 00	
			1,575 00
30,	Land Security Company:		
	Capital stock, 1907,	$5 00	
	Capital stock, 1908,	5 00	
	Capital stock, 1909,	5 00	
	Fees of office,	75	
			15 75
Feb. 7,	McKean Coal Company:		
	Capital stock, 1907-08,	$231 00	
	Interest,	13 86	
	Fees of office,	11 55	
			256 41
8,	Midland Realty Company:		
	On account loans, 1908,		200 00
9,	Halifax Water Company:		
	Interest on capital stock, 1906-07,	$2 92	
	Interest on loans, 1906-07,	11 12	
			14 04
	Fees of office,		7 20
10,	Merritt & Company:		
	Loans, 1898,	$2 11	
	Loans, 1899,	15 20	
	Loans, 1900,	7 60	
	Loans, 1905,	1 16	

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
	Loans, 1906,	19 29	
	Loans, 1907,	30 88	
	Interest,	6 25	
			82 49
20,	Moshameon Coal Mining Company:		
	Commission on $35.00 on account of capital stock tax, 1908,		
	Commission on $410.09 Loans, 1908,		39 25
20,	The Pittsburgh Company:		
	Interest on capital stock tax, 1898 to 1907, ..	$1,100 96	
	Interest on loans, 1906-07,	53 19	
	Fees of office,	357 14	
			1,511 29
20,	Saxonburg Mineral Springs Company:		
	Fees of office,		9 71
21,	Keystone Indemnity Company:		
	Capital stock, 1905,		68 75
21,	Delaware, Lackawanna & Western Railroad Company:		
	Capital stock, 1909,	$25,000 00	
	Fees of office,	850 00	
			25,850 00
21,	Central Railroad Company of Pennsylvania:		
	Capital stock, 1890 and 91,	$16 00	
	Gross receipts, 6 months ending June 30, 1910,	363 53	
			379 53
27,	West End Land Company:		
	Interest on capital stock, 1905 to 1908, incorporated,	$73 42	
	Interest on loans, 1905-1908, incorporated,	29 41	
			102 83
27,	Great Lakes Coal Company:		
	Fees of office,	$396 71	
	Interest on capital stock, 1908,		
	Interest on loans, 1908,	69 27	
	Balance,		
			465 98
28,	Verstine, Hibbard & Company:		
	Capital stock, 1908,	$314 00	
	Loans, 1906,	19 00	
	Interest,	23 01	
	Fees of office,	32 90	
			388 91
Mar. 2,	Lukens Iron & Steel Company:		
	Capital stock, 1909,	$140 00	
	Fees of office,	7 00	
			147 00
3,	Williamsport & North Branch Railroad Company:		
	Interest on capital stock, 1908,	$32 88	
	Interest on loans, 1908,	6 75	
	Interest on gross receipts, 1908 and 1909, ..	80 61	
	Fees of office,	120 81	
			241 05
6,	Glen Olden Real Estate & Improvement Company:		
	Capital stock, 1905-06-07-08,	$22 00	
	Interest,	1 15	
	Fees of office,	1 10	
			24 25
6,	Bridgeville Lumber & Supply Company:		
	Capital stock, 1909,	$165 00	
	Interest,	68	
			165 68
7,	Verstine, Hibbard & Company:		
	Capital stock, 1909,		396 00

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
7,	West End Land Company:		
	Capital stock, 1909,	$375 00	
	Loans, 1909,	81 48	
	Interest,	7 53	
			464 01
13,	Filbert Paving and Construction Company:		
	Capital stock, 1906,	$226 13	
	Interest,	39 42	
	Fees of office,	11 31	
			276 86
14,	James H. Worden, Prothonotary, docket costs in Commonwealth cases adjusted since January 4, 1911,		161 50
14,	Newport & Shermans Valley Railroad Company:		
	Interest on gross receipts, 1903, balance, ..	$7 91	
	Interest on gross receipts, 1904, on account,	42 09	
			50 00
15,	Colorado Coal Mining Company:		
	Interest on capital stock, 1904,	$6 35	
	Interest on capital stock, 1905,	6 35	
	Interest on capital stock, 1906,	5 89	
	Interest on capital stock, 1907,	3 92	
	Interest on capital stock, 1908,	2 35	
			24 86
	Capital stock, 1909,	$25 00	
	Interest,	60	
			25 60
15,	Lake Ladore Improvement Company:		
	Capital stock, 1907-08,	$220 00	
	Loans, 1907-08,	380 00	
			600 00
16,	Tripp Farm Land Company:		
	Capital stock, 1909,		6 60
16,	Dupont Land Company:		
	Capital stock, 1909,	$3,522 00	
	Interest,	75 73	
	Loans, 1909,	1,631 52	
	Interest,	35 94	
			5,265 19
16,	Cambria County Telephone & Telegraph Company:		
	Capital stock, 1908,	$50 00	
	Capital stock, 1909,	55 00	
	Capital stock, 1910,	29 17	
	Loans, 1908,	38 00	
	Loans, 1909,	44 00	
	Loans, 1910,	16 67	
			232 84
20,	Verstine, Hibbard & Company:		
	Interest on capital stock, 1909,		1 19
22,	Lake Ladore Improvement Company:		
	Fees of office,		30
22,	Cambria County Telephone & Telegraph Company:		
	Interest on capital stock, 1908,	$1 86	
	Interest on capital stock, 1909,	2 05	
	Interest on capital stock, 1910,	1 09	
	Interest on loans, 1908,	1 41	
	Interest on loans, 1909,	1 64	
	Interest on loans, 1910,	62	
			8 67
24,	Avis Land Company:		
	Capital stock, 1906-07-08,	$825 00	
	Interest,	56 10	
	Capital stock, 1909,	44 00	
	Interest,	43	
	Loans, 1906, 07, 08,	102 96	
	Interest,	7 00	
			1,035 49

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
29,	Equity Coal & Coke Company:		
	Capital stock, 1907,	$150 00	
	Interest,	14 25	
	Capital stock, 1908, on account,	17 25	
			181 50
31,	Pottstown & Reading Street Railway Company:		
	Capital stock, 1909,		25 00
April 3,	Charles H. Thompson, Incorporated:		
	Capital stock, 1907, 08,	$88 00	
	Capital stock, 1909,	53 90	
			141 90
3,	Reading Iron Works:		
	Bonus on interest,	$333 34	
	Bonus on increase,	176 66	
			510 00
7,	Schuylkill & Dauphin Traction Company:		
	Capital stock, 1909,	$125 00	
	Loans, 1909,	725 04	
	Gross receipts to June 30, 1910,	104 02	
	Interest on capital stock, on account,	2 26	
			956 32
10,	Continental Brewing Company:		
	Capital stock, 1908,	$1,000 00	
	Interest,	65 68	
	Capital stock, 1909,	1,210 00	
	Interest,	11 87	
	Loans, 1908,	194 17	
	Loans, 1909,	244 20	
			2,725 92
11,	Anthracite Brewing Company:		
	Capital stock, 1909, balance,	$72 50	
	Interest,	15 00	
	Fees of office,	3 62	
			91 12
13,	Munroe & Sons Manufacturing Company:		
	Interest on loans, 1904, 5, 6,		2 99
13,	Lackawanna Land Company:		
	Capital stock, 1909,	$425 00	
	Interest,	18 59	
			443 59
18,	Indianola Coal Company:		
	Capital stock, 1909,	$875 00	
	Interest,	10 50	
			885 50
18,	Continental Brewing Company:		
	Capital stock, 1908,	$1,000 00	
	Interest,	23 50	
	Capital stock, 1909,	1,200 00	
	Interest,	9 68	
	Loans, 1908,	194 17	
	Interest,	4 56	
	Loans, 1909,	244 20	
	Interest,	1 95	
			2,688 06
18,	Carbo Smokeless Coal Company:		
	Capital stock, 1907,	$5 73	
	Capital stock, 1908,	100 00	
	Capital stock, 1909,	100 00	
	Loans, 1909,	47 50	
			253 23

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
May 1,	Glen Olden Real Estate and Improvement Company:		
	Capital stock, 1909,	$5 50	
	Interest,	09	
	Fees of office,	27	
			5 86
2,	Pittsburgh, Bessemer & Lake Erie Railroad Company:		
	Capital stock, 1907,		2,045 70
3,	Imperial Realty Company:		
	Capital stock, 1907,	$143 00	
	Capital stock, 1908,	143 00	
			286 00
5,	Chestnut Ridge Coal Company:		
	Loans, 1905,		186 20
8,	Franklin Homestead Loan & Trust Company:		
	Capital stock, 1903,	$25 00	
	Interest,	1 12	
	Capital stock, 1904,	5 00	
	Interest,	22	
	Capital stock, 1905 to 1909, incorporated,	33 00	
	Interest,	57	
	Fees of office,	3 15	
			68 06
8,	Citizens Water Company of Confluence:		
	Capital stock, 1909,	$124 00	
	Loans, 1909,	5 70	
			129 70
8,	Lake Shore & Michigan Southern Railway Company:		
	Loans, 1908,		4,407 73
10,	Citizens Water Company of Confluence:		
	Interest on capital stock, 1909,	$5 87	
	Interest on loans, 1909,	27	
	Fees of office,	9 63	
			15 77
11,	Pittsburgh Hardwood Door Company:		
	Capital stock, 1909,	$115 50	
	Interest,	1 72	
			117 22
11,	Pennsylvania Land Improvement Company:		
	Capital stock, 1908,	$29 39	
	Capital stock, 1909,	95 20	
	Loans, 1909,	186 96	
			311 55
15,	Side Real Estate Company:		
	Capital stock, 1907-08,		110 00
15,	Imperial Company:		
	Capital stock, 1909,		123 72
18,	Pennsylvania Land Improvement Company:		
	Capital stock, 1908,	$29 39	
	Capital stock, 1909,	95 20	
	Loans, 1909,	186 96	
			311 55
18,	Kittanning & Leechburg Railways Company:		
	Loans, 1909,		104 50
19,	Labor Brewing Company:		
	Capital stock, 1909,	$1,375 00	
	Interest,	92 13	
			1,467 13

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
22,	Cumren Township Electric Light, Heat & Power Company:		
	Capital stock, 1908,	$27 50	
	Capital stock, 1909,	30 25	
	Interest,	4 74	
	Gross receipts (12 months), 1907,	35 20	
	Gross receipts (6 months) to Dec. 31, 1908,	17 60	
	Gross receipts (6 months) to June 30, 1909,	17 60	
	Gross receipts (6 months) to Dec. 31, 1909,	22 00	
	Gross receipts (6 months) to June 30, 1910,	22 00	
	Interest,	5 40	
	Fees of office,	8 60	
			190 89
22,	Oakmont Land & Improvement Company:		
	Capital stock, 1908,	$196 00	
	Capital stock, 1909,	196 00	
	Interest,	21 90	
			413 90
22,	North Side Real Estate Company:		
	Capital stock, 1907, 08, interest,		8 50
22,	R. W. Jenkinson Company:		
	Capital stock, 1903,	$429 00	
	Capital stock, 1905,	429 00	
	Capital stock, 1906,	429 00	
	Capital stock, 1907,	429 00	
	Capital stock, 1908,	429 00	
	Capital stock 1909,	506 00	
	Interest,	128 59	
	Fees of office,	132 55	
			2,912 14
22,	Pennsylvania Land Improvement Company:		
	Interest on capital stock, 1908, 09,	$5 47	
	Interest on loans, 1909,	5 69	
			11 16
22,	John Wood Manufacturing Company:		
	Loans, 1907,	$136 40	
	Loans, 1908,	136 40	
			272 80
23,	Danville & Bloomsburg Street Railway Company:		
	Loans, 1909,	$133 00	
	Fees of office,	6 65	
			139 65
23,	United Gas and Electric Company of Bloomsburg:		
	Capital stock, 1909,	$55 00	
	Fees of office,	2 75	
			57 75
23,	Ligonier Electric Light Company:		
	Capital stock, 1908,	$58 85	
	Capital stock, 1909,	58 85	
	Interest,	3 24	
	Gross receipts (6 months) to June 30, 1909,	45 76	
	Gross receipts (6 months) to June 30, 1907,	45 76	
	Interest,	2 53	
			214 99
24,	John Wood Manufacturing Company:		
	Interest on loans, 1907-08,	$14 08	
	Fees of office,	13 64	
			27 72
24,	Catasauqua Castings Company:		
	Capital stock, 1909,	$112 75	
	Interest,	1 86	
	Fees of office,	5 63	
			120 24

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
26,	Hirsch, Baskin Company:		
	Capital stock, 1908,	$105 00	
	Capital stock, 1909,	105 00	
	Loans, 1908,	7 60	
	Loans, 1909,	11 40	
	Interest on capital stock,	5 19	
	Interest on loans,	54	
	Fees of office,	11 45	
			246 18
29,	Midland Realty Company:		
	Loans, 1908, balance,	$150 00	
	Interest,	99 10	
	Interest on capital stock, 1907-08,	1 49	
	Interest on loans, 1907,	18 13	
			268 72
29,	Joseph Heacock Company:		
	Capital stock, 1907,	$275 00	
	Capital stock, 1908,	275 00	
	Interest on capital stock, 1909,	250 00	
	Interest on capital stock, 1907, 1908, 1909,	37 50	
	Loans, 1907,	11 40	
	Loans, 1908,	11 40	
	Loans, 1909,	81 70	
	Interest,	10 30	
			952 30
29,	Middletown Telephone Company:		
	Capital stock, 1909,	$35 75	
	Interest,	1 31	
	Loans, 1909,	87 12	
	Interest,	2 38	
			126 56
June 1,	Carlisle Gas & Water Company:		
	Loans, 1907-8,	$142 54	
	Fees of office,	7 13	
			149 67
	Gross receipts, 1908, (12 months), 1909, to June 30,	$169 96	
	Fees of office,	8 50	
			178 46
	Gross receipts, 1909, to Dec. 31,	79 04	
	Fees of office,	3 95	
			82 99
	Loans, 1909,	76 38	
	Fees of office,	3 82	
			80 20
2,	L. B. Wood Company:		
	Capital stock, 1907,	$412 50	
	Capital stock, 1908,	412 50	
	Capital stock, 1909,	467 50	
	Loans, 1906,	79 20	
	Loans, 1907,	79 20	
	Loans, 1908,	79 20	
	Loans, 1909,	94 60	
			1,624 70
6,	Pennsylvania Bridge Company:		
	Capital stock, 1906-7-8-9,	$660 00	
	Interest,	11 65	
			671 65
6,	Mingo Coal Company:		
	Capital stock, 1909,	$100 00	
	Fees of office,	5 00	
			105 00
6,	Carnegie Natural Gas Company:		
	Capital stock, 1909,	$343 75	
	Fees of office,	17 18	
			360 93

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
6,	Carnegie Land Company:		
	Capital stock, 1909,	$500 00	
	Fees of office,	25 00	
			525 00
6,	Clairton Land Company:		
	Capital stock, 1909,	$175 00	
	Fees of office,	8 75	
			183 75
12,	Olyphant Coal Company:		
	Capital stock, 1908,	$55 00	
	Interest,	4 40	
	Capital stock, 1909,	50 00	
	Interest,	1 50	
			110 90
12,	L. B. Wood Company:		
	Interest on capital stock, 1907-8-9,	$46 43	
	Interest on loans, 1906-7-8-9,	9 04	
			55 47
13,	H. C. Frick Coke Company:		
	Capital stock, 1909,	$17,004 05	
	Fees of office,	500 00	
			17,504 05
	Loans, 1909,	87 76	
	Fees of office,	4 38	
			92 14
13,	Republic Connellsville Coke Company:		
	Capital stock, 1909,	$1,332 09	
	Fees of office,	66 60	
			1,398 69
14,	National Mining Company:		
	Capital stock, 1909,	$500 00	
	Fees of office,	25 00	
			525 00
15,	Monongahela Southern Railroad Company:		
	Capital stock, 1909,	$800 00	
	Fees of office,	40 00	
			840 00
16,	Park Refreshment Company:		
	Capital stock, 1907,	$27 50	
	Capital stock, 1908,	27 50	
	Capital stock, 1909,	35 75	
	Capital stock, 1910,	32 50	
	On account interest,	1 75	
			125 00
16,	A. W. Wycoff Company:		
	Capital stock, 1907,	$92 40	
	Interest,	5 54	
			97 94
16,	Meadville, Conneaut Lake & Luiesville Railroad Company:		
	Capital stock, 1909,	$107 50	
	Interest,	5 37	
			112 87
20,	Sharon Coke Company:		
	Capital stock 1909,	$320 42	
	Fees of office,	16 02	
			336 44
20,	Union Steel Company:		
	Capital stock, 1909,	$127 50	
	Fees of office,	6 37	
			133 87

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
22,	McKeesport Times Company:		
	Capital stock, 1907,	$88 00	
	Capital stock, 1909,	104 50	
	Loans, 1907,	30 80	
	Loans, 1908,	30 80	
	Loans, 1909,	37 40	
			291 50
22,	Carlisle & Mt. Holly Railroad Company:		
	Interest on capital stock, 1906,	$2 00	
	Interest on loans tax, 1906,	7 60	
			9 60
23,	Oakdale & McDonald Street Railway Company:		
	Capital stock, 1909,	$104 50	
	Interest,	2 61	
	Gross receipts to Dec. 31, 1909,	79 20	
	Gross receipts, to June 30, 1910,	79 20	
	Interest,	3 96	
			269 47
26,	Maple Hill Land Company:		
	Capital stock, 1909,	$107 25	
	Interest,	2 78	
	Loans, 1908,	19 36	
	Loans, 1909,	19 36	
	Interest,	62	
	Fees of office,	7 29	
			156 66
27,	Black Creek Coal Company:		
	Loans, 1910,	$7 00	
	Fees of office,	35	
			7 35
27,	Commonwealth Trust Company:		
	Tax on shares, 1907, to June 20,	$2,577 46	
	Fees of office,	128 87	
			2,706 33
28,	North Pittsburgh Telephone Company:		
	Capital stock, 1907,	$60 50	
	Balance on capital stock, 1908,	2 15	
	Capital stock, 1909,	60 50	
	Loans, 1907,	3 30	
	Loans, 1909,	3 30	
	Gross receipts, June 30, 1907,	17 16	
	Gross receipts, Dec. 31, 1907,	17 16	
	Gross receipts, Dec. 31, 1908,	15 84	
	Gross receipts, June 30, 1909,	15 84	
	Gross receipts, June 30, 1910,	17 16	
	Gross receipts, Dec. 31, 1909,	17 16	
			230 07
29,	Park Refreshment Company:		
	Balance on capital stock,		2 68
29,	Real Estate Holding Company:		
	Capital stock, 1909,	$25 00	
	Fees of office,	1 25	
			26 25
29,	National Tube Company of New Jersey:		
	Capital stock, 1909,	$80 00	
	Fees of office,	4 00	
			84 00
29,	E. P. Wilbur Trust Company:		
	Tax on shares, 1907,	$3,190 04	
	Fees of office,	159 50	
			3,349 54
29,	Coudersport & Port Allegheny Railroad Company:		
	Capital stock, 1909,	$50 00	
	Fees of office,	2 50	
			52 50

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
29,	Harrisburg Gas Company:		
	Loans, 1909,	$718 20	
	Fees of office,	35 91	
			754 11
29,	Chester County Gas Company:		
	Loans, 1909,	$273 60	
	Fees of office,	13 68	
			287 28
29,	Keystone Watch Case Company:		
	Loans, 1909,	$1,467 50	
	Fees of office,	73 37	
			1,540 87
	Loans, 1908,	1,266 00	
	Fees of office,	63 30	
			1,329 30
29,	Dauphin County Gas Company:		
	Loans, 1909,	$151 60	
	Fees of office,	7 58	
			159 18
29,	Nescopec Coal Company:		
	Capital stock, 1909,	$500 00	
	Fees of office,	25 00	
			525 00
29,	Keystone Coal & Coke Company:		
	Loans, 1909,	$429 08	
	Fees of office,	21 45	
			450 53
29,	The Equitable Illuminating Gas Light Company of Philadelphia:		
	Loans, 1909,	$2,457 40	
	Fees of office,	122 87	
			2,580 27
29,	American District Telegraph Company:		
	Capital stock, 1910,	$912 50	
	Fees of office,	45 62	
			958 12
29,	Investment Trust Company:		
	Taxes on shares, 1907,	$479 16	
	Fees of office,	23 95	
			503 11
29,	Standard Real Estate Improvement Company:		
	Loans, 1909,	$314 92	
	Fees of office,	15 75	
			330 67
29,	Midvalley Coal Company:		
	Capital stock, 1909,	$700 00	
	Fees of office,	35 00	
			735 00
30,	Keystone Land Company:		
	Capital stock, 1909,	$225 00	
	Fees of office,	7 60	
	Interest on capital stock,	8 10	
	Interest on loans,	27	
	Fees of office,	11 63	
			252 60
30,	Clearfield Bituminous Coal Corporations:		
	Loans, 1909,	$167 96	
	Fees of office,	8 39	
			176 35
30,	Harbison Walker Company:		
	Loans, 1909,	$615 32	
	Fees of office,	30 77	
			646 09

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
30,	Harbison Walker Refractories Company:		
	Loans, 1909,	$898 10	
	Fees of office,	44 90	
			943 00
July 3,	Columbia Coal Mining Company:		
	Loans, 1909,	$135 78	
	Fees of office,	6 78	
			142 56
3,	Henriette Coal Mining Company:		
	Loans, 1909,	$31 66	
	Fees of office,	1 58	
			33 24
3,	Latrobe Coal Company:		
	Loans, 1909,	$138 70	
	Fees of office,	6 93	
			145 63
3,	Central Railroad Company of New Jersey:		
	Capital stock, 1909,	$1,125 00	
	Fees of office,	56 25	
			1,181 25
3,	Lehigh New England Railroad Company:		
	Capital stock, 1909,	$1,000 00	
	Fees of office,	50 00	
			1,050 00
	Loans, 1909,	4 70	
	Fees of office,	23	
			4 93
3,	Schuylkill Coal & Iron Company:		
	Capital stock, 1909,	$285 00	
	Fees of office,	14 25	
			299 25
3,	N. Z. Graves Company:		
	Capital stock, 1909,	$327 44	
	Fees of office,	16 37	
			343 81
3,	Lehigh & Wilkes-Barre Coal Company:		
	Capital stock, 1909,	$12,192 50	
	Fees of office,	500 00	
			12,692 50
3,	Jeannette Planing Mill Company:		
	Capital stock, 1905,	$25 00	
	Capital stock, 1906,	25 00	
	Capital stock, 1907,	35 75	
	Capital stock, 1908,	30 78	
	Interest,	4 06	
	Fees of office,	5 83	
			126 42
5,	Lehighton Water Supply Company:		
	Loans, 1909,	$536 75	
	Fees of office,	26 84	
			563 59
5,	Tionesta Valley Railway Company:		
	Capital stock, 1909,	$500 00	
	Fees of office,	25 00	
			525 00
5,	Edison Electric Light Company of Philadelphia:		
	Capital stock, 1909,	$2,218 00	
	Fees of office,	110 90	
			2,328 90
5,	Union Steel Company:		
	Loans, 1909,	$1,162 00	
	Fees of office,	58 10	
			1,220 10

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
5,	St. Clair Terminal Railroad Company:		
	Capital stock, 1909,	$1,250 00	
	Fees of office,	62 50	
			1,312 50
6,	Chestnut Ridge Coal Company:		
	Loans, 1906,		148 20
6,	Metropolitan Electric Company:		
	Loans, 1909,	$78 65	
	Fees of office,	3 93	
			82 58
6,	Clinton Iron & Steel Company:		
	Loans, 1908,	$380 00	
	Fees of office,	19 00	
			399 00
7,	Easton, Pa., Railways Company:		
	Loans, 1909,	$32 75	
	Fees of office,	1 64	
			34 39
7,	Keystone Telephone Company:		
	Capital stock, 1909,	$250 00	
	Fees of office,	12 50	
			262 50
	Loans, 1909,	$1,310 62	
	Fees of office,	65 53	
			1,376 15
7,	Pennsylvania Light & Power Company:		
	Capital stock, 1909,	$564 25	
	Fees of office,	28 21	
			592 46
10,	Bath Portland Cement Company:		
	Capital stock, 1908,	$390 50	
	Interest,	23 43	
	Capital stock, 1909,	390 50	
	Interest,	24 01	
	Loans, 1908,	990 00	
	Interest,	59 40	
	Loans, 1909,	990 00	
	Interest,	60 88	
			2,928 72
10,	Farmers & Mechanics Trust Company, West Chester:		
	Shares, 1907,	$193 27	
	Fees of office,	9 66	
			202 93
11,	Finance Company of Pennsylvania:		
	Tax on shares, 1907,	2,169 00	
	Fees of office,	108 45	
			2,277 45
11,	Wilkes-Barre, Dallas & Harvey's Lake Railway Company:		
	Loans, 1909,	$186 20	
	Fees of office,	9 31	
			195 51
11,	Wilkes-Barre & Wyoming Valley Traction Company:		
	Loans, 1909,	$680 79	
	Fees of office,	34 04	
			714 83
11,	Lebanon Valley Street Railway:		
	Loans, 1909,	$794 20	
	Fees of office,	39 71	
			833 91
12,	Johnstown Water Company:		
	Capital stock, 1909,	$125 00	
	Fees of office,	6 25	
			131 25

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
12,	Allentown Gas Company:		
	Loans, 1909,	$475 00	
	Fees of office,	23 75	
			498 75
	Loans, 1910,	$570 00	
	Fees of office,	28 50	
			598 50
12,	Lake Shore & Michigan Southern Railway Company:		
	Loans, 1909,	$852 00	
	Fees of office,	42 60	
			894 60
12,	International Navigation Company:		
	Capital stock, 1909,	$500 00	
	Fees of office,	25 00	
			525 00
13,	Buffalo & Lake Erie Traction Company:		
	Capital stock, 1909,	$950 00	
	Fees of office,	47 50	
			997 50
14,	F. A. Poth & Sons, Incorporated:		
	Capital stock, 1909,	$750 00	
	Fees of office,	37 50	
			787 50
17,	New York, Chicago & St. Louis Railroad Company:		
	Loans, 1909,	$3 80	
	Fees of office,	19	
			3 99
17,	James H. Worden, Prothonotary, docket costs adjusted in in Commonwealth cases since Mar. 14, 1911,		333 50
17,	Keystone Indemnity Company:		
	Capital stock, 1906,		68 75
17,	West Pittsburgh Realty Company:		
	Capital stock, 1907,	$5 00	
	Fees of office,	25	
			5 25
19,	Northern Electric Street Railway Company:		
	Loans, 1909,	$1,388 38	
	Fees of office,	69 42	
			1,457 80
19,	Disston Water Company:		
	Capital stock, 1909,	$100 00	
	Fees of office,	5 00	
			105 00
19,	Excelsior Brick & Stone Company:		
	Capital stock, 1908,		1,875 00
24,	Parsons Silk Throwing Company:		
	Loans, 1907,	$26 60	
	Loans, 1908,	26 60	
	Loans, 1909,	35 20	
	Interest on account,	1 58	
	Fees of office,	4 42	
			94 40
25,	Lewisburg, Milton & Watsontown Passenger Railway Company:		
	Capital stock, 1908,	$85 00	
	Fees of office,	4 25	
			89 25
26,	Manheim & Mt. Joy Electric Light Company:		
	Balance gross receipts, 1907, to June 30,	$5 03	
	Gross receipts to Dec. 31, 07,	24 06	
	Gross receipts to June 30, 08,	28 37	
	Gross receipts to Dec. 31, 08,	28 37	
	Gross receipts to June 30, 09,	32 00	
	Gross receipts to Dec. 31, 09,	24 89	
			142 72
	Interest,		17 18

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
31,	Temple Theatre Company:		
	Capital stock, 1906,	$165 00	
	Capital stock, 1907,	165 00	
	Capital stock, 1908,	165 00	
	Loans, 1902,	36 08	
	Loans, 1903,	36 08	
	Loans, 1904,	36 08	
	Loans, 1905,	36 08	
	Loans, 1906,	36 08	
	Loans, 1907,	36 08	
	Loans, 1908,	36 08	
			747 56
31,	Dunkirk, Allegheny Valley & Pittsburgh Railroad Company:		
	Capital stock, 1909,	$405 00	
	Fees of office,	20 25	
			425 25
31,	Johnston Theatre Company:		
	Capital stock, 1907,	$203 52	
	Loans, 1907,	22 17	
	Loans, 1908,	141 70	
	Fees of office,	18 37	
	Less credit settlement,	60 25	
			446 01
Aug. 1,	Adena Mining Company:		
	Interest on capital stock, 1908,	$5 50	
	Interest on capital stock, 1909,	5 50	
			11 00
2,	Temple Theatre Company:		
	Interest in full,		53 50
11,	Manheim & Mt. Joy Electric Light Company:		
	Fees of office,		12 13
11,	The Seddon Company:		
	Capital stock, 1908,	$16 50	
	Loans, 1908,	22 00	
			38 50
11,	The Independence Trust Company:		
	Bonus,		833 34
11,	Independence Trust Company:		
	Fees of office,		41 67
21,	Oakdale Land Improvement Company:		
	Loans, 1909,	$28 50	
	Capital stock, 1909,	103 12	
	Interest,	6 58	
			138 20
23,	Millener Drug Company:		
	Capital stock, 1909,	$198 00	
	Interest,	4 95	
	Fees of office,	9 90	
			212 85
25,	Pennsylvania & Maryland Street Railway Company:		
	Loans, 1909,	$324 90	
	Interest,	10 25	
	Fees of office,	16 24	
			351 39
31.	Black Diamond Distilling Company:		
	Capital stock, 1909,	$299 00	
	Interest,	13 45	
	Fees of office,	14 95	
			327 40

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
Sept. 1,	Johnson Brewing Company:		
	Capital stock, 1908,	$331 02	
	Interest,	17 98	
	Capital stock, 1908,	400 00	
	Interest,	13 13	
	Loans, 1908,	57 00	
	Interest,	3 09	
	Loans, 1909,	57 00	
	Interest,	1 86	
	Fees of office,	42 25	
			923 33
5,	Allison Dry Goods Company:		
	Capital stock, 1908,	$166 65	
	Interest,	12 50	
	Capital stock, 1909,	198 00	
	Interest,	5 94	
			383 09
6,	Valley Hard Vein Slate Company:		
	Capital stock, 1910,	$5 09	
	Interest,	10	
	Loans, 1910,	26 60	
	Interest,	38	
			32 17
6,	John D. Doris, Atty. for Commonwealth suit of Isett vs. Meehan et al.		
	Costs,		16 00
13,	Ada Coke Company:		
	Interest on capital stock, 1909,	$2 17	
	Interest on loans, 1909,	2 94	
			5 11
25,	McAvoy Vitrified Brick Company:		
	Commission on $247.50 tax,		12 37
29,	Louis H. Zinnuer, late Recorder of Deeds, Lackawanna County:		
	Balance due Commonwealth,	$75 55	
	Interest,	57	
	Fees of office,	3 77	
			79 89
Oct. 11,	H. Lawler, Register of Wills, Lackawanna county:		
	Amount due Commonwealth,		853 17
16,	Buffalo & Lake Erie Traction Company:		
	Loans, 1907,		855 02
	Loans, 1908,	$535 76	
	Fees of office,	26 78	
			562 54
	Loans, 1909,	$150 00	
	Fees of office,	7 50	
			157 50
17,	James H. Worden, Prothonotary, docket costs in Commonwealth cases adjusted since July 17, 1911,		75 00
18,	Allegheny Oil Company:		
	Capital stock, 1909,	$100 00	
	Interest,	6 75	
	Fees of office,	5 00	
			111 75
20,	A. W. Wycoff Company:		
	Capital stock, 1909,	$120 00	
	On account interest,	7 20	
			127 20
24,	A. W. Wycoff Company:		
	Balance interest on capital stock, 1909,		56

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
25,	Charles L. Bailey, Incorporated:		
	Capital stock, 1898,	$181 50	
	Capital stock, 1899,	181 50	
	Capital stock, 1900,	181 50	
	Capital stock, 1901,	181 50	
	Capital stock, 1902,	181 50	
	Capital stock, 1903,	181 50	
	Capital stock, 1904,	181 50	
	Capital stock, 1905,	181 50	
	Capital stock, 1906,	181 50	
	Capital stock, 1907,	181 50	
	Capital stock, 1908,	181 50	
	Interest,	161 71	
	Capital stock, 1909,	1,336 00	
	Interest,	73 48	
			3,567 69
26,	Auburn Water Company:		
	Capital stock, 1909,	$25 00	
	Interest,	1 75	
	Loans, 1909,	133 00	
	Interest,	9 17	
	Fees of office,	7 90	
			176 82
30,	Ambridge Boro Light, Heat & Power Company:		
	Fees of office,		3 87
Nov. 2,	Anthracite Lumber Company:		
	Capital stock, 1907,	$49 50	
	Capital stock, 1908,	49 50	
	Interest,	7 70	
	Fees of office,	4 95	
			111 65
3,	Pennsylvania Marble & Granite Company:		
	On account loans, 1909,		359 96
21,	Investment Company of Philadelphia:		
	Taxes on shares to June 20, 07,	$2,250 00	
	Fees of office,	112 50	
			2,362 50
21,	Adam Scheidt Brewing Company:		
	Capital stock, 1910,	$200 00	
	Fees of office,	10 00	
			210 00
22,	Standard Ice Manufacturing Company:		
	Loans, 1909,	$262 50	
	Fees of office,	13 13	
			275 63
22,	Johnstown Passenger Railway Company:		
	Loans, 1909,	$250 80	
	Fees of office,	12 54	
			263 34
23,	Scranton & Pittston Traction Company:		
	Loans, 1909,	$75 00	
	Fees of office,	3 75	
			78 75
23,	Paulton Coal Mining Company:		
	Capital stock, 1909,	$35 00	
	Fees of office,	1 75	
			36 75
23,	Rimerton Coal & Coke Company:		
	Capital stock, 1909,	$12 50	
	Fees of office,	63	
			13 13

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
23,	Montorey Coal Mining Company:		
	Capital stock, 1909,	$85 00	
	Fees of office,	4 25	
			89 25
23,	Pine Run Company:		
	Capital stock, 1909,	$37 50	
	Fees of office,	1 88	
			39 38
23,	Pencoyd & Philadelphia Railroad Company:		
	Capital stock, 1909,	$50 00	
	Fees of office,	2 50	
			52 50
23,	Sonman Shaft Coal Company:		
	Capital stock, 1909,	$55 00	
	Fees of office,	2 75	
			57 75
23,	Erbin-Harding Company:		
	Loans, 1910,	$376 58	
	Fees of office,	18 83	
			395 41
24,	Thomas Colliery Company:		
	Loans, 1909,	$50 00	
	Fees of office,	2 50	
			52 50
24,	Mountain Supply Company:		
	Capital stock, 1909,	$137 50	
	Fees of office,	6 88	
			144 38
24,	Philadelphia Warehousing & Cold Storage Company:		
	Capital stock, 1910,	$544 20	
	Fees of office,	27 21	
			571 41
24,	Merion & Radnor Gas & Electric Company:		
	Loans, 1909,	$230 71	
	Fees of office,	11 53	
			242 24
24,	Lukens Iron & Steel Company:		
	Loans, 1909,	$205 87	
	Fees of office,	10 29	
			216 16
24,	Philadelphia Brewing Company:		
	Capital stock, 1909,	$100 00	
	Fees of office,	5 00	
			105 00
24,	Leechburg Land & Improvement Company:		
	Capital stock, 1909,	$25 00	
	Fees of office,	1 25	
			26 25
27,	Youghiogheny Northern Railway Company:		
	Capital stock, 1909,	$250 00	
	Fees of office,	12 50	
			262 50
27,	Republic Connellsville Coke Company:		
	Capital stock, 1910,	$1,426 98	
	Fees of office,	71 35	
			1,498 33
27,	Sharon Coal & Limestone Company:		
	Capital stock, 1909,	$100 00	
	Fees of office,	5 00	
			105 00
27,	Vallamont Traction Company:		
	Capital stock, 1909,	$20 00	
	Fees of office,	1 00	
			21 00

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
27,	Jersey Shore Electric Street Railway Company:		
	Capital stock, 1909,	$37 50	
	Fees of office,	1 88	
			39 38
27,	Buffalo & Susquehanna Railroad Company:		
	Capital stock, 1909,	$3,500 00	
	Fees of office,	175 00	
			3,675 00
	Loans, 1909,	1,874 00	
	Fees of office,	93 70	
			1,967 70
27,	Philadelphia & West Chester Traction Company:		
	Loans, 1909,	$115 88	
	Fees of office,	5 79	
			121 67
27,	Panther Valley Water Company:		
	Capital stock, 1909,	25 00	
	Fees of office,	1 25	
			26 25
27,	West Branch Coal Company:		
	Capital stock, 1909,	$55 00	
	Fees of office,	2 75	
			57 75
27,	Susquehanna Boom Company:		
	Capital stock, 1909,	$53 38	
	Fees of office,	2 67	
			56 05
27,	Adams Express Company:		
	Capital stock, 1910,	$75 32	
	Fees of office,	3 77	
			79 09
27,	Real Estate Holding Company:		
	Capital stock, 1910,	$25 00	
	Fees of office,	1 25	
			26 25
27,	Lehigh & Wilkes-Barre Coal Company:		
	Capital stock, 1910,	$31 062 75	
	Fees of office,	500 00	
			31,562 75
27,	Philadelphia Mortgage & Trust Company:		
	Tax on shares, 1907,	$287 50	
	Fees of office,	14 37	
			301 87
	Tax on shares, 1908,	$1,250 00	
	Fees of office,	62 50	
			1,312 50
	Tax on shares, 1909,	$625 00	
	Fees of office,	31 25	
			656 25
	Tax on shares, 1910,	$625 00	
	Fees of office,	31 25	
			656 25
	Tax on shares, 1911,	$625 00	
	Fees of office,	31 25	
			656 25
27,	Dents Run Coal Company:		
	Capital stock, 1910,	$25 00	
	Fees of office,	1 25	
			26 25
27,	Leedom & Warall Company:		
	Capital stock, 1909,	$50 00	
	Fees of office,	2 50	
			52 50

SCHEDULE J.—Continued.
SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
27,	Lackawanna Coal & Coke Company:		
	Capital stock, 1909,	$200 00	
	Fees of office,	10 00	
			210 00
27,	Northern Coal & Iron Company:		
	Capital stock, 1909,	$1,500 00	
	Fees of office,	75 00	
			1,575 00
27,	Wayne Brewing Company:		
	Capital stock, 1908,	$50 00	
	Fees of office,	2 50	
			52 50
	Capital stock, 1909,	$50 00	
	Fees of office,	2 50	
			52 50
28,	Western Union Telegraph Company:		
	Capital stock, 1908,	$563 00	
	Fees of office,	28 15	
			591 15
	Capital stock, 1909,	$703 00	
	Fees of office	35 15	
			738 15
29,	Magnesia Covering Company:		
	Capital stock, 1910,	$5 00	
	Fees of office,	25	
			5 25
29,	Westmoreland Coal Company:		
	Capital stock, 1909,		14,500 00
29,	Pennsylvania Gas Coal Company:		
	Capital stock, 1909,		4,500 00
29,	Manor Gas Coal Company:		
	Capital stock, 1909,	$400 00	
	Fees of office,	20 00	
			420 00
29,	McKeesport Connecting Railroad Company:		
	Capital stock, 1909,	$1,044 00	
	Fees of office,	52 20	
			1,096 20
29,	Union Supply Company:		
	Capital stock, 1909,	$6,200 00	
	Fees of office,	310 00	
			6,510 00
29,	National Mining Company:		
	Capital stock, 1910,	$840 00	
	Fees of office,	42 00	
			882 00
29,	Central Railroad Company of New Jersey:		
	Capital stock, 1910,	$1,125 00	
	Fees of office,	56 25	
			1,181 25
29,	Ambler Electric Light, Heat & Motor Company:		
	Capital stock, 1910,	$10 00	
	Fees of office,	50	
			10 50
29,	Stewart Distilling Company:		
	Loans, 1909,	$60 00	
	Fees of office,	3 00	
			63 00
29,	Walnut Run Coal Company:		
	Capital stock, 1909,	$125 00	
	Fees of office,	6 25	
			131,25
29,	United Traction Street Railway Company, (formerly United Traction Extension Railroad Company.):		
	Capital stock, 1908,	$150 00	
	Fees of office,	7 50	
			157 50

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
29,	United Traction Extension Street Railroad Company:		
	Capital stock, 1909, to Jan. 4,	$25 00	
	Fees of office,	1 25	
			26 25
Dec. 1,	Hanover Brewing Company:		
	Capital stock, 1910,	$75 00	
	Interest,	3 45	
	Loans, 1910,	38 00	
	Interest,	1 75	
			118 20
1,	Pond Creek Coal Company:		
	Capital stock, 1909,	$50 00	
	Fees of office,	2 50	
			52 50
	Capital stock, 1910,	$9 03	
	Fees of office,	45	
			9 48
1,	Pennsylvania & New York Canal and Railroad Company:		
	Capital stock, 1910,	$500 00	
	Fees of office,	25 00	
			525 00
1,	S. B. & B. W. Fleisher, Incorporated:		
	Capital stock, 1909,	$13 94	
	Fees of office,	70	
			14 64
1,	Donora Southern Railroad Company:		
	Capital stock, 1909,	$200 00	
	Fees of office,	10 00	
			210 00
1,	John B. Stetson Company:		
	Capital stock, 1909,	$649 50	
	Fees of office,	32 48	
			681 98
1,	Pittsburgh, Bessemer & Lake Erie Railroad:		
	Capital stock, 1908,	$45 71	
	Fees of office,	2 29	
			48 00
	Capital stock, 1909,	45 71	
	Fees of office,	2 29	
			48 00
4,	Buffalo, Rochester & Pittsburgh, Railway Company:		
	Capital stock, 1909,	$4,783 75	
	Fees of office,	239 19	
			5,022 94
4,	Philadelphia & Bristol Water Company:		
	Capital stock, 1909,		300 00
4,	Morris Run Coal Mining Company:		
	Capital stock, 1910,	$227 90	
	Fees of office,	11 40	
			239 30
4,	Clairton Land Company:		
	Capital stock, 1910,	$75 00	
	Fees of office,	3 75	
			78 75
4,	Carnegie Land Company:		
	Capital stock, 1910,	$200 00	
	Fees of office,	10 00	
			210 00
5,	Lackawanna & Montrose Railroad Company:		
	Capital stock, 1909,	$26 50	
	Fees of office,	1 33	
			27 83

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
5,	Waldemeer Company:		
	Capital stock, 1909,	$50 00	
	Fees of office,	2 50	
			52 50
5,	Sorosis Shoe Company of Philadelphia:		
	Capital stock, 1909,	$80 00	
	Capital stock, 1910,	100 00	
			180 00
5,	Union Railroad Company:		
	Capital stock, 1909,		11,000 00
4,	Pittsburgh Limestone Company, Limited:		
	Capital stock, 1909,	$925 00	
	Fees of office,	46 25	
			971 25
5,	Long Valley Coal Company:		
	Capital stock, 1909,	$12 50	
	Fees of office,	63	
			13 13
5,	New York Central & Hudson River Railroad Company:		
	Capital stock, 1909,	$500 00	
	Fees of office,	25 00	
			525 00
5,	Susquehanna & New York Railroad Company:		
	Capital stock, 1909,	$650 00	
	Fees of office,	32 50	
			682 50
5,	Hudson Coal Company:		
	Capital stock, 1909,	$250 00	
	Fees of office,	12 50	
			262 50
6,	Sorosis Shoe Company of Pittsburgh:		
	Capital stock, 1909,	$17 50	
	Capital stock, 1910,	12 50	
			30 00
7,	Erie Land and Improvement Company:		
	Capital stock, 1910,	$25 00	
	Fees of office,	1 25	
			26 25
7,	New York, Lake Erie & Western Coal & Railroad Company:		
	Capital stock, 1910,	$200 00	
	Fees of office,	10 00	
			210 00
7,	Buffalo, Bradford & Pittsburgh Railroad Company:		
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
7,	Columbus & Erie Railroad Company:		
	Capital stock, 1910,	$400 00	
	Fees of office,	20 00	
			420 00
7,	Jefferson Railroad Company:		
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
7,	Nypano Railroad Company:		
	Capital stock, 1910,	$300 00	
	Fees of office,	15 00	
			315 00
7,	New York, Susquehanna & Western Coal Company:		
	Capital stock, 1910,	$150 00	
	Fees of office,	7 50	
			157 50

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
7,	Blossburg Coal Company:		
	Capital stock, 1910,	$125 00	
	Fees of office,	6 25	
			131 25
7,	Northwestern Mining & Exchange Company:		
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
7,	Hillside Coal & Iron Company:		
	Capital stock, 1910,	$375 00	
	Fees of office,	18 75	
			393 75
7,	Pennsylvania Coal Company:		
	Capital stock, 1910,	$1,407 63	
	Fees of office,	70 38	
			1,478 01
7,	Wilkes-Barre & Eastern Railroad Company:		
	Capital stock, 1910,	$175 00	
	Fees of office,	8 75	
			183 75
7,	Hudson Coal Company:		
	Loans 1905 & 1908,	$253 34	
	Fees of office,	12 67	
	Interest,	30 40	
			296 41
	Loans, 1909,	$95 00	
	Fees of office,	4 75	
			99 75
7	Webster Coal & Coke Company:		
	Capital stock, 1909,		50 00
8,	Wyoming Valley Coal Company:		
	Capital stock, 1909,	$5 00	
	Fees of office,	25	
			5 25
11,	Sunbury Gas Company:		
	Fees of office,		9 50
12,	The George Hogg Company:		
	Capital stock, 1909,	$264 00	
	Interest,	13 20	
			277 20
12,	Cambria County Water Supply Company:		
	Capital stock, 1909,	$37 50	
	Fees of office,	1 88	
			39 38
13,	Lehigh Valley Coal Company:		
	Capital stock, 1909,	$3,500 00	
	Fees of office,	175 00	
			3,675 00
13,	New York & Middle Coal Field Railroad & Coal Company:		
	Capital stock, 1910,	$1,550 00	
	Fees of office,	77 50	
			1,627 50
14,	James H. Worden, Prothonotary, docket costs in Commonwealth cases adjusted since Oct. 17, 1911:		
	Fees of office,		354 00
18,	Mifflin County Gas & Electric Company:		
	Loans, 1909,	$36 58	
	Fees of office,	1 83	
			38 41

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
27,	Imperial Department Store:		
	Capital stock, 1910,	$250 00	
	Interest,	6 83	
			256 83
	Total,		1,670,125 91
	Collections from Jan. 1, 1911, to Jan. 18, 1911,		1,388,587 28
	From Jan. 18, 1911, to Jan. 1, 1912,		1,670,125 91
	Total,		3,058,713 19
1912 Jan. 9,	Hyndman Water Company:		
	Capital stock, 1910,	$100 00	
	Interest,	3 00	
	Loans, 1910,	7 60	
	Interest,	23	
			$110 83
10,	National Relief Assurance Company:		
	Capital stock, 1903,	$1 37	
	Capital stock, 1904,	5 50	
	Capital stock, 1905,	5 50	
	Capital stock, 1906,	5 50	
	Gross premiums, 1903,	15 84	
	Gross premiums, 1904,	42 24	
	Gross premiums, 1905,	42 24	
	Gross premiums, 1906,	42 24	
	Fees of office,	8 01	
			168 44
15,	North Pittsburgh Telephone Company:		
	Interest on capital stock, loans, and gross receipts, 1907, 08, and 09,	$10 90	
	Fees of office,	11 50	
			22 40
15,	American Home Supply Company:		
	Capital stock, 1909,	$50 00	
	Loans, 1909,	60 80	
	Interest,	7 75	
	Fees of office,	5 54	
			124 09
15,	Hawley Water Company:		
	Capital stock, 1909,	$120 00	
	Loans, 1909,	57 76	
	Interest,	12 44	
			190 20
16,	Nay Aug Coal Company:		
	Capital stock, 1908,	$178 75	
	Capital stock, 1909,	236 50	
	Interest,	34 71	
	Fees of office,	20 76	
			470 72
25,	Buffalo & Susquehanna Coal & Coke Company:		
	Capital stock, 1909, from May 1,	$800 00	
	Fees of office,	40 00	
			840 00
Feb. 2,	Pittsburgh Watch Company:		
	Capital stock, 1907,	$27 50	
	Capital stock, 1908,	27 50	
	Fees of office,	2 75	
			57 70

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
6,	Allentown & Reading Traction Company:		
	Gross receipts, 1910, (to June 30),	$574 25	
	Interest,	33 40	
			607 65
6,	Allentown Crockery Company:		
	Capital stock, 1905,	$82 50	
	Capital stock, 1906,	82 50	
	Capital stock, 1907,	101 14	
	Capital stock, 1908,	114 30	
	Capital stock, 1909,	116 45	
	Fees of office,	24 84	
			521 73
8,	Eaglesmere Railroad Company:		
	Gross receipts, 1900, to June 30,	$47 20	
	Interest,	34 34	
	Fees of office,	2 36	
			83 90
	Gross receipts, 1900, to Dec. 31,	$95 24	
	Interest,	68 96	
	Fees of office,	4 76	
			168 96
	Loans, 1897,	$84 40	
	Interest,	61 00	
	Fees of office,	4 22	
			149 62
	Loans, 1898,	$102 73	
	Interest,	74 37	
	Fees of office,	5 10	
			182 20
	Loans, 1899,	$115 63	
	Interest,	90 25	
	Fees of office,	5 78	
			211 66
	Loans, 1900,	$288 42	
	Interest,	208 83	
	Fees of office,	14 42	
			511 67
	Loans, 1901,	$317 30	
	Interest,	147 28	
	Fees of office,	15 86	
			480 44
	Loans, 1902,		317 30
	Loans, 1903,		317 30
	Loans, 1904,		317 30
	Loans, 1905,		317 30
	Loans, 1906,		317 30
	Capital stock, 1900,		5 00
	Capital stock, 1901,		5 00
	Capital stock, 1902,		5 00
	Capital stock, 1903,		5 00
	Capital stock, 1904,		5 00
	Capital stock, 1905,		5 00
	Capital stock, 1906,		5 00
	Fees of office,		81 07
	Capital stock, 1907,		5 00
	Capital stock, 1908,		5 00
	Capital stock, 1909,		5 00
	Loans, 1909,		138 39
13,	Bethlehem City Water Company:		
	Capital stock, 1909,	$375 00	
	Fees of office,	18 75	
			393 75

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
18,	Graemar Hotel Company:		
	Capital stock, 1910,		187 50
18,	Hooper Brothers, Incorporated:		
	Capital stock, 1903-08,	$100 00	
	Fees of office,	5 00	
			105 00
21,	Graemar Hotel Company:		
	Interest on capital stock, 1910,	$7 43	
	Fees of office,	9 37	
			16 80
21,	Clearfield Quarrying Company:		
	Capital stock, 1904-09,		
	Fees of office,	$ 68	
	Loans, 1904-08,		
	Fees of office,	14	
			82
21,	Mt Penn Knitting Company:		
	Loans, 1905,	$5 85	
	Loans, 1906,	4 59	
	Loans, 1907,	4 59	
	Interest,	26	
	Fees of office,	75	
			16 04
21,	American Plate Glass Company:		
	Loans, 1908,	$361 00	
	Bonus on increase, 1908,	125 00	
			486 00
26,	Pocono Mountain Ice Company:		
	Capital stock, 1909,	$110 00	
	Fees of office,	5 50	
			115 50
26,	Germania Brewing Company:		
	Capital stock, 1909,	$641 50	
	Interest,	37 42	
	Fees of office,	32 08	
	Loans, 1909,	65 95	
	Fees of office,	3 30	
			780 25
Mar. 1,	Chestnut Ridge Coal Company:		
	Capital stock, 1909,	$120 00	
	Loans, 1909,	136 80	
			256 80
5,	American Plate Glass Company:		
	Loans, 1908, and bonus increase,		24 30
7,	Allentown & Reading Traction Company:		
	Gross receipts, 1910, to Dec. 31,	$644 98	
	Interest,	30 31	
	Fees of office,	60 96	
			736 25
9,	Berks Development Company:		
	Capital stock, 1909,	$1,000 00	
	Interest,	103 00	
			1,103 00
14,	Monroe County Water Supply Company:		
	Capital stock, 1909,	$10 00	
	Interest,	1 00	
			11 00
18,	Longstreth Motor Car Company:		
	Capital stock, 1907,	$82 50	
	Capital stock, 1908,	77 00	
	Capital stock, 1909,	65 00	
	Fees of office,	11 23	
			235 73

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
20,	Kane & Elk Railroad Company:		
	Capital stock, 1908,	$150 00	
	Loans, 1908,	13 92	
			163 92
20,	James Brothers Lumber Company:		
	Capital stock, 1895, balance,	$6 83	
	Capital stock, 1908,	246 59	
			253 42
21,	Keystone Indemnity Company:		
	Capital stock, 1907,		68 75
25,	Kensington Improvement Company:		
	Capital stock, 1903, 08,		
	Fees of office,		28 87
25,	New Kensington Company:		
	Capital stock, 1907, 08,		
	Loans, 1903-08,		
	Fees of office,		20 19
29,	Clinton Falls Coal Company:		
	Capital stock, 1909,	$47 50	
	Interest,	3 80	
	Loans, 1908,	52 73	
	Loans, 1909,	70 30	
	Fees of office,	8 53	
			182 86
Apr. 3,	Pittsburg & Homestead Company:		
	Capital stock, 1909,	$440 00	
	Interest,	10 70	
			450 70
16,	Koos Drug Company:		
	Capital stock, 1908,	$82 50	
	Capital stock, 1909,	68 75	
	Fees of office,	7 56	
			158 81
23,	North Shore Railroad Company:		
	Capital stock, 1909,	$112 50	
	Capital stock, 1910,	90 00	
	Gross receipts, 1909, to Dec. 31,	34	
	Interest,	13 55	
			216 39
23,	Squirrel Hill Land Company:		
	Capital stock, 1904,	$176 46	
	Capital stock, 1905,	192 50	
	Capital stock, 1906,	140 10	
	Capital stock, 1907,	35 31	
	Fees of office,	27 22	
			571 59
	Capital stock, 1908,	$35 31	
	Capital stock, 1909,	35 31	
	Fees of office,	3 53	
			74 15
24,	Red Jacket Coal Company:		
	Capital stock, 1909,		25 00
25,	Indiana Coal Company:		
	Capital stock, 1903,		250 00
29,	Allegheny Water Company:		
	Loans, 1910,	$307 42	
	Fees of office,	15 37	
			322 79
30,	C. Schmidt & Sons Brewing Company:		
	Capital stock, 1910,	$250 00	
	Fees of office,	12 50	
			262 50

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
May 1,	Scranton & Pittston Traction Company:		
	Capital stock, 1910,	$55 00	
	Fees of office,	2 75	
			57 75
1,	Scranton Railway Company:		
	Capital stock, 1910,	$541 75	
	Fees of office,	27 08	
			568 83
	Capital stock, 1911,	$2,750 00	
	Fees of office,	137 50	
			2,887 50
	Loans, 1911,	$561 37	
	Fees of office,	28 06	
			589 43
1,	The Equitable Illuminating Gas Light Company:		
	Loans, 1910,	$2,714 79	
	Fees of office,	135 74	
			2,850 53
1,	Easton Transit Company:		
	Capital stock, 1910,	$875 00	
	Fees of office,	43 75	
			918 75
1,	Keystone Coal & Coke Company:		
	Loans, 1910,	$681 36	
	Fees of office,	34 06	
			715 42
1,	The United Gas Improvement Company:		
	Capital stock, 1910,	$1,874 00	
	Fees of office,	93 70	
			1,967 70
1,	Lackawanna Iron & Steel Company:		
	Capital stock, 1910,	$1,000 00	
	Fees of office,	50 00	
			1,050 00
2,	Midland Coal Company:		
	Capital stock, 1910,	$250 00	
	Fees of office,	12 50	
			262 50
2,	Huntingdon & Broad Top Mountain Railroad & Coal Company:		
	Loans, 1910,	$49 75	
	Fees of office,	2 49	
			52 24
2,	Robisonia Iron Company, Limited:		
	Capital stock, 1910,	$475 00	
	Fees of office,	23 75	
			498 75
2,	Philadelphia Electric Company:		
	Capital stock, 1910,	$937 50	
	Fees of office,	46 87	
			984 37
2,	Archbald Water Company:		
	Capital stock, 1910,	$470 00	
	Fees of office,	23 50	
			493 50
2,	Dickson City Water Company:		
	Capital stock, 1910,	$175 00	
	Fees of office,	8 75	
			183 75
2,	Olyphant Water Company:		
	Capital stock, 1910,	$750 00	
	Fees of office,	37 50	
			787 50

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
2,	Dunmore Gas & Water Company:		
	Capital stock, 1910,	$580 00	
	Fees of office,	29 00	
			609 00
3,	Alden Coal Company:		
	Capital stock, 1910,	$1,750 00	
	Fees of office,	87 50	
			1,837 50
3,	Disston Water Company:		
	Capital stock, 1910,	$50 00	
	Fees of office,	2 50	
			52 50
3,	Philadelphia & Garrettford Street Railway Company:		
	Loans, 1910,	$118 79	
	Fees of office,	5 93	
			124 72
3,	Pennsylvania Heat, Light & Power Company:		
	Capital stock, 1910,	$185 35	
	Fees of office,	9 26	
			194 61
3,	Altoona & Logan Valley Electric Railway Company:		
	Loans, 1910,	$1,050 34	
	Fees of office,	52 51	
			1,102 85
3,	Henrietta Coal Mining Company:		
	Loans, 1910,	$200 00	
	Fees of office,	10 00	
			210 00
3,	Jacob Ulmer Packing Company:		
	Capital stock, 1910,	$33 11	
	Fees of office,	1 65	
			34 76
3,	South Fork Coal Mining Company:		
	Capital stock, 1910,	$75 00	
	Fees of office,	3 75	
			78 75
3,	Renovo Fire Brick and Clay Works:		
	Loans, 1904,	$25 00	
	Fees of office,	1 25	
			26 25
	Loans, 1905,	$25 00	
	Fees of office,	1 25	
			26 25
	Loans, 1906,	$25 00	
	Fees of office,	1 25	
			26 25
	Loans, 1907,	$25 00	
	Fees of office,	1 25	
			26 25
	Loans, 1908,	$25 00	
	Fees of office,	1 25	
			26 25
3,	Maryland, Pennsylvania & West Virginia Telephone and Telegraph Company:		
	Capital stock, 1909,	$5 00	
	Fees of office,	25	
			5 25
3,	Standard Real Estate Improvement Company:		
	Loans, 1910,	$227 05	
	Fees of office,	11 35	
			238 40

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
3,	Western Terminal Company:		
	Capital stock, 1902,	$5 50	
	Loans, 1890 to 1910, incorporated, 21 years, $20.90 for each year,	438 90	
			444 40
6,	Harbison-Walker Refractories Company:		
	Loans, 1910,	$833 98	
	Fees of office,	41 70	
			875 68
6,	Rosenbaum Company:		
	Capital stock, 1910,	$349 65	
	Fees of office,	17 48	
			367 13
6,	Hector Coke Company:		
	Loans, 1909 and 1910,	$5 00	
	Fees of office,	25	
			5 25
6,	Burks Development Company:		
	Capital stock, 1910,	$1,000 00	
	Interest,	62 83	
			1,062 83
6,	National Tube Company of New Jersey:		
	Capital stock, 1910,	$80 00	
	Fees of office,	4 00	
			84 00
6,	Sharon Coke Company:		
	Capital stock, 1910,	$575 00	
	Fees of office,	28 75	
			603 75
6,	Mingo Coal Company:		
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
6,	Diamond Coal Land Company:		
	Capital stock, 1910,	$110 00	
	Fees of office,	5 50	
			115 50
6,	Union Supply Company:		
	Capital stock, 1910,	$5,675 00	
	Fees of office,	141 87	
			5,816 87
6,	H. C. Frick Coke Company:		
	Capital stock, 1910,	$1,000 00	
	Fees of office,	50 00	
			1,050 00
6,	Philadelphia & West Chester Traction Company:		
	Loans, 1910,	$264 60	
	Fees of office,	13 23	
			277 83
6,	Atlas Portland Cement Company:		
	Capital stock, 1910,	$300 00	
	Fees of office,	15 00	
			315 00
6,	Upper Lehigh Coal Company:		
	Capital stock, 1909,	$1,350 00	
	Fees of office,	67 50	
			1,417 50
	Capital stock, 1910,	$1,350 00	
	Fees of office,	67 50	
			1,417 50
6,	Great Southern Lumber Company:		
	Loans, 1910,	$15 84	
	Fees of office,	79	
			16 63

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
6,	Buffalo & Susquehanna Coal & Coke Company:		
	Capital stock, 1910,	$1,150 00	
	Fees of office,	57 50	
			1,207 50
7,	Merchants Coal Company of Pennsylvania:		
	Capital stock, 1910,	$250 00	
	Fees of office,	12 50	
			262 50
7,	United Coal Company:		
	Capital stock, 1910,	$500 00	
	Fees of office,	25 00	
			525 00
7,	North Shore Railroad Company:		
	Gross receipts, 1908, (to June 30),	$9 03	
	Interest,	1 82	
			10 85
7,	Baldwin Locomotive Works:		
	Loans, 1910,	$2,263 03	
	Fees of office,	113 15	
			2,376 18
7,	Union Steel Company:		
	Capital stock, 1910,	$452 50	
	Fees of office,	22 62	
			475 12
7,	Delaware, Susquehanna & Schylkill Railroad Company:		
	Capital stock, 1910,	$1,500 00	
	Fees of office,	75 00	
			1,575 00
7,	Schuylkill & Lehigh Valley Railroad Company:		
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
8,	W. Deweeswood Company:		
	Capital stock, 1909,	$13 57	
	Fees of office,	67	
			14 24
8,	Consolidated Real Estate Company:		
	Capital stock, 1910,	$50 00	
	Fees of office,	2 50	
			52 50
8,	Tionesta Valley Railroad Company:		
	Capital stock, 1910,	$1,062 50	
	Fees of office,	53 12	
			1,115 62
8,	Susquehanna & New York Railroad Company:		
	Capital stock, 1910,	$800 00	
	Fees of office,	40 00	
			840 00
8,	P. E. Sharpless Company:		
	Capital stock, 1910,	$133 06	
	Fees of office,	6 65	
			139 71
8,	Annex Hotel Company:		
	Loans, 1910,	$5 00	
	Fees of office,	25	
			5 25
8,	Autocar Service Company of New Jersey:		
	Capital stock, 1910,	$15 00	
	Fees of office,	75	
			15 75
8,	Clearfield Bituminous Coal Corporation:		
	Loans, 1910,	$555 94	
	Fees of office,	27 80	
			583 74

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
10,	Erie Railroad Company:		
	Capital stock, 1910,	$800 00	
	Fees of office,	40 00	
			840 00
10,	Erie & Wyoming Valley Railroad Company:		
	Capital stock, 1910,	$1,250 00	
	Fees of office	62 50	
			1,312 50
10,	Central Pennsylvania Lumber Company:		
	Capital stock, 1910,	$2,500 00	
	Fees of office,	125 00	
			2,625 00
10,	Lyric Theatre Company of Allentown:		
	Loans, 1909,	$5 00	
	Fees of office,	25	
			5 25
	Loans, 1910,	$5 00	
	Fees of office,	25	
			5 25
10,	Clarion Gas Company:		
	Capital stock, 1910,	$150 00	
	Fees of office,	7 50	
			157 50
13,	Carnegie Natural Gas Company:		
	Capital stock, 1910,	$250 00	
	Fees of office,	12 50	
			262 50
13,	Edgworth Water Company:		
	Loans, 1910,	$136 80	
	Fees of office,	6 84	
			143 64
13,	Keystone Telephone Company of Philadelphia:		
	Capital stock, 1910,	$750 00	
	Fees of office,	37 50	
			787 50
13,	Keystone Indemnity Company:		
	Capital stock, 1908,		68 75
14,	Beech Creek Railroad Company:		
	Loans, 1910,	$913 63	
	Fees of office,	45 68	
			959 31
	Capital stock, 1910,	$2,000 00	
	Fees of office,	100 00	
			2,100 00
14,	Beech Creek Extension Railroad Company:		
	Capital stock, 1910,	$150 00	
	Fees of office,	7 50	
			157 50
	Loans, 1910,	133 00	
	Fees of office,	6 65	
			139 65
14,	New York Central & Hudson River Railroad Company:		
	Capital stock, 1910,	$450 00	
	Fees of office,	22 50	
			472 50
14,	United Traction Street Railway Company:		
	Capital stock, 1909,	$33 00	
	Fees of office,	1 65	
			34 65
	Capital stock, 1910,	50 00	
	Fees of office,	2 50	
			52 50

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
14,	Bethlehem Steel Company:		
	Loans, 1910,	$8,850 00	
	Fees of office,	442 50	
			9,292 50
14,	Bell Telephone Company of Pennsylvania:		
	Capital stock, 1910,	$30,000 00	
	Fees of office,	500 00	
			30,500 00
14,	Central District and Printing Telegraph Company:		
	Capital stock, 1910,	$18,106 47	
	Fees of office,	500 00	
			18,606 47
14,	Electric Traction Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
14,	13th & 15th Streets Passenger Railway Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
14,	Market Street Elevated Passenger Railway Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
14,	Peoples Passenger Railway Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
14,	Hestonville, Mantua & Fairmount Passenger Railroad Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
14,	Philadelphia City Passenger Railway Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
14,	Union Passenger Railway Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
14,	Philadelphia Rapid Transit Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
14,	Philadelphia Traction Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
14,	Union Traction Company of Philadelphia:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
14,	West Philadelphia Passenger Railway Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
15,	McCreary Company:		
	Capital stock, 1910,	$549 76	
	Fees of office,	27 49	
			577 25

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
15,	Locust Mountain Coal & Iron Company:		
	Capital stock, 1909,	$175 00	
	Fees of office,	8 75	
			183 75
	Capital stock, 1910,	$725 00	
	Fees of office,	36 25	
			761 25
15,	Shanferoke Coal Company:		
	Capital stock, 1910,	$550 00	
	Fees of office,	27 50	
			577 50
15,	Schuylkill Coal & Iron Company:		
	Capital stock, 1910,	$160 00	
	Fees of office,	8 00	
			168 00
15,	Cornwall & Lebanon Railroad Company:		
	Capital stock, 1910,	$2,065 00	
	Fees of office,	103 25	
			2,168 25
16,	West Liberty Improvement Company:		
	Loans, 1905 to 1909,	$5 00	
	Fees of office,	25	
			5 25
16,	Bethlehem Consolidated Gas Company:		
	Loans, 1910,	$174 80	
	Fees of office,	8 74	
			183 54
16,	Deppin Brewing Company:		
	Capital stock, 1909,	$318 60	
	Fees of office,	15 93	
			334 53
	Capital stock, 1910,	$68 60	
	Fees of office,	3 43	
			72 03
16,	Dunlo Light, Heat & Power Company:		
	Gross receipts, 1905, to Dec. 31,	$22 00	
	Gross receipts, 1906, to Dec. 31,	52 80	
	Gross receipts, 1907, to Dec. 31,	22 00	
	Interest,	12 81	
	Fees of office,	4 84	
			114 45
16,	Indiana Woolen Mills Company:		
	Loans, 1907,	$66 00	
	Loans, 1908,	66 00	
	Interest,	13 86	
	Fees of office,	6 60	
			152 46
16,	Fairmount Park Transportation Company:		
	Loans, 1897 to 1908, incorporated,	$6,509 44	
	Fees of office,	306 86	
			6,816 30
16,	Northern Coal & Iron Company:		
	Capital stock, 1910,	$1,500 00	
	Fees of office,	75 00	
			1,575 00
20,	Wyoming Valley Coal Company:		
	Loans, 1909,	$12 16	
	Fees of office,	60	
			12 76
21	Northern Electric Street Railway Company:		
	Loans, 1910,	$492 25	
	Fees of office,	24 61	
			516 86

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
24,	Coudersport & Port Allegany Railroad Company:		
	Capital stock, 1910,	$50 00	
	Fees of office,	2 50	
			$52 50
27,	Schuylkill Light & Fuel Company:		
	Loans, 1901 to 1908,	$1,098 27	
	Fees of office,	54 91	
			1,153 18
	Loans, 1910,	$480 70	
	Fees of office,	24 04	
			504 74
27,	Mercantile Company:		
	Capital stock, 1910,		100 00
27,	Susquehanna River & Western Railroad Company:		
	Capital stock, 1909,	$40 00	
	Loans, 1909,	133 08	
	Gross receipts, to June 30,	70 66	
			243 74
29,	Pennsylvania Water & Power Company:		
	Capital stock, 1910,	$2,500 00	
	Fees of office,	125 00	
			2,625 00
31,	Black Lick Mining Company:		
	Capital stock, 1908,	$137 50	
	Capital stock, 1909,	165 00	
	Interest,	35 89	
	Fees of office,	15 12	
			353 51
June 3,	Jamestown, Franklin & Clearfield Railroad Company:		
	Loans, 1910,	$1,702 40	
	Fees of office,	85 12	
			1,787 52
3,	Oliver McClintock Company:		
	Capital stock, 1910,	$50 00	
	Fees of office,	2 50	
			52 50
3,	West Pittsburgh Realty Company:		
	Capital stock, 1910,	$175 00	
	Fees of office,	8 75	
			183 75
5,	Mercantile Company:		
	Interest on capital stock, 1910,		5 78
5,	Henry F. Holler, acting Prothonotary, docket costs in 3 Commonwealth cases adjusted:		
	Fees of office,		9 00
5,	Lockwood B. Worden, Prothonotary, docket costs in 131 Commonwealth cases adjusted since Dec. 14, 1911:		
	Fees of office,		393 00
7,	Housman & Wimmer Company:		
	Capital stock, 1908,	$222 00	
	Capital stock, 1909,	222 00	
	Interest,	37 54	
	Fees of office,	22 20	
			503 74
10,	Greensburg Trading Company:		
	Capital stock, 1910,	$125 75	
	Loans, 1910,	14 44	
	Interest,	7 43	
	Fees of office,	7 20	
			$154 82

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
10,	Trenton, New Hope & Lambertville Street Railway Company:		
	Capital stock, 1909,	$368 50	
	Interest,	8 59	
	Loans, 1908,	150 48	
	Loans, 1909,	150 48	
	Gross receipts, 1908, to Dec. 31,	219 95	
	Gross receipts, 1909, to June 30,	193 30	
	Gross receipts, 1909, to Dec. 31,	250 09	
	Gross receipts, 1910, to June 30,	191 03	
	Interest,	7 51	
	On account fees of office,	93 55	
			1,633 48
10,	Trenton, New Hope & Lambertville Street Railway Company: (Not in suit).		
	Capital stock, 1908,	$275 00	
	Interest,	45 37	
	Capital stock, 1910-1912, to Feb.,	829 12	
	Interest,	8 30	
	Loans, 1910-12, to Feb. 1,	312 40	
	Gross receipts, 1910, to Dec. 31,	242 62	
	Gross receipts, 1911, to June 30,	205 10	
	Gross receipts, 1911, to Dec. 31,	245 98	
	Gross receipts, 1912, to Feb. 1,	23 37	
			2,185 26
11,	Red Bank Oil Company:		
	Loans, 1910,	$5 00	
	Fees of office,	25	
			5 25
12,	Riverview Burial Park Association:		
	Capital stock, 1910,	$96 50	
	Fees of office,	5 79	
			102 29
13,	Juniata Company:		
	Gross receipts, 1911, to Dec. 31,		28 92
17,	Greenway Real Estate Company:		
	Loans, 1908,	$426 78	
	Interest,	40 54	
	Fees of office,	21 33	
			488 65
17,	Mercer Iron & Coal Company:		
	Capital stock, 1910,	$1,250 00	
	Loans, 1910,	1 90	
			1,251 90
17,	Kane & Elk Railroad Company:		
	Capital stock, 1909,	$250 00	
	Interest,	11 92	
	Loans, 1909,	41 80	
	Interest,	6 54	
	Gross receipts, 1909, 6 months,	147 74	
	Gross receipts, 1909, 6 months,	137 05	
	Gross receipts, 1910, to June 30,	146 28	
	Interest,	22 12	
	Fees of office,	44 33	
			807 78
17,	James Brothers Lumber Company:		
	Capital stock, 1909,	$187 55	
	Interest,	18 03	
	Fees of office,	22 04	
			227 62

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount
18,	Logan Valley Water Company:		
	Capital stock, 1904,	$1 25	
	Capital stock, 1906,	15 00	
	Interest,	4 35	
	Fees of office,	82	
			21 42
18,	Millsboro Lumber Company:		
	Capital stock, 1910,	$100 00	
	Interest,	5 00	
			105 00
19,	Juniata Company:		
	Interest on gross receipts, 1911, to Dec. 31,		37
19,	Pittsburgh Fire Extinguisher Company:		
	Capital stock, 1906,	$40 00	
	Capital stock, 1907,	41 25	
	Capital stock, 1908,	35 75	
	Capital stock, 1909,	25 00	
	Fees of office,	7 10	
			149 10
20,	Peoples Light Company of Pittston:		
	Loans, 1909,	$109 20	
	Fees of office,	5 46	
			114 66
	Loans, 1910,	$110 20	
	Fees of office,	5 51	
			115 71
20,	Trenton, New Hope & Lambertville Street Railway Company:		
	Balance, fees of office,		11 20
24,	Mercer Iron & Coal Company:		
	Interest on Capital stock, 1910,	$78 75	
	Interest on Loans, 1910,	12	
			78 87
24,	Glen Manufacturing Company:		
	Capital stock, 1907,	26 12	
	Capital stock, 1909,	27 50	
	Loans, 1907,	50 60	
	Loans, 1909,	88 00	
	Loans, 1910,	35 82	
			228 04
24,	Pennsylvania Smelting & Refining Company, Wilkes-Barre:		
	Capital stock, 1910,		120 25
July 1,	Pittsburgh Buffalo Company:		
	Loans, 1910,	$1,076 72	
	Fees of office,	53 84	
			1,130 56
2,	Pennsylvania Smelting & Refining Works Company:		
	Interest on capital stock, 1910,		7 21
8,	Steel Workers Land Company:		
	Fees of office, on account of capital stock, 1906, 7, 8, 9,		48 13
11,	Bethlehem City Water Company:		
	Capital stock, 1910,	$362 50	
	Fees of office,	18 12	
			380 62
	Loans, 1910,	53 60	
	Fees of office,	2 68	
			56 28

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
12,	Dickson Mill & Grain Company:		
	Loans, 1906,	$220 00	
	Loans, 1907,	220 00	
	Loans, 1908,	220 00	
	Loans, 1909,	51 20	
	Interest,	73 70	
	Fees of office,	35 56	
			220 46
16,	Union Trust Company of Pittsburgh:		
	Taxes on shares to June 20, 1910,	$11,324 85	
	Interest,	1,358 98	
	Fees of office,	500 00	
			13,183 83
	Taxes on shares to June 20, 1909,	$10,269 75	
	Interest,	1,232 37	
	Fees of office,	500 00	
			12,002 12
17,	Buffalo & Lake Erie Traction Company:		
	Loans, 1910,	$1,318 80	
	Fees of office,	65 94	
			1,384 74
18,	Lansdale Mushroom Company, Limited:		
	Capital stock, 1907,	$125 00	
	Capital stock, 1909,	125 00	
	Interest,	47 66	
	Fees of office,	12 50	
			310 16
19,	Southern Pipe Line Company:		
	Capital stock, 1909,	$29,997 99	
	Fees of office,	500 00	
			30,497 99
	Capital stock, 1910,	$38,403 50	
	Fees of office,	500 00	
			38,903 50
19.	South West Pennsylvania Pipe Line Company:		
	Capital stock, 1909,	$14,166 25	
	Fees of office,	500 00	
			14,666 25
	Capital stock, 1910,	$16,461 92	
	Fees of office,	500 00	
			16,961 92
23,	McKallip & Company, Incorporated:		
	Capital stock, 1910,	$224 50	
	Loans, 1910,	13 87	
	Interest,	14 30	
	Fees of office,	11 91	
			264 58
30,	L. B. Worden, Prothonotary, docket costs in Commonwealth cases adjusted since June 5, 1912,		75 50
30,	Aluminum Cooking Utensil Company:		
	Capital stock, 1910,	$1,500 00	
	Fees of office,	75 00	
			1,575 00
30,	Dickson Mill & Grain Company:		
	Loans, 1905,	$220 00	
	Interest,	35 95	
			255 95
31,	John E. Magerl & Company:		
	Capital stock, 1909,		5 00
Aug. 2,	Allentown & Reading Traction Company:		
	On account of loans, 1910,		2,000 00

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
3,	Kittanning Candy Company, Limited:		
	Capital stock, 1908, ...	$41 25	
	Capital stock, 1909, ...	55 00	
	Capital stock, 1910, ...	55 00	
	Interest, ...	9 07	
	Fees of office, ...	7 56	
			167 88
6,	Dunlo Light, Heat & Power Company:		
	Gross receipts, June 30, 1909, ...		26 40
7,	Allentown & Reading Traction:		
	Balance loans, 1910, ...	$787 74	
	Gross receipts, June 30, 1911, ...	549 13	
			1,336 87
16,	John Silbert & Sons Company:		
	Capital stock, 1909, ...	$47 66	
	Fees of office, ...	2 17	
			49 83
16,	Joseph Wolf Land Company:		
	Capital stock, 1909, ...	$137 50	
	Interest, ...	13 06	
			150 56
16,	Monongahela Valley Land Company:		
	Capital stock, 1909, ...	$30 00	
	Capital stock, 1910, ...	30 00	
	Loans, 1908, ...	23 48	
	Interest, ...	3 17	
	Loans, 1909, ...	3 00	
	Interest, ...	29	
	Loans, 1910, ...	24 62	
			114 56
27,	Norristown Iron & Steel Company:		
	Fees of office, ...		10 00
Sept. 3,	Joseph Wolf Land Company:		
	Interest on capital stock, 1908, ...	$6 50	
	Fees of office, ...	5 50	
			12 00
3,	Dean Adjustable Steel Pilot Company:		
	Capital stock, 1908, ...	$43 55	
	Interest, ...	3 42	
	Capital stock, 1909, ...	55 00	
	Interest, ...	5 25	
	Fees of office, ...	7 42	
			114 64
9,	Doubleday-Hill Electric Company:		
	Capital stock, 1906, ...	$377 07	
	Capital stock, 1907, ...	483 23	
	Capital stock, 1909, ...	461 46	
	Interest, ...	85 92	
	Fees of office, ...	66 09	
			1,473 77
11,	L. B. Worden, Prothonotary, docket costs in Commonwealth cases adjusted since July 30, 1912, ...		96 00
17,	Nicholson Stone Company:		
	Capital stock, 1909, ...	$24 75	
	Capital stock, 1910, ...	15 00	
	Interest, ...	90	
	Fees of office, ...	1 98	
			42 63
18,	A. F. Bornot Brothers Company:		
	Capital stock, 1910, ...		
	Fees of office, ...	$25 00	
			25 00

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
19,	Allentown & Reading Traction Company:		
	Interest on gross receipts to June 30, 1911,	$23 34	
	Interest on loans, 1910,	115 69	
			139 03
19,	Dale Light, Heat & Power Company:		
	Capital stock, 1909,	$24 00	
	Capital stock, 1910,	29 15	
	Loans, 1908,	35 64	
	Loans, 1909,	35 64	
	Loans, 1910,	39 16	
	Gross receipts to Dec. 31, 1909,	14 89	
	Gross receipts, June 30, 1911,	38 40	
	Interest,	15 19	
	Fees of office,	10 84	
			242 91
25,	H. G. Wasson, Attorney:		
	On account of capital stock tax of Oakland Realty Company:		
	On account,		200 00
30,	G. W. Ellis Company:		
	Bonus,		2 51
Oct. 7,	State Belt Electric Street Railway Company:		
	Capital stock, 1909,		100 00
8,	Lancaster Automobile Company:		
	Capital stock, 1910,	$106 65	
	Interest,	9 06	
	Loans, 1910,	52 58	
	Interest,	4 47	
	Fees of office,	8 64	
			181 40
11,	22d Street & Allegheny Avenue Passenger Railway Company:		
	Capital stock, 1910,	$2 00	
	Fees of office,	10	
			$2 10
11,	13th & 15th Streets Passenger Railway Company of Philadelphia:		
	Capital stock, 1910,	$79 00	
	Fees of office,	3 95	
			82 95
11,	Union Passenger Railway Company:		
	Capital stock, 1910,	$47 00	
	Fees of office,	2 35	
			49 35
11,	West Philadelphia Passenger Railway Company:		
	Capital stock, 1910,	5 50	
	Fees of office,	28	
			5 78
11,	Philadelphia & Willow Grove Street Railway Company:		
	Loans, 1910,	$10 00	
	Fees of office,	50	
			10 50
11,	Continental Passenger Railway Company:		
	Capital stock, 1910,	$28 00	
	Fees of office,	1 40	
			29 40
	Loans, 1910,	$536 80	
	Fees of office ,	26 84	
			563 64
11,	Philadelphia City Passenger Railway Company:		
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
11,	Philadelphia & Gray's Ferry Passenger Railway Company:		
	Capital stock, 1910,	$3 00	
	Fees of office,	15	
			3 15
11,	Union Traction Company of Philadelphia:		
	Capital stock, 1909,	$9,453 16	
	Fees of office,	472 65	
			9,925 81
	Capital stock, 1910,	$13,125 58	
	Fees of office,	500 00	
			13,625 58
11,	Electric Traction Company:		
	Capital stock, 1909,	$7,466 92	
	Fees of office,	373 34	
			7,840 26
	Capital stock, 1910,	$10,367 71	
	Fees of office,	500 00	
			10,867 71
11,	Peoples Traction Company:		
	Capital stock, 1909,	$5,399 88	
	Fees of office,	269 99	
			5,669 87
	Capital stock, 1910,	$7,497 65	
	Fees of office,	374 88	
			7,872 53
11,	Philadelphia Rapid Transit Company:		
	Capital stock, 1909,	$27,006 15	
	Fees of office,	500 00	
			27,506 15
	Capital stock, 1910,	$37,497 64	
	Fees of office,	500 00	
			37,997 64
11,	Frankford & Southwark Philadelphia City Passenger Railway Company:		
	Capital stock, 1910,	$15 62	
	Fees of office,	78	
			16 40
11,	Germantown Passenger Railway Company:		
	Capital stock, 1910,	$25 00	
	Fees of office,	1 25	
			26 25
11,	Philadelphia Traction Company:		
	Capital stock, 1909,	$18,004 11	
	Fees of office,	500 00	
			18,504 11
	Capital stock, 1910,	$24 998 43	
	Fees of office,	500 00	
			25 498 43
15,	Nay Aug No. 4 Coal Company:		
	Capital stock, 1909,	$105 60	
	Penalty,	10 56	
	Fees of office,	5 80	
			121 96

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
15,	Deer Creek Water & Water Power Company:		
	Capital stock, 1908,	$10 00	
	Interest,	1 13	
	Capital stock, 1909,	16 50	
	Interest,	47	
	Loans, 1908,	40 76	
	Interest,	4 63	
	Loans, 1909,	52 80	
	Interest,	1 50	
	Fees of office,	6 00	
			133 82
16,	Provident Realty Company:		
	Capital stock, 1906,	$27 50	
	Capital stock, 1907,	27 50	
	Capital stock, 1908,	27 50	
	Capital stock, 1909,	38 50	
	Loans, 1907,	11 00	
	Loans, 1908,	11 00	
	Loans, 1909,	17 60	
	Interest,	19 62	
	Fees of office,	8 03	
			188 25
22,	Monongahela Bridge Company, Brownsville:		
	Capital stock, 1910,	$210 00	
	Fees of office,	10 50	
			220 50
31,	Homestead Gas & Electric Supply Company:		
	Capital stock, 1905,	$22 00	
	Capital stock, 1906,	22 00	
	Capital stock, 1907,	22 00	
	Capital stock, 1908,	22 00	
	Capital stock, 1909,	30 25	
	Interest,	15 05	
			133 30
Nov. 8,	Pennsylvania Iron Works Company:		
	Loans, 1905,	$1,215 72	
	Loans, 1906,	1,215 72	
	Loans, 1907,	142 50	
	Loans, 1908,	195 70	
	Loans, 1909,	269 80	
	Interest,	315 59	
	Fees of office,	151 97	
			3,507 00
19,	National Transit Company:		
	Capital stock, 1909,	$223,133 41	
	Fees of office,	500 00	
			223,633 41
	Capital stock, 1910,	$222,904 31	
	Fees of office,	500 00	
			223,404 31
	Capital stock, 1911,	$264,500 00	
	Fees of office,	500 00	
			265,000 00
20,	Hallam Construction Company:		
	Capital stock, 1903,	$85 93	
	Capital stock, 1904,	165 00	
	Capital stock, 1905,	192 50	
	Capital stock, 1906,	247 50	
	Capital stock, 1907,	330 00	
	Capital stock, 1908,	375 00	
	Capital stock, 1909,	375 00	
			1,770 93

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
25,	Keystone Indemnity Company:		
	Interest on capital stock,	$18 91	
	Fees of office,	15 75	
			34 66
25,	Mont Clare Brick Company:		
	Capital stock, 1907,	$5 50	
	Capital stock, 1908,	5 50	
	Capital stock, 1909,	5 50	
	Capital stock, 1910,	5 00	
	Capital stock, 1911,	5 00	
	Fees of office,	1 32	
			27 82
25,	John Wanamaker:		
	Capital stock, 1911,	$373 39	
	Fees of office,	18 66	
			392 05
	Capital stock, 1910,	$531 20	
	Fees of office,	26 56	
			557 76
25,	Alden Coal Company:		
	Capital stock, 1911,	$1,750 00	
	Fees of office,	87 50	
			1,837 50
25,	Autocar Sales & Service Company:		
	Capital stock, 1911,	$15 00	
	Fees of office,	75	
			15 75
25,	The Autocar Company:		
	Loans, 1911,	$22 80	
	Fees of office,	1 14	
			23 94
25,	Dodson Coal Company:		
	Capital stock, 1910,	$150 00	
	Fees of office,	7 50	
			157 50
	Capital stock, 1911,	$300 00	
	Fees of office,	15 00	
			315 00
25,	Philadelphia Warehousing & Cold Storage Company:		
	Capital stock, 1911,	$226 45	
	Fees of office,	11 32	
			237 77
25,	Philadelphia Mortgage and Trust Company:		
	Loans, 1908,	$289 08	
	Loans, 1909,	289 08	
	Loans, 1910,	289 08	
	Fees of office,	43 36	
			910 60
25	Central Railroad Company of New Jersey:		
	Capital stock, 1911,	$1,125 00	
	Fees of office,	56 25	
			1,181 25
26,	Kingston Coal Company:		
	Capital stock, 1909,	$22,000 00	
	Capital stock, 1910,	21,600 00	
	Capital stock, 1911,	21,600 00	
			65,200 00
26,	Keystone Coal & Coke Company:		
	Loans, 1911,	$1,000 00	
	Fees of office,	50 00	
			1,050 00

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
26,	Equitable Illuminating Gas Light Company:		
	Loans, 1911,	$1,952 31	
	Fees of office,	97 61	
			2,049 92
27,	Dubois Southwestern Railroad Company:		
	Capital stock, 1910,	$20 00	
	Capital stock, 1911,	20 00	
	Fees of office,	2 00	
			42 00
27,	Berwick Water Company:		
	Capital stock, 1910,	$200 00	
	Fees of office,	10 00	
			210 00
	Capital stock, 1911,	$300 00	
	Fees of office,	15 00	
			315 00
27,	Delaware & Hudson Company:		
	Capital stock, 1910,	$6,500 00	
	Fees of office,	325 00	
			6,825 00
27,	Delaware County Electric Company:		
	Loans, 1910,	$302 10	
	Fees of office,	15 10	
			317 20
	Loans, 1911,	$273 60	
	Fees of office,	13 68	
			287 28
27,	Harrisburg Gas Company:		
	Loans, 1910,	$1,234 67	
	Fees of office,	61 73	
			1,296 40
	Loans, 1911,	$1,393 87	
	Fees of office,	69 69	
			1,463 56
29,	Buffalo & Susquehanna Railroad Company:		
	Loans, 1910,	$161 50	
	Fees of office,	8 07	
			169 57
	Loans, 1911,	161 50	
	Fees of office,	8 07	
			169 57
29,	Morland Coke Company:		
	Capital stock, 1908,	$170 00	
	Fees of office,	8 50	
			178 50
	Capital stock, 1909,	177 00	
	Fees of office,	8 85	
			185 85
29,	Ford Collieries Company:		
	Loans, 1910,	$577 12	
	Fees of office,	28 85	
			605 97
	Loans, 1911,	$1,162 25	
	Fees of office,	58 11	
			1,220 36
29,	Glen Alden Coal Company:		
	Capital stock, 1910,	$34 00	
	Fees of office,	1 70	
			35 70
	Capital stock, 1911,	34 00	
	Fees of office,	1 70	
			35 70

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
29,	C. Schmidt & Sons Brewing Company:		
	Capital stock, 1911,	$500 00	
	Fees of office,	25 00	
			525 00
29,	Philadelphia & West Chester Traction Company:		
	Capital stock, 1909,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1910,	$400 00	
	Fees of office,	20 00	
			420 00
	Capital stock, 1911,	$400 00	
	Fees of office,	20 00	
			420 00
29,	Wayne Brewing Company:		
	Capitl stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1911,	225 00	
	Fees of office,	11 25	
			236 25
29,	Lackawanna Iron & Steel Company:		
	Capital stock, 1911,	$1,500 00	
	Fees of office,	75 00	
			1,575 00
29,	Robesonia Iron Company, Limited,		
	Capital stock, 1911,	$1,450 00	
	Fees of office,	72 50	
			1,522 50
30,	Pennsylvania & New York Canal & Railroad Company:		
	Capital stock, 1911,	$500 00	
	Fees of office,	25 00	
			525 00
30,	Consolidated Real Estate Company:		
	Capital stock, 1911,	$50 00	
	Fees of office,	2 50	
			52 50
30,	Schuylkill & Lehigh Valley Railroad Company:		
	Capital stock, 1911,	$100 00	
	Fees of office,	5 00	
			105 00
30,	Westmoreland Coal Company:		
	Capital stock, 1910,	$11 300 00	
	Fees of office,	250 00	
			11,550 00
	Capital stock, 1911,	$12,325 00	
	Fees of office,	250 00	
			12,575 00
30,	Penn Gas Coal Company:		
	Capital stock, 1910,	$4,400 00	
	Fees of office,	220 00	
			4,620 00
	Capital stock, 1911,	$3,925 00	
	Fees of office,	196 25	
			4,121 25
30,	Manor Gas Coal Company:		
	Capital stock, 1910,	$450 00	
	Fees of office,	22 50	
			472 50
30,	Donora Southern Railroad Company:		
	Capital stock, 1910,	$200 00	
	Fees of office,	10 00	
			210 00

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
30,	Joseph M. Adams Company:		
	Bonus, 1910,	$83 33	
	Fees of office,	4 16	
			87 49
30,	Fairmount Park Transfer Company:		
	Capital stock, 1910,	$100 00	
	Fees of office,	5 00	
			105 00
	Capital stock, 1909,	$675 00	
	Fees of office,	33 75	
			708 75
	Capital stock, 1911,	$850 00	
	Fees of office,	42 50	
			892 50
Dec. 2,	Columbus & Erie Railroad Company:		
	Capital stock, 1911,	$100 00	
	Fees of office,	5 00	
			105 00
2,	Erie Land & Improvement Company:		
	Capital stock, 1911,	$25 00	
	Fees of office,	1 25	
			26 25
2,	Jefferson Railroad Company:		
	Capital stock, 1911,	$250 00	
	Fees of office,	12 50	
			262 50
2,	Nypano Railroad Company:		
	Capital stock, 1911,	$500 00	
	Fees of office,	25 00	
			525 00
2,	New York, Lake Erie & Western Coal & Railroad Company:		
	Capital stock, 1911,	$250 00	
	Fees of office,	12 50	
			262 50
2,	New York, Susquehanna & Western Coal Company:		
	Capital stock, 1911,	$250 00	
	Fees of office,	12 50	
			262 50
2,	Northwestern Mining & Exchange Company:		
	Capital stock, 1911,	$100 00	
	Fees of office,	5 00	
			105 00
2,	Wilkes-Barre & Eastern Railroad Company:		
	Capital stock, 1911,	$175 00	
	Fees of office,	8 75	
			183 75
2,	Erie Railroad Company:		
	Capital stock, 1911,	$520 00	
	Fees of office,	26 00	
			546 00
4,	State Line & Sullivan Railroad Company:		
	Capital stock, 1909,	$2,450 00	
	Fees of office,	122 50	
			2,572 50
	Capital stock, 1910,	$2,450 00	
	Fees of office,	122 50	
			2,572 50
	Capital stock, 1911,	$2,450 00	
	Fees of office,	122 50	
			2,572 50

SCHEDULE J.—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
4,	N. Y. Graves Company:		
	Capital stock, 1910,	$13 00	
	Fees of office,	65	
			13 65
	Capital stock, 1911,	$50 00	
	Fees of office,	2 50	
			52 50
4,	Dunkirk Gas & Coal Company:		
	Capital stock, 1910,	$500 00	
	Loans, 1910,	1,958 41	
			2,458 41
9,	Spring Brook Water Supply Company:		
	Capital stock, 1911,	$791 79	
	Fees of office,	39 58	
			831 37
	Capital stock, 1910,	$820 03	
	Fees of office,	41 00	
			861 03
10,	Emaus Gas & Fuel Company:		
	Loans, 1911,	$247 00	
	Interest,	6 92	
	Capital stock, 1911,	47 09	
	Interest,	1 32	
			302 33
10,	Emaus Gas Company:		
	Capital stock, 1910,	$5 00	
	Interest,	14	
			5 14
12,	Jerome Hotel Company:		
	Capital stock, 1907,	$5 00	
	Capital stock, 1908,	5 00	
	Capital stock, 1909,	5 00	
	Commission,	75	
			15 75
11,	Charles J. Webb & Company, Incorporated:		
	Capital stock, 1910,	$228 00	
	Fees of office,	11 40	
			239 40
11,	New York Central & Hudson River Railroad Company:		
	Capital stock, 1911,	$450 00	
	Fees of office,	22 50	
			472 50
11,	Bartram Hotel Company:		
	Capital stock, 1911,	$282 30	
	Interest,	8 47	
			290 77
13,	Central District & Printing Telegraph Company:		
	Capital stock, 1911,	$21,000 00	
	Fees of office,	500 00	
			21,500 00
13,	The Bell Telephone Company of Pennsylvania:		
	Capital stock, 1911,	$40,000 00	
	Fees of office,	500 00	
			40,500 00
16,	Arnold Traffic Company:		
	Capital stock, 1910,	$150 00	
	Capital stock, 1911,	150 00	
	Loans, 1910,	11 40	
	Loans, 1911,	11 40	
			322 80
16,	Lehigh & Wilkes-Barre Coal Company:		
	Loans, 1911,	$140 38	
	Fees of office,	7 01	
			147 39

SCHEDULE J.—Concluded.

SCHEDULE OF COLLECTIONS.

Year.	Name.		Amount.
16,	Bethlehem City Water Company:		
	Loans, 1911,	$114 00	
	Fees of office,	5 70	
			119 70
19,	D. J. Kennedy Company:		
	Loans, 1910,	$247 00	
	Interest,	14 82	
	Fees of office,	12 35	
			274 17
19,	Bowman Brothers Company:		
	Capital stock, 1911,	$414 27	
	Interest,	7 67	
			421 94
20,	L. B. Worden, Prothonotary, docket costs in Commonwealth cases adjusted since Sept. 11, 1912,		360 00
20,	Philadelphia & Western Railway Company:		
	Loans, 1911,	$35 00	
	Fees of office,	1 75	
			36 75
26,	Buffalo & Lake Erie Traction Company:		
	Capital stock, 1910,	$1,000 00	
	Fees of office,	50 00	
			1,050 00
	Capital stock, 1911,	$1,000 00	
	Fees of office,	50 00	
			1,050 00
31,	Allentown Electric Light & Power Company:		
	Capital stock, 1910,	$1,350 00	
	Fees of office,	67 50	
			1,417 50
31,	Allentown Electric Light & Power Company:		
	Capital stock, 1911,	$1,350 00	
	Fees of office,	67 50	
			1,417 50
31,	Lehigh Transit Company:		
	Capital stock, 1910,	$1,849 85	
	Fees of office,	92 49	
			1,942 34
	Capital stock, 1911,	$3,208 74	
	Fees of office,	160 43	
			3,369 17
31,	Fort Pitt Improvement Company:		
	Capital stock, 1910,	$357 50	
	On account loans, 1910,	221 20	
			578 70
	Total,		1,377,973 19
	Collections for year 1911,		3,058,713 19
	Collections for year 1912,		1,377,973 19
	Total,		4,436,686 38

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