

REPORT

OF THE

Attorney General

OF

PENNSYLVANIA

FOR THE

Two Years Ending December 31, 1896.

WM. STANLEY RAY,
STATE PRINTER OF PENNSYLVANIA.
1898.

REPORT

OF THE

Attorney General of Pennsylvania.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, PA., *January 1, 1897.*

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

In obedience to law, I have the honor to make a report of the official business transacted by me during the two years ending the thirty-first day of December, A. D. 1896.

Appended hereto will be found tabulated statements showing with particularity and in detail the character and volume of the business done, and the present condition of all matters now pending in the law department of the State.

My term of office began on January 15, 1895, the date of the expiration of the term of the Honorable W. U. Hensel, my predecessor. His report for the two years ending December 31, 1894, makes it necessary to include in this report the first fifteen days of January, 1895, intervening between the date of the report of Attorney General Hensel and the expiration of his term of office.

At the time I came into office certain suits were pending in the Supreme Court of the United States and in the Supreme Court of Pennsylvania, all of which have since been finally disposed of; but it

is due to my learned predecessor to say that, so far as it was possible by diligence and faithful attention to official duties, the public business had been well disposed of, and, comparatively speaking, there was but little unfinished business left by him at the expiration of his official term.

The Auditor General having given special attention to the collection of taxes from delinquent corporations, many of the claims being of long standing, it has imposed upon the law department of the State an unusual amount of business. Upwards of one thousand claims have been certified for collection, upon which nearly seven hundred suits have been brought during the incumbency of the present Attorney General. In addition to the work involved in this large volume of business, the usual proceedings by quo warranto, in equity and by mandamus, and proceedings against insolvent insurance companies and building and loan associations, have increased rather than diminished. At a special term of the court of common pleas of Dauphin county, beginning December 15, 1896, there were upon the list for trial upwards of one hundred and seventy-five cases in which the Commonwealth was a party. But few continuances were necessary and practically the entire list was disposed of. Many of the cases were for the recovery of large sums of money claimed to be due the Commonwealth, and new questions of great importance were involved in some of them.

The amount of collections made through this department during the past two years was \$845,211.16, of which sum \$21,738.82 were commissions paid by the defendants, all of which has been paid into the State Treasury as required by law.

It is made the duty of the Attorney General to advise the heads of departments upon all legal questions, and super-added to this duty is that of advising the different State boards established by act of Assembly, such as Board of Commissioners of Public Grounds and Buildings, State Board of Health, Mine Inspectors, &c., &c. Upwards of one hundred written opinions have been so given, besides oral opinions of more or less importance almost daily.

The steady increase of business in the law department of the State, and the probability of its continued growth as our population and material interests increase, make it necessary, in my judgment, in order to a proper disposition of the public business, to authorize the appointment of an additional Deputy Attorney General, and I earnestly recommend to your honorable bodies that such an officer be provided for by appropriate legislation. The entire force in the Attorney General's office is now what it has been for a great many years, viz: the Attorney General, Deputy Attorney General, law clerk and stenographer. There is no doubt in my mind but that the Commonwealth would profit very largely by the creation of this additional office. The proper valuation of the capital stock of cor-

porations, the residence of the holders of their loans, and numerous other matters demand a more thorough examination and the cases for trial a more thorough preparation as to the facts than the present force in the Attorney General's office can possibly give. By the fifth section of the act of April 21, 1857, the Attorney General is given access at all times to the books and papers in the Auditor General's office and the State Treasurer's office, and it is made his duty to cause to be settled, in the manner now provided by law, and collect any and all moneys appearing by said books and papers to be due the Commonwealth whenever, in his opinion, the public interests would be thereby subserved. Notwithstanding the earnest efforts and diligent work in the Auditor General's office, as shown by the claims certified to this department, abundant employment would be found, exceedingly profitable to the Commonwealth, for an additional deputy, in the matter of looking after delinquent corporations alone.

The principal matters of business transacted in this department during the past two years may be summarized as follows:

TAX CASES.

THE PENNSYLVANIA COMPANY.

The Pennsylvania Company is a corporation of this State under a charter granted by act of Assembly approved April 7, 1870. It has the right to manage, operate and control railroads within or without the State of Pennsylvania. In its charter it is specifically set forth, among other things, that "The several railroads managed by said company shall continue to be taxable as heretofore in proportion to their length within this State respectively, and the said Pennsylvania Company shall be taxable only on the proportion of dividends on its capital stock and upon net earnings or income only in proportion to the amount actually earned by it within the State of Pennsylvania, and all its earnings or income, derived from its business beyond the limits of this Commonwealth, shall not be liable to taxation." The company began business in 1872, and for that year and the following years the treasurer made reports to the Auditor General of its capital stock and dividends declared, at the same time claiming that the tax on capital stock should be apportioned according to the proportion of the number of miles of railroad operated by it within and without the State. Subsequent to 1873 the treasurer of the company made capital stock reports during all the

fiscal years down to 1888, but claimed that under the clause in its charter above quoted it was not liable for tax on capital stock. The accounting officers of the Commonwealth acquiesced in the position taken by the company and no settlement for a capital stock tax was made against it until May 1, 1888.

At that time the Auditor General and State Treasurer concluded to test the question of the liability of this company to taxation upon its capital stock. A settlement was made for taxes alleged to be due the Commonwealth from 1874 to 1887 inclusive. The settlement was appealed from by the company to the court of common pleas of Dauphin county, wherein it was decided that the company was liable to a tax upon its capital stock, and a judgment was directed to be entered in favor of the Commonwealth in the sum of \$416,500.00. An appeal was taken to the Supreme Court and the case was decided against the Commonwealth, on the ground that the Auditor General and State Treasurer had not the power to state an account against the company in 1888, by which, disregarding the action of their predecessors, they charged said company with taxes on capital stock from 1874 to 1887. The opinion of the Supreme Court rested almost entirely on the ground that the former accounting officers of the Commonwealth, acting under the advice of the Attorney General, had disposed of the question of taxation against this company prior to 1887 by refusing to make a settlement for these taxes. This being, in the opinion of the Supreme Court, an adjudication of the former accounting officers of the Commonwealth, it was not within the power of a subsequent accounting officer to open up and restate the account. On these grounds this case was decided against the contention of the Commonwealth. (See Commonwealth v. Pennsylvania Company, 145 P. S., 266.)

Inasmuch as the Supreme Court, in the case above referred to, did not decide the question whether or not the Pennsylvania Company was liable to a capital stock tax, the accounting officers concluded to raise the question by making a settlement against it for the tax years 1888 to 1894 inclusive. This settlement was entered and approved on the 26th day of February, 1895. An appeal was taken therefrom to the court of common pleas of Dauphin county. While the case was there pending the counsel for the company appeared before the Board of Public Accounts for the purpose of making an adjustment of the claims of the Commonwealth then in litigation and of agreeing upon a basis for future taxation. After a full hearing of the Board of Accounts, on September 23, 1896, agreed to accept \$54,127.65 in full of all taxes from 1888 to 1894 inclusive. It was further agreed that the company should pay the capital stock tax for 1895 of \$11,826.15, making a total of \$65,953.80, with interest and Attorney General's commission as agreed upon. It was further agreed that

the company should hereafter pay a capital stock tax upon the mileage basis, that is to say: The appraised value of the entire capital stock of the company should be divided by a fraction, with the total number of miles of the company as denominator and the number of miles in Pennsylvania as numerator, and the result thus obtained will be the portion of the capital stock subject to taxation in Pennsylvania. This settlement insures a fair return of taxes against this company which has until now practically escaped taxation upon its capital stock.

THE PITTSBURG & WESTERN RAILWAY COMPANY.

On May 6, 1895, the Auditor General certified to this department claims for capital stock tax against the Pittsburg and Western Railway Company for the tax years 1889 to 1894 inclusive, amounting to \$45,613.08. On the same day he certified another claim for tax on loans for the years 1887 to 1893 inclusive, amounting to \$12,746.32, and also a claim for tax on gross receipts for the same years amounting to \$36,139.74. On August 5, 1896, another claim was certified for collection for tax on loans for the years 1894 and 1895, amounting to \$10,082.46. In addition to the above claims the Auditor General certified on August 5, 1896, another claim against the Pittsburg and Northern Railway Company, which company is operated by the Pittsburg and Western Railway Company, for capital stock tax for the years 1893 to 1896 inclusive, amounting to \$28.78. Upon receipt of these claims the officers of the company were notified to make payment of the amount due. It was learned, however, that the Pittsburg and Western Railway Company was and had been for some time in the hands of a receiver, and that it was not in a condition financially to pay the claims due the Commonwealth. The Deputy Attorney General went to Pittsburg to confer with the attorneys for the company and if possible make arrangements for an early settlement of these delinquent claims. An investigation of the affairs of the company showed that it had a bonded indebtedness as follows:

4 per cent. first mortgage bonds, 1887,	\$9,700,000	00
7 per cent. first mortgage bonds, 1878,	219,000	00
6 per cent. first mortgage bonds, 1880,	81,000	00
5 per cent. mortgage bonds, 1891,	2,140,000	00
	<hr/>	\$12,140,000 00
Real estate mortgages,		312,375 00
Car trusts,		578,728 00
Total floating debt,		2,887,786 70
		<hr/>
Total indebtedness,		\$15,918,889 70
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Out of the floating assets at the time the road went into the hands of a receiver only \$116,377.81 had been collected by him. Under the direction of the circuit court of the United States for the Western district of Pennsylvania the receiver applied this money in partial discharge of claims against said company for labor, so that there was no fund in sight on which the Commonwealth could rely to collect its claim. Taking into consideration the fact that there was a bonded indebtedness of more than twelve millions and a floating debt of more than two millions, making a total indebtedness of about fifteen millions on this property, nearly all of which had a priority over the claims due the Commonwealth for delinquent taxes, it was deemed advisable to effect a settlement with the company.

In July, 1896, a proposition was made by the attorneys for the receiver, to compromise the claim of the Commonwealth by the payment of 50 per cent. of the balance remaining unpaid at that time. In view of the large sum of money involved and the insolvent condition of the company, the Auditor General and State Treasurer were called into consultation with the Attorney General for the purpose of considering the proposition for a settlement of these delinquent claims looking to the best interests of the Commonwealth. After a full hearing of the case it was decided by the Attorney General, with the consent and approval of the accounting officers, to accept the proposition submitted by counsel for the company, and a settlement was made accordingly. The following amounts were agreed upon and paid into the State Treasury in accordance with the terms of said settlement:

Capital stock tax, 1889 to 1894 inclusive,	\$32,169 60
Tax on gross receipts, 1889 to 1894 inclusive,	23,606 80
Tax on loans, 1887 to 1893 inclusive,	7,010 47
Tax on loans, 1894 to 1895 inclusive,	5,545 35
Tax on capital stock of Pittsburg and Northern Railway Company, paid by the Pittsburg and Western Railway Company,	33 78
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Total amount collected,	\$68,366 00
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This settlement leaves the record clear of all taxes due by the Pittsburg and Western Railway Company down to and including the tax year 1895.

THE BANK CASES.

The revenue act of June 8, 1891 (P. L. 240), provides that any bank incorporated by this State or the United States, may, in lieu of all taxation except upon its real estate, collect from its shareholders and pay into the State Treasury a tax of eight mills upon the par

value of its shares of stock; and it is further provided that any bank which fails to do so shall be subject to a tax of four mills on the actual value of the shares of its capital stock. Under the act of 1891 many of the banks elected to pay eight mills on the par value of the shares of their capital stock rather than pay four mills upon the actual value as appraised by the accounting officers of the Commonwealth. Banking institutions having a small capital stock and a large surplus very naturally preferred to pay eight mills on the par value, while those having a large capital stock and a small surplus very generally paid four mills on the actual value.

The Merchants' and Manufacturers' National Bank of Pittsburg, the First National Bank of Pittsburg, the Third National Bank of Pittsburg and the People's National Bank of Pittsburg, contended that the results obtained under this system of taxing the shares of capital stock in banking institutions discriminated against all banks having a large capital stock and small surplus in general, and against them in particular. It was contended in behalf of these institutions that the act of 1891 was repugnant to article IX, section 1 of the Constitution of Pennsylvania, which ordains that all taxes shall be uniform upon the same class of subjects within the territorial limits of the authority levying the same.

The Auditor General and State Treasurer settled an account against each of the above named banking institutions at the rate of four mills on the actual value of the shares of their capital stock. An appeal was taken from the settlements thus made by the accounting officers. The cases were argued in the court of common pleas of Dauphin county, and an opinion rendered by Judge Simonton decided that the act of 1891 relating to the taxation of shares of stock in banking institutions was constitutional. The Merchants' and Manufacturers' National Bank took an appeal and the case was argued April 29, 1895. The Supreme Court sustained the court below in an opinion found in 168 P. S., 319. This decision settles the question so far as the courts of Pennsylvania are concerned.

The defendants, not being satisfied with the disposition of the cases in our State courts, have filed a bill in equity in the United States circuit court for the Eastern district of Pennsylvania, asking for an injunction to restrain the Auditor General and State Treasurer from collecting the taxes already due and to enjoin these officers from levying and assessing taxes against them in the future. The bill in equity raises the question that the act of 1891 is in violation of section 1 of the fourteenth amendment to the Constitution of the United States. The same question was raised in the lower and Supreme Courts of Pennsylvania and decided in favor of the Commonwealth. The cases are still pending in the United States circuit court.

PRIORITY OF LIEN FOR TAX DUE THE COMMONWEALTH.

In the case of the Commonwealth v. The Goodwin Gas Stove and Meter Company, 166 P. S., 296, it was decided that, under the act of June 7, 1879 (P. L. 112), the Commonwealth has against common creditors the first lien upon personal property in an assigned estate without filing a copy of the lien under the acts of March 30, 1811 (P. L. 145), and April 16, 1827 (P. L. 473). The principle settled by the decision in this case is of great importance to the Commonwealth and may not be generally understood. The act of March 30, 1811, provided that the amount of tax due on every account settled under the provisions of that act shall be deemed to be a lien from the date of settlement of such account on all the real estate of the person or persons so indebted and his or their securities throughout the Commonwealth. It will be noticed that this act made such a settlement of tax due the Commonwealth a lien only against real estate. The act of April 16, 1827, authorized and required the Auditor General to transmit to the prothonotaries of the respective counties, to be by them entered of record, certified copies of liens claimed by the Commonwealth under the act of 1811. This legislation was followed by the general revenue act of 1879, which provided that all taxes imposed by the provisions of that act shall be a lien on the franchises and property, both real and personal, of corporations and limited partnerships from the time said taxes are due and payable. The Commonwealth contended that, under the section of the act of 1879, above referred to, a settlement for taxes by the accounting officers of the Commonwealth created a lien on the franchises and property, both real and personal, of corporations and limited partnerships; but, in the case of William Wilson & Sons Silversmith Company's Estate, 150 P. S., 285, it was decided that to entitle a tax lien, under the act of 1879, to priority, a certified copy must be filed in accordance with the provisions of the act of April 16, 1827. In the Goodwin Gas Stove and Meter Company case the defendant took the position that, inasmuch as the Auditor General had not caused a certified copy of the settlement for taxes to be filed with the prothonotary of the county in which the principal office of the corporation was located, it could not claim a prior lien out of the proceeds of the sale of an assigned estate. The Commonwealth took the position that the Silversmith Company case, above mentioned, only required a certification by the Auditor General of claims due the Commonwealth in order to bind real estate, and that as to personal property the act of 1879 in express terms created a prior lien in her favor. The Supreme Court sustained

the contention of the Commonwealth in this case. Under the authority of the two cases above mentioned it is clearly established as a legal principle that the Commonwealth has no prior lien for taxes due her as against the real estate of persons, corporations or limited partnerships unless a certified copy of the settlement is recorded in the county where the real estate is situated. As to personal property, however, the Commonwealth has a prior lien without such certification.

Acting under the authority of these cases the Auditor General has caused a certified copy of settlement to be forwarded to the respective counties in all cases where it is sought to obtain a lien against the real estate of persons, limited partnerships or corporations. In order that the Commonwealth may not lose sight of liens thus filed, I have caused to be prepared in my office a docket of tax liens in which is kept a complete record of all liens certified to the respective counties by the Auditor General.

QUO WARRANTO CASES.

INDEPENDENT SCHOOL DISTRICT OF DERRY TOWNSHIP.

A petition was presented in behalf of certain residents of the Independent School District of Derry township, Westmoreland county, asking that proceedings be instituted in the nature of a writ of quo warranto directed to the school directors of said independent school district, inquiring by what authority they claimed to exercise their rights, privileges and powers as school directors of said district. The petitioners alleged that the act of Assembly, which had erected said independent school district, had been repealed in 1854, and that therefore it had no legal existence since the repeal of the act of Assembly which created it. A hearing was fixed and the parties in interest having appeared, the writ was allowed. The proceedings were instituted to No. 349 Commonwealth Docket, 1896. The case was on the list at the December term of court, was argued and is now being considered by the court.

MAHANAY CITY AND SHENANDOAH JUSTICES OF THE PEACE.

On the 18th of March last a petition was presented from citizens of Schuylkill county to the Attorney General stating that the bor-

oughs of Mahanoy City and Shenandoah are each divided into five wards. It was further alleged that in each of said boroughs there were ten persons serving as justices of the peace—two in each ward—making twenty in the two boroughs. It appeared also that these justices of the peace were not elected by the concurrent votes of all the wards, but that each ward as such elected two. Counsel for petitioners claimed that under the act of May 10, 1878 (P. L. 51), each borough is authorized to elect only two justices of the peace for the entire borough, and they must be elected by the concurrent votes of all the wards. The petitioners asked the Commonwealth to institute proceedings of quo warranto against the acting justices of the peace for the reasons hereinbefore stated.

Following the usual practice of the office, notice was given to the officers complained against and a day was fixed for a hearing. After fully considering the cases it was decided to institute proceedings in order to determine the title of the defendants to the office of justice of the peace in said boroughs. Suggestions for writs of quo warranto were filed in the court of common pleas of Dauphin County. The cases were fully argued and an opinion was rendered by his honor, Judge McPherson, in which it was held that these boroughs came under the provisions of the act of 1878 above referred to and hence were only entitled to elect two justices of the peace by the concurrent votes of all the wards in each borough. The defendants appealed to the Supreme Court. The cases were there argued June 2, 1896, and in a per curiam opinion handed down October 5, 1896, reported in 178 Advance Reports, 198, the court below was sustained and the judgment of ouster was affirmed on the able opinion of Judge McPherson.

These cases went further than any prior case on the question therein involved. The principle is of wide application and in a general way means that the boroughs of this Commonwealth, unless an exception is made on account of special legislation in a particular case, or for other reasons pointed out in the decision, are only entitled to elect two justices of the peace by the concurrent votes of all the wards. In other words, ward justices can no longer be elected in Mahanoy City and Shenandoah and in most of the other boroughs of the Commonwealth.

THE PITTSTON PRESSED BRICK COMPANY.

On the 28th of February, 1896, James L. Lenahan, Esq., presented his petition asking for a writ of quo warranto against the Pittston Pressed Brick Company to show cause why said company should not be ousted and excluded from the exercise of its franchises as a cor-

poration. The petitioner alleged that ten per centum of the capital stock, required to be paid to the treasurer of said company in cash prior to the time of its incorporation, had not in fact been paid. It was further alleged that the subscriptions for a certain amount of the stock subscribed for by C. M. Heilman and William Griffith were not made in good faith. For these and other reasons the intervention of the Commonwealth was asked for the purpose of ousting said company from the exercise of its franchises as a corporation. The corporation filed an answer denying the material averments of the petition. After due consideration, on April 7, 1896, an order was made refusing to institute the proceedings as prayed for, for the reason that the petitioner did not show that he had any interest either as stockholder or creditor of the company. He was therefore without standing to ask that the proceedings be instituted, and the writ was refused.

THE PROVIDENT BICYCLE ASSOCIATION.

This is a corporation chartered in November, 1894, under the general corporation act of 1874, in the court of common pleas of Philadelphia county. Each member of the association is required to pay annual dues of two dollars and the further sum of one dollar on the first days of January, April, July and October, making a total annual payment of six dollars. By virtue of these payments the member becomes and remains entitled to all the benefits accruing under a card of membership issued to him by the association, which undertakes to clean his bicycle twice a year, to repair the same when punctured by accident, and replace the same if destroyed or stolen. The association has no lodges, secret rituals, signs or symbols, and does not pay its members any sick, disability or death benefits. It was contended by the Commonwealth that the association was doing what amounted to an insurance business and that it was not properly incorporated under the act of 1874 as a beneficial society. The Attorney General filed a suggestion for a writ of quo warranto to determine this question. The case was argued in the court of common pleas of Dauphin county and decided against the Commonwealth and in favor of the defendant in an opinion rendered by Judge McPherson. The Commonwealth took an appeal to the Supreme Court, where the judgment of the court below was affirmed in an opinion which has been recently handed down by Mr. Justice Fell. While the courts have decided the question involved in this controversy against the contention of the Commonwealth, yet the division line between beneficial societies and insurance companies is not well defined and must necessarily result in some confusion. The opinion of Justice Fell, not yet reported, is as follows:

“The defendant is a corporation chartered under the second section of the act of 1874, as a protective association. The question raised by the quo warranto and the answer is whether the association is carrying on the business of insurance in violation of the act of 1876. The right challenged is that of the defendant to carry on the business in which it is engaged. A part of this business is clearly not insurance, and a part of it may come within the meaning of that term. This would, however, depend on the manner in which the affairs of the association are conducted. All of its business may be so transacted as to be of a kind that a protective association may properly carry on, and it does not appear that it has not been so transacted. The obligation of the association is to repair and replace, not to pay a fixed amount or an amount covering or proportionate to the loss sustained, and the right of the member is fixed by the fact of membership. The propriety of granting such a charter under the act of 1874 may well be doubted, as there is a probability of its improper use as a cover for a business regulated by the act of 1876, and this case is so near the border line that we have hesitated to affirm it because it might encourage attempts to establish insurance companies which would not be subject to the wholesome provisions of the insurance laws. These laws are founded on a wise public policy, and any attempt to evade them should be promptly met and defeated. We cannot, however, say that the learned judge of the common pleas erred in entering judgment in this case for the defendant, and we can add nothing to his very able and thorough discussion of the subject.

“The judgment is affirmed.”

BENJAMIN R. SEVERN, CONTROLLER OF SCHUYLKILL COUNTY.

The act of June 27, 1895 (P. L. 403), provides that in counties of this Commonwealth containing 150,000 inhabitants and over, controllers shall be elected, and abolishes the office of county auditor in such counties. The sixteenth section of said act authorizes the Governor, immediately after its passage, to appoint a person in each county wherein the act becomes operative to act as controller until his successor shall be duly elected. Acting under this authority the Governor appointed Benjamin R. Severn on the 5th day of October, 1895, as controller of Schuylkill county. It appears from recitals in a petition presented to the Attorney General that three county auditors had been elected in 1893, had been installed into office on the 1st day of January, 1894, and were still exercising the rights, privileges and functions of said office at the time of the appointment of the aforesaid controller. It was the evident intention of the Legislature to abolish the office of county auditor in counties having a population

of 150,000 and more, and to substitute therefor the office of county controller. The county auditors refused to vacate their office, and claimed the right to continue to perform their duties as such officers, and denied the right of the said Benjamin R. Severn to act as county controller. The petitioner asked that a suggestion and complaint be filed against said Benjamin R. Severn, and that a writ of quo warranto might be directed to be issued against him to show cause by what authority he claimed to exercise the office of county controller of said county. The parties in interest appeared before the Attorney General on the 4th day of December, 1895, and a full hearing was had. It was held that the county controller was acting under authority of law, and the suggestion for a writ of quo warranto was therefore refused.

TITUSVILLE AND PIT HOLE PLANK ROAD COMPANY.

June 9, 1896, John W. Pratt, of Venango county, and L. C. Clark, of Crawford county, presented their petition, alleging that the Titusville and Pit Hole Plank Road Company, by reason of non-compliance with the provisions of the act of June 26, 1849, under which it was erected into a corporation, never became a body corporate and that the exercise by it of the powers incident to a corporation was without lawful warrant, and further alleging that by reason of the non-user of a large portion of said road and the misuser of the remaining portion, it had forfeited whatever rights and privileges it might have originally acquired, if any.

The Attorney General was requested to cause to be issued a writ of quo warranto from the court of common pleas of Dauphin county, requiring said plank road company to appear and show by what authority it claims to exercise the rights, privileges and franchises of a corporation. Counsel for the corporation appeared and filed an answer denying all the material allegations of fact set out in the petition. Counsel for the corporation also claimed that it had been lawfully erected into a corporation by act of Assembly, and that it had not forfeited its franchises either by non-user or misuser. A hearing was fixed for June 24, 1896. On July 8, after due consideration of the facts involved in the controversy, as well as the law applicable to the same, it was decided to refuse to institute the proceedings.

U. B. MUTUAL AID SOCIETY OF PENNSYLVANIA.

It having come to the knowledge of the Attorney General that the U. B. Mutual Aid Society of Pennsylvania, whose principal office was located at Lebanon, was not in good condition financially, and

that its manner of transacting business did not subserve the best interests of the public, a suggestion was filed in the court of common pleas of Lebanon county to show cause why the corporation should not be dissolved and a receiver appointed. The rule was made returnable March 3, 1896, at which time the Deputy Attorney General appeared before Judge Ehrgood, of said county, obtained a decree of dissolution and had a receiver appointed as prayed for. Michael W. Reinoehl was appointed receiver and is closing up the business of said society.

COMPANY STORE ACT.

CAMBRIA IRON COMPANY.

The petition of C. A. Funk and others, citizens of Johnstown, Cambria county, was filed in this department on February 6, 1896. It averred that the Cambria Iron Company is now and has been conducting a company store known as "The Penn Traffic Company, Limited," in connection with the business of said Cambria Iron Company. It was alleged that the Cambria Iron Company was connected with the Penn Traffic Company, Limited, both directly and indirectly, in such a way as to violate the provisions of the act of June 9, 1891, which prohibits mining and manufacturing corporations from carrying on what is known as "company stores." It was further alleged that the stockholders and officers of the Cambria Iron Company were also the stockholders and officers of the Penn Traffic Company, Limited, and that the employes of the Cambria Iron Company were obliged to settle their accounts in said store.

The respondent filed an answer denying every averment in the petition and affidavit above referred to. The answer was sworn to by Paul Stackhouse, president of the Cambria Iron Company, by Josiah M. Bacon, a stockholder, and W. S. Robison, the secretary and treasurer. The affidavit of Charles S. Price, general manager of the Cambria Iron Company, was also filed, denying in detail all the material averments of the petition. A further affidavit was filed by J. E. Heagy, general manager of the stores of the Penn Traffic Company, Limited, in which a denial of every material averment in the petition was made. The affidavit of Charles O. Kruger, secretary and treasurer of the Penn Traffic Company, Limited, denying all the material averments of the petition was also filed. Several other affidavits to the same effect were presented and filed. The counsel repre-

senting the petitioners contended that the Attorney General has no discretion under the act of Assembly above referred to, but that the petitioners, having complied with the requirements of the act, it became his duty to file a suggestion upon which a writ of quo warranto will issue. The Attorney General did not accept this view of his duties under the law. After a careful consideration of the petition, answer and affidavits filed in the case, he was of opinion that no such specific proof is offered by affidavit or otherwise as would convict the respondent of a violation of the act of 1891. On the other hand, every material averment contained in the petition is denied by the respondent. The Attorney General was of the opinion that a complaint, which would authorize the intervention of the Commonwealth under said act, should be such as at least to make out a prima facie case, and that the writ ought not to be allowed where it was apparent that litigation would not be successful in the courts. Attorney General Hensel took the same view of the question, as set out in his report to the Legislature of 1895, page 18. The suggestion for the writ was therefore refused.

USE OF THE NAME OF THE COMMONWEALTH.

THE BUTLER WATER COMPANY.

The Butler Water Company filed a bill in equity against A. J. Russell, James McNally, James Patton and John Henry, in the court of common pleas of Butler county, to No. 4 March term, 1895, charging that said defendants, by the pumping of large quantities of salt water into the streams and basins from which they supplied the borough of Butler with water, had polluted it in such a way as to make it unfit for public use. The bill asked for an injunction to restrain the defendants from pumping salt water into the streams that supplied the said borough with water.

After the proceedings had been instituted the Butler Water Company applied to the Attorney General for permission to use the name of the Commonwealth as party plaintiff in the equity proceedings. It was contended that the name of the Commonwealth was necessary in order to fully raise all the questions involved in the courts. On June 8, 1895, after due consideration, leave was given to amend the proceedings by adding the name of the Commonwealth as party plaintiff so that all the legal questions involved in the controversy could be properly raised and decided. This case was appealed to the

Supreme Court and is reported in 172 P. S., 506. Mr. Justice Williams, who rendered the opinion of the court, clearly recognizes the right and duty of the Attorney General to intervene in behalf of the public in such matters.

KANARDA OIL COMPANY.

On February 15, 1896, the Butler Water Company, by its president, made application for the use of the name of the Commonwealth in a bill in equity to be filed against the Kanarda Oil Company to restrain it from the pollution of Connoquenessing creek. For the same reasons suggested in the application against the defendants, A. J. Russell, James McNally, &c., the use of the name of the Commonwealth was permitted.

IN RE POLLUTION OF SCHUYLKILL RIVER.

On the 20th day of February, 1896, the Hon. M. W. Kerkeslager, representative from the Twentieth district of the city of Philadelphia, addressed a letter to the Attorney General, stating that the pollution of the Schuylkill river was affecting the health of the citizens of the city of Philadelphia and others who were compelled to use water from said river. It was alleged that if the pollution were not checked it would result in making the water of the river unfit for public use. Later, a bill in equity asking for an injunction to restrain certain persons and corporations from polluting said river was prepared by the city solicitor of Philadelphia, which, being presented to the Attorney General with the request that he intervene in behalf of the Commonwealth so as to protect the rights of the public, was granted. The questions involved have not received judicial determination, but are of very great importance to the public generally. The case is now pending in the courts of Philadelphia county.

MANDAMUS CASES.

ALDERMAN IN JOHNSTOWN.

John T. Harris, of the First ward of the city of Johnstown, was a candidate for re-election as alderman in February, 1895, and received

169 votes for said office, Edgar O. Fisher, who was a candidate in the same ward for the same office, receiving 271 votes. Fisher, having received the greater number of votes, filed his acceptance in the office of the prothonotary of Cambria county, and was in due time commissioned as alderman. Harris, claiming that the ward was entitled to two aldermen under the general provisions of the act of 1839, relating thereto, filed his acceptance also and asked that a commission be issued to him. Johnstown is a city of the third class, incorporated under the act of May 23, 1889. This act is silent upon the question of the election of aldermen. Counsel for Mr. Harris made demand on the Secretary of the Commonwealth for a commission, which was refused. The question was then raised before the Governor, who after due consideration, and acting under the advice of the Attorney General, refused to issue the commission. Whereupon counsel for Mr. Harris presented a petition to the court of common pleas of Dauphin county, asking for a mandamus against the Governor to compel the issuance of a certificate to him as alderman in the first ward of the city of Johnstown. An answer was made for the Governor, and the case was heard by the court on petition and answer. It was contended on behalf of the Governor that the first ward of the city of Johnstown was entitled to only one alderman, and it was further contended that the court was without jurisdiction to issue a writ of mandamus against the governor. The case was decided in favor of the Commonwealth upon the ground that the First ward of the city of Johnstown was entitled to only one alderman, and that, inasmuch as the person receiving the greater number of votes had already been commissioned, no commission should issue to the petitioner. The question of jurisdiction was not passed upon.

PUBLICATION OF MERCANTILE APPRAISERS' LIST FOR PHILADELPHIA COUNTY.

In April, 1895, David Mandell, Jr., and Matthew Dittmann, attorneys for John Gutyar, Charles Horsch and S. Lubin, of the city of Philadelphia, presented a petition to the Attorney General, alleging that the act of April 20, 1887, which provides for the publication of the mercantile appraisers' lists, had been disregarded by the Auditor General of the State of Pennsylvania and the treasurer of the city and county of Philadelphia. It was alleged that, under the provisions of the act aforesaid, the Auditor General and city treasurer are required to direct the commissioners of Philadelphia county to publish the mercantile appraisers' lists of names and classification of each person subject to license, in not less than four newspapers in the city of Philadelphia. It being further alleged that the petitioners

had requested the Auditor General and city treasurer to so direct the commissioners of the county of Philadelphia to publish said lists, and the Auditor General and city treasurer having refused so to do, an application was made to the Attorney General to cause to be issued a writ of mandamus against said officers to compel them to do their duty as required by the act of 1887 above referred to. After having fully heard the case and following the opinion of my learned predecessor on the same subject dated May 30, 1892, it was decided that the public interests justified a refusal to file a suggestion for mandamus against the officers complained of, and it was accordingly refused.

IN RE METALLIC MANUFACTURING COMPANY v. THE BOARD OF COMMISSIONERS OF PUBLIC GROUNDS AND BUILDINGS.

H. N. Booz, representing the Metallic Manufacturing Company, presented a petition to the court of common pleas of Dauphin county, at No. 2 Commonwealth Docket, 1895, asking for a mandamus against the Board of Commissioners of Public Grounds and Buildings to compel them to award a contract to him for certain metallic work to be placed in the public buildings. The petition alleged that he was the lowest bidder and that the contract should therefore be awarded to him. The Board of Commissioners above referred to made a return denying the jurisdiction of the court and setting up several other defenses. The act of 1895 under which such contracts are awarded, requires that the sureties on the bond to be filed with the bid must be approved by the judge of the court where the bondsmen reside. The whole question was argued before the judges of the courts of said county and was decided in favor of the Commonwealth on the ground that the bond had not been filed in accordance with the provisions of the law. The question of jurisdiction was not passed on.

READING TRACTION COMPANY.

J. H. Cheatham and Dr. Henry Landis, of the city of Reading, made a complaint to the Attorney General against the Reading Traction Company under the act of May 7, 1887 (P. L. 94). In their complaint and petition to the Attorney General it was alleged that they were reputable citizens, residents in the region traversed by the street railway line, and as such had a standing to demand that the Attorney General institute proceedings against the above named company to enforce the provisions of the act hereinbefore mentioned.

Following the usual practice of the office, notice was given to the company complained against and to the attorney interested for the

petitioners. A hearing was given on the 9th of July, 1895, and some time afterwards an opinion was filed by the Attorney General, declining to institute proceedings at law or equity as prayed for. On September 11th following, the same persons presented a petition for a re-hearing, which was granted on September 18th, but was postponed until November 20th. After a full hearing of the case the Attorney General again refused to institute the proceedings asked for. Whereupon the petitioners presented a petition to the court of common pleas of Dauphin county, asking for a mandamus to issue against the Attorney General compelling him to institute the proceedings. The alternative writ was granted as prayed for, to which the Attorney General made return in due course. The case was argued in the court below and decided by Judge Simonton in favor of the petitioners and a peremptory mandamus was awarded. An appeal was taken by the Attorney General to the Supreme Court. Mr. Justice Williams, in an opinion handed down October 5, 1896, and reported in 178 P. S. 186, reversed the decree of the court below and defined the duties of the Attorney General under the act of 1887.

SUPERIOR COURT.

Hon. M. S. Quay, chairman of the Republican State Committee, by letter dated October 5, 1895, addressed to the Secretary of the Commonwealth, suggested that the provision of the act of June 23, 1895, creating the Superior Court, which forbids each elector to vote for more than six candidates although there are seven judges to be elected, is in contravention of the Constitution of the State, which declares that each qualified elector shall be entitled to vote at all elections, and provides for a limited vote for judges only in the case of those of the Supreme Court, and that an election of judges of the Superior Court, held upon the limited plan of voting would be invalid; he further requested that the Secretary of the Commonwealth, in making up the form of ballot, giving instructions and performing the other duties imposed by the ballot law, disregard that provision of the statute and prescribe such form of ballot and give such instructions as will insure each elector throughout the Commonwealth the right and privilege of voting for seven candidates for judges of the Superior Court.

The Secretary of the Commonwealth, after a careful consideration of the question involved, refused to take the responsibility of disregarding this provision of the statute, and answered that the instructions he had already prepared indicated that each elector might vote for six candidates only. The matter having been brought to

the attention of the Attorney General, it was decided that the question raised was of such importance as to demand judicial determination before the official ballot should go out. A proceeding in the nature of an amicable mandamus was therefore instituted against the Secretary of the Commonwealth for the purpose of determining the legal question involved. The court below, in a well-considered and able opinion of Judge Simonton, sustained the position taken by the Commonwealth and held that the provision of the act of 1895, creating the Superior Court, which limited the right of an elector to vote for six persons, was unconstitutional. An appeal was taken to the Supreme Court, and the case being advanced was speedily heard. The Supreme Court divided on the question but the majority held that the act of 1895 was constitutional and the proceedings against the Secretary of the Commonwealth were therefore dismissed. The case is reported in 171 P. S., 505.

OPINIONS.

APPROVAL OF BONDS OF NOTARIES PUBLIC.

On December 10, 1894, the secretary of the board of judges of the county of Philadelphia addressed a communication to my learned predecessor, asking for the views of the Attorney General on the question of the proper practice in approving the bonds of notaries public. Another letter was addressed to the Hon. Robert E. Pattison, then Governor, dated January 1, 1895, notifying him that the judges of the courts of common pleas of Philadelphia county had refused to approve sureties on said bonds. Prior to that time it had been the practice of said judges to approve such bonds. Their refusal further to continue in this practice raised the question as to the requirements of the acts of Assembly bearing on the subject.

The act of March 5, 1791 (P. L. 11), which provided for the appointment of notaries public, contained no specific provision for the approval of their bonds. The act of March 12, 1791 (P. L. 13), however, supplied this deficiency by providing that "all bonds and recognizances which are now or hereafter shall be by law directed to be given to this Commonwealth for the faithful discharge of any office, commission or public trust, shall be taken to the secretary in the name of the Commonwealth for the uses in the same respectively expressed, the sureties therein to be approved by the Governor, except

in the cases of bonds and recognizances given by sheriffs and coroners and their sureties, and the competency of the sureties shall be submitted to the justices of the courts of common pleas of their respective counties.”

Under the provision of the act of Assembly last mentioned it became the practice of the judges of the courts of common pleas of the county of Philadelphia to approve the bonds of persons appointed to the office of notary public. This practice continued down to the first of January, 1895. The act of 1840 (P. L. 335), provided that persons appointed to the office of notary public should give bond with two sufficient sureties to be approved by the Governor in such amount as he might determine. It was contended that this is the only act in force with reference to the authority for approving the bonds of notaries public. This position is further strengthened by the fact that the county of Philadelphia was the only one wherein the practice of approving said bonds by the judges was in force. In all the other counties of the Commonwealth it has been the practice of the Governor to approve these bonds. The Attorney General was of the opinion that the position taken by the judges of the courts of common pleas of Philadelphia is correct, and that the proper practice is to have the Governor approve the bonds as provided in the act of 1840, above referred to.

VACANCIES IN THE OFFICE OF ALDERMAN.

A number of citizens of the second ward of the city of Hazleton petitioned the Governor, asking for the appointment of John H. Huth to the office of alderman in said ward on the ground that a vacancy existed in said office. From the facts in the case it appeared that Frederick M. Swanck had been duly elected alderman in said ward, and that, since his election to said office, he had become insane and was at that time confined in the Danville insane asylum. The question of the power of the Governor to make an appointment to fill what was supposed to be a vacancy being referred to the Attorney General, it was decided that the fact of the incumbent having become insane did not of itself make a vacancy in said office. The physical or mental disability of the present incumbent did not create any vacancy. The officer is still living and has not resigned. In such cases, if an officer becomes insane or, for any other reason, is unfit to perform the duties of his office, the power of removal exists under the last clause of section 4 of article VI of the Constitution, which provides: “All officers elected by the people, except Governor, Lieutenant Governor, members of the General Assembly, and judges of the courts of record learned in the law, shall be removed by the Governor for

reasonable cause after due notice and full hearing on the address of two-thirds of the Senate.”

AUTHORITY OF THE AUDITOR GENERAL TO DRAW HIS WARRANT FOR THE PAYMENT OF THE CLERK HIRE AND CONTINGENT EXPENSES OF THE BANKING DEPARTMENT.

The Banking Department was created by the act of June 8, 1891. It continued to act under this authority until the approval of the act of February 11, 1895. The act of 1895, which provides for the creation of a Banking Department substantially and, in many of its sections, by express terms, re-enacts the provisions of the act of June 8, 1891. The act of 1895 therefore repealed by necessary implication the act of 1891. The general appropriation act of 1893 provided for the payment of a stenographer, typewriter, clerk hire and other contingent expenses of the Banking Department for the two fiscal years beginning June 1, 1893. The Auditor General doubted his authority to draw his warrant to pay these expenses of the Banking Department as required by the act of 1895. He contended that the general appropriation act of 1893 covered the expenses of the Banking Department as it existed under the act of 1891, and, since the act of 1891 was repealed by the act of 1895, therefore there must be an appropriation to cover the expenses of the Banking Department as reorganized and continued under the act of 1895.

The question having been referred to the Attorney General, it was decided that the act of February 11, 1895, was a re-enactment of the act of June 8, 1891, with some of its provisions extended, the duties of the some of the officers therein designated changed, and their powers increased, but still continuing the original Banking Department as created under the act of 1891. This opinion followed that familiar rule in the interpretation of statutes, that the re-enactment of an earlier statute is a continuance, not a repeal, of the former, even though the later act expressly repeals the former. This principle is well stated in Endlich on the Interpretation of Statutes, section 490, wherein it is said: “But even a repealing act, re-enacting the provisions of the repealed statute in the same words, is construed to continue them in force without intermission, the repealing and re-enacting provisions taking effect at the same time.” To the same effect see *Barclay v. Lease*, 9. C. C., 314. The Auditor General was advised that under these authorities he could draw his warrants in favor of the Commissioner of Banking under the general appropriation act of 1893 for the use of the Banking Department, to be applied to the payment of a stenographer, typewriter, clerk hire and contingent expenses of the Banking Department, as reorganized and continued under the act of 1895.

POWER OF THE GOVERNOR TO REMOVE THE RECORDER OF DEEDS IN
THE CITY OF PHILADELPHIA.

On March 8, 1895, the Governor addressed a communication to the Attorney General, asking as to the power of the Executive to remove the then incumbent of the office of recorder of deeds in the city of Philadelphia. From the facts in the case it appeared that John J. Curly, who was the then incumbent of said office, was appointed to such office by Governor Pattison on the 29th day of September, 1894, and was commissioned to hold the same from that date until the first Monday of January, 1896. The appointment was made to fill the vacancy caused by the death of the officer elected by the people at the November election of 1893. The vacancy occurred less than three months before the general election in 1894, hence the appointee was commissioned to serve until the first Monday of January, 1896, at which time the person elected by the people at the general election in 1895 would be entitled to the office. The question arose as to the power of the Executive to create a vacancy by the removal of the then incumbent and to fill such vacancy by appointment until the first Monday of January, 1896.

The power given the Executive to remove is contained in section 4 of article VI of the Constitution, and reads as follows: "Appointed officers, other than judges of the courts of record and the Superintendent of Public Instruction, may be removed at the pleasure of the power by which they shall have been appointed. All officers elected by the people, except Governor, Lieutenant Governor, members of the General Assembly, judges of the courts of record learned in the law, shall be removed by the Governor for reasonable causes, after due notice and full hearing, on the address of two-thirds of the Senate."

It will be observed that, under the section last above quoted, appointed officers, except judges and the Superintendent of Public Instruction, may be removed at the pleasure of the power by which they shall have been appointed. It necessarily follows that, if John J. Curly, then recorder of deeds, was an "appointed officer" within the meaning of the Constitution, there can be no doubt that full power is vested in the Executive to remove him. If he is not such "appointed officer," but is "an officer elected by the people," although filling the office ad interim by appointment, then he can be removed by the Governor only for reasonable cause on address of two-thirds of the Senate.

The exact question involved in this controversy has not received judicial determination. By section 8 of article IV of the Constitution, the Governor is given power to fill a vacancy in any elective office which he is or may be authorized to fill, and the same section provides "but in any such case of vacancy in an elective office, a person

shall be chosen to said office at the next general election, unless the vacancy shall happen within three calendar months immediately preceding such election, in which case the election for said office shall be held at the second succeeding general election."

Under the Constitution, laws and decisions of the courts cited in said opinion, which will be found in the Appendix, the Attorney General reached the conclusion that the Executive had no power to remove John J. Curly, recorder of deeds for the city of Philadelphia, because it is an elective office, and as to such offices the Governor does not have the power of removal under the Constitution. The Attorney General was further of opinion that the Constitution and the act of 1874 fixed the term of the appointee of Governor Pattison to the office until the first Monday of January, 1896, and that he could not be disturbed in his office except for reasonable cause, after due notice and hearing, on address of two-thirds of the Senate. (See opinion in Appendix.)

CLERKS AND EMPLOYES OF BANKING INSTITUTIONS CANNOT BE APPOINTED TO THE OFFICE OF NOTARY PUBLIC.

John A. Rupert, of West Chester, Pa., who was the cashier of the Dime Savings Bank of Chester County, asked to be appointed a notary public. The Dime Savings Bank above referred to was organized under the provisions of the act of Assembly approved May 20, 1889 (P. L. 246). The act of April 14, 1840, provides that "No person, being a stockholder, director, cashier, teller, clerk or other officer in any bank or banking institution, or in the employment thereof * * * shall at the same time hold, exercise or enjoy the office of notary public." The question was raised by Mr. Rupert as to whether a bank, incorporated under the act of 1889 as a savings bank, forbidden as it is by the act "to loan money deposited with them, or any part thereof, upon notes, bills of exchange or drafts, or to discount any such notes, bills of exchange or drafts," is within the prohibition of the act of 1840.

After carefully considering the case the Attorney General was of opinion that the inhibition as to cashier and other employes was just as strong as that regarding a stockholder. It does not follow that because a bank is prohibited from dealing in commercial paper, the reason for the act of 1840 is removed. Notarial certificates and attestations are required almost daily in a savings bank where the bank itself is a party. To permit either a stockholder, an officer or an employe of a bank to exercise a judicial power of this kind is, in the opinion of the Attorney General, prohibited by the letter and certainly by the spirit of the act of 1840. The Attorney General was therefore

of the opinion that a commission should not issue to Mr. Rupert because of his holding the position of cashier in the Dime Savings Bank of Chester County.

POWER OF THE GOVERNOR TO ISSUE WRITS FOR THE HOLDING OF SPECIAL ELECTIONS.

Judges Waddell and Hemphill, of the Fifteenth judicial district, filed with the Governor a certificate setting forth the fact that the election of the officers of township auditor and supervisor, held in the township of West Marlborough, county of Chester, on the 19th day of February, 1895, was found to be invalid for the reason that the official ballots used were erroneous and that the election for this reason was set aside. A communication was also received from Thomas W. Baldwin, asking that writs of election, in accordance with the provisions of the ballot law of 1893 (P. L. 433), should be issued. These communications raised the question whether it is the duty of the Governor, under the provisions of the act of Assembly above referred to, to cause writs of election to issue when township or borough elections are for any reason declared to be invalid or set aside by a proper tribunal.

The act of 1893 provides for the manner of holding elections, township, special and general, but many of its provisions apply only to general elections. It is true that township and borough elections are incidentally provided for in said act of Assembly, but it does seem to be a reasonable construction that, so far as the Governor has any duty to perform under the provisions of this act, it applies only to general elections. It certainly was not the intention of the Legislature that the Governor should cause a writ of election to issue every time the election of some township or borough officer should be declared invalid. Vacancies in the office of township auditor or supervisor can be filled under the provisions of the act of 15th April, 1834 (P. L. 552). The method of supplying vacancies therein provided is more desirable and less expensive than the holding of new elections under a proclamation of the Governor. The Governor was therefore advised not to issue the writ of election in this case.

CONSTRUCTION OF THE PHRASE "COUNTY SEAT," AS USED IN THE ACT OF APRIL 17, 1878, AND IN ARTICLE XIII, SECTION 1, OF THE CONSTITUTION.

On the 17th day of May, 1895, the commissioners appointed to make a survey and report upon a new county, addressed a communi-

cation to the Attorney General asking for an interpretation of the phrase "county seat," as used in the act of Assembly approved April 17, 1878, entitled "An act to provide for the divisions of counties of this Commonwealth and the erection of new counties therefrom." The practical question raised by this inquiry is whether, in the measurement of the distance from an existing county seat, as referred to in the act of Assembly and the Constitution, is meant ten miles from the court house or ten miles from the limits of the municipality in which the court house is situated. On the question of establishing a new county the Constitution provides, among other things, that the line of the new county shall not pass within ten miles of the county seat of any county proposed to be divided. The act of 1878, above referred to, was passed for the purpose of providing for the formation of new counties under the constitutional provision. The Attorney General was of the opinion that by the phrase "county seat" is meant the municipality in which the court house is located and not the court house itself. Hence the commissioners were instructed that in making the measurement of distance from the county seat such measurement must be made from limits of the municipality and not from the court house.

TAXATION OF LIFE INSURANCE POLICIES.

The Auditor General, in November, 1895, addressed a communication to the Attorney General, asking whether all classes or kinds of life insurance policies are taxable or only certain kinds and, if so, what kinds. The question raised by this inquiry was of great importance and it has not yet had judicial determination. Under the general revenue laws of the Commonwealth insurance policies have never been taxed. It was contended, however, that many insurance policies represented moneyed capital and were legitimate investments having a present surrender value, and therefore came within the purview of the revenue statutes of the Commonwealth. After carefully considering the whole question the Attorney General was of the opinion that insurance policies were not properly subject to taxation under the provisions of the present revenue laws of the State. Certain kinds of insurance policies might very properly be included in the general classification of taxable subjects, but it will require legislative authority to make them subject to taxation.

POWER OF COLLEGES TO CONFER DEGREES.

The Hon. Nathan C. Schaeffer, Superintendent of Public Instruction, and secretary of the College and University Council, addressed a

communication dated February 18, 1896, asking the opinion of this department upon the right of certain institutions of learning to confer literary degrees under the 12th section of the act of June 26, 1895. Most of the institutions about which inquiry was made were incorporated under the act of 1874. The court of common pleas, in the decree of incorporation, gave to the colleges the power to confer literary degrees. It was contended, however, that the courts, in thus granting power to confer degrees, acted without proper authority.

The question raised is not free from difficulty, but the Attorney General was of the opinion that the decrees of the several courts, creating these corporations and expressly granting to them the power to confer degrees, should be recognized and respected as the decisions of courts of competent jurisdiction upon a subject committed to them by the Legislature, and that they should be binding upon all concerned until reversed by a court of last resort. The College and University Council was accordingly advised that the institutions of learning referred to in the letter of its secretary had the right, under existing laws, to confer literary degrees, if such power had been granted to them by courts of competent jurisdiction, and that such powers having been granted them, will continue if the institutions comply with the twelfth section of the act of 26th June, 1895.

WHO SHOULD PAY FOR THE ENUMERATION OF SCHOOL CHILDREN UNDER THE COMPULSORY EDUCATION LAW OF 1895.

The Superintendent of Public Instruction addressed a communication to this department asking for an opinion upon the question of the liability of the several counties of the Commonwealth to pay assessors who are required under the compulsory school law, approved May 16, 1895 (P. L. 72), to make an enumeration of children between the ages of eight and thirteen years. The county commissioners, in some instances, took the position that the county is not liable for the payment of the district assessors in making the enumeration of school children, for the reason that the act of Assembly which requires the work to be performed does not provide in express terms that the county shall pay for the same. The question being carefully considered, the Attorney General was of the opinion that the district assessors, in making the enumeration of school children and returning the same to the county commissioners under the provisions of the compulsory school law, are entitled to receive a per diem compensation for their services out of the funds of the proper county, taken in connection with such other services as they perform under authority of law.

THE STATE'S SHARE OF COUNTY OFFICERS' FEES.

In the last report of my learned predecessor reference is made to a series of cases instituted by the Commonwealth against the counties and county officers of Philadelphia, Allegheny and Luzerne. Each of these counties had more than 150,000 population, and came under the constitutional provision which required the officers in all such counties to be paid by salary and not by fees.

The history of the legislation which led up to the controversy arising in the cases above-mentioned, briefly stated, is as follows: Before the passage of the act of March 10, 1810, all fees of office belonged to the officers to whom they were paid. The act of 1810 imposed a tax of fifty per cent. on the excess of fees of office received by any officer over \$1,500 for the benefit of the Commonwealth. Under this act the State was entitled to one-half of the aggregate fees received by the county officers therein designated in excess of \$1,500. The act of April 5, 1842, provided that the officers, in addition to the \$1,500, were entitled to a deduction for clerk hire, stationery and other expenses incidental to the performance of the duties of their office. The acts of 1810 and 1842 were general in terms and applied to every county of the Commonwealth. Section 5 of article XIV of the Constitution of 1874 provides that in all counties having over 150,000 population, county officers shall be paid by salary. The act of March 31, 1876, was passed for the purpose of carrying into effect this provision of the Constitution. The first section of the last named act provides that in counties containing over 150,000 inhabitants, all fees limited and appointed to be received by each and every county officer shall belong to the county. It was contended by the county of Philadelphia that the general provisions of the act of 1876 repealed by implication the act of 1810 which gave one-half the fees of office to the State. The county of Allegheny, in addition to the position taken by the county of Philadelphia, contended that the act of March 10, 1810, was repealed as to that county by the act of April 6, 1871 (P. L. 476), and its supplements, the act of March 6, 1872 (P. L. 209), providing that such fees in said counties should be paid into the county treasury.

A large amount of revenue was involved in this controversy for the reason that the accounting officers of the Commonwealth had not made a settlement against these counties since the passage of the act of 1876 until 1893, when the question was raised in the proceedings instituted to collect these taxes.

An appeal was taken by the defendants to the court of common pleas of Dauphin county. The cases were argued during the latter part of the term of Attorney General Hensel. The position of the Commonwealth was sustained in a very able opinion rendered by

Judge Simonton. The defendants took an appeal to the Supreme Court, where I found the cases pending at the beginning of my official term. In due course the cases were argued in the Supreme Court, but after full hearing the position of the court below was reversed in an opinion rendered by Mr. Justice Dean and reported in 168 P. S., 293.

The decision in these cases has established the principle that the Commonwealth, in counties having a population of more than 150,000 inhabitants, cannot collect fifty per cent. of the fees of officers included in the provisions of the act of 1876.

ESCHEATS.

APPLICATION OF MRS. ANN THOMPSON BY HER ATTORNEY-IN-FACT FOR A REFUNDING OF MONEYS ESCHEATED TO THE COMMONWEALTH.

The act of June 25, 1895 (P. L. 283), constituted the Governor, Attorney General, State Treasurer and Auditor General a board to receive satisfactory proof of the wrongful escheat of moneys to the Commonwealth and cause the same to be refunded in proper cases. Under the authority of this act of Assembly, Mrs. Ann Thompson, of the city of Buffalo, by her attorney-in-fact, Dan. H. Stone, Esq., of the borough of Beaver, presented a petition asking for a refunding of certain moneys which, it was alleged, had been wrongfully escheated to the Commonwealth. A hearing was given to the parties in interest and the following facts were developed:

Mrs. Ann Thompson is the administratrix and sole surviving heir at law of Mrs. Maria Bull, deceased. The said Mrs. Maria Bull died seized of a certain number of shares of the capital stock of the Birmingham and Pittsburg Bridge Company, a corporation of the Commonwealth of Pennsylvania. Dividends had been declared by said corporation on the said stock to the amount of \$1,322.00. These dividends were escheated to the Commonwealth because the whereabouts of Mrs. Maria Bull were unknown and no friend or legal representative having demanded the payment of the dividends under the law, the treasurer of the corporation paid them into the State Treasury as escheats. In further hearing of the case the fact was well established that Maria Bull had died and that Mrs. Ann Thompson was her sole surviving heir. The bridge company, above referred to, recognized Mrs. Ann Thompson as the surviving heir of Mrs. Maria Bull and had the stock transferred to her on the books of the company. Mrs. Thompson petitioned the Auditor General and State Treasurer in 1892, asking that the money which had been escheated to the Com-

monwealth should be returned to her. Attorney General Hensel gave an opinion which recognized the justice and equity of the claim, but held that there was no legislative authority to refund the moneys. By reason of the position taken by the learned Attorney General the act of June 25, 1895, above referred to, was passed and upon the authority of this act it is now asked that the moneys be refunded. After a full hearing in the case and due consideration of all the facts connected therewith, it was decided by the Board hereinbefore mentioned, upon the advice of the Attorney General, that the moneys which had been escheated as aforesaid should be returned to the proper party.

CASES IN THE UNITED STATES SUPREME COURT.

The accounting officers of the Commonwealth having settled certain taxes against the New York, Lake Erie and Western Railroad Company, the Tioga Railroad Company, the New York, Lake Erie and Western Coal and Railroad Company and the New York, Pennsylvania and Ohio Railroad Company, appeals were taken to the court of common pleas of Dauphin county. The cases were there argued by my learned predecessor and judgments were entered in favor of the Commonwealth. An appeal was taken to the Supreme Court of Pennsylvania and the opinion of the lower court was sustained. The cases are reported in 145 P. S., 57. An appeal was taken to the Supreme Court of the United States by counsel for the defendants on the ground that this was an attempt by the accounting officers of the Commonwealth to impose a tax on gross receipts derived from commerce from points within to points without the State, and was therefore void under the Interstate commerce clause of the Constitution of the United States. The Supreme Court of the United States sustained the position taken by the lower and Supreme Courts of Pennsylvania. Judgment was entered accordingly, which, together with costs and interest accrued, has been paid.

INSURANCE CASES.

Too much credit cannot be given the Insurance Commissioner for the diligence of his department in discovering and calling to account insurance companies that have conducted their business either fraud-

ulently or against public policy. During the past two years informations have been lodged by the Commissioner with the Attorney General against twenty-three mutual insurance companies for alleged violations of law. In all these cases proper proceedings were instituted, as requested. Fifteen companies were dissolved and receivers appointed. In three cases the proceedings were discontinued after an investigation of the affairs of the companies, and the remaining five cases are still pending. The wholesome restraints imposed upon insurance companies under the law have a very salutary effect, and when properly administered by the Insurance Commissioner great good necessarily results to the public. The person who takes out a policy in an insurance company generally relies upon the statements made to him by the agent who solicits the risk and does not have much information as to the standing of the company outside of these statements. It is therefore of the very highest importance that insurance companies should deal with their policy holders in the best of good faith and upon sound business principles. The only protection the policy holders have in most cases is that conferred under the laws, whereby the Insurance Commissioner is given the right to investigate the affairs of all insurance companies, and, when it is ascertained that they are in an insolvent condition or are not conducting their business honestly, or they are doing business contrary to public policy, to have proceedings instituted against them for so doing. The record made by the present Insurance Commissioner is highly creditable to him, and is an assurance to the public that their interests are being carefully guarded.

SEXENNIAL LEAGUE.

In September, 1895, Hon. James H. Lambert, Insurance Commissioner, called the attention of the Attorney General to the character of the business of the Sexennial League, with the request that proper proceedings should be instituted to inquire into the right of said society to transact under its charter the kind of business being done by it. At the hearing it was developed that the Sexennial League was chartered by the court of common pleas of Philadelphia county on July 24, 1888, as a beneficial society. The object of the order was to establish a relief fund from which its members, who had complied with the laws, rules and regulations of the society might receive benefits in a

sum not exceeding twenty-five dollars per week for each member during sickness, or if a member became disabled an amount equal to one-half of the certificates issued, and an amount not exceeding one thousand dollars when he had been in continuous membership for six years. A mortuary benefit was also provided for by the laws of the league. The funds for carrying out these objects were obtained from assessments levied upon all the members in proportion to the amount of certificates held by them. Certificates were issued in the sums of \$1,000, \$800, \$600, \$400 and \$200, respectively. As the name of the corporation indicates these certificates matured in six years. Assessments were paid on such certificates at the rate of \$2.50, \$2, \$1.50, \$1 and fifty cents respectively. The moneys obtained by the levying of assessments were divided into three funds. Ten per centum was placed in the general fund, forty per centum in the reserve fund, and fifty per centum in the relief fund for the payment of sick, disability and mortuary benefits. The league has been building up its reserve fund for a period of six years until the first certificates matured in June, 1894. At that time it had a reserve fund in round numbers of \$1,200,000. Since that time the reserve fund had been reduced until, at the time these proceedings were instituted, it amounted to about \$750,000.

It was alleged that, under these circumstances, notwithstanding the assessments called during that period, amounting to about half a million dollars, if the league was allowed to continue under its general plan of doing business, the reserve fund would be exhausted in less than a year. Those who first took out certificates would be paid in full, but the great body of members, who had been paying in their money for the purpose of maturing certificates, would receive nothing. For this reason it was earnestly pressed by certain petitioners, who joined with the Insurance Commissioner in asking proceedings to be instituted, that the business of the order should be closed so that all the members might receive that proportion of the reserve fund then intact to which they were entitled. A suggestion was filed in the court of common pleas of Dauphin county by the Attorney General against the league, alleging the unlawful character of its business, its insolvent condition, praying for a decree of dissolution and the appointment of a receiver. The case coming on to be heard after a very full investigation of the general condition and business methods of the league, it was concluded that in so far as it attempted to pay members holding matured certificates an amount largely in excess of the amount such members had paid in, thus influencing persons to join and promising more than the society could pay, it was doing a business not authorized by any act of Assembly and against public policy. So far, however, as the society was established for beneficial and protective purposes under the provisions of

the general corporation act of 1874, no legal objection could be made thereto. It was therefore agreed by the Attorney General and counsel for the Sexennial League that a decree should be entered by the court of common pleas of Dauphin county that would eliminate all that was objectionable in the business methods of the society, give members the right to withdraw their proper proportion of the reserve fund then intact, and permit the society to continue business with all the objectionable features eliminated.

On the 23d day of October, 1895, Judge Simonton made the decree by consent of all parties. This decree required the officers of the Sexennial League to make payment without unnecessary delay to all withdrawing members or members resigning or ceasing to be beneficiaries of such proportion of the surplus or reserve fund as they may be entitled to receive under the order of court. The officers of the league proceeded to make the distribution among the members according to the terms of the order and decree of court. It is the judgment of this department that an expensive receivership proceeding was thus saved and that the members received a larger pro rata share of the surplus than they would have done had the league been dissolved and a receiver appointed.

BUILDING AND LOAN ASSOCIATIONS.

Under the act of 1895 reorganizing the Department of Banking, the Commissioner is given the power to investigate the affairs of building and loan associations. Up to that time these associations had conducted their business without being subjected to the visitation of any inspecting officer. The manner of conducting business by building and loan associations is popular with the masses of the people, and many persons are investing their money in local, State and national building and loan associations. The Legislature of 1895 deemed it prudent to subject these institutions to the visitation of the Commissioner of Banking and his deputies. The results of the investigations made clearly demonstrate that the Legislature acted wisely in subjecting these institutions to examination by the proper officers of the Commonwealth. The Commissioner of Banking, after hearing before the Attorney General, as authorized by the act above referred to, appointed temporary receivers for fourteen associations. After the appointment of temporary receivers the At-

torney General was notified of the facts and proceedings were instituted in the court of common pleas of Dauphin county to have the receivers made permanent. In most of the cases the receivers have filed their bonds and are proceeding to wind up the affairs of the associations. Persons in charge of the management of building and loan associations cannot be too careful, and it is certainly in the interest of the public to require the most careful examination to be made by the proper officers into the affairs of associations that invest the capital of so large a number of people. The Commissioner of Banking and his deputies have done a great service to the State in calling to the attention of the public the plans, methods and defects of building and loan associations. Such associations can be made by careful management the means of providing safe investments for capital, but when conducted on loose business principles and badly managed, disaster must and always will result.

CONTESTED ELECTION CASES.

LYON-DUNN, SCHUYLKILL COUNTY.

The petition of certain electors of Schuylkill county was presented to the Attorney General on the 3d of December, 1895, asking process to issue to determine whether the Hon. P. M. Dunn or the Hon. T. H. D. Lyon was legally elected president judge of the orphans' court of said county. A hearing was fixed for December 11th, at which hearing all parties in interest were represented by counsel. On December 23, 1895, the Attorney General advised the Governor that the petition had been presented within thirty days after the election complained of; that it was in due form; and that it was his duty to direct the three president judges residing nearest the court house of the county composing the district to convene without delay the court of common pleas of Schuylkill county and proceed to hear and determine the complaint of the said petition. On the same day the Governor issued praecipes to the Hon. Allen Craig, president judge of the Forty-third judicial district; Hon. Allen W. Ehrgood, president judge of the Fifty-second judicial district, and Hon. E. R. Ikeler, president judge of the Twenty-sixth judicial district, directing them to convene the court of common pleas of Schuylkill county, as aforesaid, to hear and determine the complaint of the petitioners contesting the election of Hon. P. M. Dunn, to the office of president judge of the orphans' court of said county. The case is still pending in that county.

DUNHAM-SITTSER, SULLIVAN COUNTY.

On November 28, 1894, Governor Pattison issued praecipes to the Hon. Charles E. Rice, president judge of the Eleventh judicial district, Hon. Daniel W. Searle, president judge of the Thirty-fourth judicial district, and Hon. Robert W. Archbald, president judge of the Forty-fifth judicial district, directing them to convene the court of common pleas of Sullivan county, to hear and determine the complaint of certain petitioners contesting the election of Edward M. Dunham to the office of president judge of the Forty-fourth judicial district.

These judges convened the court of common pleas of Sullivan county, as directed by the Governor, and were proceeding with the performance of their duties in the contested election case, when the Hon. Edward M. Dunham, president judge of the said Forty-fourth judicial district, and John Yonkin, and Maynard J. Phillip, associate judges of said county, presented their petitions to the Attorney General, alleging that they had been duly elected to the offices of president and associate judges of said district and county respectively, and that on the 11th day of December, 1894, the three judges aforesaid came to the court house of the county of Sullivan and convened what was called and designated the court of common pleas of Sullivan county, to the exclusion of the president and associate judges of said county. It was further alleged that the said Judges Rice, Searle and Archbald assumed jurisdiction over the prothonotary and other officers of the court of common pleas of said county and used the seal of said court without authority. The petitioners contended that the convening of said court by the three judges aforesaid was in contravention of their rights, duties and emoluments. They therefore asked the Attorney General to cause a writ of quo warranto to be issued from the Supreme Court of the State of Pennsylvania, directed to the aforesaid three judges complained against, requiring them to show by what authority they assumed to hold and exercise the powers and duties of judges of the court of common pleas of Sullivan county.

A hearing was given the parties in interest on February 15, 1895, and after a careful investigation of the law the writ was refused.

IN RE APPLICATION OF GEORGE W. SNYDER FOR COMMISSION AS ALDERMAN IN THE TENTH WARD OF THE CITY OF HARRISBURG.

At the election held February 18, 1896, in Susquehanna township, Dauphin county, George W. Snyder was elected a justice of the peace for said township, filed his acceptance with the prothonotary of said county, and a commission was issued to him as justice of the peace of said township for the regular term of five years, to be computed from the first Monday of May, 1896. In March, 1896, by order of the court of Dauphin county, a part of Susquehanna township was

annexed to the city of Harrisburg, and created into a new ward, designated the Tenth. Mr. Snyder resides in that portion of Susquehanna township which was afterwards included in the Tenth ward of the city of Harrisburg. After said ward had been created the Governor appointed John S. Machamer alderman for said ward, and he was duly commissioned to serve until the first Monday of May, 1897. A special election of ward officers for the Tenth ward was ordered by the court to be held April 14, 1896, and Mr. Snyder was elected alderman for said ward. He filed with the prothonotary of Dauphin county his acceptance of the office. The prothonotary certified to the department the election of Mr. Snyder and his acceptance of said office, and demanded a commission, which was refused by the Secretary of the Commonwealth. The whole question was then referred to the Attorney General for a decision thereon as to whether or not Mr. Snyder had been duly elected alderman in and for said ward, and whether a commission should be issued to him. After a careful consideration of the law, the Attorney General advised the Secretary of the Commonwealth that, inasmuch as there was no vacancy to be filled at the February election in the office of alderman in the Tenth ward of the city of Harrisburg, at which time Mr. Snyder was voted for, a commission should not issue to him. Acting upon this advice the Secretary of the Commonwealth refused to issue the commission.

BRIDGES TO BE REBUILT BY THE COMMONWEALTH.

The act of June 3, 1895 (P. L. 130), authorized the Commonwealth to rebuild county bridges over navigable rivers and other streams which have been declared public highways, where such bridges have been destroyed by flood, fire or other casualty. The act provides for the appointment of viewers and inspectors and for the payment by the State of the cost of rebuilding such bridges. Prior to the passage of the act above referred to all such bridges were built in the first instance and rebuilt when destroyed by the counties in which they were located. The disastrous floods of 1889 caused great destruction to bridges over the Conemaugh, Juniata, Susquehanna and other rivers throughout the State. Since 1889 there have been damaging floods in several counties of the Commonwealth, especially in 1894. Many of the counties complained that the expense of rebuilding the bridges swept away by flood and other casualties was greater than they were able to bear and that the State should bear the burden of rebuilding bridges thus swept away. It was to remedy this state of affairs that the act of 1895 was passed and approved.

Only one case has arisen under this act of Assembly. On the 7th day of October, 1896, the commissioners of Columbia county presented a petition to the court of common pleas of Dauphin county, asking for the appointment of viewers for the purpose of having the county bridge at Catawissa in said county, over the north branch of the Susquehanna river, rebuilt at the cost of the State. The petition recited facts sufficient to give the court of common pleas of Dauphin county jurisdiction to appoint viewers as requested. Proper notice having been served upon the Attorney General to represent the Commonwealth in these proceedings, an appearance was entered by him in the court aforesaid. Upon due consideration the court appointed J. Murray Africa, civil engineer of the county of Huntingdon; William S. Moyer, of Bloomsburg; Luther Eyer, of Catawissa; W. W. Griest, of Lancaster; and Daniel B. Dykins, of Williamsport, viewers to view the location of the bridge and to make report, as required by the act of Assembly, to the court aforesaid on the second Monday in January, 1897. The proceedings are still pending. See No. 786, Commonwealth Docket, 1896.

SUMMARY OF BUSINESS OF ATTORNEY GENERAL'S DEPARTMENT FROM JANUARY 1, 1895, TO DECEMBER 31, 1896.

Appeals from settlements of Auditor General and State Treasurer,	209
Claims for collection certified by Auditor General et. al., not included in actions of assumpsit,	325
Actions in assumpsit instituted,	679
Quo warranto proceedings,	46
Mandamus proceedings,	8
Equity proceedings,	3
Cases argued in Supreme Court of Pennsylvania,	25
Cases argued in and decided by United States Supreme Court,	4
Proceedings against insolvent insurance companies and building and loan associations,	38
Formal opinions written,	100
Insurance company charters approved,	43
Bridge proceedings under act of June 3, 1895 (P. L. 130),	1
Cases pending in Supreme Court of United States,	1

Cases pending in United States Circuit Court,	4
Cases pending in Supreme Court of Pennsylvania,	3
	<hr/> <hr/>
Total collections, exclusive of commissions,	\$823,472 34
Total commissions,	21,738 82
	<hr/> <hr/>
Grand total,	\$845,211 16
	<hr/> <hr/>

The experience of the past two years has brought very forcibly to my attention the fact that what may be termed the business methods in this department, as well as in the other departments of the State, are unfamiliar to the people generally and largely so to the legal profession. This state of affairs has devolved upon the head of each department a great deal of labor in explaining by letter and personal interview the way in which business of the several departments is transacted. No other means is open to the citizen or the lawyer of obtaining desired information except by addressing letters to the heads of departments or by personal consultation. In the interest of the dispatch of public business I have ventured to include in the Appendix to this report some features which I trust will meet with your approval and prove beneficial to the public. Prior to the year 1887 the opinions of the Attorneys General were not preserved in any permanent form either in this office or elsewhere. These opinions, some of them of great importance, exist only in manuscript on file in the different departments of the State. I have thought it wise to collect them and publish them as a part of this report, including all the opinions of general interest of my predecessors in office. I have also added the general rules of practice, not only in this department, but before the Board of Public Accounts, the Board of Property, the Board of Pardons, and the practice as to Commonwealth cases in the court of common pleas of Dauphin county, and generally, by the courtesy of the heads of the respective departments, have given such rules and suggestions as may be useful to those having business therein.

HENRY C. McCORMICK,
Attorney General.

OPINIONS OF THE ATTORNEY GENERAL.

NOTARIES PUBLIC—POWER OF GOVERNOR TO REMOVE—PROCEEDING.

The Executive has undoubted authority to remove notaries public for official misconduct but a removal upon ex parte statements is not advisable.

The notary should be given a hearing on a day fixed and the proceeding should be in the nature of a rule to show cause why he should not be removed.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, *January 23, 1895.*

DANIEL H. HASTINGS, *Governor.*

Sir: I am in receipt of the communication of Hon. Henry C. Pitney, addressed to you, under date of January 17th, making complaint of Christopher Fallon, a notary public of the city of Philadelphia, for official misconduct.

The charge contained in this letter, if true, would seem to require his removal. As to your power in the premises I have no doubt. I cannot, however, advise a removal upon the ex parte statement of anyone, and respectfully suggest that Mr. Fallon be given a hearing on a day to be fixed, the proceeding to be in the nature of a rule to show cause why he should not be removed.

I further respectfully call your attention to the last paragraph in Mr. Pitney's letter concerning the practice of notaries in the city of Philadelphia to sign their names and affix their seals to jurats to depositions without either seeing the deponent or having his signature to the deposition. This charge, of course, is so general that it perhaps cannot be reached, but if the practice does exist, something should be done to correct it.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

NOTARIES PUBLIC—Acts of 5th March, 1791 (P. L. 11), 12th March, 1791 (P. L. 13), 14th April, 1840 (P. L. 335)—Approval of bonds by judges of court of common pleas of Philadelphia.

The judges of the courts of common pleas of Philadelphia correctly refuse to approve bonds of notaries public.

The proper practice is for these bonds to be approved by the Governor of the Commonwealth, as is uniformly done in the other counties of the State, in accordance with act of 14th April, 1840 (P. L. 335).

The practice of the State Department requiring an affidavit of sureties as to their responsibility is commended, as affording the most definite knowledge of their financial standing.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *January 30, 1896.*

DANIEL H. HASTINGS, *Governor.*

Sir: I have before me the letter of Judge Arnold, secretary of the board of judges of the county of Philadelphia, addressed to Hon. W. U. Hensel, late Attorney General, dated December 10, 1894, asking the views of the Attorney General as to the practice of approving the bonds of notaries public by the judges of the courts of common pleas in the said county of Philadelphia; also a letter to the Hon. Robert E. Pattison, late Governor of the Commonwealth, dated January 1, 1895, from the same source, notifying the Executive Department that the judges of the courts of common pleas of the county of Philadelphia had refused to approve sureties on the bonds of notaries public for the reason that there is no act of Assembly providing for such approval by said judges.

After an examination of the subject presented, it clearly appears that the act of March 5, 1791 (P. L. 11), providing for the appointment of notaries public, made no specific provision for the approval of their bonds; but the act of March 12, 1871 (P. L. 13), supplied this deficiency by providing that "all bonds and recognizances which now are, or hereafter shall be, by law directed to be given to the Commonwealth for the faithful discharge of any office, commission or public trust, shall be taken to the Secretary in the name of the Commonwealth for the uses in the same respectively expressed, the sureties therein to be approved by the Governor, except in the cases of bonds and recognizances given by sheriffs and coroners and their sureties, and the competency of the sureties shall be submitted to the justices of the courts of common pleas of their respective counties." Under this provision of the act of March 12, 1791, it became the practice of the judges of the courts of common pleas in the county of Philadelphia to approve the bonds of persons appointed to the office of notary public. This practice has continued down to the first of the present year, at which time the board of judges of said county of Philadelphia served notice of their refusal to perform this work, as will appear

in their letter of January 1st, above referred to, claiming that the act of 1840 (P. L. 335), provided that persons appointed to the office of notary public should give bond, with two sufficient sureties, to be approved by the Governor in such amount as he may determine, and contending that the act of 1840 is the only act now in force with reference to the authority for approving the bonds of notaries public. I am of the opinion that the position of the judges of the county of Philadelphia is correct, and that the proper practice is for these bonds to be approved by the Governor of the Commonwealth, as provided in the act of 1840.

This position is further strengthened by the fact, as we are informed by the commission clerk of the State department, that the county of Philadelphia is the only county wherein the practice of approving the bonds of notaries public by the judges of the court of common pleas obtains, and that throughout the Commonwealth, with this exception, it has been the practice of the Governor to approve these bonds. In matters of this kind it is desirable that there should be uniformity of practice throughout the entire Commonwealth, and I would therefore recommend that hereafter the bonds of notaries public of the county of Philadelphia be approved in the same manner as bonds of notaries public in other parts of the Commonwealth are now approved.

I desire especially to commend the practice, which obtains in the department, requiring an affidavit of sureties as to their responsibility. This is about the only definite knowledge the Governor can have as to the financial standing of the sureties in most of the cases presented.

All of which is respectfully submitted.

JOHN P. ELKIN,
Deputy Attorney General.

VACANCIES IN OFFICE—SECTION 4, ARTICLE VI OF THE CONSTITUTION—CONFINEMENT IN AN INSANE ASYLUM DOES NOT CREATE A VACANCY IN THE OFFICE OF ALDERMAN.

The power of the Executive to fill such vacancy, caused by death, resignation or otherwise, is unquestioned.

The physical or mental disability of an alderman (who has not resigned) does not create a vacancy, for he may be able to resume his duties.

If the incumbent is unlikely to recover he may be removed under the last clause of section 4, article VI of the Constitution, and by this process alone.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, *January 30, 1895.*

DANIEL H. HASTINGS, *Governor.*

Sir: I beg to acknowledge your communication enclosing petition of sundry citizens of the Second ward of the city of Hazleton, asking

the appointment of John H. Huth as alderman of the said ward, it being alleged in the petition that a vacancy exists in said office. Also your reply to Mr. Huth, dated January 18, 1895, stating that before an appointment can be made, it will be necessary to procure the resignation of the present alderman, Frederick M. Swank, in order that a vacancy might exist that would warrant the appointment. In reply to that communication, Mr. Huth writes you, under date of January 23, 1895, that the present incumbent, Mr. Swank, has become insane and is now confined in the Danville insane asylum. Under the facts above stated, your inquiry is whether an appointment would be justified.

There can be no question of the power of the Executive to make this appointment if a vacancy exists, whether by death, resignation or otherwise, the real question being whether, in the case in hand, there is a vacancy. I am clearly of the opinion there is no vacancy, and therefore no present power of appointment. The physical or mental disability of the present incumbent does not create a vacancy. He is still living and has not resigned. For aught we know he may be able to return to his duties in a week or a month.

It may be proper, however, here to add for the information of those seeking this appointment, that if the present incumbent is unlikely to recover, he may be removed under the last clause of section 4, of article VI of the Constitution, which provides as follows: "All officers elected by the people, except Governor, Lieutenant Governor, members of the General Assembly and judges of the courts of record learned in the law, shall be removed by the Governor for reasonable cause, after due notice and full hearing on the address of two-thirds of the Senate." I am not aware of any other process by which a vacancy can be created.

Very respectfully,

HENRY C. McCORMICK,
Attorney General.

SUPERINTENDENT OF PUBLIC PRINTING—DUTY OF—Act of 1 May, 1876. Section 6 (P. L. 70).

The duty of the Superintendent is fixed by section 6 of act of 1 May, 1876 (P. L. 70).

The Superintendent is clearly not obliged to "prepare and furnish" maps and other data called for by resolution of the Legislature, and can be required to do no more than "to arrange all matter ordered to be printed by the Legislature, or either branch thereof," furnished to him by said body.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *January 30, 1895.*

W. HAYES GRIER, *Superintendent of Public Printing:*

Sir: Your communication of the 22d inst., submitting to me a

joint resolution of the Senate and House of Representatives, instructing the Superintendent of Public Printing to "prepare and furnish for the use of the Senate and House of Representatives (5) five thousand apportionment maps of Pennsylvania, said maps to be in outline, giving county lines and showing population by counties as furnished by the census of 1890, with vote cast by each political party at the last presidential election; that upon the back of said maps there shall be printed maps of the cities of Philadelphia, Pittsburg, Allegheny and Scranton, showing the wards of said cities," &c., &c., and asking my opinion as to whether it is your duty to comply therewith, has been received.

The duty of the Superintendent of Public Printing is fixed by the sixth section of the act of May 1, 1876 (P. L. 70), and, among other things, it is provided that "he shall also arrange all matter ordered to be printed by the Legislature, or either branch thereof, and supervise the printing of the same, causing it to be done in a prompt and workmanlike manner." The language of the resolution requires you to "prepare and furnish" the matter therein specified.

I am of the opinion that the language of this resolution is much broader than the act of Assembly fixing your duties. Inasmuch as I am informed by you that you are not even in possession, or have under your control, any plates from which these maps can be made, and, in some instances, none of the data called for, it would seem clear that you are obliged to do no more than "to arrange all matter ordered to be printed by the Legislature, or either branch thereof," furnished to you by them. -

Very respectfully,

HENRY C. McCORMICK,

Attorney General.

JUSTICES OF THE PEACE—CONSTABLE'S NOTICE OF ELECTION TO FILL VACANCIES—LENGTH OF TIME FOR WHICH APPOINTMENTS ARE TO BE MADE.

Act of 22 March, 1877. Sections 2 and 3 (P. L. 12).

Section 2 of said act is mandatory, and under it twenty days' notice is a condition precedent to the election of a justice to fill a vacancy caused by death, resignation or otherwise.

Section 3 of said act while not clearly providing for filling a vacancy which occurs after the time necessary to permit of the notice required by section 2 of said act, is broad enough to cover a vacancy occurring within twenty days of the time for holding the election.

The commission of one appointed prior to the election to fill such vacancy must extend to first Monday of May of same year. The commission of one appointed after the election must extend to first Monday of May of the succeeding year.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, *February 13, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The letter of R. S. Bowman, of the 8th inst., addressed to Your

Excellency, making inquiry as to the time for which a person can be appointed to fill a vacancy in the office of a justice of the peace, caused by death within twenty days of the time for holding a township or borough election, having been referred to the Attorney General for an opinion, I have the honor to submit the following in answer thereto:

The second section of the act of March 22, 1877 (P. L. 12), provides:

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

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

The third section of said act provides for the appointment by the Governor of persons to fill vacancies caused by neglect or refusal to accept a commission within sixty days after the election of justices of the peace, or caused by death, resignation or otherwise after an election. This section does not clearly provide for the filling of a vacancy which occurs after the time necessary to permit of giving the twenty days’ notice made mandatory in the second section of the act. I am of the opinion, however, that the words “If any vacancy shall take place after any ward, district, borough or township election” are broad enough to cover a vacancy caused by death, resignation or otherwise within twenty days of the time for holding the election for such office, because such vacancy occurs after the ward, district, borough or township election of the preceding year.

With this view of the law there remains but a single question. That is: The length of time for which such appointment is to be made.

The language of the act says: “Such vacancy shall be filled by appointment by the Governor until the first Monday of May succeeding the next ward, district, borough or township election.” I am clearly of the opinion that, if the appointment to fill the vacancy is made prior to the election, the commission must extend to the first Monday of May of the same year, but if made after the election, it must extend to the first Monday of May of the following year, for the reason that this would be the first Monday of May succeeding the next ward, district, township or borough election.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General

STATE LICENSE—THE WILD WEST SHOW OF BUFFALO BILL SUBJECT THERETO—Act of 14 April, 1851 (P. L. 596).

The act of 14 April, 1851 (P. L. 596), is broad enough to cover the class of shows of which the Wild West Show of Buffalo Bill is a representative.

The word "circus" is not confined to a tent and ring, but any place of amusement where feats of horsemanship and acrobatic displays are given falls within its meaning.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *February 20, 1895.*

W. H. GARDNER, *106 W. 37th St., New York, N. Y.:*

Sir: The Attorney General has referred to me for answer your favor of the 18th inst., asking whether the Wild West Show of Buffalo Bill is subject to a license tax in this State.

The act of April 14, 1851, provides "Any person, the proprietor or manager of a theatre, circus or menagerie, desiring a license for the exhibition of dramatic, equestrian, or other performance, &c., shall pay one thousand dollars." We are of the opinion, and have so instructed the Auditor General, that this language is broad enough to cover the class of shows of which you are the representative. The word "circus" is not confined to a tent and ring, but any place of amusement where feats of horsemanship and acrobatic displays are given falls within its meaning.

Very truly yours,

JOHN P. ELKIN,
Deputy Attorney General.

STATE BANKING DEPARTMENT—Acts of 8th June, 1891, and 11th February, 1895—Appropriations made by act of 1893 for use of said Department.

The act of 11th February, 1895, is a re-enactment of the act of 8th June, 1891, with some of its provisions extended, the duties of some of the officers, therein designated, changed, and their powers increased but still continuing the original Banking Department.

It is a well sustained principle that the re-enactment of an earlier statute is a continuance, not a repeal, of a former, even though the later act expressly repeals a former.

Where an act of Assembly repeals a former act and at the same time substantially re-enacts the former act, the provisions of the former are held to be continued without intermission.

Moneys appropriated in the general appropriation act of 1893 for the use of the Banking Department, can be applied to payment of similar expenses of the Banking Department as continued under the said act of 1895.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, *February 26, 1895.*

D. McM. GREGG, *Auditor General:*

Sir: Your favor of the 15th inst., asking whether the appropriations made in the general appropriation act of 1893 for the payment of a stenographer and typewriter, clerk hire and contingent expenses

of the Banking Department for the two fiscal years beginning June 1, 1893, are applicable to the payment of like expenses of the Banking Department under the act approved February 11, 1895, has been received, and in reply I have the honor to submit the following opinion:

The question involved depends upon the construction given to a subsequent act of Assembly which re-enacts a former one. The act approved February 11, 1895, substantially and in many of its sections by express terms re-enacts the provisions of the act of June 8, 1891, creating the Banking Department. It is true the title of the act of February 11, 1895, provides for the creation of a Banking Department, but this must be held to mean a continuation of the Banking Department which had already been created by the act of 1891. It certainly was not the intention of the Legislature to establish a Banking Department anew and for the first time, because such a department had been in existence during a period of four years. Hence we are of the opinion that the act of February 11, 1895, is a re-enactment of the act of June 8, 1891, with some of its provisions extended, the duties of some of the officers changed, and their powers increased, but still continuing the original Banking Department.

The principle of construction in the interpretation of statutes, that the re-enactment of an earlier statute is a continuance, not a repeal, of a former, even though the later act expressly repeals the former, has been sustained in many very competent jurisdictions. See Endlich on Interpretation of Statutes, section 490. It is there said *inter alia*, "But even a repealing act, re-enacting the provisions of the repealed statute in the same words, is construed to continue them in force without intermission, the repealing and re-enacting provisions taking effect at the same time." See *Fullerton v. Spring*, 3 Wis. 667; *Laude v. Railway Co.*, 33 Id. 640.

"The principle has been applied also to a revision which repealed, collated and consolidated, but immediately in its own provisions re-enacted them literally or in substance, so that there never was a moment when the repealed acts were not practically in force." See *Middleton v. Railroad Co.*, 26 N. J. Eq. 269; *Ballin v. Ferst*, 55 Georgia 546.

We have at least one Pennsylvania authority strongly sustaining this principle of interpretation. In the case of *Barclay v. Lease*, 9 C. C. 314, Judge Endlich lays down the principle that "It appears to be the general understanding that the re-enactment of an existing statute is a continuance, not a repeal, of the latter. So general is this understanding that it substantially has, in late years, been incorporated as a statutory rule of construction in the codes of several of the States of the Union." See *Stimson Am. Stat. Law*, page 143, section 1001.

We are of the further opinion that the same principle of construction applies even if the former statute is not re-enacted in express terms, but if the same provisions are substantially re-enacted in the subsequent act. From the authorities above cited we think the principle is well established that where an act of Assembly repeals a former act of Assembly, and at the same time substantially re-enacts the former act, the provisions of the former are held to be continued without intermission.

There is still another view that, we think, would support our position on this question. The general appropriation act of 1893 made provision for a Banking Department. It mentioned no act of Assembly under which the Banking Department was created, and we think it would be "sticking in the bark" to hold that it related to the Banking Department as then existing, and that these appropriations could not be made use of to support the Banking Department as reconstructed and continued by a subsequent act of Assembly. It was not the intention of the Legislature to legislate the Banking Department out of existence, but it was its evident intention to reconstruct and continue it on a more substantial basis. There never was a moment of time, since the approval of the act of 1891 to the present, when the Banking Department did not exist. The very act that repealed the law of 1891 continued the Banking Department.

I am therefore of the opinion that you are warranted in allowing moneys appropriated in the general appropriation act of 1893 for the use of the Banking Department, to be applied to the payment of a stenographer and typewriter, clerk hire, and contingent expenses of the Banking Department, as continued under the act of 1895. This being our view, of course it would follow that the money now in the State Treasury, for the use of the Banking Department, to wit, the sum of \$15,397.75, can be applied to the purposes intended.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

TRADESMEN'S MUTUAL FIRE INSURANCE COMPANY.

Where a fire insurance company is not a stock company issuing policies based upon capital stock, but issues policies for cash, and also policies for which notes are taken subject to assessment, this plan appearing to be authorized by the act of July 14, 1855 (P. L. 1856, p. 616), such insurance, however objectionable it may be, is not insuring on the stock or mutual plan, nor forbidden by its charter.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *February 28, 1895.*

JAMES H. LAMBERT, *Insurance Commissioner:*

Dear Sir: In reply to yours of February 20, 1895, enclosing printed statement issued by Tradesmen's Mutual Fire Insurance Company,

of Philadelphia, and asking for the opinion of this department as to the right of said company to issue policies on the cash plan, and on the mutual plan also, under the provisions of its charter, I beg leave to say:

This company was incorporated by special act of Assembly, approved July 14, 1855 (P. L. of 1856, page 616), its original corporate title being the Somerset County Mutual Fire Insurance Company, the name having been subsequently changed and the business of the company transferred to Philadelphia in 1894. You will note that this is not a stock company, nor does it issue policies based upon any capital stock. It issues policies for cash and it also issues policies for which notes are taken subject to assessment.

After a very careful examination of this question, I am of the opinion that this company is not insuring upon the stock and mutual, but on a cash and note plan, and that such insurance, however objectionable it may be, is authorized by the provisions of its charter.

The case of *Schimpf & Son v. The Lehigh Valley Mutual Fire Insurance Company*, reported in 7 Insurance Law Journal, page 663, would appear to be conclusive upon the question raised by your letter. It is the decision of the Supreme Court of Pennsylvania and was a case very closely analogous to the one under consideration. The case of *Commonwealth ex rel v. The Merchants' and Mechanics' Insurance Company*, reported in 2 Pearson, 428, is in the same line.

Respectfully yours,

HENRY C. McCORMICK,
Attorney General.

FACTORY INSPECTOR—RIGHT TO VISIT MANUFACTURING ESTABLISHMENTS OPERATED UNDER ONE MANAGEMENT—Act 3 June, 1893. Section IV (P. L. 276).

The fact that a company operates its business in several different buildings under one management does not affect the right and duty of a Factory Inspector under act of 3 June 1893, section IV (P. L. 276), to inspect the same, if the company employs five or more women and children in any one or all of its establishments.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 5, 1895.*

JAMES CAMPBELL, *Factory Inspector:*

Sir: I am in receipt of your favor of the 28th ult., enclosing a communication from B. F. Battles, Deputy Factory Inspector, asking whether, upon the statement of facts presented, the Carlisle Manufacturing Company is subject to the supervision of your department.

As the fact appears, this company has three separate buildings in which its business is conducted—a machine shop in the central part of the borough of Carlisle, a frog works about one mile away, and a

car shop not far distant from the frog works. These establishments are owned and operated by the Carlisle Manufacturing Company under one management. The company does not employ five boys under the age of twenty-one years in any one of its shops, but, taken collectively, it employs nine boys under twenty-one years of age and one girl.

Your communications raise the question as to whether the fourth section of the act of June 3, A. D. 1893 (P. L. 276), applies to the company under the statement of facts hereinbefore set out, or is the company exempt from the supervision of the Factory Inspector because five women and children are not employed in each separate building operated by this company.

You will observe that the act which regulates your duties confers upon you the right to visit and inspect the factories, workshops and other establishments in the State employing women and children. (See P. L. of 1893, section 5, page 277.) Factories and manufacturing establishments may be operated in the same or different buildings. The fact that a company operates its business in several different buildings under one management does not affect the right of your department to inspect the same. If the company employs five or more women and children in any one or in all of its establishments, operated under one management, I am of the opinion that it is subject to the visitation and inspection of your department.

Under the statement of facts presented, I therefore instruct and advise you that it is the duty of your Deputy to visit and inspect the factory and shops of the Carlisle Manufacturing Company.

Very truly yours,

JOHN P. ELKIN,
Deputy Attorney General.

JOINT STOCK INSURANCE COMPANIES—POWERS AS TO INVESTMENTS—THE TERM "RAILROAD CORPORATION" BROAD ENOUGH TO COVER STREET RAILWAY CORPORATIONS—Act of May 1, 1876, sections 18 and 19.

In the absence of legislative limitation, joint stock companies, organized to insure against accident, have the right to invest their capital as to them seems most judicious.

The term "railroad corporation" is broad enough to include street railway corporations, and an investment in bonds of a solvent corporation of the latter class is a compliance with the provisions of said act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 6, 1895.*

JAMES H. LAMBERT, *Insurance Commissioner:*

Sir: In answer to your favor of the 27th ult., asking (1) Whether stock companies organized under the act of May 1, 1876 (P. L. 53), to

insure against accident, are required to invest their capital according to the provisions of the eighteenth and nineteenth sections of said act, and (2) Whether the term "railroad corporation" as used in the said eighteenth section, can be construed to mean "street railway corporations," I have the honor to submit the following opinion:

1. There is no legislative authority providing the manner in which the capital of joint stock companies, organized to insure against accident, is to be invested. In the absence of legislative limitation, such companies have the right to invest their capital as to them seems most judicious.

2. I am of the opinion that the term "railroad corporation" as used in the eighteenth section, is broad enough to include street railway corporations, and that an investment in the bonds of solvent street railway corporations is a compliance with the provisions of said section.

Very truly yours,

HENRY C. McCORMICK,
Attorney General.

FACTORY INSPECTOR—DUTIES OF IN THE MATTER OF CONDEMNING UNSAFE BUILDINGS—Act of 3d June, 1893, section 12 (P. L. 278).

The duties of the Factory Inspector are confined to the inspection of factories as set forth in act of 3d June, 1893, section 12 (P. L. 278).

There is nothing in said act which confers the right to condemn unsafe buildings, although it is always wise for the Inspector, in the discharge of his official duty, to call the attention of those in charge of a defectively constructed building to its defects.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 14, 1895.*

JAMES CAMPBELL, *Factory Inspector:*

Sir: In answer to your communication of the 8th inst., asking for an opinion as to the duties of your department in the matter of condemning unsafe buildings, I have the honor to submit the following opinion:

The twelfth section of the act of June 3, 1893 (P. L. 278), provides:

1. For the inspection of the heating, lighting, ventilation or sanitary arrangement of any shop or factory.

2. For the inspection of the means of egress in case of fire or other disaster.

3. For the inspection of the belting, shafting, gearing, elevators, drums and machinery in shops and factories located so as to be dangerous to employes.

4. For the inspection of vats, pans or structures filled with molten metal or hot liquid and not protected by proper safeguards.

Your duties are confined to the inspection of factories as set out in

the above paragraphs. You are not by law required further to go. You could not enforce your authority beyond the provisions of the act. There is nothing therein which gives you the right to condemn unsafe buildings. Or course, in the discharge of your official duties, it is always wise to give notice of any defect in the construction of a building itself, and to call the attention of those in charge thereof to such defects, but with such notice your duty ends.

Very truly yours,

JOHN P. ELKIN,
Deputy Attorney General.

"INDIAN FORT COMMISSION"—EXPENSES OF—Act of 23 May, 1893 (P. L. 123).

The act of 23 May, 1893 (P. L. 123), unquestionably provided for the expenses of carrying out the purposes therein set forth.

The expenses incurred by G. Dallas Albert, a member of the commission created by said act, in preparing the manuscript of his report, employing a stenographer and typewriter, etc., are within the purview of the act, and in compliance with its provisions.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 20, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: In answer to your favor of the 19th inst., asking whether the bill of G. Dallas Albert, enclosed with your communication, is in compliance with the law and whether it is in such form as to justify payment, I have the honor to submit the following opinion:

The commission, of which Mr. Albert is a member, was appointed under the provisions of the act of May 23, 1893 (P. L. 123). Before undertaking to perform the duties of their appointment the commissioners asked for an opinion from Attorney General Hensel on the question of what expenses they were allowed to incur under the provisions of the law. He gave them an opinion, dated August 22, 1893, a copy of which I take the liberty of enclosing to you. Under this opinion the commission was instructed that the act unquestionably provided for the expenses of carrying out the purposes of the law. Acting under that opinion, as I am informed, the commissioners proceeded with the duties of their appointment and incurred expenses as therein provided. Mr. Albert seems to have taken on a larger share of the work than any other member of the commission, and, in the course of the writing of his report, he incurred expenses in preparing the manuscript, employing a stenographer and typewriter, and in clerical force for transcribing, which are included in his bill at the rate of \$1.50 per folio page.

I am of the opinion that the expenses incurred for the purposes mentioned in the bill of Mr. Albert are within the purview of the act

of Assembly. I do not pass upon the question as to the amount of the bill or whether the rate charged is extravagant or not. If you are satisfied that the amount of the bill is all right, I think the labor for which the expense was incurred is in compliance with the provisions of the law.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

RECORDER OF DEEDS OF PHILADELPHIA—POWER OF EXECUTIVE TO REMOVE THE INCUMBENT HOLDING BY APPOINTMENT OF A FORMER EXECUTIVE.

Section 8 of article IV. Section 4 of article VI. Section 1 of article XIV of Constitution. Act of 15 May, 1874.

The clause in the Constitution giving the power to the Executive to remove "appointed officers" means officers holding offices that are appointed in character and not elective.

An appointee to the office of recorder of deeds at Philadelphia, to fill a vacancy caused by death, cannot be disturbed in his office except for reasonable cause, after due notice and after hearing on the address of two-thirds of the Senate.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, PA., *March 26, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: I am in receipt of your communication dated March 8, 1895, inquiring as to the power of the Executive to remove the present incumbent of the office of the recorder of deeds of the city of Philadelphia, and in reply thereto I beg leave to submit the following as my views upon this subject:

John J. Curley, who now holds the office of recorder of deeds of the city of Philadelphia, was appointed by Governor Pattison, on the 29th day of September, 1894, and was commissioned to hold the office from that date until the first Monday of January, 1896. The appointment was made to fill a vacancy caused by the death of the officer elected by the people at the November election, 1893. The authority for such appointment is found in section 8 of article IV of the Constitution, which reads as follows:

"He (the Governor) shall have power to fill any vacancy that may happen during the recess of the Senate in the office of the Auditor General, State Treasurer, Secretary of Internal Affairs or Superintendent of Public Instruction, in a judicial office, or in any other elective office which he is, or may be authorized to fill: if the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Senate, before their final adjournment, a proper person to fill said vacancy, but in any such case of vacancy in an elective office, a person shall be chosen to said office at the next general election, unless the vacancy shall happen within three (3) calendar months immediately preceding such election, in which case the election of said office shall be held at the second succeeding general election."

It will be seen that the vacancy occurred less than three months before the general election in 1894; hence the appointee was commissioned to serve until the first Monday of January, 1896, at which time the person elected by the people at the general election in 1895 will be entitled to the office.

The question is: Has the Executive the power to create a vacancy by the removal of the present incumbent and fill such vacancy by appointment until the first Monday of January, 1896?

The power given the Executive to remove officers is contained in section 4, article VI of the Constitution, and reads as follows:

“Appointed officers, other than judges of the courts of record, and the Superintendent of Public Instruction, may be removed at the pleasure of the power by which they shall have been appointed. All officers elected by the people except Governor, Lieutenant Governor, members of the General Assembly and judges of the courts of record learned in the law, shall be removed by the Governor for reasonable cause, after due notice and full hearing on the address of two-thirds of the Senate.”

It will be observed that under the section last above quoted, appointed officers, except judges and Superintendent of Public Instruction, may be removed at the pleasure of the power by which they shall have been appointed. If John J. Curley is “an appointed officer” within the meaning of the Constitution, there can be no doubt that full power is vested in the Executive to remove him. If he is not such “appointed officer,” but is an officer “elected by the people,” although filling the office ad interim by appointment, then he can only be removed by the Governor for reasonable cause on the address of two-thirds of the Senate.

I am not aware that this exact question has ever received judicial determination. By section 8 of article IV, above cited, the Governor is given power to fill any vacancy in any “elective office which he is, or may be, authorized to fill,” and the same section provides “But in any such case of vacancy in an elective office a person shall be chosen to said office at the next general election, unless the vacancy shall happen within three calendar months immediately preceding such election, in which case the election for said office shall be held at the second succeeding general election.”

By act of Assembly, approved May 15, 1874 (P. L. 205), it is provided that “In case of a vacancy happening by death, resignation or otherwise, in any office created by the Constitution or laws of this Commonwealth, and where provision is not already made by said Constitution and laws to fill said vacancy, it shall be the duty of the Governor to appoint a suitable person to fill such office, who shall be confirmed by the Senate if in session, and who shall continue therein and discharge the duties thereof till the first Monday of January next succeeding the first general election which shall occur

three or more months after the happening of such vacancy." This act of Assembly was evidently passed for the purpose of authorizing the Governor to fill vacancies in offices where provision was not already made by the Constitution or laws to fill such vacancies and expressly provides that the person so appointed to such office "Shall continue therein and discharge the duties thereof, until the first Monday of January next succeeding the first general election which shall occur three or more months after the happening of such vacancy." This act, by its very terms, refers only to elective officers, and, while it cannot, of course, control any constitutional power given to the Executive relating to removals from office, yet it would appear to be at least a very clear expression of the understanding the General Assembly had of the Constitution of 1874, immediately after its adoption. The officer appointed to fill a vacancy, they declare, shall continue in office and discharge the duties thereof until his successor is duly elected.

The officers provided by the Constitution and the laws are either appointive or elective; as to the former—except those specifically excepted—there can be no doubt of the Governor's power to remove; as to the latter—excepting those as to whom specific provision is made—they can be removed only on the address of two-thirds of the Senate. Does the present incumbent of the office of recorder of deeds of the city of Philadelphia become an "appointed officer," within the meaning of the Constitution, because he was appointed to fill a vacancy in an elective office?

By section 1 of article XIV of the Constitution "County officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, etc.," and by section 2 of the same article these county officers are required to be elected at the general elections and hold their offices for three years, beginning on the first Monday of January next after their election and until their successors be duly qualified. The same section provides that "All vacancies (in these offices) not otherwise provided for, shall be filled in such manner as may be provided by law."

In the case of *Commonwealth v. King*, 85 Pa., 103, it is held that "The right of appointment of the Governor to fill a vacancy in a county office, under the eighth section of the fourth article of the Constitution, extends only to the period between the death, resignation or removal of the incumbent, and the beginning of the new term by regular succession." The commission issued by Governor Pattison to John J. Curley extends to the first Monday of January, 1896. If the office had become vacant by death, or otherwise, in the last year of the term of the incumbent, even if such vacancy occurred less than three months before the general election, the appointee of the Governor could have held the office only until the beginning of the new term by regular succession, as was held in *Commonwealth*

v. King, above cited. But in the case under consideration, the vacancy having occurred in the first year of the term to which the officer was elected, and less than three months before the general election of 1894, that provision of the Constitution becomes operative which extends the term of the appointee to the first Monday of January succeeding the second general election occurring after the vacancy.

Some light is thrown upon this question by the case of *Commonwealth v. Waller*, 145 Pa., 257, in which the Supreme Court use the following language:

“It will be noticed, however, that there are two classes of vacancies to be filled by appointment by the Governor, viz: those that relate to elective offices, and those that are non-elective. In the former, the Governor can only fill a vacancy until such time as the people can fill it by an election, as provided by law. Hence the commission of the Governor can run no further. In the other case, non-elective offices, no time is designated during which his appointee can hold, except the single provision that, if a vacancy shall occur during the recess of the Senate, he shall be commissioned until the expiration of the next session.”

My attention has been called to the case of *Lane v. The Commonwealth*, 103 Pa., 481, as an authority which would justify the removal of the incumbent of this office, and it has received careful examination at my hands. In that case David H. Lane was appointed by Governor Hoyt to the office of recorder of the city of Philadelphia on January 30, 1879. He entered upon his duties and continued to discharge them until February 1, 1883, when he was removed by Governor Pattison. The power of the Governor to remove him was denied by Mr. Lane, and quo warranto proceedings were commenced by the Attorney General before Judge Finletter, who gave judgment in favor of the Commonwealth. The defendant took a writ of error to the Supreme Court and the decision of the court below was affirmed; the court holding that there was a clear constitutional right of removal vested in the Governor. The case of *Lane*, however, is not an authority in the matter now under consideration, for the reason that the office of recorder of the city of Philadelphia—the office to which Mr. Lane had been appointed—was one that was non-elective. The Governor, by the terms of the act creating the office (act of 18th April, 1878, P. L. 26), had the power to appoint by and with the advice and consent of the Senate for the term of ten years, and no right of election by the people was given by the statute. The office of recorder of the city of Philadelphia, created by the act of 1878, was widely different from the office of recorder of deeds. The former had none of the duties of recorder of deeds assigned to it, was purely a statutory office, and the incumbent held the office by appointment only. It came directly within that provision of the Constitution

which gives the Governor the power to remove where he has power to appoint.

It has been suggested that the language of section 4 of article VI of the Constitution, inferentially confers the power upon the Executive to remove the appointee to an elective office. The language referred to, and already quoted, is as follows: "Appointed officers, other than judges of courts of record, and the Superintendent of Public Instruction, may be removed at the pleasure of the power by which they shall have been appointed." The argument is made that the phrase "other than judges of courts of record" necessarily implies that all other appointees to elective offices are removable by the power appointing them, because the office of judge of a court of record is elective and not appointive. I am persuaded, however, that, although it may be difficult to give force and meaning to the phrase excepting judges from the power of removal in connection with the phrase "appointed officers," the power of removal is not thereby necessarily given in the case of appointees to all other elective offices. By reference to the Constitutional Convention Debates it would seem that the phrase "other than judges of courts of record" appeared in this article of the Constitution, and was discussed at a time when it was in contemplation by the judiciary committee of the convention to make judges appointive and not elective. Mr. Bidle, a delegate, in discussing this, said, Vol. 3, page 233: "If, when our labors come ultimately to be reconsidered and revised, there is no occasion for it (the phrase above referred to) it may be left out. But there is a propriety in having it here now, and I trust that the committee will adopt it." And again, at a later stage of the convention proceedings (Vol. 5, page 374), Mr. Dallas, a delegate, in speaking of the phrase "other than judges of courts of record," uses the following language: "I assume that, as the only article we have reported on the subject of the judiciary provides exclusively for the election of judges, this clause, which relates to their appointment, should be stricken from the section." The article was, subsequently, referred to the committee on revision and adjustment, and whether the phrase was retained in the article unnecessarily or by inadvertence, I, of course, do not undertake to say. It seems, however, to be a wholly unnecessary provision, because section 15 of article V, provides that judges may be removed by the Governor on the address of two-thirds of each house of the General Assembly "for any reasonable cause which shall not be sufficient ground for impeachment."

To hold that there exists in the Executive the right to remove the appointee to an elective office might lead to an intolerable abuse of power, and result in great detriment to the public service. That section of the Constitution which confers upon the Governor the power to appoint to the vacancy in the office of recorder of deeds,

confers also the power to fill vacancies in the office of Auditor General, State Treasurer, Secretary of Internal Affairs, and all other elective offices which he may be authorized by law to fill. If the power to remove exists, it must of necessity be a continuing power, not limited to one removal and one appointment to the same office, but successive removals and appointments could be made at the pleasure of the Executive, limited only by the time fixed by the Constitution for an election by the people. Extend this reasoning to the greater offices of Auditor General and State Treasurer, as to which the Governor has precisely the same power, and we see such possibilities as could not have been contemplated by the makers of the Constitution. I may be permitted to add that an examination of the records in the State department discloses no instances where the Executive has ever exercised this power or claimed the right to exercise it.

I reach the conclusion that the Executive has no power to remove John J. Curley, recorder of deeds for the city of Philadelphia, because it is an elective office, and because I am of the opinion that that clause of the Constitution, giving the power to the Governor to remove "appointed officers," means officers holding offices that are appointive in character and not elective. I am of the opinion, further, that the Constitution and the act of 1874, which I think not in conflict with the Constitution, fix the term of the appointee of Governor Pattison to the office, viz: until the first Monday of January, 1896, and that he cannot be disturbed in his office except "for reasonable cause, after due notice and after hearing on the address of two-thirds of the Senate."

HENRY C. McCORMICK,
Attorney General.

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APPROPRIATIONS BY THE LEGISLATURE—SPECIAL BILLS NOT NECESSARY TO PROVIDE FOR EACH PARTICULAR DEFICIENCY—THE GENERAL APPROPRIATION BILL CAN PROPERLY INCLUDE THEM—SECTION 15, ARTICLE 3 OF THE CONSTITUTION.

The authority of the Legislature to make appropriations in the general appropriation bill is found in section 15, article III of Constitution, and applies solely to the "ordinary expenses of the executive, legislative and judicial departments of the Commonwealth," &c. What might be included in the term "ordinary expenses" is always a question of construction.

The Legislature has the right to include in the general appropriation bill as well any deficiency in the "ordinary expenses" of said departments during the past two years as the expenses to be incurred in the two years following.

If expenses were necessarily incurred in providing for the proper administration of said departments in the ordinary and usual routine of business, these deficiencies may be provided for in the general appropriation bill, which latter should include under the head of "deficiencies" all items of expense relating to the "ordinary expenses" of said departments not covered in the general appropriation bill of the preceding session of the Legislature. It is suggested that the title of the general appropriation bill be so amended as to include a specific reference to such deficiency.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 29, 1895.*

To the Board of Commissioners of Public Grounds and Buildings:

Gentlemen: In answer to the communication of your secretary of the 21st inst., asking whether the expenses incurred in hanging the curtains in the hall of the House of Representatives and placing metallic cases in the Treasury department of the new Executive building should be provided for under the general appropriation bill, or whether it will require a separate bill, the Attorney General has directed me to prepare the following opinion:

In section 15 of article III of the Constitution it is provided that "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth," &c. Any authority the Legislature has to make appropriations in the general appropriation bill is found in this provision of the Constitution. It is, therefore, quite clear that no appropriation can be made in the general appropriation bill except for the "ordinary expenses of the executive, legislative and judicial departments." What might be included in the term "ordinary expenses" is always a question of construction. The Supreme Court in the case of *Commonwealth v. Gregg*, 161 P. S. 587, say:

"It cannot be assumed that the Constitution meant to compel the Legislature even to supervise all the details of the government. That is properly the function of the executive and judicial branches. What work there is to be done, and what clerical force is requisite to do it, is a question of detail, as to which much must necessarily be left to the head of each department. It is clearly the legislative province to keep a general control over the expenditure of the public funds, but this it does so long as no money is paid out without a previous appropriation for that purpose."

The reasoning of the Supreme Court in this case clearly conveys the idea that much of the detail in carrying on the work of the executive and judicial branches of the government must necessarily be left to the heads of the different departments; hence the question of what constitutes the "ordinary expenses" of those departments is somewhat dependent upon their discretion. This being the only judicial construction we have of the right of the Legislature to make appropriations in the general appropriation bill, I am clearly of the opinion that the Legislature has the right to include in this bill as well any deficiency in "the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth, during the past two years, as the expenses to be incurred in the two years following." In the administration of the affairs of our State government it must necessarily happen that deficiencies will occur by reason of

insufficient appropriations for the ordinary expenses of government, and it would seem to be a harsh rule to hold that every deficiency which occurs in the matter of providing for the ordinary expenses of the government must be provided for by a separate bill. Certainly this was not the intent of the framers of the new Constitution, and such a construction has not been put upon that provision of the Constitution by our courts. The Governor is given the right to veto specific items in the general appropriation bill, so that a check to vicious legislation is thus provided in this power.

If the expenses, about which your inquiry is made, were necessarily incurred in providing for the proper administration of the affairs of the executive or legislative departments in the ordinary and usual routine of business, then I am clearly of the opinion that these deficiencies may be provided for in the general appropriation bill. Since, as I am informed, the expenses referred to were incurred by direction of your Board, in order to facilitate the orderly transaction of business in the executive and legislative departments, I can see no good reason why they should not be classed as "ordinary expenses," and therefore proper subjects to be included in the general appropriation bill.

If you will permit the suggestion, I will take the liberty of saying that I consider it not only good law but wise precedent as well to set out in the general appropriation bill, under the head of "deficiencies," all those items of expense relating to the "ordinary expenses of the executive, legislative and judicial departments" not covered in the general appropriation bill of the preceding session of the Legislature. This method would group together all deficiencies and enable the members of the Legislature, as well as the Governor, more readily to see what items are included in the deficiency appropriation. The advantage of this practice over that of sandwiching in deficiencies under some other name, here and there, all through a bill covering many pages and including hundreds of items, can be easily understood.

If you conclude to provide for these deficiencies in the general appropriation bill, I would suggest that you amend the title by adding the following, to wit: "and providing for any deficiency in the ordinary expenses of the executive, legislative and judicial departments during the two years preceding."

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

COMMISSIONERS APPOINTED UNDER ACT OF 17 APRIL, 1878—POWERS OF IN EMPLOYMENT OF ASSISTANCE—EXPENSES OF.

Commissioners appointed under act of 17 April, 1878 (P. L. 18), to report on question of the erection of a new county have authority to employ such assistants as they deem necessary to complete the work, and the expenses incurred in such employment will be paid by warrant upon the State Treasurer, not in advance, but after they have been contracted and proper bills presented for the same.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 10, 1895.*

TO THE HONORABLES ISAAC A. HARVEY, J. JEREMIAH SNYDER AND D. F. A. WHEELOCK, *Commissioners Appointed to Report on the Question of the Erection of a new County Under the Provisions of the Act of April 17, 1878:*

Gentlemen: In answer to your communication of the 9th inst., addressed to this department, asking for instruction upon the questions therein stated, I have the honor to submit the following opinion:

1. Under the provisions of section 4 of the act of April 17, A. D. 1878 (P. L. 18), you have the authority to employ such assistants as you deem necessary to complete the work within the time prescribed by said act.

2. Section 10 of said act provides as follows: "All actual expenses of said commissioners, together with five dollars per day each for every day necessarily employed, shall be paid by warrant drawn upon the State Treasurer." Reading this section with the provisions of section 4, I am clearly of the opinion that the expense incurred by the commissioners in the employment of assistants to do the actual work of making the survey may be included and will be paid by warrant drawn upon the State Treasurer. These expenses, however, cannot be paid in advance, and will be paid only after they have been incurred and proper bills presented to the State Treasurer and a warrant drawn for the same.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

FISH WARDENS—POWERS AND DUTIES OF—Acts of 8 May 1876, section 1, and 3 June, 1878, section 27.

The State Board of Fishery Commissioners have no power or authority to restrict coal operators in their operations, and this ruling of the Attorney General's Department is equally applicable to the tannery business.

If tanners violate the provisions of the act of 8 May, 1876, section 1 (P. L. 146), it becomes the duty of a fish warden, under the act of 3 June, 1878, section 27 (P. L. 164), to enforce the laws providing for the propagation and protection of fish in the interior waters of the Commonwealth.

Unnecessary or oppressive conduct on the part of a fish warden should be reported by those injured to the Fishery Commission.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 19, 1895.*

ISAAC B. BROWN, *Secretary of Internal Affairs:*

Dear Sir: I am in receipt of yours of the 17th inst., enclosing certain correspondence relating to the action of Mr. Simmons, a fish warden at Corry, and inquiring as to the powers and duties of that officer.

It appears from the correspondence referred to that Messrs. Weisser and Gaensslen are the owners of a tannery at or near Corry; that they have been accustomed for more than thirty years to run their drainage into Bear Creek; and that, by reason of such action on the part of that firm and others engaged in like business, the fish warden has by legal proceedings seriously interfered with their operations. Inasmuch as you attach to the correspondence a telegram received from Mr. Louis Strueber, State Fishery Commissioner at Erie, showing that the action of the warden did not meet with his approval, and that the suits commenced by the warden were directed to be withdrawn by the Commissioner, I must conclude that the action of the warden, whatever it was, was upon his own motion, and was wholly unauthorized by the Fishery Commission or any of its members. It has been decided by this department, in an opinion by the Hon. James A. Stranahan, Deputy Attorney General, under date of July 14, 1892, that the Board of Fishery Commissioners have no power to take measures to restrict coal operators in their operations, and that no authority has been conferred upon the Board to take such action. In this opinion I concur. It is as applicable to the tannery business as it is to the mining of coal.

I should add, however, as probably applicable to the matter in hand, that, by the act of May 8, 1876, section 1 (P. L. 146), it is provided that "All persons engaged in any of the manufacturing interests of this State, accustomed to the washing of iron and other ores and of coal preparatory to its use for coking, or in the tanning of hides by the process in which vitriol is used, shall prepare a tank or other receptacle, into which the culm or coal dirt, or offal, refuse and the tan bark, and the liquor or the water therefrom may be collected, so that the sediment therefrom, so far as is practicable, may be thereby prevented from passing into or upon any of the rivers, lakes, ponds or streams of the Commonwealth, under a penalty of fifty dollars for each offense, in addition to liability for all damage he or they may have done to any individual owners or lessees of such waters."

In the above cited act of Assembly the duty of tanners is very clearly set forth. If the tanners referred to come within the provisions of the statute and are violating it, then it becomes the duty of the fish warden, under the act of 3d June, 1878, section 27 (P. L. 164), "to enforce, by information or prosecution, the laws of this Com-

monwealth now in force, or that may hereafter be passed, providing for the propagation and protection of fish in any of the interior waters of the Commonwealth." Any unnecessary or oppressive conduct on the part of the fish warden, interrupting the business interests to which you refer, should be promptly reported by the persons injured to the Fishery Commission, and I have no doubt they will take immediate action to prevent its continuance.

I return herewith the correspondence referred to.

Very respectfully,

HENRY C. McCORMICK,
Attorney General.

NOTARIES PUBLIC—OFFICERS AND STOCKHOLDERS OF BANKS INELIGIBLE TO APPOINTMENT—Acts of 14 April, 1840, and 20 May, 1889.

The language of the act of 14 April, 1840, is broad and explicit, and refers to "any bank or banking institution," and prohibits the appointment as notary public of those interested in any manner in such institutions.

The cashier of a savings bank organized under the provisions of the act of 20 May, 1889 (P. L. 246), is prohibited by the letter and spirit of the act of 14 April, 1840, from exercising the office of notary public and no commission should issue unto him.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 27, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: By reference from the Executive department, under date of April 23, 1895, I am in receipt of a letter of John A. Rupert, of West Chester, Pa., addressed to Hon. Frank Reeder, Secretary of the Commonwealth, in which the writer of the letter states that he has applied for a commission as a notary public. He states further that he is cashier of "The Dime Savings Bank of Chester County," and desires to know whether or not he is ineligible to an appointment by reason of his holding the office of cashier.

The Dime Savings Bank of Chester County, as I am informed by the letter of Mr. Rupert, was organized under the provisions of an act of Assembly approved May 30, 1889 (P. L. 246), entitled "An act to provide for the incorporation and regulation of savings banks and institutions without capital stock established for the encouragement of saving money."

The act of 14th April, 1840, provides that "No person being a stockholder, director, cashier, teller, clerk or other officer in any bank or banking institution, or in the employment thereof, shall at the same time hold, exercise or enjoy the office of notary public."

The question raised by Mr. Rupert is whether a bank, incorporated under the act of 1889 as a savings bank, forbidden, as it is by the act, "to loan the money deposited with them, or any part thereof, upon notes, bills of exchange or drafts, or to discount any such notes, bills of exchange or drafts," is within the prohibition of the act of 1840,

It is true that the act of 1889 does require the moneys deposited in the banks incorporated thereunder to be invested in the manner therein specified, and prohibits the loaning of such moneys on notes, bills of exchange or drafts or in the discount thereof. The banks so incorporated are prohibited from doing what is generally known as commercial banking. Their investments are required to be in mortgages on unincumbered, improved real estate and the bonds of cities and other municipalities, bonds of the State, of the United States and the bonds of certain other states that have not within ten years previous to making such investments defaulted in the payment of any part of either principal or interest of any debt authorized by any Legislature of such state to be contracted. The language of the act of 1840 is broad and explicit. It refers to "any bank or banking institution," and prohibits the appointment of those interested in any manner, whether as stockholders, directors or employes.

In the case of *Commonwealth v. Pyle*, 18 Pa. 519, decided in 1852, the act of 1840 received judicial construction. The opinion of the court is delivered by Black, C. J., in the course of which he says:

"A notary has a sort of judicial power. His protests, attestations and other official acts, certified under his hand and seal of office, are evidence of the facts therein certified. It is necessary, therefore, that he should not be interested in favor of the parties who are oftenest invoking his services. It is true that his certificate would not be received in evidence where he is so interested * * * His appointment must either taint the stream of justice with at least the suspicion of impurity, or else break its current and turn away. For these good reasons it is provided by the act of 14th April, 1840, that no stockholder in any bank shall hold, exercise or enjoy the office of notary public."

The inhibition as to cashier and other employes is just as strong as that regarding a stockholder. It does not follow because the bank is prohibited from dealing in commercial paper, that the reason for the act of 1840 is removed. Notarial certificates and attestations are required indeed almost daily in a savings bank where the bank itself is a party. To permit either a stockholder, an officer or an employe of the bank to exercise a judicial power of this kind is, I think, prohibited by the letter, and certainly by the spirit, of the act of 1840. I am of the opinion, therefore, that a commission should not issue to Mr. Rupert, because of his holding the position of cashier in the Dime Savings Bank of Chester County.

I return the letter of Mr. Rupert hereto attached.

Very respectfully,

HENRY C. McCORMICK,
Attorney General.

HEALTH OFFICERS AND SECRETARIES OF BOARDS OF HEALTH—SALARIES OF—APPROPRIATIONS FOR BY COUNCILS—Acts of 23 May, 1889, and 11 May, 1893.

The act of 23 May, 1889, article 11, section 3 (P. L. 306), and 11 May, 1893, section 3 (P. L. 45), clearly give boards of health, in boroughs and cities of the third class, the right to fix the salaries of the secretaries and health officers. Councils have not the right to regulate the salaries of these officers.

Under the 7th section of article 11 of the act of 1889, councils have no discretion in making appropriations for such salaries as fixed by boards of health, but it is their duty to make such appropriations as they shall deem necessary.

A mandamus lies to compel councils to make specific appropriations for salaries but not to compel general appropriations for other expenses of boards of health.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 2, 1895.*

BENJAMIN LEE, M. D., *Secretary of the State Board of Health:*

Dear Sir: In answer to your communication of the 27th ult., asking the question whether, in accordance with the act of 1889, incorporating cities of the third class, and the act of 1893, establishing boards of health in boroughs, councils have the right to determine the amount of the salaries to be received by health officers and secretaries of boards of health, I have the honor to submit the following opinion:

The act of 1889 (P. L. 306), incorporating cities of the third class, in article 11, section 3, provides that "The secretary and health officer shall receive such salary as may be fixed by the board." The act of 1893 (P. L. 45), establishing boards of health in boroughs, in section 3, provides that "The secretary and the health officer shall receive such salary as may be fixed by the board."

The plain terms of the acts above referred to give to the boards of health, in cities of the third class and in boroughs, the right to fix the salaries of the secretaries and health officers. Since the specific authority has been conferred upon the boards of health, I am of the opinion that councils do not have the right to regulate the salaries of those officers. Under the provisions of the seventh section of article 11 of the act of 1889 (P. L. 308), it is made the duty of the boards of health to submit annually to councils before the commencement of the fiscal year estimates of the probable receipts and expenditures of the boards during the ensuing year, "and councils shall then proceed to make such appropriation thereto as they shall deem necessary." I am of the opinion that the councils have no discretion in the question of making appropriations for the salaries of the health officers and secretaries, as fixed by the boards of health, and that it is the duty of the councils to make such appropriations. But the question of any general appropriations to cover the expenditures of the boards is discretionary with the councils, and they can make such appropriations therefor as they shall deem necessary. A mandamus would lie to

compel councils to make the specific appropriations for salaries, but it would not lie to compel the councils to make general appropriations for other expenses of the boards of health. A mandamus will not lie to compel an officer to exercise his discretion in a particular way.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

RAILROAD POLICE—APPOINTMENT OF—Act of 27 February, 1865.

The act of 27 February, 1865 (P. L. 225), does not provide for the appointment of railroad police for traction or electric railways.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 14, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: By reference to this Department of the application of the Wilkes-Barre and Wyoming Valley Traction Company for the appointment of a policeman for said corporation, we are asked to give an opinion on the question whether the act of February 27, 1865 (P. L. 225), provides for such appointment.

This exact question has been twice decided by our predecessors in office, and both times adversely to the right of making such appointment. Attorneys General Kirkpatrick and Hensel held that the provisions of the act of 1865 did not extend to the appointment of policemen for traction and electric roads in suburban districts. After a careful examination of the question I see no reason to change the precedents of the office in reference thereto. The act of 1865 was passed at a time when there were no traction or electric roads in suburban districts, and hence the appointment of policemen for such roads could not have been in contemplation by the legislative mind. I am of the opinion, therefore, that the act of 1865 does not provide for the appointment of railroad police for traction or electric railways.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

JUSTICES OF THE PEACE—RIGHT OF TO CARRY U. S. MAIL UNDER CONTRACT.

The holding of the office of justice of the peace is not incompatible with the right to carry the United States mail under a contract.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 15, 1896.*

DANIEL H. HASTINGS, *Governor:*

Sir: The communication of T. L. Gotshall, dated May 9, 1895, asking whether the holding of the office of justice of the peace is incompatible with a contract for carrying the United States mail, has been referred to this Department for an opinion.

After a careful examination of the question I am of the opinion that the holding of the office of justice of the peace is not incompatible with the right to carry the United States mail under a contract. The case of the Commonwealth v. Binn, 17 S. & R., 219, seems conclusive of this question.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

LIQUOR LICENSES—DISTILLERS SELLING BY WHOLESALE—Acts of 9 June, 1891, and 20 June, 1893.

The act of June 9, 1891, regulating the sale of liquor by wholesale is the general law of the State and applies in every case except such as are specifically provided for by act of 20 June, 1893 (P. L. 474).

The latter act gives distillers the right to sell liquors of their own manufacture in original packages of not less than forty gallons without requiring them to take out a license under the said act of 1891.

A distiller holding a license under the act of 1891 is not required to take out a license under the act of 1893. He cannot do business without a license under one or the other of said acts, but he need not take out a license under both.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG PA., *May 15, 1895.*

AMOS H. MYLIN, *Auditor General:*

Sir: The letter of E. E. Pugh, treasurer of Somerset county, asking whether a distiller who takes out a wholesale license under the provisions of the act approved June 9, 1891, is also required to take out an additional license under the act of June 20, 1893, has been referred to this Department, and in answer thereto I have the honor to submit the following opinion:

The act of June 9, 1891, regulates the sale of vinous, spirituous and brewed liquors by wholesale. It is a general law and applies in every case except where a different rule is specifically provided by some other act of Assembly. It was the only law of the State regulating the sale of liquor by wholesale until the approval of the act of June 20, 1893. It is still the law of the State in every instance except in such cases as are specifically provided for in the latter act. The act of 1893 gives distillers the right to sell spirituous and vinous liquors of

their own manufacture in original packages of not less than forty gallons without requiring them to take out a license under the provisions of the act of 1891. If a distiller takes out a license under the provisions of the act of 1891, there is no necessity for his taking out a license under the provisions of the act of 1893, but a license under the provisions of the act of 1893 gives the right to sell only in original packages of not less than forty gallons. A sale of a less amount than forty gallons will not be permitted under a license taken out under the provisions of the act of 1893. A distiller must take out a license either under the provisions of the act of 1891 or of 1893. He cannot do business without such a license. He need not take out a license under both.

I return herewith the letter hereinbefore mentioned.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

APPROPRIATIONS—Act of 2 June, 1893.

The act of June 2, 1893 (P. L. 203), does not authorize the Auditor General to draw warrants for more than \$9,000 in favor of the Shenango Valley Hospital. Any payment in excess of that sum would be without authority of law.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 15, 1895.*

AMOS H. MYLIN, *Auditor General:*

Dear Sir: I am in receipt of yours of the 10th inst., in reference to the act approved June 2, 1893, making an appropriation to the Shenango Valley Hospital, in the city of New Castle, Penna.

The first section of the act provides "that the sum of ten thousand dollars, or so much thereof as may be necessary, be and the same is hereby specifically appropriated to the Shenango Valley Hospital, located in the city of New Castle, Pennsylvania, for the following purposes, viz: the sum of four thousand dollars, or so much thereof as may be necessary, to assist in the erection, furnishing and equipping of a suitable hospital building * * * and the sum of five thousand dollars, or so much thereof as may be necessary, for the maintenance of said hospital for the two fiscal years beginning June 1, 1893."

I am of the opinion that this act of Assembly does not authorize you to draw warrants for more than \$9,000, and that any payment in addition to that sum, to be applied to the hospital generally, would be without authority of law.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

INSURANCE COMPANIES—INCORPORATION OF—BONA FIDES OF APPLICATIONS FOR CHARTER FOR MUTUAL INSURANCE COMPANY—DUTY OF INSURANCE COMMISSIONER—Act of 1 May, 1876.

SUBSCRIPTIONS TO STOCK.

REQUISITE AMOUNT OF—DUTY OF INSURANCE COMMISSIONER.

From the provisions of the act of 1 May, 1876 (P. L. 53), it clearly appears that there must be \$200,000 of insurance subscribed in good faith before a mutual company is authorized to accept risks and issue policies.

While the certificate, under oath, of the president, treasurer and a majority of the board of directors makes a prima facie case for persons asking such incorporation, yet if it can be established that the application is not made in good faith it would be the duty of the Insurance Commissioner to investigate the facts and report the same to the Governor before the issuing of letters patent.

SUBSCRIPTIONS TO STOCK.

Subscriptions to mutual companies must not fall below \$200,000. If a company permits its subscription list to fall below said amount the Insurance Commissioner is authorized to require its subscription to be increased to the minimum amount.

A failure on part of company to comply with such request would warrant the institution of quo warranto proceedings against it.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 16, 1895.*

JAMES H. LAMBERT, *Insurance Commissioner:*

Sir: In answer to your communication of the 8th inst., inquiring as to your duties in reference to the question of investigating the bona fides of applications for insurance in mutual companies when such companies ask for charters of incorporation, I have the honor to submit the following opinion:

The act of May 1, 1876 (P. L. 53), provides for the incorporation and regulation of insurance companies. In section 4 of this act it is provided that the promoters of the company shall keep open subscription books for the purpose of receiving applications for insurance until a sufficient number and amount have been obtained to comply with the requirements of law. Section 7 of the same act provides that when applications for insurance, in sufficient number and amount, have been secured, the president, treasurer and a majority of directors shall under oath make certificate, setting forth the names and residences of the persons subscribing for insurance and the amount agreed to be taken by each. Upon receipt of such certificate the subscribers are to be "erected" into a body corporate by letters-patent to be issued by the Governor. In section 11 it is further provided that mutual companies must have insurance subscribed to the amount of \$200,000 before they "accept risks and issue policies."

From the foregoing provisions it clearly appears that there must be at least \$200,000 of insurance subscribed in good faith before a mutual company is authorized to accept risks and issue policies, as provided in the first and fourth paragraphs of section 1 of said act.

Letters-patent are not authorized to be issued to such a company unless this amount of insurance has been subscribed. The certificate, under oath, of the president, treasurer and a majority of the directors, as required in section 7, makes a prima facie case for the persons asking such incorporation, and, unless shown to be untrue or fraudulent, is conclusive. It is a legal maxim, however, that fraud vitiates everything it touches, and if the Insurance Commissioner can establish that the applications for subscription are not made in good faith, and are not intended to be carried into effect in the future operations of the proposed company, then it follows that the representations of the certificate are untrue and fraudulent in a legal sense. Under such circumstances it would be the duty of the Insurance Commissioner to investigate the facts and report the same to the Governor before the issuing of letters-patent.

I am of the further opinion that the subscriptions to mutual companies above designated must not fall below \$200,000, and if the company permits its subscription list to fall below said amount, the Insurance Commissioner is authorized to require such company to increase its subscription to the minimum amount, and a failure upon the part of the company to comply with such request would warrant the institution of quo warranto proceedings against it for doing business in violation of law.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

TOWNSHIP OFFICES—VACANCIES IN—DUTY OF GOVERNOR IN RELATION THERETO—Acts of 15 April, 1834, and 10 June, 1893.

All the duties of the Governor under the provisions of the act of 10 June, 1893 (P. L. 419), apply only to general elections. The 29th section of said act does not apply to special or township elections.

Vacancies in the office of township auditor or supervisor should be filled under the provisions of the act of 15 April, 1834 (P. L. 552).

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 16, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The certificates of Judges Waddell and Hemphill, of the Fifteenth judicial district, setting forth the fact that the election for the offices of township auditor and supervisor, held in the township of West Marlborough, in the county of Chester, on the 19th day of February, A. D. 1895, was found to be invalid for the reason that the official ballots used were erroneous, and that the election, for this reason, was set aside; and the letter of Thomas W. Baldwin, of the 4th inst., asking that you issue writs of election in accordance with

(the provision of the twenty-ninth section of the act of 1893 (P. L. 433), have been referred to this department. These communications raise the question whether it becomes the duty of the Governor, under the provisions of the twenty-ninth section of the act of 1893, to cause writs of election to issue when township or borough elections are for any reason declared to be invalid or set aside by a proper tribunal.

This is the first time, so far as I am informed, the Governor has been called upon to issue a writ of election for a township officer. Unless the mandate of the law requires it, it would seem as if it ought not to be any part of his duty. It is true the act of 1893 provides for the manner of holding elections, township, special and general, but many of its provisions apply only to general elections. In section 10 it is provided that at least ten days before any general election the sheriff must give notice of the same by proclamation, and, indeed, a large proportion of all the sections of this act apply only to general elections. It is true that township and borough elections are incidentally provided for, but it does seem to be a reasonable construction that, so far as the Governor has any duty to perform under the provisions of this act, it applies only to general elections. Certainly the Legislature did not intend that the Governor should cause a writ of election to issue every time the election of some township or borough officer should be declared invalid. Vacancies in the office of township auditor or supervisor can be filled under the provisions of the act of April 15, 1834 (P. L. 552). The method of supplying vacancies therein provided is much more desirable and less expensive than the holding of a new election under proclamation of the Governor.

Taking all these things into consideration, I am of the opinion that the twenty-ninth section of the act of 1893 applies only to general elections, and that you should not issue special writs of election in the case presented.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

REGISTER OF WILLS—FEES OF, FOR ADVERTISING ACCOUNTS IN DECEDENTS' ESTATES—Act of April 2, 1868.

Under the act of 2 April, 1868 (P. L. 10), a register of wills is entitled to deduct for advertising executors', administrators' or guardians' accounts the sum of \$2.50 for each account.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 17, 1895.*

AMOS H. MYLIN, *Auditor General:*

Sir: In answer to the communication of Auditor General Gregg, dated May 6, 1895, asking for an opinion as to the amount a register of wills is entitled to deduct for advertising executors', administrators' or guardians' accounts, I beg leave to say that the act of April 2, 1868 (P. L. 10), fixes his fees for this service at two dollars and fifty cents (\$2.50) for each account.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

STATUTE—INTERPRETATION—MEANING OF LANGUAGE.

In interpreting the Constitution, the language used should receive that meaning given to it by popular acceptance and understanding, unless the words used are of a technical character.

WORDS AND PHRASES—"COUNTY SEAT."

The provision of the Constitution which forbids the lines of a new county to pass within ten miles of the county seat of any county proposed to be divided, has reference to the county town, and not to the court house.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 17, 1895:*

TO MESSRS. ISAAC A. HARVEY, J. JEREMIAH SNYDER, AND D. F. A. WHEELOCK, *Commissioners, Harrisburg, Pa.:*

Gentlemen: I am in receipt of yours of this date, in which you request my interpretation of the phrase "county seat," as used in the act of Assembly approved April 17, 1878, entitled "An act to provide for the division of counties of this Commonwealth, and the erection of new counties therefrom;" and as also used in article XIII, section 1 of the Constitution.

The practical question which I understand you to submit is, whether in the measurement of the distance from an existing county seat, as referred to in the act of Assembly and the Constitution, is meant ten miles from the court house, or ten miles from the limits of the municipality in which the court house is situated.

The provision of the Constitution above referred to is as follows:

"No new county shall be established which shall reduce any county to less than four hundred square miles, or to less than twenty thousand inhabitants, nor shall any county be formed of less area, or containing a less population; nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided."

By section 4 of the act of Assembly above referred to, it is provided, amongst other things:

“If it shall appear from such report (the report of the commissioners) that said new county may be established without conflicting with the constitutional provisions as to territory, population, and the nearest distance of the boundary line to the county seat, then the Governor shall issue a proclamation ordering an election to be held by the qualified voters of the said proposed new county district.”

In interpreting the Constitution the language used should receive that meaning given to it by popular acceptation and understanding, unless the words used are of a technical character. What was the commonly-understood meaning of the “county seat” at the time of the adoption of the Constitution? If, for instance, the question were asked, what is the county seat of Dauphin county? the answer given would be Harrisburg. The meaning attached to the phrase “county seat” by the people, generally, it must be admitted, is the county town; the town where the county buildings are located, and not the buildings themselves. This appears also to be the definition given by lexicographers, generally.

“County seat,” according to Webster, is “a county town.” And “county town,” according to the same authority, is “the town of a county where the county business is transacted; a shire town.” This meaning is adopted in the American and English Encyclopaedia of Law, volume 4, page 402. Zell’s Encyclopaedia gives “county seat” and “county town” as synonymous, and defines the phrase to be “the chief town of a county; the seat of justice.” The Century Dictionary defines “county seat” to be “the seat of government of a county; the town in which the county and other courts are held and where the county officers perform their functions.”

Some light is thrown upon the meaning of this phrase by the fifteenth section of the act of Assembly above referred to, providing for the selection of a county seat in the county erected under the provisions of that act. The language used is:

“The place having the greatest number of votes shall be the county seat, and the commissioners shall as soon as convenient proceed to construct the necessary buildings therefor at the county seat.”

By section twelve of the same act it is made the duty of the commissioners of the new county erected under such act and appointed by the Governor to “designate a place which shall be the county seat for the time being.”

It is possible, or may be in the near future, in one or two counties in the Commonwealth, that to allow a line of a new county to approach within ten miles of the court house in such county, would have the effect of cutting off part of the city in which the court house is located and to include it as part of the new county. This certainly could not have been meant by the framers of the Constitution, or the Legislature that passed the act.

I am of the opinion, therefore, that in making the measurement

of the distance from the "county seat," such measurement must be made from the limits of the municipality in which the court house is situated, and not from the court house itself.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

ALDERMEN—NUMBER OF IN WARDS OF CITIES OF THE THIRD CLASS—Acts of 23d May, 1874, section 32 (P. L. 248), and 23d May, 1889 (P. L. 277).

The basis of legislation regulating cities of the third class is found in the act of 1874, and therefore the provisions of said act are in force in all cities of that class, whether incorporated under said act or under the act of 1889, which is supplemental thereto.

Cities of the third class incorporated under the act of 1889 are entitled to but one alderman in each ward.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 20, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The application of John T. Harris, a citizen of the First ward of the city of Johnstown, to be commissioned as an alderman in said ward, having been referred to this Department, I have the honor to submit the following opinion upon the question therein involved:

At the municipal election held in said city on the 19th day of February, 1895, Edgar O. Fisher and John T. Harris were candidates for the office of alderman in said ward. Fisher, having received the greater number of votes, filed his acceptance in the office of the prothonotary of Cambria county and was in due time commissioned as alderman. Harris, claiming that the ward was entitled to two aldermen, under the provisions of the act of 1839, filed his acceptance also and now asks that a commission be issued to him.

Johnstown is a city of the third class, incorporated under the act of May 23, 1889 (P. L. 277). This act is silent upon the question of alderman; hence we must look elsewhere to ascertain the number of such officers to be elected. The learned counsel for the applicant very earnestly contends that the provisions of the thirty-second section of the act of 1874 (P. L. 248), do not apply to the city of Johnstown for the reason that the defining clause of the act of 1889 limits the application of the provisions of the act of 1874 to the different classes of cities set out in this defining clause. While there is force in this reasoning, we are not persuaded that it is the proper construction of these two acts of Assembly. Such an interpretation would involve us in endless confusion. All those cities of the third class, incorporated under the act of 1874, or that have accepted the provisions of that act prior to 1889, or that have accepted them since 1889, and have been incorporated under the provisions of the latter

act, would be entitled to one alderman in each ward, while those cities originally incorporated under the act of 1889 would be entitled to two aldermen. Certainly such a construction should not be permitted unless the plain letter of the law demands it. We think that Mr. Justice Clark, in the case of the Commonwealth v. Reynolds, 137 Pa. St. 405, gave the keynote of the proper construction of the acts regulating cities of the third class, wherein he said:

“The Legislature, in the act of 1874, provided a general system, upon which are found all the cities thereafter incorporated, and upon which are to be put, ultimately, all other cities of the third class, as beads are put upon a string. The system may be strengthened or extended, but it cannot be parted or divided. The loose beads, as they are taken up, must be put upon the string and not upon one of the strands of which the string consists. The system, under the Constitution, is necessarily an entirety; and the special charter city, in passing upon the acceptance of its provisions, under an elective clause, such as in contained in the act of 1874, must decide to take all or none of them.”

From this it seems quite clear that the basis of the legislation regulating cities of the third class is found in the act of 1874, and that all the subsequent legislation governing said cities is but supplemental to this original act. This being our view of the law, it follows that the provisions of the act of 1874, regulating the number of aldermen to be elected in cities of the third class, are in force in all cities of that class, whether incorporated under the act of 1874 or under the act of 1889. These acts are to be construed *in pari materia* and must stand together wherein the provisions of the later act are not inconsistent with the former.

I am of the opinion, therefore, that cities of the third class, incorporated under the act of 1889, are entitled to but one alderman in each ward, and inasmuch as one alderman has already been commissioned in the First ward of the city of Johnstown, no commission should issue to Mr. Harris.

I return herewith petition for commission, together with letter and other papers of counsel for petitioner.

Very respectfully,

HENRY C. McCORMICK,
Attorney General.

McCLURG GAS CONSTRUCTION COMPANY.

CORPORATIONS—CHARTER—APPLICATIONS—DUPLICITY—PRACTICE, EX. DEP.

The statement of purpose should be in general terms, and the law then fixes the powers which are incident to and may be properly enjoyed by such corporation. It is a mistake to make the statement of purpose an index to every right and privilege claimed under the charter.

STATEMENT OF PURPOSE BAD WHEN DUAL IN CHARACTER, PROLIX IN PHRASEOLOGY AND OF DOUBTFUL CONSTRUCTION.

The certificate submitted contained the following statement of purpose, which it was held by the Attorney General should be corrected before letters patent were issued:

“Manufacturing gas for illuminating, heating and fuel and their bi-products, and erecting, purchasing, leasing, improving and operating works for the manufacture of the same; of manufacturing, leasing, buying and selling all goods, materials, apparatus and appliances, with the right to acquire and hold patent rights for inventions and designs relating thereto, and receiving and granting licenses thereunder.”

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 23, 1895.*

FRANK REEDER, *Secretary of the Commonwealth:*

Sir: Your communication of recent date, asking whether the statement of purpose contained in the application of the W. J. McClurg Gas Construction Company, of Pittsburg, for a charter is in proper form, has been received, and in reply thereto I have the honor to submit the following opinion:

The certificate of incorporation of the proposed company contains the following statement of purpose, to wit:

“Manufacturing gas for illuminating, heating and fuel and their bi-products; and erecting, purchasing, leasing, improving and operating works for the manufacture of the same; of manufacturing, leasing, buying and selling all goods, materials, apparatus and appliances, with the right to acquire and hold patent rights for inventions and designs relating thereto, and receiving and granting licenses thereunder.”

Your inquiry raises the question whether this statement expresses that singleness of purpose required by the corporation act of 1874 and the precedents established thereunder. The statement can be divided into four distinct propositions, as follows:

1. The right to manufacture gas for the purposes of illuminating, heating and fuel, as well as the right to manufacture the bi-products of the same.

2. The right to erect, purchase, lease, improve and operate works for the manufacture of such gas.

3. The right to manufacture, lease, buy and sell all goods, materials, apparatus and appliances.

4. The right to acquire and hold patent rights for inventions and designs relating thereto and receiving and granting licenses thereunder.

There is an evident attempt in this statement of purpose to include many of the incidents and powers which every corporation enjoys under the law and its charter. The first clause contains a statement of the general purpose for which the corporation is to be created, and, in my opinion, about all that should be contained in the statement of purpose. The phraseology might be improved. The second clause should not be included in the statement of purpose because the powers therein enumerated are incident to every corporation under the provisions of the act of April 29, 1874 (P. L. 73), wherein it is provided that corporations have the right "to hold, purchase, and transfer such real and personal property as the purposes of the corporation require." The third clause contains the enumeration of powers of doubtful meaning and authority under the law. It is quite clear that a corporation organized for the purpose of manufacturing gas cannot have conferred upon it the power of "buying" all kinds of goods, materials, apparatus and appliances. A corporation certainly has the right to acquire and hold such patent rights as may be necessary or convenient in conducting its business, but such powers are incidents to the charter privileges of every corporation, and have no proper place in the statement of purpose contained in the certificate. It is a mistake to make the statement of purpose an index to every right and privilege claimed under the charter. The statement of purpose should be in general terms, and the law then fixes the powers which are incident to and may be properly enjoyed by such corporation. This rule has been established by a long line of precedents, and, in my opinion, should be strictly adhered to.

I am, therefore, of the opinion that the above statement of purpose is dual in character, prolix in phraseology, of doubtful construction, and should be corrected before letters-patent are issued to the proposed company.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

MINE INSPECTION—ANTHRACITE AND BITUMINOUS INSPECTORS—
Acts of 2 June, 1891, and 15 May, 1893.

A coal mine in the anthracite region whose product is of the anthracite quality, even though located in a county not included in the division of districts made by article 2 of act of 2 June, 1891 (P. L. 176), should be subject to the examination of the anthracite inspectors.

The act of 1891 applies to every anthracite coal mine in the Commonwealth employing more than ten persons. The act of 15 May, 1893 (P. L. 52), by its very title is intended to apply only to the bituminous coal fields.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 30, 1895.*

H. McDONALD, ESQ., *Inspector of Mines, Third Anthracite District, Towanda, Pa.:*

Sir: Your communication of the 11th inst., addressed to the Attorney General, asking whether the mines at Bernice, Sullivan county, Pa., are subject to examination by the anthracite or bituminous inspectors, received.

While the question is not entirely free from doubt, yet, as I am informed, the quality of the coal is clearly anthracite, and it seems as though the mines should be subject to the examination of anthracite inspectors. The act of June 2, A. D. 1891 (P. L. 176), provided for the protection of the health and safety of persons employed in and about the anthracite coal mines of Pennsylvania and for the proper inspection of such mines. Article I, section 1 of the act provided "that this act shall apply to every anthracite coal mine or colliery in the Commonwealth, provided the said mine or colliery employs more than ten (10) persons." Article II makes a division of districts, and it is true the county of Sullivan is omitted, but section 3 of article II, which provides for the filling of vacancies, by reason of the expiration of term, resignation or removal, by the judges of the courts, includes Sullivan, Carbon and Luzerne counties in one district, thus showing that it was the legislative intention that Sullivan county should be included in the anthracite region. The act of May 15, A. D. 1893 (P. L. 52), is entitled "An act relating to bituminous coal mines, and providing for the lives, health, safety and welfare of persons employed therein." From the title it is apparent that the provisions of this act were intended to apply to the bituminous coal fields. In section 1 of article XXII it is provided that "the term 'bituminous' coal mine shall include all coal mines in the State not now included in the anthracite boundaries." Under this provision it is contended, as I am informed, that the bituminous inspectors have the right to inspect the mines at Bernice. While the language of this definition might be broad enough to include the anthracite mines in Sullivan county, I do not think such a construction is necessary. I am informed that the mining of the anthracite coal at Bernice was in operation many years prior to the passage of the act of 1893. In point of

fact, these mines had been subject to the examination of anthracite inspectors prior to the passage of that act, and were therefore properly included in the anthracite boundaries at the time of its approval, and are not within the terms of this definition.

I am of the opinion, therefore, that, since the fact seems to be well established that the coal mined at Bernice is of the anthracite quality, there is no good reason why it should be subject to the examination of the bituminous inspectors, but that it should be included in the anthracite boundaries for purposes of inspection as it was prior to the act of 1893.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

FIRE ESCAPES—MANNER OF ERECTION—Act 3 June, 1885.

The act of June 3, 1885 (P. L. 68), and the supplements thereto regulate the manner in which fire escapes shall be erected, but the Legislature has the right at any time to provide new rules and regulations in reference to the same.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 31, 1895.*

JAMES CAMPBELL, *Factory Inspector:*

Sir: In answer to your communication of the present date, enclosing a letter of John Dobson, dated May 24, 1895, also a letter of M. A. O'Reilly, Deputy Factory Inspector, dated May 29, 1895, received.

In answer to the same I desire to state that the act of June 3, 1885 (P. L. 68), and the supplements thereto, now regulate the manner in which fire escapes shall be erected. Any law prior thereto and repealed by these later acts is inoperative, and fire escapes erected under the old law will not necessarily answer under the new. There is no legal force in the position that the act of 1885 is prospective, and cannot apply to buildings with fire escapes erected prior to that time. The Legislature has the right at any time to provide by law new rules and regulations in reference to the same. This, as I understand it, answers your question.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

STATE TREASURER—REPAYMENT OF MONEY ERRONEOUSLY PAID INTO STATE TREASURY—Act of 12 June, 1878.

The only legal authority vested in the State Treasurer to repay tax erroneously paid to the Commonwealth is by the act of June 12, 1878, and all applications for such repayment must be made within two years from the date of payment.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 6, 1895.*

S. M. JACKSON, *State Treasurer:*

Sir: I am in receipt of yours of the 28th ult., concerning the estate of Franklin Mathias, deceased, and in which you submit the question as to whether you are authorized to repay the collateral inheritance tax of \$123.42 paid by the administrator of the decedent to the register of wills of Indiana county. The circumstances detailed by you are to the effect that Cyrus Stouffer, as administrator of Franklin Mathias, on November 28, 1891, paid to the register of wills of Indiana county the collateral inheritance tax on property in Indiana county to which his wife and others were supposed to be collateral heirs. It subsequently appeared, by litigation, and was determined on August 31, 1894, that the decedent died intestate, leaving one, Rebecca Lane Graham, a daughter, to whom the estate devolved upon his death, and that none of the collateral heirs were entitled to receive any portion of the estate of the decedent.

I regret to say that the only legal authority vested in the State Treasurer to repay tax erroneously paid to the Commonwealth is by the act of June 12, 1878, and that, by a proviso contained in said act, all applications for repayment of tax erroneously paid into the Treasury must be made within two years from the date of payment. As this payment was made on November 29, 1891, and more than two years having elapsed before the application for repayment was made, I have to advise you that you have no power to make such repayment. I reach this conclusion because of the imperative words of the statute, and regret that I cannot say to you that the money should be repaid because it now clearly appears that the State was never entitled to it.

Very truly yours,

HENRY C. McCORMICK,
Attorney General.

STATE BOARD OF HEALTH—AUTHORITY OF TO ABATE A NUISANCE—
PROCEEDINGS.

Where a legitimate business is conducted in a manner prejudicial to the rights of the public, and property rights are involved in the attempt to abate it, legal proceedings should be instituted by the State Board of Health, either by filing a bill in equity or by the more summary process of having a local officer make information against the proprietor for maintaining a nuisance.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, *June 14, 1895.*

BENJAMIN LEE, M. D., *Secretary State Board of Health, Philadelphia, Pa.*

Sir: Your communication of the 12th inst., enclosing information

and other papers concerning a nuisance on the property of Frederick Hangstorfer, near Center Square, Whitpain township, Montgomery county, received, and by way of reply thereto I have the honor to submit the following opinion:

The authority of your Board to abate a nuisance is given by the act under which it is created. In this particular case, however, the nuisance complained of is, when properly conducted, a legitimate business. It is the manner of conducting the business that is the nuisance and not the business itself. The law protects every citizen in any legitimate business so long as the conduct of such business does not interfere with the rights of the public. In the Hangstorfer case I am satisfied that the manner of conducting his business is prejudicial to the rights of the public and the health of the people in that particular locality. For this reason I am of the opinion that it is a nuisance, but inasmuch as property rights are involved in the attempt to abate it, I would advise you to proceed by some well established legal method rather than by a summary process under the police powers of your Board. Two methods may be adopted. You can, by bill in equity, ask for an injunction to restrain the proprietor from conducting his business in such an offensive way, or you can have your local officer make an information against the proprietor for maintaining a nuisance. The latter, perhaps, would be the more summary process.

The latest utterance of the Supreme Court upon the question of the authority of the board of health of the city of Philadelphia to abate a nuisance may be found in the case of Philadelphia v. Trust Company, 132 P. S. 224. For your convenience I enclose you herewith a copy of the per curiam opinion in that case.

I return herewith all papers forwarded to me in reference to this case.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

BOARDS OF HEALTH—APPROPRIATIONS BY BOROUGH COUNCILS FOR EXPENSES OF—Act of 11 May, 1893.

Under the provisions of act of 11 May, 1893 (P. L. 47), the council of boroughs must make some appropriation for the expenses of boards of health. The amount thereof is discretionary with council.

It is the duty of council to appropriate sufficient money to pay salaries of secretary and health officers as fixed by the board. Upon refusal of council to perform this duty a mandamus would lie.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 14, 1895.*

BENJAMIN LEE, M. D., *Secretary State Board of Health:*

Dear Sir: I am in receipt of your communication of the 13th inst., enclosing letter of A. C. Maley, secretary of the board of health of the borough of East Greensburg, dated June 4, 1895, also letter of Anton Green, of the borough of Sharpsburg, dated June 13, 1895, and beg to submit the following answer:

Nearly all of the questions you raise have been substantially answered in my letter of May 2d, addressed to you, upon subjects of a similar nature. As a general rule it can be stated that the State Board of Health, established under the act of 1885, as well as local boards, established under the act of 1893, have no authority except such as is derived from the acts of Assembly creating such boards. The law in such cases means what it says and says what it means; so, in interpreting these acts, we must look to the letter and spirit of the law. In section 7 of the act of May 11, 1893 (P. L. 47), it is provided that the board of health shall submit annually to the council an estimate of the probable receipts and expenditures during the ensuing year "and the council shall then proceed to make such appropriation thereto as they shall deem necessary." This vests in the council a large discretion. I am of the opinion, however, that some appropriation must be made by the council, but the amount of that appropriation is discretionary with the council.

Your second question is included in the first and the same answer applies.

I am of the further opinion that it is the duty of the borough council to make appropriation of a sufficient amount of money to pay the salaries of the secretary and health officers, as fixed by the board. If this is not done a mandamus would lie to compel the council to perform its duty under the law.

I return herewith letters above referred to.

Very truly yours,

JOHN P. ELKIN,
Deputy Attorney General.

NOTARIES PUBLIC—INCOMPATIBILITY OF OFFICERS—NUMBER OF NOTARIES TO BE APPOINTED.

The offices of chief burgess and notary public are not incompatible and both may be filled by same individual.

Under the act of February 19, 1873 (P. L. 36), the Governor is authorized to appoint as many notaries as the interests of the public may require.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 19, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The communication of Lillian M. DeMott, dated June 13, 1895, has been referred to this Department for the purpose of getting an opinion upon the questions therein contained.

The office of chief burgess of a borough is not incompatible with an appointment as notary public. Both offices may be filled by the same individual.

Under the act of February 19, 1873 (P. L. 36), the Governor is authorized to appoint as many notaries public as, in his judgment, the interests of the public may require. Two notaries may be appointed in the same ward.

I return herewith the letter above referred to.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

COAL AND IRON POLICE—APPOINTMENT OF FOR GLASS MANUFACTURING PLANTS—Acts of February 27, 1865, and April 11, 1866.

The Governor has no authority under the law to appoint what are known as "coal and iron police" for a company engaged in the manufacture of glass.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 19, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: By reference to this Department of the letter of Thomas J. Ford, dated June 7, 1895, we are asked to say whether a company operating a plant for the manufacture of glass can secure the appointment of coal and iron police under existing law.

The term "coal and iron police" is used in reference to persons appointed under the provisions of the act of February 27, 1865 (P. L. 225), and its supplements. The original act provided for the appointment of such police officers only for a corporation owning or using a railroad in this State. The act of April 11, 1866 (P. L. 99), extended the provisions of the original act so as to embrace all corporations, firms or individuals owning, leasing or being in possession of any colliery, furnace or rolling mill within this Commonwealth. Some later acts have extended the provisions to other corporations and organizations, but no act of Assembly has extended the provisions of the original act so as to include the appointment of such officers for companies engaged in the manufacture of glass. In the absence of legislation authorizing the appointment of police officers for such companies the right does not exist.

I am, therefore, of the opinion that you have no authority to appoint what are known as "coal and iron police" for a company engaged in the manufacture of glass.

I return herewith letter above referred to.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

IN RE TEACHER'S CERTIFICATE.

SCHOOL LAW—NORMAL SCHOOL—TEACHER'S CERTIFICATE.

Our normal school system is predicated upon the idea of training teachers for our common schools. It follows, therefore, that all privileges incident thereto, and particularly the issuance of teachers' certificates, are to be based on two years' service in the common schools of this Commonwealth.

STATUTES—CONSTRUCTION OF—Act of May 20, 1857.

The act of 1857 is entitled "An act to provide for the due training of teachers for the common schools of the State." The provision of section 10 does not say that the two years' actual teaching, which are the condition precedent to a teacher's certificate, must be in Pennsylvania, but it is the fair and reasonable interpretation of the entire act. The title is a part of the act, and must be construed with the rest of it, so that the whole may stand together.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 19, 1895.*

NATHAN C. SCHAEFFER, *Superintendent of Public Instruction:*

Sir: This Department is in receipt of your communication of the 14th inst., asking whether a second diploma, in the nature of a certificate of competence in the practice of teaching, under the act of May 20, 1857 (P. L. 586), should be granted to graduates of our State normal schools who, subsequent to graduation, have successfully taught two years in the common schools of another state.

This is a new question, and, so far as I am informed, has not been raised before, although the normal school system has been in existence for more than thirty years. The act of 1857 is entitled "An act to provide for the due training of teachers for the common schools of the State." In section 10 of this act it is provided "That no certificate of competence in the practice of teaching shall be issued to the regular graduate of any of said normal schools till after the expiration of two years from the date of graduation, and of two full annual terms of actual teaching in the district or districts in which such graduate taught." This provision does not expressly say that the two years of actual teaching must be in Pennsylvania, but it is the fair and reasonable interpretation of the entire act. The title is a part of the act and must be construed with the rest of it so that the

whole may stand together. Our laws can have no extra-territorial force. The Legislature of Pennsylvania cannot say what the teachers in the state of New York must do, but it can provide for the requirements of teachers in the common schools of this State. The act of 1866 (P. L., pp. 73 and 74), provides, *inter alia*:

“For each student, over seventeen years of age, who shall sign a written declaration, in the form prescribed by the superintendent of schools, that said student intends to teach in the common schools of the State, there shall be paid the sum of fifty cents per week towards the expense of said student * * * to each student, who, during the school year, commencing on the first Monday of June, one thousand eight hundred and sixty-six, shall have graduated at any of the normal schools of the State, and who shall sign an agreement binding said student to teach in the common schools of the State two full years, there shall be paid the sum of fifty dollars.”

From this and other legislation on the subject it clearly appears that our normal school system is predicated upon the idea of training teachers for the common schools of Pennsylvania. For this purpose fifty cents per week are appropriated to every normal school student who signifies his intention of teaching in our common schools, and fifty dollars are paid to every graduate who agrees to teach in the common schools of this State for a period of two years after graduation. The Commonwealth has appropriated a large sum of money for the support of the normal school system, for the express purpose of training teachers for their work in her common schools. It is but just, then, that she should expect in return some service from the students thus aided. If those students go into other states to teach, Pennsylvania receives no direct benefit, although she has contributed liberally to their support. Of course, it is not within the power of the Legislature to prevent graduates of our normal schools from going into other states to teach, but it can say by so doing they forfeit the advantages which the law confers upon those teachers who give their services to our own common schools.

I am of the opinion, therefore, that you should not accept the testimonial of the superintendent or school board of another state as evidence of the successful teaching required in the tenth section of the act of 1857.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

STATE TAXATION—INTEREST-BEARING SECURITIES BELONGING TO ESTATE OF A DECEDENT—Act of June 1, 1889, section 21.

By the terms of section 21, act of June 1, 1889 (P. L. 429), all interest-bearing securities, held by an administrator, are subject to taxation for State purposes, just as they were during the lifetime of the decedent.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 21, 1895.*

AMOS H. MYLIN, *Auditor General:*

Sir: By reference to this Department of the letter of C. W. Loveland, clerk for the commissioners of Clinton county, dated June 12, 1895, we are asked whether all moneys owing by insolvent debtors, the evidence of which indebtedness is held by administrators during the period of the settlement of decedents' estates, are subject to taxation for State purposes.

The exact question raised by this inquiry has not been judicially determined under the recent revenue acts, but in *Winster's Estate*, 46 *Legal Intelligencer*, 270, in the orphans' court of Philadelphia county, Judge Ashman held that moneys in the hands of an administrator were taxable under the acts of 1844 and 1846. The revenue act of 1889 (P. L. 420), in the proviso of the twenty-first section, expressly mentions administrators, thus indicating that it was the intention of the Legislature that interest-bearing securities held by them in the course of the settlement of such estate should be subject to taxation for State purposes. I can see no good reason why securities thus held should not be liable to this tax. All such obligations continue to bear interest during the period in which the estate is being settled, and it would seem to be the fair and reasonable rule that they should pay tax as well as bear interest.

I am of the opinion, therefore, that all interest-bearing securities held by an administrator are subject to taxation for State purposes, just as they were during the lifetime of the decedent.

I return herewith letter hereinbefore mentioned.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

STATE BANKING DEPARTMENT—EXPENSES OF—TAX PAID BY
FOREIGN CORPORATIONS UNDER PROVISIONS OF SECTION 4 ACT OF
11 FEBRUARY, 1895.

The charges provided for in section 4 of the act aforesaid are in the nature of a tax for the purpose of raising revenue to provide for the expenses of the Banking Department.

Such tax can be imposed only on that part of the capital stock or assets of a foreign corporation as shall be used in the conduct of the business of such corporation within the limits of the State.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 10, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The communication of Hon. B. F. Gilkeson, Commissioner of Banking, of recent date, has been referred to this Department for an opinion upon the question therein stated.

The fourth section of the act of February 11, 1895, under which the Banking Department is now acting, provides for certain charges upon institutions under the supervision of said Department. The question asked is whether the charges provided in the fourth section of the act shall be computed upon the entire amount of the subscribed capital stock of foreign corporations, or is the Commonwealth confined to the amount of the capital stock or assets of such corporations as is invested and doing business within the Commonwealth.

The right of the State to impose a license tax upon foreign corporations for the purpose of regulating the conduct of their business in this State, or practically to exempt them from doing business therein, is well supported by authority. The principle was well stated by Mr. Justice Paxson in the case of *Commonwealth v. Standard Oil Company*, 101 P. S., 147, wherein it is stated:

"Speaking for myself, I doubt the power of the Legislature to tax the entire property and assets, i. e., the entire capital stock of a foreign corporation whose necessities compel it to transact a portion of its business, however small, within this State. I concede the power of the Commonwealth to exclude foreign corporations altogether from her borders; or she may impose a license tax so heavy as practically to amount to the same thing."

In the case of *Oil City v. Trust Company*, 151 P. S. 455, Judge Taylor, delivering the opinion of the court below, said:

"Is the charge in controversy a tax, or is it a license fee, under the police regulation? If it be a tax for revenue, the plaintiff cannot recover, whether it be denominated a tax or a license fee. The taxing power is to be distinguished from the police power, and the power to license and regulate particular branches of business or matters is usually a police power, but when license fees or exactions are plainly imposed for the sole and main purpose of revenue, they are in effect taxes."

The Supreme Court sustained the position of the court below in an opinion delivered by Mr. Justice Mitchell, page 457, *supra*, in which it was held:

"The learned judge rightly held that the test of the charge in controversy was whether it was a license fee under the police power, or a tax for revenue. On its face it purports to be a license fee on the occupation of banking, and though we may suppose it was not imposed without an eye to the increase of revenue, yet its good faith and the reasonableness of its amount are not questioned here, and the presumption therefore is that it is what it professes to be: *Johnson v. Philadelphia*, 60 Pa. 445."

From these authorities it clearly appears that the question to be decided here is whether the charges provided for in the fourth section of the act above referred to are intended as a license fee for the purpose of regulating the business of these foreign corporations, or whether they are a tax for the purpose of raising revenue. The best answer to this question is found in the provision of the act itself, wherein it is stated:

“The compensation of examiners and expenses of examinations provided for by this act shall be paid by warrant drawn by the Auditor General on the State Treasurer, upon requisition made by the Commissioner of Banking, and in order to help pay such expenses all corporations subject to the supervision of the Banking Department (except building and loan associations doing business exclusively within this State), shall annually, upon the first Monday of May, in each year, pay into the Treasury of the State the following amounts in addition to any taxes or fees imposed by existing laws upon such corporations.”

I am of the opinion, therefore, that the charges provided for in the fourth section of the act in question are in the nature of a tax for the purpose of raising revenue to provide for the expenses of the Banking Department, and that such tax can be imposed only on that part of the capital stock or assets of foreign corporations as shall be used in doing the business of such corporations within the limits of our State.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

ELECTION CONTEST—VACANCY IN COURT TRYING SAME UNDER ACT
19 MAY, 1874—HOW FILLED.

One of three judges of the court appointed under the act of 19 May, 1874, to try an election contest, resigning as president judge of his district, his successor as president judge of the district must be commissioned by the Governor as one of the judges under said statute.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 17, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: Your communication of 15th inst., referring to me the letter of Hon. R. W. Archbald and Hon. D. W. Searle, dated July 13, 1895, in reference to the vacancy in the court trying the Sittser-Dunham election contest in the Forty-fourth judicial district, composed of the counties of Wyoming and Sullivan, has been received. The court, as originally constituted, consisted of Judges Archbald, Searle and Rice, in which a vacancy has recently been created by reason of the resignation of Judge Rice, and the question is whether the successor of Judge Rice, as president judge in the Luzerne district, should be commissioned by the Executive to form part of the court of common pleas specially convened for trying said election contest or whether the two remaining judges will constitute the court and be authorized to hear and determine the questions raised.

I am of the opinion that the court must be composed, in the language of the act of 19th May, 1874, of "the three president judges residing nearest to the court house of the county composing the district," and it therefore becomes your duty to commission Judge Woodward, the successor of Judge Rice as president judge of the Luzerne district, as one of the three president judges who under the statute are required to convene and compose the court of common pleas for the purpose aforesaid. The commission to Judge Woodward should recite the resignation of Judge Rice as president judge of the Luzerne district and the commissioning heretofore of Judge Woodward as president judge of said court and the vacancy thus created in the court of common pleas specially convened for the purpose of trying the special election case.

I return herewith the papers submitted.

Very respectfully,

HENRY C. McCORMICK,
Attorney General.

MINE INSPECTION—NUMBER OF MINE FOREMEN—Act of June 2, 1891, section 6 (P. L. 176).

The intention of the act of June 2, 1891, was that every separate mine should be under the supervision of a mine foreman, but where two companies unite and combine their interests under a single management one foreman would answer the requirements of the law.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 17, 1895.*

H. McDONALD, ESQ., *Inspector of Mines, Pittston, Pa.*

Dear Sir: Your letter of the 8th inst., addressed to the Attorney General, has been referred to me for the purpose of making an answer.

The act of June 2, 1891 (P. L. 176), in section 6, provides that "No mines shall be operated for a longer period than thirty days without the supervision of a mine foreman. In case any mine is worked any longer period than thirty days without such certified mine foreman, the owner, operator or superintendent thereof shall be subject to a penalty of twenty dollars per day for each day over the thirty days during which the said mine is operated." It is clear that it was the intention of this law to provide that every separate mine should be under the supervision of a mine foreman. If the companies about which you make inquiry operate separate mines under a different management, having no interest in common, then each company should provide a mine foreman. The fact that the underground workings of two different companies are connected does not alter the provisions of the law. Of course, if two companies should unite and combine their interests under

a single management, then I am of the opinion that it would be considered a single mine for the purposes of inspection and one mine foreman would answer the requirements of the law.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

REGISTRATION, TIME OF, UNDER ACT OF MAY 16, 1895, SECTION 4.

The registration provided for in section 4 of act of May 16, 1895, known as the "Compulsory Education Act," should be made at the next succeeding spring assessment after the passage of the act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, *July 18, 1895.*

JOHN Q. STEWART, *Deputy Superintendent of Public Instruction:*

Sir: Your communication of the 18th inst., requesting my opinion as to the proper interpretation of section 4 of the act of May 16, 1895, known as "The Compulsory Education Act," has been received. You therein propound the question: "Are the several boards of county commissioners required by the act to cause an enumeration of children to be made immediately, or can they defer the duty imposed upon them until the spring assessment of 1896?"

I am of the opinion that the registration provided for in the act of Assembly referred to should be made at the next succeeding spring registration after the passage of the act.

Very truly yours,

HENRY C. McCORMICK,
Attorney General.

MERCANTILE LICENSE TAXES—COLLECTION OF IN CITY OF PHILADELPHIA—PENALTIES—PAYMENT OF—Acts of March 4, 1824 (P. L. 33), April 7, 1830 (P. L. 390), section 8, April 11, 1862 (P. L. 492), June 6, 1893 (P. L. 43).

The general act of 1862 which is now in force provides a uniform system for the recovery of mercantile license tax for city of Philadelphia as well as for the other counties of the Commonwealth.

The penalty of five per cent. imposed by act of 1830 is still in force and should be collected from delinquents by the treasurer of said city for the use of the Commonwealth in defraying expenses incurred in making such collection.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 19, 1895.*

AMOS H. MYLIN, *Auditor General:*

Sir: Your communication of the 13th inst., addressed to the Attorney General, enclosing letter of Richard G. Oellers, city treasurer of Philadelphia, has been referred to me for the purpose of giving

an opinion upon the questions therein involved. Your inquiry raises two distinct questions:

1. Does the act of 1862 (P. L. 492), regulate the collection of mercantile license taxes in the city of Philadelphia?

2. Are delinquents subject to the payment of penalties imposed by the act of 1830 (P. L. 390)? If they are subject to these penalties, who is entitled to receive the same?

The answer to the first question is found in the very satisfactory opinion of Attorney General Hensel, dated September 6, 1892, and addressed to your predecessor, Auditor General Gregg. That opinion held that section 2 of the act of April 13, 1866 (P. L. 104), was repealed by the recorder's act of 1878 (P. L. 26). In 1883 the General Assembly repealed the recorder's act and abolished that office. (P. L. 1883, pp. 9 and 48). This left the general act of 1862, providing a uniform system for the recovery of the mercantile license taxes, which is now in force and under which mercantile taxes should be collected in the city of Philadelphia as well as other counties of the Commonwealth.

The answer to the second question is not free from difficulty. The act of March 4, 1824 (P. L. 33), provided, *inter alia*, as follows:

"That instead of proceeding against delinquents by indictment, in the manner directed by the act to which this is a supplement, it shall be the duty of the proper city or county treasurer to institute a suit before any alderman or justice of the peace in the name of the Commonwealth, within the months of June and December, in every year, against each delinquent retailer, as aforesaid, for the amount of duty payable agreeably to law, adding thereto ten per cent. as a further compensation to the treasurer for his trouble in suing for and recovering the same."

Section 8 of the act of April 7, 1830 (P. L. 390), amended the act of 1824 as follows:

"The percentage recoverable by the said city or county treasurer from the delinquents for his own use as a compensation for his services in the suits aforesaid, shall be five per cent., in lieu of the ten authorized by the above act."

The act of April 11, 1862 (P. L. 492), provided a general system in the several cities and counties of the State for the collection of mercantile license taxes. Section 7 of this act provides:

"That all the penalties of the existing laws and the provisions thereof in regard to licenses to wholesale dealers and retailers of merchandise, be and the same are hereby declared to be applicable to each of the said fourteen classes."

It will be observed that the act of 1862 preserves all the penalties in force under the then existing laws for the collection of delinquent mercantile license taxes; that is, the penalty of five per cent. provided by the act of 1830. Since we hold, with Attorney General Hensel, that the act of 1862 is still in force, it must necessarily follow that

these penalties are to be collected unless they have been repealed by subsequent legislation. It is not contended that there is any such repeal unless the act of June 6, 1893 (P. L. 43), is broad enough to include such penalties. This act repeals and abolishes all fees and commissions now allowed, received or collectible by the treasurer of the city of Philadelphia for services rendered by him in the receipt, collection, payment and disbursement of revenues for or on behalf of the Commonwealth. The reason for the passage of the act of 1893 is apparent. The treasurer of the city of Philadelphia is made a salaried officer, and it was the intention of the law to deprive him of any fees or commissions which he had theretofore enjoyed. I do not think, however, that it was the intention of the Legislature to include the penalties imposed upon a delinquent for the non-payment of his mercantile license. The primary object of this penalty was to make a delinquent pay the expenses of the collection of this tax. The duties of the county treasurer in respect to the collection of these taxes have been materially changed by subsequent legislation since the act of 1830, which provides for the penalty; but, while the duties of the county treasurer, as a collector of these taxes, have changed, we find no subsequent legislation that repeals the provision requiring the payment of the penalty. On the contrary, the act of 1862, above referred to, in express terms declares the penalties to be applicable to each of the fourteen classes of mercantile license taxes. It is clear, however, that the city treasurer is not entitled to receive these penalties, for the very good reason that his office has been made a salaried office since the provision for the collection of these penalties was made. There is no express provision of law specifying what disposition shall be made of the penalties thus collected. It seems to me, however, that it is a fair implication that the penalties, having been imposed primarily for the payment of the costs of collecting these delinquent taxes, should be made use of for that purpose. Hence it follows that the penalty should be collected by the city treasurer for the use of the Commonwealth in defraying the expenses of collecting such delinquent taxes. After the payment of such expenses if there is any of these funds left they should be covered into the State Treasury for the purpose aforesaid.

This view of the law is supported, to some extent, by the dictum of the Supreme Court in the case of the Commonwealth v. Potter & Company, 34 W. N. C. 43.

I am, therefore, of the opinion that the mercantile license taxes in the city of Philadelphia should be collected under the provisions of the act of 1862, above referred to, and that the penalty of five per cent., imposed by the act of 1830, is still in force and should be collected from the delinquent by the treasurer of the city of Philadelphia for

the use of the Commonwealth in defraying the expenses incurred in making such collections.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

MUTUAL FIRE INSURANCE COMPANIES.

INSURANCE—MUTUAL COMPANIES—NON-ASSESSABLE, NON-PARTICIPATING POLICIES.

A mutual company organized under the act of May 1, 1876, P. L. 63, has the power to issue cash policies without liability to assessment, in the light of the ruling of *Given v. Rettew*, 162 Pa. 638; hence it follows that mutual fire insurance companies may attach to and make part of their policy contract the following agreement, viz: "In consideration of the assured hereby waiving all right to participate in the profits or return dividends of this company, this policy is exempt from assessment liability."

MUTUAL COMPANIES—NON-ASSESSABLE POLICIES—ABSENCE OF CAPITAL.

It would seem that a mutual fire insurance company might confine itself to issuing cash non-assessable policies and do business without any capital whatever, whereas a stock company must have a capital of not less than \$100,000.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, PA., *July 30, 1895.*

JAMES H. LAMBERT, *Insurance Commissioner:*

Sir: I am in receipt of yours of the 24th inst., inquiring whether mutual fire insurance companies of this State have the right to attach to and make part of their policy contract the following agreement, viz: "In consideration of the assured hereby waiving all right to participate in the profits or return dividends of this company, this policy is exempt from assessment liability."

The purpose of such a paragraph in a policy of insurance is, of course, to permit the company to issue what is known as a cash policy, subjecting the assured to no further assessment. By section 34 of the act of May 1, 1876 (P. L. 61), it is provided as follows: "Companies incorporated under this act must be organized upon the joint stock or the mutual plan, and the power to insure upon both plans shall not exist in the same corporation except temporarily, as provided in the preceding section of this act." The preceding section of the act refers to a case where a mutual fire insurance company has accumulated, in the course of its business, not less than \$20,000 over and above all liabilities, and desires to create a capital stock, which it is provided they may do with the assent of two-thirds in interest of the policy holders.

On June 9, 1891, this Department, in an opinion addressed to George B. Luper, Insurance Commissioner, held that mutual companies have no authority to issue non-assessable policies. That opinion was concurred in in a communication addressed to the present Insurance Commissioner January 23, 1895. It was the opinion of this Department that it was the intention of the law to distinguish between mutual and stock companies, and that the basis of the strength of the former was the power to assess upon the policy or the note of the assured to raise funds for the payment of losses. About the time the last opinion, above referred to, was delivered, a decision of the Supreme Court was promulgated (*Given v. Rettew*, 162 P. S. 638), in which it is distinctly held that a mutual fire insurance company, organized under the act of May 1, 1876, has the power to issue cash policies without liability to assessment. This decision is the law of the case and is binding upon this Department and upon you. If the assured can accept a policy from a mutual fire insurance company, not assessable, I see no reason why he may not agree that he will not participate in the "profits or return dividends." As they would be for his benefit, he would have power to waive his right to take them, and, in the light of the decision above referred to, I can see no objection to the clause quoted from your letter and proposed to be inserted in the non-assessable policies.

It may be of interest to your Department to note the probable effect of this construction of the statute. By section 11 of the act of May 1, 1876:

"Joint stock companies organized under this act for any of the purposes of insurance mentioned in the first division of the first section (fire and marine insurance) shall have a capital stock of not less than one hundred thousand dollars. Mutual companies for any of the purposes aforesaid may accept risks and issue policies whenever applications be made for insurance to the amount of two hundred thousand dollars, and authority to commence business has been granted in the manner hereinbefore provided."

The manner hereinbefore provided is set forth in section 7 of the act and is in the following language:

"Whenever applications for insurance in the case of a mutual company mentioned in the first or fourth paragraph of the first section of this act have been obtained in sufficient number and amount, the president, treasurer and a majority of the directors of said company shall, under their respective oaths or affirmations, make a certificate to the Governor, stating the names and residence of the persons applying for insurance in said company and the amount agreed to be taken by each. Upon the receipt of such certificate the Governor shall, in the same manner as is provided in the preceding section of this act, erect the subscribers to the articles of agreement and their associates into a body corporate with succession under the name designated in said articles of agreement, with power to engage immediately in the business of mutual insurance mentioned in the articles of agreement aforesaid."

It would seem to follow that if a mutual fire insurance company has the power to issue both assessment and non-assessment policies, they can issue either. Assuming that the companies will confine themselves to issuing cash non-assessable policies, it would be in the power of mutual companies to do business without any capital whatever; whereas, a stock company must have a capital of not less than one hundred thousand dollars. The original applicants for the insurance in the amount of two hundred thousand dollars, as required by section 11 of the act, forming a condition precedent to organization, may themselves take cash policies, so that we would thus have a company issuing policies to the amount of two hundred thousand dollars and upwards without a dollar of invested capital. I respectfully refer to what seems to me to be a necessary sequence of the construction put upon the statute in order that you may consider the propriety of some legislative action in the premises.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

RECORDER OF DEEDS—BOND OF—LIABILITY OF SURETIES THERE-
UNDER—Acts of March 18, 1775, March 14, 1777, April 6, 1830.

The sureties on a bond given by a recorder of deeds under the provisions of the act of April 6, 1830, are liable to the Commonwealth for a deficit in the State's share of fees collected by said official under said act.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, PA., *July 30, 1895.*

AMOS H. MYLIN, *Auditor General:*

Dear Sir: Your favor of recent date, addressed to the Attorney General, has been referred to me for an opinion upon the question asked.

Isaac W. Keim was elected recorder of deeds for the county of Berks in 1893, and assumed the duties of his office on the first Monday of January, A. D. 1894. Prior to his entering upon his official duties he gave two separate bonds to the Commonwealth, as required by law. One bond was in the sum of one thousand pounds, as required by the act of March 18, 1775 (1 Smith, 424), and its supplement of March 14, 1777 (1 Smith, 423). The condition of this bond required the said Isaac W. Keim to faithfully execute the duties of the office of recorder of deeds and to deliver up the records and other writings belonging to said office whole, safe and undefaced to his successor, according to law. The other bond was in the sum of eight thousand

three hundred and thirty-three and one-third dollars, as required by the act of April 6, A. D. 1830 (P. L. 274). Isaac S. Bagenstose and Ezra Z. Griesemer were approved as sureties on the latter bond. The condition of this bond required the recorder of deeds, as aforesaid, to well and truly pay over to the State Treasurer all the taxes demanded and received under the act passed April 6, A. D. 1830. From the facts represented it appears that Isaac W. Keim has since died, leaving an insolvent estate, and that there is a deficit in his accounts with the Commonwealth. You desire to know upon which bond his sureties are to be held.

The deficit in the accounts of said recorder of deeds with the Commonwealth arises by reason of his failure to pay over the State's share of the fees of office collected under the act of 1830. It necessarily follows that the sureties on the latter bond are responsible to the Commonwealth for the deficit. I am of the opinion, therefore, that Isaac S. Bagenstose and Ezra Z. Griesemer are liable to the Commonwealth for the entire deficit in the accounts of the said Isaac W. Keim.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

DAIRY AND FOOD COMMISSIONER—EXPENSES OF—Section 5, act of 5 July, 1895.

The fifth section of act of July 5, 1895, contains a sufficient appropriation to entitle the Dairy and Food Commissioner to draw upon the State Treasurer for the expenses incurred in carrying out the provisions of said act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 31, 1895.*

THOMAS J. EDGE, *Secretary of Agriculture:*

Dear Sir: Your favor of the 24th inst., addressed to the Attorney General, has been referred to me with the request that I give an opinion upon the question therein stated.

The act approved July 5, 1895, provided for the enlarging of the duties of the State Dairy and Food Commissioner. In its fifth section it is provided that all charges, accounts and expenses of the said Commissioner, and all of the assistants, agents, experts, chemists, detectives and counsel employed by him in carrying out the provisions of this act shall be paid by the State Treasurer in the same manner as other accounts and expenses of the State Board of Agriculture are now paid, as provided by law. You desire to know whether your Department is entitled to draw upon the State Treasurer for the expenses incurred in enforcing the provisions of the law under the act above referred to.

I am of the opinion that there is a sufficient appropriation in the section mentioned to entitle you to draw upon the State Treasurer for the expenses incurred as provided in said act of Assembly.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

GOVERNOR OF THE COMMONWEALTH—POWERS OF IN REGARD TO
COMMUTATION OF SENTENCE OF PRISONERS—Acts of May 21, 1869, and
February 12, 1870.

The Governor of the Commonwealth has the same right to recommend the commutation of the sentence of prisoners in county jails as those confined in penitentiaries and State prisons.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *August 7, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The communication of John M. Greer, president judge of the Seventeenth judicial district, addressed to Your Excellency, recommending the commutation of the sentence of McKee Scott, has been referred to this Department for an opinion upon the question therein involved.

The commutation of prisoners is provided by the act of May 21, 1869 (P. L. 1267). It is provided in the aforesaid act that any person confined in a State prison or penitentiary, who shall so conduct himself that no charge for misconduct shall be sustained against him, shall, if the Governor so direct, have a deduction of one month for each of the first two years, two months on each succeeding year to the fifth year, three months on each following year to the tenth year, and four months on each remaining year of the term of his sentence. The act of February 12, 1870 (P. L. 32), extends the provisions of the act of 1869 to prisoners confined in county jails. Under the law, therefore, you have the same right to recommend the commutation of sentence of prisoners in county jails as those confined in penitentiaries and State prisons.

I return herewith the letters submitted.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

COMMISSION OF NOTARY PUBLIC.

PUBLIC OFFICERS—NOTARY PUBLIC—STENOGRAPHER EMPLOYED
IN TRUST CO. INELIGIBLE.

It has been held that the provisions of the act of April 14, 1840, P. L. 334, applied as well to security and trust companies as to banks proper.

A stenographer and typewriter is certainly an employe, and therefore comes within the inhibition of the act of Assembly.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *August 14, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The communication of the Hon. Robert E. Pattison, of the 13th instant, asking for the appointment of Miss Carlene W. Dunlap as a notary public, has been referred to this Department for the purpose of getting an opinion upon the question of her eligibility to perform the duties of the office.

From the facts in the case it appears that Miss Dunlap is employed as a stenographer and typewriter in the office of the Security Trust Company, of Philadelphia. She desires to be appointed a notary public for the purpose, largely, of doing the notarial business of said company. The act of April 14, A. D. 1840, P. L. 334, provides that "No person being a stockholder, director, cashier, teller, clerk or other officer in any bank or banking institution or in the employment thereof" shall be appointed a notary public.

Under a former opinion of the Attorney General it was held that the provisions of this act of Assembly applied as well to Security and Trust Companies as to banks proper. In this opinion it is stated, *inter alia*, "To permit either a stockholder, an officer or an employe of the bank to exercise a judicial power of this kind is, I think, prohibited by the letter and certainly by the spirit of the act of 1840."

By the express provisions of the act of Assembly and the construction already placed upon same by the Attorney General, it appears that neither a stockholder, an officer or an employe of a bank or banking institution can be appointed as a notary public. A stenographer and typewriter is certainly an employe and therefore comes within the inhibition of the act of Assembly.

I am, therefore, of the opinion that a commission should not issue to Miss Dunlap as notary public.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

CHARITABLE INSTITUTIONS—AID OF BY THE STATE—REFUSAL TO ADMIT INDIGENT PATIENT.

Institutions of a charitable character receiving State aid but conducted by local authorities can refuse to receive indigent patients in the absence of legislative authority requiring a certain number to be cared for by such institution, provided there is no room for such patient at the time of the application for admission.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Sept. 4, 1895.*

AMOS H. MYLIN, *Auditor General:*

Dear Sir: I am in receipt of the communication of the Deputy Auditor General of the 3d inst., asking if institutions of a general charitable character, such as the Adrian Hospital Association of Jefferson County, receiving aid for maintenance from the State, but conducted by local authorities, can refuse admission to an indigent patient requiring care and treatment, provided there is room for such patient in the institution at the time such application is made.

The answer to your inquiry depends almost entirely upon the provisions of the act of Assembly making the appropriation. The Legislature has the undoubted right to impose such conditions as it chooses upon institutions receiving State aid. On the other hand, it can extend its aid to charitable institutions without imposing any conditions. If it chooses to make an appropriation in general terms without conditions, then much must necessarily depend upon the persons intrusted with the management of the institution in the matter of the admission of patients. It is quite true that these appropriations are predicated upon the idea that charity patients will be taken into such institutions and such relief extended as the circumstances of the case will admit. Certainly no institution desiring to be continued as one of the State's beneficiaries, would refuse to receive charity patients so long as they have any room for them, but, while this is true, I do not think it is within the power of anyone to specify how many or how few patients shall be admitted, in the absence of some legislative authority requiring a certain number to be cared for by such institution.

I am of the opinion, therefore, that the number of charity patients to be admitted to institutions of the character named must depend largely upon the persons in charge of the management of such institutions. If the trustees of an institution receiving aid from the State refuse admission to any charity patient the remedy will be to make the fact known at the succeeding session of the Legislature, when a further appropriation can be opposed on these grounds.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

APPROPRIATIONS—Section 16, article III of Constitution; section 6, act of March 13, 1895.

Section 6, act of March 13, 1895, is not repugnant to section 16, article III of the Constitution, but carries with it a sufficient appropriation to justify the Auditor General in drawing his warrant for the expenses therein provided for to the extent of \$5,000, but not more.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Sept. 5, 1895.*

AMOS H. MYLIN, *Auditor General:*

Dear Sir: I am in receipt of your favor of the 4th inst., addressed to the Attorney General, asking whether the sixth section of the act entitled "An act to establish a Department of Agriculture and to define its duties and provide for its proper administration," approved March 13, 1895, makes a sufficient appropriation to comply with section 16, article III of the Constitution of Pennsylvania.

The article of the Constitution above referred to provides: "No money shall be paid out of the treasury except upon appropriations made by law and on warrant drawn by the proper officer in pursuance thereof." This is a mandate of the Constitution and must be strictly enforced. The only question involved in your inquiry is: What is a sufficient appropriation within the meaning of this constitutional provision? On this exact question we do not have the light of judicial interpretation, so that much is left to legislative precedent and department practice.

For many years three methods of making appropriations have been recognized: the first, by the general appropriation bill; the second, by appropriations made in special bills for specific objects; and the third, by continuing appropriations where certain duties are imposed upon officers and an appropriation in general terms to pay the expenses of such officers in the performance of these duties. There can be no objection to the first and second methods of making appropriations, and there can be no doubt that the third has been sufficiently recognized by legislative practice to justify the Auditor General in drawing his warrant for expenses incurred as therein specified. In the very nature of things it is impossible to provide, either in the general appropriation bill or by means of special appropriation, for all the necessary expenses of officers, and for that reason the third method has been to some extent recognized.

I am of the opinion, therefore, that section 6 of the act above referred to carries with it a sufficient appropriation to justify the Auditor General in drawing his warrant upon the State Treasury for the expenses therein provided for to the extent of \$5,000, but no more. In such cases, however, it is the duty of the Auditor General to

scrutinize the accounts carefully and use such discretion in passing them as he deems to be for the best interest of the Commonwealth.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

FACTORY INSPECTORS—PRIVILEGE OF DEPUTIES—Acts of June 3, 1893, and April 11, 1895.

In a general way Deputy Factory Inspectors appointed under the provisions of the act of April 11, 1895 (P. L. 34), have same powers as those appointed under the act of June 3, 1893 (P. L. 276), but the word "power" is not broad enough to confer upon Inspectors the authority to compel owners of buildings to erect fire escapes.

If in the opinion of the Inspector a fire escape is necessary to the health and safety of those employed in a building, he could refuse a permit until it was erected.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Sept. 17, 1895.*

JAMES CAMPBELL, *Factory Inspector:*

Sir: This Department is in receipt of your communication of the 12th inst., asking what privilege Deputy Factory Inspectors have under the act approved the 11th day of April, A. D. 1895 (P. L. 34).

In a general way, it may be said that Deputy Factory Inspectors appointed under the provisions of the aforesaid act, have the same powers as those appointed under the provisions of the factory act approved June 3, A. D. 1893 (P. L. 276). I take it, however, that the provisions of section 5 of the act of 1895 confer upon Deputy Factory Inspectors appointed thereunder the same general powers and compensation as those appointed under the act of 1893, but the word "powers" here must be understood to mean the personal duties of the Deputy Factory Inspectors. I do not believe this word is broad enough to confer upon Deputy Factory Inspectors powers to force the owners of buildings to erect fire escapes unless the law, by express provisions, makes it the duty of such owner to erect them. In the absence of more specific legislation upon this subject I would not feel warranted in advising you to instruct your deputies to have fire escapes erected under the provisions of the act of 1895.

While this is my opinion, I think you can arrive at the same result in another way. Section 1 of said act provides for the granting of a permit by the Factory Inspector for the use of such a building as is contemplated under the provisions of the act of 1895. You are given the right to revoke a permit already granted at any time the health of the community or those employed may require it. If, therefore, you should be of the opinion that a fire escape on such a

building, as is contemplated by this act of Assembly, is necessary to the health and safety of those who are employed therein, you could refuse a permit until it was erected.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

STATE APPROPRIATIONS—Act of May 24, 1878, section 3; act of March 13, 1895.

The act of March 13, 1895 (P. L. 17), creating the Department of Agriculture, repealed the act of May 24, 1878 (P. L. 132), and the annual appropriations made in section 3, of the last mentioned act, to the State Agricultural Society, the State Dairymans Association and the State Fruit Growers Association fall with the act itself.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Sept. 27, 1895.*

THOMAS J. EDGE, *Secretary of Agriculture:*

Dear Sir: Your letter of the 24th inst., asking whether the State Agricultural Society, the State Dairymans Association and the State Fruit Growers Association are entitled to receive the several sums appropriated by section 3 of the act of May 24, A. D. 1878, P. L. 132, for the compilation, arranging and indexing of the matter for publication in the reports of the Department of Agriculture, has been received.

The act of 1878 above referred to authorized the publication annually of fourteen thousand and fifty copies of a report to be known as the "Agriculture of Pennsylvania." Section 2 of this act provided how much space should be allotted to each of the several agricultural organizations therein named. Section 3 made an annual appropriation of seven hundred and fifty dollars, which was to be divided among these several societies in the proportion therein named for the preparation of the matter for this work. Under the provisions of this law, the "Agriculture of Pennsylvania" has been published annually from the date of the approval of the act of 1878 down to the present year.

The act creating the Department of Agriculture, approved March 13, 1895, P. L. 17, makes it the duty of the Secretary of Agriculture to prepare and publish an annual report. In the sixth section of said act it is provided that this annual report of the Secretary of Agriculture shall take the place of the "present agricultural reports." The phrase "present agricultural reports" must mean the "Agriculture of Pennsylvania," published under the act of 1878, as this was the only annual report of an agricultural character published at the time of the approval of the act of 1895. Hence it follows that the

act of 1878, which provided for the publication of the "Agriculture of Pennsylvania," was repealed by the act of 1895. If, then, those portions of the act of 1878 which provided for the publication of the report were repealed, it must necessarily follow that the section which made the annual appropriation for the preparation of the matter to be contained in the reports falls with the rest of the act.

I have not reached this conclusion without some hesitancy, on account of the provisions of section 6, which say, "In this annual report to the Governor he may include so much of the reports of other organizations as he shall deem proper." Under this provision of the law the Secretary of Agriculture has a large discretion and may accept or refuse the reports of other agricultural organizations in the publication of his annual report to the Governor. It will be noticed that there is no enumeration of the names of the organizations that may report to him, and the duty of making a report is not imposed upon any society, nor is there an appropriation made for such work.

I am of the opinion, therefore, that the act of March 13, 1895, creating the Department of Agriculture, repealed the act of May 24, 1878, P. L. 132, and that the annual appropriation made in section 3 of the act last aforesaid falls with the act itself.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

DAIRY AND FOOD COMMISSIONER—DUTIES OF—LABELS—Act of June 26, 1895.

The intention of a label is to show the true character of the article sold and not to conceal it by ingenious phraseology.

In the enforcement of the law, the Dairy and Food Commissioner should protect, as far as possible, the vested property rights of merchants and manufacturers who have in stock articles of food already prepared and labeled, if they are pure and wholesome, even if not marked according to the requirements of the act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Oct. 1, 1895.

LEVI WELLS, *Dairy and Food Commissioner*:

Dear Sir: This Department is in receipt of your communication of the 27th ult., enclosing letter of the Hon. Frank H. Robinson, of the State of New York, asking whether the sample labels therein contained meet the requirements of the pure food law approved the 26th day of June, A. D. 1895.

The law above referred to is intended as a protection to the public by preventing the adulteration of articles of food and should be enforced in such a manner by your Department as to secure the most beneficial results to the great mass of food consumers. At the same time it should be borne in mind that an arbitrary enforcement of the law might seriously embarrass many business men and make the law very obnoxious to the people.

The one central and primary idea of this law is that no person shall manufacture, sell or offer for sale in this Commonwealth any adulterated article of food. All the other provisions of the act are but the ways and means of enforcing this proposition; hence every person who manufactures, sells or offers for sale any adulterated article of food comes under the ban of the law. It is equally true, however, that the act does not apply to manufacturers, merchants, dealers or other persons who manufacture, sell or offer for sale pure, wholesome and unadulterated articles of food.

As Dairy and Food Commissioner you could not say in advance that any particular kind or brand of goods is pure and unadulterated. The question of adulteration can be determined only as the facts in each case arise. An examination at any given time might show a prepared article of food to be pure and wholesome, while at a later period the same brand of goods might be adulterated within the meaning of the law. Section 3 of this act defines what an adulterated article of food is, and it is the only rule to which you can point anxious inquirers who want to know whether they come under the provisions of the law. The proviso to this section makes an exception of mixtures and compounds recognized as ordinary articles or ingredients of articles of food. Under this exemption no ordinary article or ingredient of an article of food, manufactured or sold as a mixture or compound, comes under the provisions of the law. Of course, this exception is predicated upon the idea that the mixture or compound is pure, wholesome and not injurious to health. The act provides, however, that every package sold or offered for sale under this exemption must be "distinctly" labeled as a mixture or compound. The word "distinctly" as here used, must be intended to mean that every package should be marked in such a conspicuous way as to give notice to the purchaser that it is a mixture or compound. Either the word "mixture" or "compound" should appear prominently on the label. In other words, the intention of the label is to show the true character of the article sold and not to conceal it by ingenious phraseology.

I am of the opinion, therefore, that the phraseology of labels Nos. 1 and 2, submitted for your inspection, is intended more to conceal the fact of the article being a compound than to give notice of it; hence the labels are insufficient under the law. I am of the further opinion that, in the enforcement of the law, you should, as far as possible, protect the vested property rights of merchants and manufacturers who have in stock articles of food already prepared and labeled, if they are pure and wholesome, even if not marked according to the requirements of the new law.

I return herewith the sample labels submitted.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

NATIONAL GUARD—ROLL OF RETIRED OFFICERS—ELIGIBILITY
THERE TO—Section 56, act of 13 April, 1887.

The provisions of the act of 13 April, 1887, section 56, are retrospective as well as prospective. All commissioned officers who shall have held continuous rank for a period of ten years in the National Guard upon honorable retirement may be carried upon the "Roll of Retired Officers" as provided by said act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA. *Oct. 3, 1895.*

THOMAS J. STEWART, *Adjutant General:*

Dear Sir: In answer to your request of recent date, asking for an opinion upon the application made by Gen. H. S. Huidekoper, under the provisions of the fifty-sixth section of the act approved the 13th day of April, A. D. 1887 (P. L. 23), to be placed on "the roll of retired officers," I have the honor to submit the following:

Under the provisions of the act above referred to all commissioned officers who shall have held continuous rank for a period of ten years in the National Guard, may, upon honorable retirement from service, be carried upon "the roll of retired officers," and shall be entitled to wear on State occasions the uniform of the highest rank which they may have held while in service. This act was approved the 13th day of April, 1887, and went into effect immediately.

From the facts in the case it appears that Gen. Huidekoper was in the continuous service of the National Guard of Pennsylvania from the 17th day of September, 1870, until the 18th day of July, 1881, having been twice commissioned major general and twice brigadier general. His application now raises the legal question whether the provisions of the act of 1887 are retrospective as well as prospective. It seems to me that it was the intention of this provision of the law to honor those officers who had already served continuously for a period of ten years as well as those who might thereafter continue in the service for the same period. This provision of the act should be construed in such a way as to promote the best interests of the National Guard and properly honor those who have given it continuous and faithful service for the period therein designated.

I am of the opinion, therefore, that the application of Gen. Huidekoper to be placed upon "the roll of retired officers" should be recognized and his name placed thereon as requested.

I return herewith letter of Gen. Huidekoper and other papers.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

FUGITIVES FROM JUSTICE—REQUISITIONS FOR—CRIMINALS UNDER
SENTENCE—WHEN DELIVERABLE TO ANOTHER STATE.

It is a well settled rule of law that the duty of delivering a fugitive criminal, in actual confinement on criminal or civil process in one state, to the authorities of the demanding state, does not arise until the expiration of the term of his sentence.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Oct. 4, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The communication of the Hon. Frank D. Jackson, Governor of the state of Iowa, dated the 25th day of September, A. D. 1895, asking for the release of James Moore, who is now confined in the jail of Lehigh county, for a crime committed in that jurisdiction, having been referred to the Attorney General with a request that the matter be investigated and report made thereon, I have the honor to submit the following:

From the facts in the case it appears that the prisoner above referred to is known in the state of Iowa as J. J. Reilly, and is under indictment there charged with an assault with intent to commit murder. He is also charged with burglarizing a bank and with the larceny of six hundred dollars worth of postage stamps. He has the reputation of being a desperate character, and the authorities of the state of Iowa are anxious to make him pay the penalties of his crimes by conviction and sentence in that state. The prisoner having been duly convicted of a crime in this State subsequent to the commission of the crimes in the state of Iowa, and having been sentenced by a court of proper jurisdiction here, the question arises as to the authority of the Governor of Iowa to make requisition upon Your Excellency for the delivery of this prisoner to the authorities of that state.

The law does not in express terms make any provision for such a case, yet it has been construed by the courts of many states, and the rule seems to be well settled that the duty of delivering the prisoner to the demanding state does not arise until the expiration of the term of his sentence. This rule was well stated in an early case by the Supreme Court of New Jersey in the following language:

"If a fugitive from justice, for whose delivery a requisition is made by the Executive of the state from which he is such fugitive, be in actual confinement on criminal or civil process in this state, he cannot be delivered up. The Constitution and laws of the United States refer to fugitives at large. In such a case the requisition should be lodged with the sheriff, whose duty it would be, upon the prisoner's discharge from his previous arrest, to detain him thereon until notice could be given to the party presenting the requisition."

See matter of Troutman, 4 Zabr., 634.

Under this rule of law you would not be justified in delivering up the prisoner to the authorities of the state of Iowa until the expiration of his sentence.

I return herewith the letter above referred to.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

INSPECTOR OF STEAM ENGINES AND BOILERS FOR ALLEGHENY COUNTY—APPOINTMENT OF—Act of June 6, 1873, section 3 (P. L. 1874, page 410).

Under the above act it becomes the duty of the board of examiners to report to the Governor the names of persons who are fully qualified to fulfill the duties incumbent upon the inspector, and the Governor has the right to appoint as such inspector any one of the persons whose names are submitted by the board.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Oct. 10, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The report of the Board of Examiners of applicants for appointment to the position of inspector of steam engines and boilers for the county of Allegheny, together with the recommendation of three members of the Board, dated July 12, 1895, and the protest of two members of the Board, dated August 13, 1895, having been referred to this Department with a request for instructions and opinion upon the question of your duties in reference to the same, I have the honor to submit the following:

This proceeding is under the act of June 6, A. D. 1873 (P. L. of 1874, page 410). The third section of this act provides, *inter alia*:

“The said board of commissioners shall certify to the Governor, in writing, the name or names of the person or persons who, upon due examination received, is or are fully qualified and competent to fulfill the duties incumbent upon the inspector of steam engines and boilers, as prescribed by this act; whereupon the Governor shall commission one person to serve as inspector of steam engines and steam boilers in and for the county of Allegheny.”

Under this provision of law it becomes the duty of the Board of Examiners to report the names of persons who are fully qualified and competent to fulfill the duties incumbent upon the inspector of steam engines and boilers to the Governor, and from this list of names so reported an appointment for the position must be made. The act of Assembly does not require that the person receiving the highest average percentage should be appointed. It is quite clear, since the act requires the reporting to the Governor of one or more names, that any one of the names submitted can be selected in making the appointment. Under the civil service rules, so generally followed in government affairs, the person having the highest percentage would be given the preference; but if, for any reason, it is desirable to select any other person among those reported, your right to do so cannot be doubted.

The protest of two members of the Board of Examiners, above referred to, contains serious charges, and if the facts are true, you would be warranted in refusing to entertain the application of the offending party. This is largely a question for the exercise of your

own discretion and judgment, the law giving you the right to appoint any person whose name has been recommended by the Board of Examiners.

I return herewith all the papers in the case.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

COUNTY COMMISSIONERS—DUTIES OF—Act of May 13, 1885 (P. L. 17).

By the act of May 13, 1885, county commissioners are justified in the erection of tombstones only for soldiers who have been buried under the provisions of said act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Oct. 15, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The letter of H. S. Mekiell, dated October 9th, having been referred to this Department, with a request for the law applicable to the same, I have the honor to submit the following:

The act of May 13, 1885 (P. L. 17), provided:

“It shall also be the duty of the county commissioners of each county in this State upon the death of any soldier, sailor or marine within their county who shall be buried under the provisions of this act, to cause a headstone to be placed at the head of the grave of each deceased soldier, sailor or marine, containing his name, and, if possible, the organization to which he belonged, or in which he served, to be of such material and designs as they may deem suitable; and the expense for the same shall be paid out of the funds of the county in which such soldier, sailor or marine died.”

Under this provision of the law it would seem that the county commissioners are justified in the erection of tombstones only for those soldiers who have been buried under the provisions of the act of Assembly above referred to.

I return Mr. Mekiell's letter herewith.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

SUSQUEHANNA RIVER—ENFORCEMENT OF FISH LAWS THEREIN—Act of May 22, 1889.

The act of May 22, 1889 (P. L. 267), is a general law and applies to the Susquehanna as well as to all other rivers and streams of the Commonwealth, and the enforcement of the fish laws therein cannot be questioned.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Oct. 15, 1895.*

DANIEL H. HASTINGS, *Governor:*

Sir: The letter of J. Harry Deckard, of recent date, asking whether certain portions of the Susquehanna river had not been sold at one time to Col. James Freeland, and whether, under the circumstances, the tearing out of fish baskets by the direction of the Commissioner of Fisheries, is justified, having been referred to the Attorney General for an opinion upon the questions therein contained, I have the honor to submit the following:

The act of May 22, A. D. 1889 (P. L. 267), for the protection of shad and game fish in the State of Pennsylvania, is a general law and applies to all the rivers, streams and waters of this Commonwealth. The Susquehanna river is a public highway and the enforcement of the fish laws cannot be questioned.

I return herewith the letter above referred to.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

BANKING DEPARTMENT v. BUILDING ASSOCIATIONS.

BUILDING ASSOCIATIONS—BANKING ACT OF 1895—EXEMPTION FOR HOME ASSOCIATIONS.

Building associations will be construed as doing business entirely within this State within the meaning of the exemption of the act of February 4, 1895, notwithstanding that non-residents may be the holders of certain shares of stock, whether such ownership became so vested by removal, assignment or by voluntary subscription without solicitation of any kind.

TAXATION—LIABILITY FOR FOREIGN INVESTMENTS.

Where investments are made by building and loan associations upon real estate out of this State, whether owned by residents or non-residents of this State, the association becomes liable to the provisions of the banking act of 1895.

BASIS OF STOCK VALUATION FOR BANKING DEPARTMENT FEES.

The valuation of stock of a building association for the \$5 tax on every \$100,000 of stock, or fractional part in excess of the first \$100,000, for the purposes of the act of 1895, should be based on the amount actually paid in as such basis of the fees to be charged.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Oct. 17, 1895.*

B. F. GILKESON, *Commissioner of Banking:*

Sir: Your letter of the 1st inst. has been received, in which you ask for a construction of that part of section 4 of the act approved the 11th of February, 1895, creating a Banking Department, which provides as follows:

“And in order to help pay such expenses all corporations subject to the supervision of the Banking Department (except building and loan associations doing business exclusively within this State) shall annually, upon the first Monday in May in each year, pay into the Treasury of the State the following amounts in addition to any taxes or fees imposed by existing laws upon such corporations, the sum of twenty-five dollars each, and in all cases of such corporations having capital stock, for each one hundred thousand dollars of capital stock or fractional part thereof in excess of one hundred thousand dollars, the sum of five dollars shall be paid annually at the time aforesaid; and all such corporations shall pay annually at the time aforesaid the sum of two cents for each one thousand dollars of assets which it may have * * * Provided however, That nothing herein contained shall impose upon building and loan associations doing business exclusively within this State the payment of any sum or sums of money whatsoever.”

I am advised by your communication that the reports furnished your Department by a number of building and loan associations chartered under the laws of this Commonwealth disclose, under their method of doing business, the following facts:

1. Stock in such corporations is subscribed for by persons who are residents of this Commonwealth, but who subsequently remove therefrom and continue to pay their monthly dues.

2. Stock in such corporations is subscribed for by residents of this State who subsequently remove therefrom, and after such removal assign their stock to non-residents, such non-residents thereby becoming owners of the same and paying the monthly dues thereon by sending such dues to the officers of the corporation in this State.

3. Stock in such corporations is subscribed for and the monthly payments thereon are made by non-residents of this State, but without solicitation of any kind either by agents or otherwise of such corporation.

4. Investments are made by such corporations upon real estate out of this State owned by both residents and non-residents of this State.

Under this state of facts you inquire whether or not building associations, chartered under the laws of this Commonwealth, are or are not within the proviso above quoted, viz: “that nothing herein contained shall impose upon building and loan associations doing business exclusively within this State the payment of any sum or sums of money whatsoever.”

I am of the opinion, in answer to the first question above stated, that subscribers to stock held in such corporations, but who subsequently remove from the State and continue to pay their monthly dues, cannot by such removal take away from the corporation the benefit of the proviso. It is a matter over which the corporation has no control and it cannot, in any proper sense, be said to be doing business outside of the State of Pennsylvania because of the fact that

one or more of the holders of its stock choose to remove from the State and continue to pay their dues.

The second question must be answered in the same way. Stockholders who remove from the State and assign their stock to non-residents, they continuing to pay the monthly dues, cannot, in my opinion, take away from the corporation the benefit of exemption under the proviso. The corporation has no volition in this matter, and it certainly cannot be charged with doing business outside of the State unless it does, in its corporate capacity, some affirmative act looking in that direction.

So, too, in answer to the third question, where stock is subscribed for by non-residents of the State but without solicitation of any kind, either by agents or otherwise, the corporation cannot be said to be doing business outside of the State. It may, in my opinion, be construed as doing business exclusively within the State, even though some of its subscribers may be non-residents. Almost all banking corporations have non-resident stockholders, and what is true of banks is true of most of the other great corporations organized under the laws of the State of Pennsylvania. To hold that, by reason of the fact that one or more shares of the stock of a corporation are held by non-residents, it could not be considered as doing business exclusively within this State, would seem to me to be a construction warranted neither by the letter nor the spirit of the act.

As to the fourth question, however, where these corporations make their investments upon real estate in states other than Pennsylvania, I am of the opinion that they could not be held to be doing business exclusively within this State and therefore not within the exemption of the proviso. The primary object of building associations is to aid its members in securing homes, although I am well aware that, practically, the building associations of the State are to a very large extent conducted for purposes of profitable investments by capitalists; but if the association chooses to depart from the object of its creation and invests its funds in other States, I am of the opinion that it is not "doing business exclusively within this State," and should pay the fees required by the act.

You also inquire as to the basis of the taxation of building associations where they are not doing business exclusively within this State.

The act provides for the payment of twenty-five dollars each by the corporations supervised by the Banking Commissioner, "and in all cases of such corporations having capital stock, for each one hundred thousand dollars of capital stock, or fractional part thereof in excess of one hundred thousand dollars, the sum of five dollars shall be paid annually at the time aforesaid, and all such corporations shall pay annually at the time aforesaid the sum of two cents for each one thousand dollars of assets which it may have." The stock in a

building association, when fully paid, is two hundred dollars per share, but I am of opinion, for the purposes of the act under consideration, that the stock should be valued at the amount actually paid in. It would be manifestly unjust, as it seems to me, to hold that a building association had the same amount of capital stock the first year that it had in the seventh. The actual amount paid in should represent the value of the stock as a basis of the fees to be charged.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

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STATE OFFICERS—PAY OF—Act of June 2, 1891 (P. L. 176).

An officer should be permitted to draw pay from the State only from the date when he actually begins the performance of his labors after the taking of the oath of office.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Oct. 18, 1895.

AMOS H. MYLIN, *Auditor General*:

Sir: In answer to your communication of the 15th inst., asking for an opinion upon the question of the right of James E. Roderick, who was recently appointed mine inspector of the Fifth anthracite district, to receive pay from August 22d to September 6th, I have the honor to submit the following:

From the facts as presented in your letter it appears that the commission of Mr. Roderick was dated as of August 22, 1895, but that he did not take the oath of office and begin the actual performance of his duties until the 6th day of September. He now claims his salary from the date of his commission.

So far as I am informed, it has been the practice of your Department to allow the salary in such cases only from the date upon which the officer took the oath of office and began the performance of his duties thereunder. The act of June 2, 1891 (P. L. 176), provides that the inspector, before entering upon the duties of his office, must take an oath that he will perform the same with fidelity and impartiality. The taking of the oath is a condition precedent to the performance of any duty. I take it that if the oath was never taken he would not be an inspector within the meaning of the law. It seems to follow, therefore, that an officer should be permitted to draw pay only from the date when he actually begins the performance of his labors after the taking of the oath of office. For this reason I am of the opinion that Mr. Roderick is not entitled to receive pay for services from the 22d day of August until the 6th day of September.

I return the enclosed papers.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

CLAIMS FOR SERVICES RENDERED THE STATE—INTEREST ON—Act of 1 June, 1895 (P. L. 130).

It is an unusual thing to demand interest on claims for services rendered the Commonwealth, and it should not be allowed unless by the plain terms of the act of Assembly it is made mandatory.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Oct. 22, 1895.*

AMOS H. MYLIN, *Auditor General:*

Sir: Your communication of the 19th inst., asking whether Walter H. Lewis, who was a stenographer for the election committee of the House of Representatives for the session of 1893, in the contested election cases of Taggart v. Baker and others, is entitled to receive interest on the amount of his bill for his services under the act of Assembly approved the 1st day of June, 1895 (P. L. 130), has been received.

The act of Assembly above referred to makes an appropriation of \$4,333.00, or so much thereof as may be necessary, for the payment in full for the services rendered by Walter H. Lewis. The act provides further that specifically itemized vouchers, certified to by the chairman of the election committee, must be submitted to and approved by the Auditor General and State Treasurer. It appears that Mr. Lewis filed vouchers for services rendered amounting to \$3,940.04. He claims interest on this amount, \$393.00, making the sum total of his claim \$4,333.04. The question in dispute is whether he is entitled to interest on the amount of his claim for services.

It is an unusual thing to demand interest on claims of this character against the Commonwealth, and it should not be allowed unless, by the plain terms of the act of Assembly, it is made mandatory. The appropriation is made for the purpose of paying for the services rendered as stenographer. Nothing is said in the act about this item of interest, and in the absence of a specific provision of law authorizing its payment, I am of the opinion that you would not be justified in approving it.

I return herewith all the papers in the case.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

MINE INSPECTION, APPOINTMENT OF FOREMEN.

STATUTES—INTERPRETATION—MINING LAW—WORDS AND PHRASES.

Under the act of June 2, 1891, P. L. 176, the word "miner" includes all classes of miners who have had practical experience in working in a "mine," as defined by said act of Assembly. And the right of examination for certificates of qualification for the position of mine foreman and assistant should be limited only in accordance with the above definition.

MINE FOREMAN—WHEN HE MAY EMPLOY ASSISTANTS.

Where a mine foreman cannot personally superintend the entire mine, he has authority to employ a sufficient number of competent persons to act as his assistants.

ASSISTANTS MUST HAVE CERTIFICATE OF QUALIFICATION.

It is in the interest of the public good, and the law is to be so construed, that all assistants should have a certificate of qualification before they are employed as "competent persons" to act under the provisions of the act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Oct. 24, 1895.

WILLIAM STINE, *Inspector of the Sixth Anthracite District, Shenandoah, Pa.:*

Dear Sir: This Department is in receipt of your communication of recent date, asking whether the word "miner," as used in article VIII, section 2, of the anthracite mining law, approved June 2, A. D. 1891 (P. L. 176), is to be confined in its application to the person who actually mines and cuts the coal, or whether it may include laborers, loaders, starters, roadmen, repairmen and others who work in the mines but do not actually cut coal.

The section above referred to provides for the granting of certificates of qualification by the Secretary of Internal Affairs to mine foremen and assistant mine foremen who have passed a satisfactory examination before the Board of Examiners and who have had five years' practical experience as miners. The question your inquiry raises is what constitutes "practical experience as a miner" within the meaning of the law, or, in other words, does the above phrase require actual experience in cutting or digging coal.

Webster defines the word "miner" as "one who mines; a digger for metals and other minerals." I do not understand that a miner must necessarily be a digger of minerals. The definition is satisfied if he is a digger for minerals. A person might be a long time digger for minerals and yet never actually mine them. Then, again, article XVIII of the act hereinbefore mentioned, under the head "definition of terms," contains the following, to wit:

"The term 'mine' includes all underground workings and excavations and shafts, tunnels and other ways and openings; also all such shafts, slopes, tunnels and other openings in course of being sunk or driven, together with all roads, appliances, machinery and materials connected with the same below the surface."

If, then, the term "mine," as used in this act of Assembly, embraces all underground workings, excavations, shafts, tunnels, other ways and openings, &c., it must necessarily follow that a person who works in any of the places included in this definition is a miner within the meaning of the law. I do not think it was the intention of the Legislature to limit the right of examination to a particular class of persons who work in the mines, but rather to include all classes of miners who have had five years practical experience in working in a "mine," as defined in the act of Assembly.

You desire further to know whether it is necessary that a mine foreman or assistant mine foreman should examine the workings of a colliery to see that they are practically safe and free from explosive gas, or whether this duty can be performed by a fire boss.

In article XII, rule 2, of the act in question, it is provided:

"Whenever a mine foreman cannot personally carry out the provisions of this act so far as they pertain to him, the owner, operator or superintendent shall authorize him to employ a sufficient number of competent persons to act as his assistants, who shall be subject to his orders."

When the mine foreman cannot personally superintend the entire mine he has the authority to employ a sufficient number of "competent persons to act as his assistants." Upon the proper construction of this phrase depends the answer to your question. The act of Assembly itself does not set the exact standard of qualification for assistants thus employed. It only provides that they must be "competent persons" to act in this capacity. This law was passed as a protection to the persons who work in mines and that construction should be given to it which will most nearly accomplish this result.

Inasmuch, therefore, as the law has provided for certain qualifications on the part of those who act as mine foremen and assistant mine foremen, it would seem to be in the interest of the public good to require that any assistant employed by them should have a certificate of qualification as required by law. Such certificates are granted only to mine foremen and assistant mine foremen; hence I am of the opinion that these assistants should have such a certificate of qualification before they are employed as "competent persons" to act under the provisions of the law.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

FOREST PROTECTION.

DEPARTMENT OF AGRICULTURE—POWERS OF—FOREST PROTECTION.

The act of March 13, 1895, P. L. 21, gives the Secretary of Agriculture power to make and carry out rules and regulations for the enforcement of all laws designed to protect forests from fire, &c. What rules and regulations may be made, depend largely on the discretion of the Secretary of Agriculture, so far as the same are confined within the limits of the law. Under the act of June 2, 1870, P. L. 1356, the assistance of the county commissioners can be invoked.

ADDITIONAL LEGISLATION REQUIRED.

It would seem as if there should be additional legislation to render the powers of the Department fully effective.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, PA., *Oct. 25, 1895.*

THOMAS J. EDGE, *Secretary of Agriculture:*

Sir: Your favor of the 24th inst., addressed to the Attorney General, has just been received. You ask to be advised upon the question of your duties in reference to the protection of timber lands against forest fires.

The act creating your Department, approved March 13, A. D. 1895, requires you "to make and carry out the rules and regulations for the enforcement of all laws designed to protect forests from fires and from all illegal depredations and destruction, and report the same annually to the Governor." What rules and regulations you make to effectuate this purpose are largely within your own discretion, so far as the same are confined within the limits of the law. It would seem as if there should be some additional legislation upon this question. The act of June 2, 1870 (P. L. 1356), makes it the duty of the county commissioners of the several counties to appoint persons, under oath, who shall be required to ferret out and bring to punishment all persons who either wilfully or otherwise cause the burning of timber lands and to take measures to have such fires extinguished where it can be done, the expenses thereof to be paid out of the county treasury. This act is still in force, and I am of the opinion that, under the authority conferred upon you by the act creating your Department, above referred to, you would be justified in calling the attention of the county commissioners to the provisions thereof and asking them to co-operate with you in this matter of preventing forest fires, so far as possible, and of apprehending and punishing persons who start such fires wilfully or negligently.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

LIGHT AND FUEL COMPANIES.

CHARTER OF LIGHT AND FUEL COMPANY—STATUTES CONSTRUED— Act of 1887.

The act of June 2, 1887, P. L. 310, relating to heat, light and fuel companies, should be read as an independent statute, governed by its own provisions, and without reference to the act of 1874, of which it purports to be an amendment.

ARTICLES OF ASSOCIATION—LIMITATION OF TERRITORY.

The only limitation as to territory that need be set forth in the articles of association, under this act of 1887, is that such territory shall not cover more than a single county, nor include any municipal sub-division of a county that has been already covered by a charter exclusive in its character.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Oct. 25, 1895.

FRANK REEDER, *Secretary of the Commonwealth:*

Sir: I beg to acknowledge the receipt of your communication of 7th instant. By clause 1 of section 34 of the act of April 29, 1874, it is provided "Where any such company shall be incorporated as a gas company, or company for the supply of heat or light to the public, it shall have authority to supply with gas light the borough, town, city or district where it may be located, and such persons, partnerships and corporations residing therein, or adjacent thereto, as may desire the same," etc.

By the act of Assembly of 2d June, 1887 (P. L. 310), the clause above quoted was amended to read as follows: "Where any such company shall be incorporated for the supply of heat, light and fuel, or any of them, by any process of manufacture, it shall have authority to apply such heat, light and fuel, or any of them, to the territory named in its articles of association (which shall never cover more than a single county), and to such persons, partnerships and corporations residing therein, or adjacent thereto, as may desire the same," etc.

The question you propound is as to the effect of the parenthetical clause in the act of 1887, viz: "Which shall never cover more than a single county," and you inquire whether this phrase is to be construed as permitting a corporation chartered with power to supply heat, light and fuel, or any of them, to supply the same to territory comprising an entire county, or several of the municipal sub-divisions thereof, and further, whether or not it was the intention to extend the territorial limits imposed in charters of this kind by the thirty-fourth section of the act of April 29, 1874.

The act of 1874 gave authority to the company to supply with gas light "the borough, town, city or district where it may be located," etc. The act of 1887 gives such companies the "authority to supply heat, light and fuel, or any of them, to the territory named in its articles of association (which shall never cover more than a single

county),” etc. If the act of 1887 did not contain the parenthetical clause, it would seem that the articles of association of the proposed corporation could name the territory in which it was intended to operate, without limitation as to its extent. The parenthetical clause is added, however, viz: “Which shall never cover more than a single county.” The act of 1887, I think, must be read as an independent statute, governed by its provisions and as though the provision in the act of 1874 had never been passed.

I am inclined to the opinion, therefore, that the only limitation as to territory that need be set forth in the articles of association under this act is that such territory shall not cover more than a single county, and may embrace one or more of the municipal sub-divisions thereof. I may add, however, that such articles of association and charter cannot properly include any municipal sub-divisions of a county, whether city, borough or township, that has been already covered by a charter exclusive in its character.

I am respectfully yours,

HENRY C. McCORMICK,
Attorney General.

SURETY BONDS.

CORPORATIONS—SURETY BONDS—STATUTES—CONSTRUCTION OF ACT OF JUNE 26, 1895.

The act of June 26, 1895, P. L. 343, relative to bonds, &c., authorized, &c., to be given by sureties, &c., must be held to apply alone to corporations created by or organized under the laws of other states or countries. It was not intended to apply to domestic companies authorized by their charters to guarantee the fidelity of persons holding places of public or private trust and to guarantee the performance of contracts.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Oct. 25, 1895.

JAMES H. LAMBERT, *Insurance Commissioner*:

Sir: I am in receipt of yours of the 9th instant in relation to the act of Assembly entitled “An act relative to bonds, undertakings, recognizances, guarantees and other obligations required or permitted to be made, given, tendered or filed with surety or sureties, and to the acceptance as surety or guarantor thereupon of companies qualified to act as such,” approved June 26, 1895.

Your inquiry relates to the scope of the act, and you ask “Whether it is intended to embrace trust and surety companies chartered under the authority of this State, and whether such corporations must de-

posit \$100,000 in securities with the Insurance Commissioner in order to enable them to become surety upon administration bond, etc., or whether it is an act applying only to corporations organized under the laws of other states and seeking to do business in Pennsylvania."

After a careful consideration of the act of Assembly referred to I have reached the conclusion that it applies only to corporations created and organized under the laws of other states or foreign countries seeking to do business within this Commonwealth. The title of the act, it is true, is general in terms, but the text clearly indicates that it was intended to apply only to corporations of other states or countries. In the second section we find "That such company, to be qualified to so act as surety or guarantor must be authorized under the laws of any state or country where incorporated," etc., and in the same section it is provided that such company "Must comply with the requirements of the laws of this State applicable to such company in doing business therein," etc., and further "Must have at least \$100,000 invested in securities created by the laws of the United States, or by or under the laws of the state or country wherein it is incorporated," which securities are required to be "Deposited with or held by the Insurance Commissioner, or other corresponding officer of the State or country where such company is domiciled or any state of the United States in which it is authorized to transact business, in trust for the benefit of the holders of the obligations of such company." And again, it is provided that "Such company shall, before transacting business in this State under this act, file with the Insurance Commissioner a certified copy of its charter or act of incorporation, a written application to be authorized to do business under this act, and a statement signed and sworn to by its president, or one of its vice presidents, and its secretaries, or one of its assistant secretaries, stating the amount of its paid up cash capital, particularly each item of investment," etc. While the act lacks clearness of expression and is somewhat obscure in meaning in some of its parts, I think it very plain that it was not intended to apply to domestic companies, authorized by their charters to guarantee the fidelity of persons holding places of public or private trust and to guarantee the performance of contracts. By the act of 9th May, 1889 (P. L. 159), the corporation act of 1874 was so amended as to authorize the creation of corporations of this character, with the same and even greater powers than are mentioned in the act under consideration, and such domestic corporations under the act of 1889 were permitted to exercise such powers if they had a capital of not less than \$125,000 upon the filing of an affidavit made by the treasurer of such company of such fact in the office of the Secretary of the Commonwealth. And again, by act of Assembly approved June 27, 1895 (P. L. 399), the same powers are conferred upon fidelity, insurance, safe deposit, trust and savings companies as were given by the act of 1889 to "The companies incorporated

* * * for the insurance of owners of real estate, mortgagees, and others interested in real estate from loss by reason of defective titles, liens and incumbrances." The act of 1895 you will observe is approved June 27, 1895, and the act under consideration June 26, 1895.

Taking these several acts of Assembly together, I feel clear that those acts of Assembly (acts of 1889 and 1895), covering domestic corporations of this character, were not intended to be interfered with by the act of June 26, 1895, but that the last named act, in so far as your duties are concerned, must be held to apply alone to corporations created by or organized under the laws of other states or countries.

Respectfully yours,

HENRY C. McCORMICK,

Attorney General.

INSTRUCTIONS TO STATE BOARD OF UNDERTAKERS.

STATE BOARD OF UNDERTAKERS—OBJECTS—POWERS—DUTIES.

The act of June 7, 1895, P. L. 167, applies only to cities of the first, second and third classes.

Undertakers desiring to do business in such cities must take out a license and be registered under provisions of the act. It is not the residence, but the place of business that decides whether and where a license should be issued.

The act requires a proper examination and granting of certificates only to those found competent.

Licenses can only be granted to individuals and not to firms.

The names, residence and place of business of licensees must be registered with the board.

The question of citizenship does not enter into the administration of the law.

Licenses may be granted to minors, but not to women, unless upon examination found to be competent.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Nov. 12, 1895.

J. LEWIS GOOD, *President State Board of Undertakers, 921 Spruce Street, Philadelphia, Pa.:*

Dear Sir: Your communication of recent date, asking for instructions as to your duties under the act of June 7, A. D. 1895 (P. L. 167), has been duly considered. This act confers upon the Governor the authority to appoint a State Board of Undertakers, consisting of five persons, and certain powers and duties are imposed upon the members thereof. You desire to be advised as to your duties, and have addressed to us a number of questions pertaining to the same, which I have the honor to answer in the order set out in your letter of inquiry.

1. The act of 1895, creating the State Board of Undertakers, applies only to cities of the first, second and third classes. Your jurisdiction is, therefore, confined by the act of Assembly to cities of the classes just named. Any person desiring to do business in a city of the first, second or third class must take out a license or be registered under the provisions of this act. It is not the residence of the person in the undertaking business, but the place where he transacts it, that decides whether or not a license should be issued. For instance, a person might be a resident of the city of Camden, but do his business as an undertaker in the city of Philadelphia. In such case he must comply with the provisions of the law. Or a person might be a resident and an undertaker in a borough adjoining the city of Philadelphia and do part of his business within the limits of the city. In such case he must take out a license or be registered in order to do business in your city. In other words, anyone doing the business of undertaking in a city of the classes named, no matter where his residence may be, is subject to the provisions of the law. Of course you have no authority to grant a license to a person to do business outside of the cities of the classes designated, but you can require people who live outside the limits of the cities to take out licenses before they will be permitted to do business in the city.

2. The object of the act of 1895 is to secure the better protection of life and health by diminishing the danger from infectious and contagious diseases by requiring a greater degree of efficiency on the part of those who care for and bury the dead. In order to accomplish this the law provides for proper examination of those who desire to do business of this character, and requires the State Board to grant certificates to those who are found competent and qualified. Such certificates should not be granted to partnerships but to individuals. If two or more persons are joined together in a partnership the license should be granted to each member thereof, if all are engaged in the practical work of undertakers; but if only one member of the firm does such practical work he alone need be examined and have a certificate of qualification.

3. This question is practically answered by what I have said in answer to the second inquiry. The individual members, not the partnership, receive the license.

4. This question is practically answered in what has been said in reply to inquiries Nos. 2 and 3. Of course, if a partnership is dissolved and each individual member desires to enter into business for himself, he will be required to undergo an examination and must receive a license before he can engage in the business of undertaking.

5. Section 5 of the act provides, *inter alia*, that "It shall be the duty of any person, persons or corporation engaged in the business of undertaking, care, preparation, disposition and burial of the dead at the time of the passage of this act to cause, within six months after

the passage of this act, his, her, their or its name or names, residence and place of business to be registered with said Board." You will observe that the act of Assembly says "any person, persons or corporation engaged in the business of undertaking." From the language of this section it would seem that it was the intention of the law to extend this provision only to those who were engaged in the business of undertaking at the time of the approval of the act. A person who had hung out his sign but had done no business, could scarcely be designated as one "engaged in the business of undertaking."

6. The facts stated in the sixth inquiry impress me with the belief that the person who applies to be registered under the provisions of section 5, but who never actually did undertaking business and acted only in the capacity of solicitor for a practical undertaker, is not an undertaker within the meaning of the law, and should not, therefore, be entitled to registration as provided in said section.

7. A man has a right to choose how his name shall appear in business, and I do not think it would be wise for your Board to compel his name to be given in any other way than that in which he uses it in the ordinary transaction of his business.

8. The question raised by this inquiry is not free from doubt. The law regards persons under the age of twenty-one years as infants, and, as such, are under many disabilities. Generally speaking, they are incompetent to enter into contracts in their own right. For the present I think it wise to instruct you not to grant licenses to such persons.

9. A widow can carry on the business of her 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.

10. The question of citizenship does not enter into the administration of this law. Any person competent to do business is a "person" within the meaning of the act of Assembly, and you would not be justified in raising the question of naturalization.

11. This question has been answered in the reply to the second inquiry.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General

TENEMENT INSPECTION.

STATUTES—CONSTRUCTION—DUTIES UNDER VAGUE LANGUAGE.

Where an act of Assembly imposes a discretionary duty upon a ministerial officer, and draws a distinction without defining it, it becomes the duty of such officer to adopt some rule of practice for the enforcement of the law that will make it operative and at the same time meet the conditions as they are found to exist at the passage of the act.

TENEMENTS AS CLOTHING SHOPS—ACT OF 1895—FACTORY INSPECTORS.

Under the provisions of the act of April 11, 1895, P. L. 34, regulating employment, &c., of persons employed in tenement houses where clothing is made, the Factory Inspector is authorized to grant permits for the use as shops of rooms or apartments in the rear of tenements or dwelling houses.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Dec. 10, 1895.

JAMES CAMPBELL, *Factory Inspector*:

Dear Sir: I am in receipt of your communication of this date, asking for an opinion as to your duty in reference to the enforcement of the act to regulate the employment and provide for the safety of persons employed in tenement houses and shops where clothing, &c., is made, approved the 11th day of April, A. D. 1895 (P. L. 34).

The first clause of section one of the act above referred to prohibits the use of any room or apartment in any tenement or dwelling house for the purpose of manufacturing coats, vests, trousers, &c., by any person except the immediate members of the family living therein. It is very apparent from the reading of this clause that the Legislature intended to prohibit absolutely the making of the articles enumerated in said act in tenements or dwelling houses, except by the immediate members of the family. In other words, it was the object of the persons interested in securing the enactment of this legislation to prevent the use as workshops of rooms or apartments in tenements and dwelling houses where families reside.

It is further provided in section 1 of the act that "no person, firm or corporation shall hire or employ any person to work in any room or apartment in any rear building or building in rear of a tenement or dwelling house at making, in whole or part," any of the articles mentioned in said section without first obtaining a written permit from the Factory Inspector or one of his deputies. You desire now to be informed what may be included in the term "any room or apartment in any rear building or building in rear of a tenement or dwelling house."

The act of Assembly is not specific in its definition of the term "rear building" and a "building in rear of a tenement or dwelling house." Since, then, the Legislature has drawn a distinction, with-

out defining it, it becomes your duty to adopt some rule of practice for the enforcement of the law that will make it operative and at the same time meet conditions as you now find them to exist. With this idea in view I think it necessary to draw a distinction between a "rear building" and a "building in rear of a tenement or dwelling house." Under the term "rear building" might be included all such rooms or apartments as are connected with the tenement or dwelling house where the family resides, but which are separated from the other part of the house by walls, partitions or doors. A building in the rear must be held to be one that is built separate and apart from the tenement or dwelling house proper and in the rear of it.

I am of the opinion, therefore, that under the provisions of this act of Assembly you are authorized to grant permits for the use as shops of rooms or apartments in the rear of tenements or dwelling houses. Under such circumstances it would be your duty to require that these rooms or apartments be separated, in such manner as you deem best, from that part of the house used as a dwelling.

I return herewith all papers forwarded to me in reference to this matter.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

ADVERTISEMENT OF CHARTER NOTICES.

STATUTES CONSTRUED—CHARTER ADVERTISEMENTS—GERMAN NEWSPAPERS.

The act of July 2, 1895, P. L. 426, does not apply to notices required to be published under the provisions of the general corporation act, approved April 29, 1874.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Dec. 10, 1895.

JAMES E. BARNETT, *Deputy Secretary of the Commonwealth:*

Dear Sir: Your communication of even date herewith, asking for an opinion upon the question of the publication of notices required by the act of July 2, 1895 (P. L. 426), has been given due consideration, and in answer thereto I have the honor to submit the following:

Many years ago our courts held that, where an act of Assembly provides for public notice in a newspaper, an English paper is always intended in the absence of express legislative provision establishing a different rule. (See *Road in Upper Hanover*, 44 P. S. 277). This rule has been followed ever since and was recognized as the proper practice by our learned predecessor, Attorney General Kirkpatrick, in an opinion dated August 2, 1887.

The act of April 29, 1874, provides, among other things, for the publication of notice of intention to apply for charter of a corporation in two newspapers of general circulation, printed in the proper county, for a period of three weeks. This act does not specify what language the newspapers must be printed in, but, under the rule of construction adopted by our courts, it must be held to mean the ordinary language of the country used in judicial proceedings. If the inquiry ended here it would be an easy task to answer, but it is accompanied by a letter from the managers of the German Daily Gazette, published in the city of Philadelphia, contending that the act regulating the advertisement of all notices required to be published by authority of law in cities of the first and second classes, approved July 2, 1895, applies to the publication of the notice to take out a charter. I am not convinced that this is the proper construction of the act of 1895. By its terms it applies only to such notices as are required to be published by authority of law in cities of the first and second classes. The reasonable interpretation of this phraseology must mean that it applies to notices required to be published in reference to the governmental affairs of cities of the classes named, or such other notices as may be designated by act of Assembly relating to the affairs of such cities. The act of April 29, 1874, hereinbefore mentioned, is a general law, applies to every part of the Commonwealth and is not limited to cities of the first, second and third classes.

Moreover, the act of incorporation is not limited to any particular locality. A company, once incorporated, is a legal entity throughout the entire Commonwealth. It is quite true the law provides that the notice must be published in the county or counties where its principal place of business is to be located, but this does not in any way limit the exercise of the charter rights of the proposed company to that locality.

Again, the requirement as to notice should be uniform throughout the State. Now, if the act of 1895, above referred to, was held to apply to notices of incorporation, then cities of the first and second classes would have one rule, while the rest of the Commonwealth would have a different rule. This should not be unless the plain mandate of the law requires it. I do not think there is any such mandatory provision in the act of Assembly referred to.

I am of opinion, therefore, that the act of July 2, 1895 (P. L. 426), does not apply to notices required to be published under the provisions of the general corporation act, approved April 29, 1874.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

TALLY-ON-TOP SALESBOOK COMPANY.

CORPORATIONS—INCREASE OF CAPITAL—CONSTITUTIONAL REQUIREMENTS.

By virtue of the provisions of article XVI, section 7, of the Constitution of Pennsylvania, the act of April 18, 1874, the precedents of the Department of the Secretary of the Commonwealth, and the principles enunciated in an analogous matter in *Railway v. Railway*, 167 Pa., 101, a formal meeting of the stockholders of a corporation must be held to vote on an increase of the capital stock of the corporation before such increase can be allowed.

AUTHORITY TO INCREASE MUST BE BASED ON CORPORATE ACTION.

Not only the protection of the individual stockholder is contemplated, but also that of the public as well. It is for this reason that the law requires that there must be deliberate corporate action, of which a proper record must be kept in the regular proceedings thereof.

NOTICE OF MEETING BUT NOT THE MEETING MAY BE WAIVED.

The right of the stockholders to waive, by unanimous consent, the sixty days' notice of such meeting has been recognized, but the necessity of the meeting to vote the increase of stock has always been insisted upon.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Dec. 13, 1895.

JAMES E. BARNETT, *Deputy Secretary of the Commonwealth:*

Dear Sir: I am in receipt of your communication of the 4th inst., enclosing the application of the Tally-on-Top Salesbook Company for an increase of its capital stock under the provisions of the act of April 18, 1874.

The constitutional provision and the requirements of the act of Assembly in reference to notice and the holding of a meeting to vote the increase have not been complied with. The contention of the attorney who represents the above named corporation is, that both the notice and the meeting can be waived by the unanimous consent of all the stockholders. Acting upon this idea, the stockholders have signed a paper formally waiving notice and meeting, and asking that the capital stock of said corporation be increased as therein stated.

It is provided, among other things, in article XVI, section 7 of the Constitution, that "the stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the larger amount in value of the stock first obtained, at a meeting to be held, after sixty days' notice, given in pursuance of law." The 18th, 19th, 20th, 21st and 22d sections of the act of April 18, 1874, provide the method of carrying into effect the constitutional provision. Deputy Attorney General Snodgrass, in a carefully prepared opinion, held that the sixty days' notice required in the Constitution and by the act of Assembly might be

waived by consent of all the stockholders, and this has been the rule followed by the State Department since the rendering of that opinion. But, while the right of the stockholders to waive the sixty days' notice has been recognized, yet the necessity of the meeting to vote an increase of the stock has always been insisted upon, and the waiver of such meeting has never been allowed. For more than twenty years the unbroken precedent in the office of the Secretary of the Commonwealth has been to require a formal meeting of the stockholders to be held before an increase of the capital stock has been allowed.

In my view of the case, the constitutional provision hereinbefore stated was intended, not only as a protection to the individual stockholder, but to the public as well, and it is clear to my mind that none of its salutary features should be indifferently set aside. It is a fair implication from the provisions of the Constitution and the act of Assembly that there must be deliberation and corporate action before an increase of the capital stock of a corporation can be authorized. The authority to increase can be obtained only by the company acting in its corporate capacity, of which a proper record must be kept in the proceedings thereof. A principle somewhat analogous to this has recently been declared by Justice Williams, of the Supreme Court, in *Street Ry. v. Inter-County Ry.*, 167 Pa. 101, wherein it is substantially stated that the consent of supervisors for the use of township roads by a street railway company, to be valid, must be given at a regular or special meeting entered upon the books of the township in the possession of the town clerk. The case was decided upon the principle that the subject in controversy was one for deliberation, and that the individual acts of the supervisors could not be held to be the act of the municipal corporation which they represented.

In view, therefore, of the constitutional provision, the requirements of the act of Assembly, the precedents of your office and the reasoning of the Supreme Court, I am of opinion that the meeting of the stockholders of a corporation for the purpose of voting upon the question of increasing its capital stock cannot be waived by the consent of the stockholders.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

TAXATION OF LIFE INSURANCE.

TAXATION FOR STATE PURPOSES—LIFE INSURANCE POLICIES.

No kind of life insurance policies is the subject of taxation for State purposes, under existing laws.

STATUTES—REVENUE LAWS OF 1889 AND 1891 COMPARED.

The revenue law of June 8, 1891, P. L. 229, so far as subjects of taxation are concerned, is an exact transcript of the act of June 1, 1889, P. L. 420, the rate being changed from three to four mills. Neither the act of 1891 nor its predecessors profess to tax all personal property, but "all personal property of the classes hereinafter enumerated." Life insurance policies cannot, by any rule of interpretation be included in any of the classes of property named in the act, and it follows, therefore, that they cannot be taxed, and therefore should not be returned by the taxpayer.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Dec. 16, 1895.

AMOS H. MYLIN, *Auditor General*:

Sir: I am in receipt of your communication of the 25th ult., in which you enclose copy of a letter from the commissioners of Allegheny county in reference to the taxation of certain policies of life insurance companies held by residents of this State, and also containing a request from you for instruction from this Department upon the matters referred to. The question you propound is "whether all classes or kinds of life insurance policies are taxable or only certain kinds, and if so, what kinds."

The question here raised is one of great importance and has received careful consideration at my hands. The second section of the act of June 1, 1889 (P. L. 420), makes it the duty of the board of revision of taxes in cities co-extensive with counties, to "furnish the assessors of said city annually, and the commissioners of the other counties shall annually furnish the assessors of the several townships, boroughs and cities of the respective counties with blanks in the form prepared and supplied by the Auditor General," the assessors to furnish a copy of the same to every taxable person, co-partnership, unincorporated association, &c., in his respective ward, district, borough or township, &c., upon which blank each taxable person, co-partnership, unincorporated association, company, limited partnership, &c., shall respectively make return annually of the aggregate amount of all the different classes of personal property made taxable by the first section of the act of June 1, 1889, which, as amended by the act of June 8, 1891 (P. L. 229), so far as it affects the question here raised, may be quoted as follows:

“That from and after the passage of this act all personal property of the classes hereinafter enumerated, owned, held or possessed by any person, persons, co-partnership or unincorporated association or company resident, located or liable to taxation within this Commonwealth, &c., is hereby made taxable annually for State purposes at the rate of three mills on each dollar of the value thereof, that is to say:

“All mortgages, all moneys owing by solvent debtors, whether by promissory note or penal or single bill, bond or judgment; all articles of agreement and accounts bearing interest; all public loans whatsoever, except those issued by this Commonwealth or the United States; all loans issued by or shares of stock in any bank, corporation, association, company or limited partnership, created or formed under the laws of this Commonwealth or of the United States, or of any other State or government, including car trust securities and loans secured by bonds or any other form of certificate or evidence of indebtedness, whether the interest be included in the principal of the obligation or payable by the terms thereof, except shares of stock in any corporation or limited partnership liable to the capital stock imposed by the twenty-first section of this act, or relieved from the payment of tax on capital stock by said section; all moneys loaned or invested in other states, territories, the District of Columbia or foreign countries; all other moneyed capital in the hands of individual citizens of the State: Provided, That this section shall not apply to bank notes, or notes discounted or negotiated by any bank or banking institution, savings institution or trust company: And provided, That the provisions of this act shall not apply to building and loan associations.”

The act of June 8, 1891, above referred to, so far as subjects of taxation are concerned, is an exact transcript of the act of June 1, 1889, the rate being changed from three mills to four mills on the dollar under the act of 1891.

In the preparation of the blanks required by the act of 1889 to be furnished to the assessors, your Department, in the ninth paragraph of such blanks, instructs the taxpayers to make return as follows:

“9. MONEYS—

“Owing by solvent debtors of this or any other State or country, represented by promissory note, penal or single bill, bond (except bonds of Pennsylvania corporations paying a tax upon capital stock), or judgment, including loans on collateral and policies of life insurance issued by foreign or domestic, stock or old line mutual companies.”

And again, in the printed instructions to taxpayers (paragraph 11) you use the following language:

“The provision of the act taxing all moneyed capital, does not apply to bank notes, or notes discounted or negotiated by any bank, banking institution or trust company. It will be noted that all policies of life insurance, whether full paid or not, issued by foreign or domestic, stock or old line mutual companies (known as level premium companies) must be returned by the holder at their value at the time of the assessment.”

If life insurance policies are subject to taxation, the authority therefor must be found in the act of Assembly. All the subjects of taxation are enumerated and are as above quoted. The blank form of return would appear to indicate that your Department construes them to be covered by the phrase "Moneys owing by solvent debtors," but it should be noted that the "Moneys owing by solvent debtors," to be taxable, are such as, by the terms of the act, are evidenced "by promissory note or penal or single bill, bond or judgment." It cannot be said, I think, that a life insurance policy of any kind can be within the purview of the language quoted; nor can it be said to be within the phrase "loans secured by bonds or any other form of certificate or evidence of indebtedness, whether the interest be included in the principal of the obligation or payable by the terms thereof." This, I think, has reference to what are understood to be loans in the ordinary acceptation of the word. Nor can it be said that life insurance policies fall within the phrase "all other moneyed capital in the hands of individual citizens of the State." Life insurance policies, by common understanding, are not "moneyed capital." They are rather contracts of indemnity, sometimes written upon what is termed "the ordinary life plan," at other times to be paid up by a certain number of instalments, and the amount payable at the death of the assured; in other cases payable at a certain date, known as "the endowment plan." Sometimes the amount of the policy is payable to the legal representatives of the assured after his death, but more frequently to other beneficiaries.

It may be true and admitted that policies of life insurance, in most instances, have a cash surrender value by the terms of the contract, varying with the amounts paid thereon, and that it is within the legislative power to tax them, but the practical question is, Has the Legislature included them within the subjects of taxation? As has already been stated, the act of 1891 follows the act of 1889 precisely in its subjects of taxation, and it may be said, for the purpose of reaching the legislative intent, that, by the seventeenth section of the act of June 7, 1879, "money owing by solvent debtors * * * money loaned or invested on interest in any other state, and all other moneyed capital in the hands of individual citizens of the State" was made taxable for State purposes. It would appear, therefore, that from 1879 down to 1891—a period of twelve years—practically the same language was used in naming the subjects of taxation so far as they are relevant to the question here raised; but not until the present year, as I am informed, has your Department in the preparation of its blanks to be used by the assessors, included life insurance policies within its list of taxable subjects.

The contemporaneous construction given the acts of 1879, 1889 and 1891, excluded life insurance policies. If such construction by your

Department of the acts above referred to had not been in accord with the legislative intent, it is fair to assume that the Legislature would have long since corrected the law by adding life insurance policies as a taxable subject. They have not done so, and I am of the opinion that policies of life insurance of no kind are the subject of taxation for State purposes under existing law.

In your communication to me you say that "After examining the subject and ascertaining that certain policies of life insurance had a present cash value, I deemed it my duty to include them within the class of personal property subject to taxation." I cannot agree that the fact that these policies have a surrender cash value makes them taxable. Fire insurance policies also have a cash surrender value, and if that is a sufficient reason, they, too, would be taxable. The broad ground upon which I put my conclusion is that life insurance policies were not intended to be included within any of the acts of Assembly providing for taxation for State purposes.

The act of 1891 does not provide that "all personal property" is to be taxed, the language of the act being "all personal property of the classes hereinafter enumerated," thus clearly excluding all such personal property as does not fall within any of the classes enumerated. Believing as I do that life insurance policies cannot, by any rule of interpretation, be included in any of the classes of property named in the act, it follows that they cannot be taxed, and therefore should not be returned by the taxpayer.

Very respectfully,

HENRY C. McCORMICK,
Attorney General.

INSANE HOSPITAL—APPROPRIATIONS FOR—"MAINTENANCE" DEFINED—Act of 3 July, 1895 (P. L. 441).

The term "maintenance" as used in the act is broad enough to include items of expense incurred for horses, cows, harness, wagons, carts, garden seeds, &c., which are necessary and useful in the cultivation of lands attached to institutions for the care of the chronic insane.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Dec. 20, 1895.

CADWALLADER BIDDLE, *Secretary Board of Public Charities, 1224 Chestnut Street, Philadelphia, Pa.:*

Dear Sir: Your favor of recent date, addressed to the Attorney General, asking for a proper construction of the word "maintenance," as used in the act of July 3, 1895 (P. L. 441), and other similar acts of Assembly, has been duly considered, and in answer thereto I have the honor to submit the following:

It is a familiar and well known rule of construction that acts of Assembly shall be so construed as best to effectuate the intention of

the Legislature. If this rule of interpretation did not obtain it would be very difficult to carry into practical effect many acts of Assembly. As I understand it, most of the State institutions for the care of the chronic insane have tracts of land attached, on which the principal portion of the food consumed by the inmates is grown. It is necessary to farm these lands, and this cannot be done without farm hands, horses, farming utensils and such other appliances as are useful and necessary in the cultivation of land. All such appliances wear out and have to be replaced. The question your inquiry raises is whether items of expense, made necessary by the cultivation of the farms attached to these institutions, can be included in the quarterly reports required by the act of Assembly under the term "maintenance."

It is my belief that a liberal construction should be applied in furthering the objects of such legislation. All the items of expenditure made necessary by the proper cultivation of the farm certainly can be included within the term "food," as used in the act. The trustees have a right to expend moneys in the purchase of food, and it is no stretch of legal interpretation to say that they can incur expense in that which produces the food. The result is the same in both instances. This being my view of the law, I can see no objection to including items of expense incurred for horses, cows, harness, wagons, carts, garden seeds, etc., which are necessary and useful in the cultivation of the lands in the term "maintenance," as used in the act of Assembly.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

COLLECTOR OF TAXES—COUNTY TREASURERS—Acts of 1885 and 1895.

The act of 25 June, 1895 (P. L. 296), does not apply to county treasurers, but to persons known as township and borough collectors as created by the act of 25 June, 1885 (P. L. 187), or other special laws of a similar kind.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Jan. 2, 1896.

AMOS H. MYLIN, *Auditor General*:

Sir: I am in receipt of the letter of A. S. Stover, treasurer of Franklin county, dated December 27, 1895, addressed to your Department and by you referred to the Attorney General, asking whether the act of June 25, A. D. 1895 (P. L. 296), requiring tax collectors of townships and boroughs to give a numbered tax receipt, applies to county treasurers in those counties where they are made the collectors of county and State taxes under special laws.

The act hereinbefore mentioned is a penal statute and, under the familiar rule of interpretation, it must be strictly construed. The act

of June 25, A. D. 1885 (P. L. 187), provided for the election of an officer in each borough and township to be styled a collector of taxes. The act of 1895, above referred to, applies only to persons known as township and borough collectors. This must be held to mean township and borough collectors as created by the act of 1885, or other special laws of a similar character. A county treasurer is not a borough or township collector in this sense, and does not therefore come under the provisions of the act of June 25, A. D. 1895.

I return herewith the letter of Mr. Stover.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

SCHOOL BOARD OF CARLISLE—A DE FACTO BOARD—NUMBER OF DIRECTORS TO BE ELECTED—Acts of May 8, 1854, June 6, 1893.

The board of school directors of the borough of Carlisle having been elected under the special act of April 15, 1850, which was unconditionally repealed by act of June 7, 1895 (P. L. 171), is a de facto board.

While there is some doubt as to the number of directors to be elected from each ward, the language of the act of May 8, 1854 (P. L. 618), is perhaps broad enough to cover the present case. The act of June 6, 1893 (P. L. 338), does not apply to the borough in question.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, PA., *Jan. 8, 1896.*

NATHAN C. SCHAEFFER, *Superintendent of Public Instruction:*

Sir: I am in receipt of your communication of the 3d inst., enclosing letters from R. W. Woods, of the borough of Carlisle, asking what is the status of the board of school directors of said borough since the repeal of the local law by act of June 7, A. D. 1895 (P. L. 171).

On the 15th day of April, A. D. 1850, an act was approved relative to the common schools of the borough of Carlisle. This act was local and provided a system in itself for the regulation of the schools of that borough. The general law had no application while the local act remained in force. The act of June 7, 1895, above referred to, repealed unconditionally the local school law of the borough in question. All the rights, powers and privileges conferred upon the school board under the local law ceased at the very moment of its repeal. The directors elected under that law, and subject to its provisions, were legislated out of office upon the approval of the repealing act. Since that time they have been acting as a de facto board under the general law. I am of opinion, however, that a full board of directors should be elected under the general law at the elections to be held in February next.

How many directors each ward is entitled to is a question about which there is some doubt. I am informed that the borough of Car-

lisle is divided into four wards and that at the present time each ward elects two directors. Why the number was so fixed under the old law does not clearly appear, and I am not familiar with the local proceedings which divided the borough into wards and fixed the number of directors. From the best information I can obtain, however, it appears that each ward is entitled to two directors. The act of May 8, 1854 (P. L. 618), provides for the election, in wards of cities and boroughs, of two qualified citizens as school directors, whose term of office shall be for a period of three years. The language of this act is perhaps broad enough to govern in this case. The act of June 6, A. D. 1893 (P. L. 338), provides for the election of three directors in each ward of a borough consolidated under the provisions of this law. I take it, however, that this act does not apply, except in cases where two or more boroughs have been consolidated, as therein provided for. Inasmuch as Carlisle was not consolidated under the provisions of the act of 1893, I am of opinion that this act would not apply. While I now advise you that the borough of Carlisle is entitled to two directors for each ward, I am not unmindful of the fact that a very nice legal question is involved which should be settled by the local courts, where all the facts can be brought out.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

FOOD ADULTERATIONS—COFFEE COMPOUNDS—Act of June 26, 1895, P. L. 317—Construction thereof.

A mixture, compounded of coffee and a certain amount of chickory, wheat, rye, or peas, dried and browned and labelled "Best Rio," "Prime Rio," "French Rio" or "Broken Java," and the words "Coffee Compound," showing the nature of the mixture, cannot be sold in Pennsylvania; it is an adulteration within the meaning of the act of June 26, 1895.

RECOGNIZED COMPOUNDS EXEMPTED BY THE ACT—WHAT ARE.

It would seem that it is difficult to define what are "mixtures or compounds recognized as ordinary articles or ingredients of articles of food" to which the act does not apply. What are such, within the meaning of the act, must depend upon the facts of each particular case, and the burden of proof is upon the one claiming that his compound is within the exemption.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Jan. 29, 1896.*

LEVI WELLS, *Dairy and Food Commissioner:*

Sir: Your communication of recent date, enclosing letter of Stephens & Widdlar, of Cleveland, Ohio, asking whether certain labels submitted to your Department are sufficient to protect them in the sale of coffee as a compound, which contains chicory, rye, wheat, peas and other cereals or products under the proviso to section 3 of the act of June 26, A. D. 1895 (P. L. 317), has been received.

The question involved is one of great importance in the construction of the provisions of the pure food law. As I am informed, the above named firm imports teas, coffees and spices, and, in order to make a cheaper grade of coffee, a certain amount of chicory, wheat, rye, peas, etc., is dried, browned and ground with pure coffee. The mixture thus prepared is sold on the market under a label "Best Rio," "Prime Rio," "French Rio" or "Broken Java." It is earnestly contended that the proviso to section 3 of the act above referred to gives them the right to sell such a mixture or compound without incurring the penalties of the law. Acting upon this idea, certain labels containing the words "Coffee Compound," and showing that it is a mixture of prime coffee, English chicory and choice grain, are exhibited for the purpose of securing your approval so that this "Coffee Compound" may be sold in our State without interference from those in charge of the enforcement of this law.

I have no hesitancy in saying that, if such a preparation can be sold under the law as coffee, the label is sufficient under the proviso above named. But I am of opinion that the proviso does not cover an article of food known as "Coffee Compound," such as is intended to be sold by this firm, and that any manufacture for sale, offering for sale, or selling of the same as an article of food would be in violation of the very letter and spirit of the act referred to.

Section 3 of the pure food law defines what an adulteration is within the meaning of the act of Assembly. Any article of food shall be considered adulterated: "1. If any substance or substances have been mixed with it so as to lower or depreciate or injuriously affect its quality, strength or purity. 2. If any inferior or cheaper substance or substances have been substituted wholly or in part for it. 3. If any valuable or necessary constituent or ingredient has been wholly or in part abstracted from it." These are but three of the seven kinds of adulteration named in the act. Either one of these three definitions is sufficient to brand the "Coffee Compound" offered for sale by the above named firm as an adulteration. The addition of chicory, wheat, rye or peas to coffee depreciates its "quality, strength and purity." It is the substitution, in part, of a cheaper substance to take the place of coffee, and it could very properly be said that in such a compound a valuable constituent has been in part abstracted, for part of the coffee is taken away and a cereal substituted therefor. If the "quality, strength or purity" of coffee can be thus depreciated under the authority of the proviso to section 3 of the above act, then is the pure food law a legislative dream. If this can be done, then any adulterated article could be sold by simply marking it a compound or mixture. Alspice ground with buckwheat hulls, or cinnamon with hemlock bark, could then be labelled "compound" and sold in the open markets as such. Such a construction would render the act of 1895 a nullity.

The pure food law was intended to provide against the adulteration of articles of food and to prevent deception and fraud in the sale thereof. The legislation was much needed and it should be enforced in such a way as to give the greatest security to the public consistent with the requirements of the act. It is true that the proviso to section 3, above mentioned, says that it "shall not apply to mixtures or compounds recognized as ordinary articles or ingredients of articles of food." It is difficult to give any general definition of an "ordinary article of food" that would apply in all cases. It is, however, a fair presumption that no article of food, adulterated within the meaning of the definitions of section 3, is intended to be exempted by the proviso. The proviso is designed to cover a different class of cases. Anyone relying upon the proviso to exempt him from the penalties of the law takes upon himself the laboring oar and the burden of proof is upon him to make out the exemption claimed. What is an "ordinary article of food" within the meaning of the proviso, must depend upon the facts in each particular case. I am clearly of opinion, however, that coffee, adulterated by the addition of chicory, wheat, rye or peas, is not an "ordinary article of food" intended to be exempted from the penalties of the law. On the other hand, it is an adulteration and cannot be sold without offending against the provisions of the pure food law.

I return herewith letters and labels submitted.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

INVESTMENT BY INSURANCE COMPANIES.

CORPORATIONS—INSURANCE COMPANIES—AUTHORIZED INVESTMENTS.

Under act of May 1, 1876, P. L. 53, the companies whose stock or evidence of indebtedness, &c., may be purchased by insurance companies as investments, is limited to dividend-paying companies created under the laws of the United States and the State of Pennsylvania.

WORDS AND PHRASES—UNITED STATES.

The expression "United States," as used in the act of 1876, means the legal entity; it is not broad enough to include the individual states of the union.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Jan. 30, 1896.*

JAMES H. LAMBERT, *Insurance Commissioner:*

Sir: This Department is in receipt of your letter of recent date, asking for an opinion upon the question of the right of insurance companies to invest their surplus moneys, over and above the capital stock, in the bonds of corporations formed under the laws of other states.

The eighteenth section of the act of May 1, 1876 (P. L. 53), requires that such funds be invested in the stock or other evidence of indebtedness of any solvent dividend-paying corporations created under the laws of this State or the United States. It is contended by many insurance companies that the provisions of the law permitting them to invest these funds in the bonds of dividend-paying corporations created under the laws of the United States gives them the right to invest in the bonds of dividend-paying corporations created under the laws of any state of the national government.

I cannot accept this interpretation of the act of Assembly. The expression "United States," as used in the above named section, means, in my opinion, the national government as a legal entity. It is not broad enough to include corporations created under the laws of any individual state other than Pennsylvania.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

CONSTITUTIONAL LAW—REMOVAL OF JUDGE—AUTHORITY OF GOVERNOR—Article V, section 15, Constitution.

The Governor of the State has no power to remove a judge of the court of common pleas, under section 15, article V of the Constitution of the Commonwealth, except on an address of two-thirds of each house of the General Assembly.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG PA., Feb. 19, 1896.

DANIEL H. HASTINGS, *Governor*:

Sir: This Department is in receipt of letter of J. O. Uhlrich, Esq., dated Pottsville, January 30, 1896, referred to the Attorney General by Your Excellency February 3, 1896. Mr. Uhlrich complains that one of the judges of the court of common pleas of Schuylkill county has been incapacitated for work for three years by sickness and one other of the judges for a year or more, the result being that business is delayed and the cost of administering justice increased. Mr. Uhlrich demands relief and says that the only remedy lies in an appeal to you to act as the Constitution provides in article V, section 15.

The section of the Constitution referred to reads as follows:

"All judges required to be learned in the law, except the judges of the Supreme Court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient for impeachment, the Governor may remove any of them on the address of two-thirds of each house of the General Assembly."

The plain reading of this section requires me to advise you that no duty rests upon you to take the initiative in this matter, and that you have no power to act except "on the address of two-thirds of each house of the General Assembly."

The letter of Mr. Uhlrich is herewith returned.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

MUTUAL INSURANCE COMPANIES—Construction of act of April 4, 1873, P. L. 20.

Section 16 of the act of April 4, 1873, exempting purely mutual fire insurance companies from the operation of the act, is to be strictly construed. By it only those mutual companies are exempt which are organized on the purely mutual plan, with premium notes as the basis of security.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Feb. 20, 1896.*

JAMES H. LAMBERT, *Insurance Commissioner:*

Sir: I am in receipt of your favor of the 12th inst., asking for a construction of the sixteenth section of the act of April 4, 1873 (P. L. 20), entitled "An act to establish an Insurance Department."

You desire an opinion upon that part of the section hereinbefore mentioned wherein it is provided that the act shall not apply "to fire insurance companies of this State organized and conducted on the purely mutual plan, with premium notes as the basis of security, and without capital stock, guaranty capital or accumulated reserve in lieu of capital stock." As I am informed by your letter, many insurance companies, organized on the mutual plan, are not doing business exclusively with premium notes as a basis of security. Some have what they call a guaranty fund and others are issuing cash policies. You desire to be informed whether it is the intention of the law to regard as purely mutual companies only those with premium notes as a basis of security.

The act of 1873, above referred to, is general in its terms and applies to all insurance companies except such as are specifically exempted from its provisions by the terms of the act itself. Any exemptions claimed should be strictly construed. It is my opinion that the provisions of the sixteenth section of the act of 1873 should be so construed as to exempt only those insurance companies of this State as are organized on the purely mutual plan, with premium notes as the basis of security.

Very respectfully,

HENRY C. McCORMICK,
Attorney General.

CONTINGENT FUNDS OF STATE DEPARTMENTS—SALARIES OF EMPLOYEES.

The contingent fund is intended to meet unforeseen and unexpected contingencies that may arise in a department and should not be used in payment of salaries of regular employes except under exceptional circumstances and when the public service requires it.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 25, 1896.*

AMOS H. MYLIN, *Auditor General:*

Sir: In reply to your request for my opinion as to the power of the Auditor General to allow the Factory Inspector to pay a clerk and messenger out of his contingent fund, I beg leave to say:

It is not the intention of the law to permit the contingent funds of the several departments of the government to be used in payment of salaries of regular employes. The payment of such salaries should be provided, and is presumed to be provided, specifically, in the general appropriation bill. The contingent fund is intended to meet unforeseen and unexpected contingencies that may arise in a department. If, in any case, it is necessary to perform an unusual amount of work in any department, and the clerical force therein is insufficient, I have no doubt that it would be entirely proper to pay the help necessary to meet such emergency out of the contingent fund.

In the case to which you refer it appears that, by the act of Assembly approved 11th April, 1895, the General Assembly increased the number of Deputy Factory Inspectors from twelve to twenty, thus very largely increasing the work in the office of the Factory Inspector. This, it appears, made it absolutely essential to employ a clerk and a messenger. There being no appropriation for the payment of these employes the Factory Inspector has proposed to use his contingent fund to the extent necessary to pay their salaries.

Ordinarily, this could not be allowed, but this particular case is surrounded by exceptional and peculiar circumstances. It is quite probable that the general appropriation bill was framed and considered, at least by the committee of the House, before the act was passed increasing the number of inspectors. The question of salaries of the additional employes, made necessary by the increase of the number of inspectors, it is quite probable, was not considered by either house of the General Assembly.

Under this state of facts, and without intending that this shall be a precedent for the payment of regular salaries out of any contingent fund, I advise you that the Factory Inspector be allowed to use his contingent fund to the extent necessary for the payment of the clerk and messenger above referred to. The public service seems to require it, and there is no act of Assembly forbidding it. It may truly

be said that, in this case, a contingency has arisen that was unforeseen or overlooked by the General Assembly.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

COLLEGES—AUTHORITY TO CONFER DEGREES—Section 12, act of June 26, 1895, P. L. 328.

Section 12 of the act of June 26, 1895, was intended to provide for the class of colleges incorporated by the courts of common pleas, and exercising under their charters the power of conferring degrees. The act does not take away the right of such colleges to confer literary degrees if such powers have been granted them by the courts, and they will continue to have such rights if they comply with the requirements of section 12 of the said act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, *March 30, 1896.*

NATHAN C. SCHAEFFER, *Superintendent of Public Instruction and Secretary of the College and University Council:*

Sir: I acknowledge your letter of February 10, 1896, asking the opinion of this Department as to "The right of the following institutions to confer literary degrees under section 12 of the act of June 26, 1895, viz: Juniata College, Geneva College, Bryn Mawr College, Temple College, Grove City College, Pennsylvania College for Women and Susquehanna University."

In answer, I beg leave to say: Juniata College, located at Huntingdon, Pennsylvania, was originally chartered as "The Brethren's Normal College," but of the date of its incorporation I am not advised. By the annual catalogue of the college for 1894-95 it is stated that "The trustees recently resolved to re-charter the school under the name of 'Juniata College.' The legal steps necessary to the change are now in progress." Whether or not it has been so re-chartered I am unable to determine from any information in my possession.

Geneva College was incorporated June 18, 1883, by the court of common pleas of Beaver county, and by the decree of that court was granted power to confer degrees as provided by its articles of association.

Bryn Mawr College, situate at Bryn Mawr, Pennsylvania, was incorporated in 1880, presumably by the court of common pleas of the county in which it is located, under the corporation act of 1874.

Temple College, of Philadelphia, was incorporated May 12, 1888, and by its original charter was given no power to confer degrees, but on April 8, 1891, an amendment was allowed by the late Judge Allison, in the following language: "That the said corporation shall have the right, power and authority to confer all the usual college titles and degrees."

Grove City College, by amendment to its charter, dated December

10, 1894, was authorized by the decree of the court of common pleas of Mercer county to confer degrees, etc.

Pennsylvania College for Women was incorporated in the court of common pleas of Allegheny county in 1869, and was empowered "By and with the consent of the trustees, to confer such degrees in the liberal arts and sciences as they may deem proper, upon such students as may appear worthy to receive such degrees, etc."

Susquehanna University of the Evangelical Lutheran Church, located at Selins Grove, Pennsylvania, was originally incorporated by the court of common pleas of Snyder county, in 1858, and at that time its corporate title was "The Missionary Institute of the Evangelical Lutheran Church." By the terms of its charter it was to have power "To grant diplomas to its graduates, together with all the other powers, rights, privileges and immunities usually appertaining to or belonging to classical and theological institutions or colleges." Under the provisions of the act of April 29, 1874, the name of the said corporation was changed by order of the court, made at February term, 1895, to the "Susquehanna University of the Evangelical Lutheran Church." It also appears by the affidavit of the president of the institution on file in the Department of Public Instruction, that, although the name of the corporation includes the word "university," the institution is not a university in fact, it not having the necessary departments, or the means for carrying on all the departments of a university.

As all of the foregoing institutions of learning have filed affidavits setting forth that the value of their properties, respectively, is \$100,000, or more, as required by the act of 26th June, 1895, I assume that all were incorporated by the courts of common pleas.

That part of section 12 of the act of 26th of June, 1895, bearing upon the question raised in your letter is, in words, as follows:

"This act, furthermore, shall not impair the authority of colleges heretofore incorporated by such courts of common pleas with power to confer degrees in cases where such institutions have property or capital, at the time of the passage of this act, of at least one hundred thousand dollars, and which shall, within three months after the passage of this act, file with the Superintendent of Public Instruction of this Commonwealth a sworn statement that the assets held by them individually for the purpose of promoting education in the higher branches of human learning, amount to the sum of one hundred thousand dollars, nor shall this act impair the authority of universities similarly incorporated by the courts with the power to confer degrees in cases where such institutions possess property at the time of the passage of this act amounting to the sum of five hundred thousand dollars, and which shall, within three months from the passage of this act, file with the Superintendent of Public Instruction of this Commonwealth a sworn statement that the assets held by them individually for the purpose of promoting instruction in the higher branches of human learning amount to the sum of five hundred thousand dollars."

It is contended that the corporation act of 1874 did not empower the courts to grant charters giving to institutions of learning the power to confer degrees, and that, although the courts have granted such charters to all the corporations above mentioned, such charters, in so far as they undertake to give the right to confer degrees, are of no effect because the Legislature has not vested such powers in the courts. The corporation act of 1874 gives power to the courts to create corporations for, (a) the support of any literary, medical or scientific undertaking, library association, or the promotion of music, painting or other fine arts, and (b) the support of any benevolent, charitable, educational or missionary undertaking. By section 29 of the corporation act of 1874 it is provided that:

"The incorporation of any association of persons for the purposes named in this act, or accepting the same, shall be held and taken to be of the same force and effect as if the powers and privileges conferred, and the duties enjoined, had been conferred and enjoined by special act of the Legislature, and the franchises granted shall be construed according to the same rules of law and equity as if it had been created by special charter, and no modification or repeal of this act shall affect any franchise obtained under the provisions of the same."

By section 7 of article III of the Constitution of 1874 the General Assembly is forbidden to pass any local or special law "Creating corporations, or amending, renewing, or extending the charters thereof." The corporation act of 1874 was, therefore, clearly intended as the general law, to which all corporations thereafter created should owe their existence. As the granting of special charters by the Legislature was forbidden by the Constitution of 1874, they could only come into being by compliance with the provisions of the general law. Did the Legislature intend that educational institutions of a literary, medical or scientific character might be created bodies corporate under the act of 1874, but be denied the usual powers incident to incorporated colleges and universities? If so, then all colleges and universities which have not been given the power to confer degrees, by express enactment prior to 1874, do not possess such right. They could not obtain the power since 1874 except by general law, and no general law has been passed until the act of June 26, 1895, became a law.

The case of the Medical College of Philadelphia, decided by the Supreme Court of Pennsylvania, in 1838, reported in 3 Wharton, p. 444, is the only deliverance of that court upon this subject. The question in that case arose under the act of 1791, entitled "An act to confer on certain associations of citizens of this Commonwealth the powers and immunities of corporations or bodies politic in law." That act provided for the incorporation of institutions "For any literary, charitable or religious purpose," and set forth specifically the powers that such corporations should have. There was nothing in the Constitution of 1790 that forbade the Legislature to incorporate

institutions of learning for any purpose and with any powers, and, as a matter of fact, numerous colleges and other institutions of learning continued to be incorporated by special act of Assembly down to the Constitution of 1874, which forbade it. The decision of the Supreme Court above referred to was whether or not the "Medical College of Philadelphia" could be incorporated under the act of 1791. The act in its preamble expressly states that it relates to "private corporations" of the character mentioned. In the opinion of the court we find the following language: "In the first place, the court cannot certify except in case of private associations; and in the next, it is to prevent the necessity of making application to the Legislature in all cases," thus plainly indicating that the Legislature could be applied to for the grant of powers not expressly given in the act of Assembly.

It is extremely doubtful whether under the act of 1791 a medical college could have been incorporated at all, with or without the power to confer degrees. But assuming, for the sake of the argument, that the Supreme Court in the case above cited, did decide that the Legislature was the source of the power to confer degrees, that decision must be taken as of the time it was rendered and in view of the Constitution and laws then governing the court. The Legislature then had the power to clothe any institution of learning, by special act of Assembly, with the power to confer degrees, and the act of 1791 had to be construed with reference to that power. Not so with the Constitution of 1873. Colleges, literary, medical and scientific, could be incorporated under the provisions of the act of 1874, but the franchises thus obtained are not specifically set forth. We find, however, by the third section of the act of 1874 that the articles of association shall be presented to the law judge who is "Required to peruse and examine said instrument, and if the same shall be found to be in the proper form, and within the purposes named in the first class specified in the foregoing section, and shall appear lawful and not injurious to the community, he shall endorse thereon these facts, and shall order and decree thereon that the charter is approved, and that upon the recording of the said charter and order, the subscribers thereto and their associates, shall be a corporation for the purposes and upon the terms therein stated."

This language vests in the courts a broad discretion and would appear to give them ample power to decree the incorporation of educational institutions with such powers, privileges and franchises as would not be in conflict with the purpose of their creation, and the objects of their existence.

The conferring of a degree simply marks a step in the educational career of the student. It is the expressed judgment of the faculty that he has attained a certain degree of proficiency, and a diploma is granted as the evidence of such degree. The value of a degree depends entirely upon the character and standards of the institutions

conferring it. It may mean much or little. It would seem unreasonable to deny to an institution of learning incorporated under the act of 1874 the right to certify to the world the proficiency of its students, particularly in view of the constitutional inhibition against asking for the power in any special case. If the granting of a degree has a tendency to work harm to the public it is the province of the Legislature either to prevent it or to control it under proper restrictions. This has been done, notably in the case of practitioners in medicine and surgery, and for obvious reasons.

Section 12 of the act of 1895, now under consideration, itself gives a legislative construction as to the powers of the courts to confer degrees under the act of 1874. The language is:

"This act, furthermore, shall not impair the authority of colleges heretofore incorporated by such courts of common pleas with power to confer degrees," etc.

How could this act impair the authority of colleges to confer degrees, if such authority did not exist before the passage of the act of 1895?

But my interpretation of the twelfth section of the act of 26th June, 1895, about which you inquire, renders it unnecessary for me to give any official opinion as to the right of colleges to confer degrees under the act of 1874, prior to the time the act of 1895 became a law.

The section under consideration was intended to provide for the class of colleges incorporated by the courts of common pleas and exercising under their charters the power of conferring degrees. The power so being exercised was not to be impaired by any provision of the act of 1895 as to colleges having "Property or capital at the time of the passage of this act of at least \$100,000, and which shall, within three months after the passage of this act, file with the Superintendent of Public Instruction a sworn statement," etc. The act should not be read "Courts of common pleas with power to confer degrees," but should be read "Colleges heretofore incorporated with power to confer degrees by such courts of common pleas." It has reference to powers granted by the courts of common pleas and being exercised by the corporation. This interpretation is greatly strengthened by reference to a subsequent part of the section relating to universities, which reads as follows:

"Nor shall this act impair the authority of universities similarly incorporated by the courts with power to confer degrees in cases where such institutions possess property at the time of the passage of this act amounting to the sum of \$500,000."

The section does not refer to the power of the courts but to the power of the corporation under the decree of the court. There is no intention expressed in the act that the powers of the courts of common pleas which have been exercised by them in the granting of these charters should in any wise be questioned, much less that the right

to exercise such powers as the courts have in fact exercised should be determined by the College and University Council, or the law officer of the Commonwealth.

I may add that the decrees of the several courts creating these corporations, and expressly conferring upon them the power to confer degrees, should be recognized and respected as the decisions of courts of competent jurisdiction, upon a subject committed to them by the Legislature, until reversed by the court of last resort.

I, therefore, advise the College and University Council that the institutions of learning referred to in your letter, and above mentioned, have the right under existing laws to confer literary degrees if such powers have been granted to them by the courts, and will continue to have such right if they comply with the requirements of the twelfth section of the act of the 26th day of June, 1895.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

HIGHWAY TAX—REBATE FOR FOUR-INCH TIRES—Act of June 25, 1895, P. L. 288.

Under the act of June 25, 1895, a farmer who uses four-inch tires on all draft wagons hauling not less than 2,000 pounds is entitled to a rebate on his highway taxes, notwithstanding he may own wagons having tires of less width, provided he does not carry 2,000 pounds in such wagons.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *March 31, 1896.*

THOMAS J. EDGE, *Secretary Board of Agriculture:*

Sir: I beg to acknowledge yours of the 28th inst., in which you ask the following question:

“A farmer residing near a large city has placed wide tires upon all of his farm wagons except a covered wagon which he uses for hauling market products to the city market; can he claim the reduction of road tax under the law so long as this one wagon has narrow tires?”

The act of Assembly under which a rebate of road tax is permitted is the act entitled “An act to encourage the use of wide tires upon wagons upon the public highways of this Commonwealth,” approved on the 25th of June, A. D. 1895. The first section provides “that all persons who shall own and use only draft wagons on the public highways of this Commonwealth with tires not less than four inches in width, for hauling loads of not less than two thousand pounds weight shall, for each year after the passage of this act, receive a rebate of one-fourth of their assessed highway tax.”

The evident purpose of this legislation was to prevent, as far as possible, the use of narrow tires on wagons upon which heavy loads were carried, and to encourage the use of wide tires to the end that

the roads should be injured as little as possible. The language of the section above referred to, read and interpreted literally, might mean that it applied to such persons who "use only draft wagons." I am of the opinion, however, that a farmer who uses draft wagons carrying two thousand pounds or more, has them equipped with four inch tires and uses no wagon with a narrower tire for the purpose of carrying two thousand pounds or more, brings himself within the provisions of the act of Assembly and is entitled to the rebate of one-fourth of the assessed highway tax. If the farmer you refer to as using "a covered wagon which he uses for hauling market products to the city market," presumably with a tire narrower than four inches, loads that wagon with two thousand pounds or more, he is not entitled to the rebate of the tax, even although all his other wagons are equipped with tires of the required widths. The four inch tire must be used on all wagons of the person claiming the rebate that have carried two thousand pounds or more. This interpretation is made clearer by reading the second section, which provides for the affidavit of the taxpayer. The affidavit required is "that he, she or they has, for the preceding year, owned and used only such wagons with tires not less than four inches in width for hauling loads of not less than two thousand pounds in weight on the public highways of this Commonwealth." It is upon the making of this affidavit that the supervisors of the district credit the rebate.

Very respectfully yours,

HENRY C. McCORMICK,

Attorney General. .

TAXES—SETTLEMENT OF AGAINST PENNSYLVANIA CORPORATION
WHOSE CAPITAL IS ENTIRELY INVESTED IN ANOTHER STATE.

Taxes should be settled by the Auditor General and State Treasurer against a Pennsylvania corporation having its entire capital and assets invested in the stocks of Brooklyn (N. Y.) gas companies. Any question as to whether such investment is a holding of tangible property in the state of New York should be resolved in the first instance, in favor of this Commonwealth.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, PA., *April 7, 1896.*

AMOS H. MYLIN, *Auditor General:*

Sir: Replying to yours of February 25, 1896, in the matter of the taxation of the capital stock of the Beckton Construction Company, Limited, I beg leave to say that, notwithstanding the entire capital and assets of every kind belonging to this company are invested in the stocks of Brooklyn gas companies, situate in the state of New York, I think the taxes should be settled by the Auditor General and State Treasurer upon the reports filed in your office upon the appraised val-

uation of the stock, or at a greater valuation if the same would be justified by any information in your possession or obtainable. This is a Pennsylvania company, and, while there is room for a difference of opinion as to whether its investment in stocks of New York companies is a holding of tangible property in the State of New York, the question is clearly one that should be resolved, in the first instance, in favor of the Commonwealth, and, if the company is not satisfied, then by appeal to the courts.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

APPLICATION FOR CHARTER—SPECIFICATION OF MORE THAN ONE PURPOSE—Act of June 25, 1895, P. L. 295.

The act of June 25, 1895, permits and authorizes the creation of a corporation for dealing, at wholesale, in any kind of goods for which there had been no previous authority. It adds to the purposes for which corporations may be created; but it makes no change in the law, so far as embodying more than one purpose in a charter is concerned. A charter, therefore, whose purpose was the manufacture of "gas meters, machines and regulators, * * * and for the purpose of dealing in any kind of goods * * * at wholesale," cannot be allowed.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 10, 1896.*

FRANK REEDER, *Secretary of the Commonwealth:*

Sir: I acknowledge the receipt of your communication of 11th ult., in which you say:

"We have now on file an application for a charter for the purpose of the 'manufacture of gas metres, machines and regulators and other articles of commerce from metal or wood, or both, and for the purpose of dealing in any kind of goods, wares and merchandise at wholesale.'"

And you ask to be advised whether or not the law will permit the issuing of a charter with the powers above specified.

The act of June 25, 1895 (P. L. 295-6), amends sub-division 16 of the second section of the act of April 29, 1874, so as to permit the creation of corporations for "buying, selling, trading or dealing in any kind of goods, wares and merchandise at wholesale." Before this act of Assembly was passed there was no authority for the incorporation of a company for such purpose. The effect of the act of 1895 is simply to add to the purposes for which corporations may be created, and in no wise changes the law as it theretofore existed in so far as embodying more than one purpose in a charter is concerned. It has been uniformly held by this Department, in a number of cases that might be cited, that, under the corporation act of 1874 no corporation

can be created for more than one purpose. In an opinion of the late Attorney General Lear, filed in 1878 (Meredith & Tate, page 214), he used this language:

“The corporation act provides for the incorporation of companies for particular purposes, and the act designates what each one may be created for. There is no power to create corporations for any purpose except those enumerated in the act and its supplements, and no two of them can be combined in the same company or corporation.”

In 1888 it was held by Hon. W. S. Kirkpatrick, then Attorney General, that a corporation could not be created for the purpose of establishing and maintaining a hotel and market house, for the reason that the act of 1874 contemplated the organization of corporations devoted to a single purpose.

I fully concur in these views and advise you that in the application to which you refer dual purposes clearly appear. The proposed corporation is not only for the manufacture of certain articles of commerce and the sale thereof, but also “for the purpose of dealing in any kind of goods, wares and merchandise at wholesale.” It does not even limit the sale of merchandise of a kindred or cognate character to those manufactured, but would warrant the corporation in conducting at wholesale any kind or all kinds of mercantile business. Such charter, I think, is not warranted by any provision of the law.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

LIABILITY OF COUNTY—PAY OF ASSESSORS ENUMERATING CHILDREN—Act of May 16, 1895, P. L. 72.

The assessors required, under the compulsory school law of May 16, 1895, to make an enumeration of children between the ages of eight and thirteen years, are entitled to be paid for such services out of the funds of the proper county.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 14, 1896.*

NATHAN C. SCHAEFFER, *Superintendent of Public Instruction:*

Sir: This Department is in receipt of your communication of recent date, asking for an opinion upon the question of the liability of the several counties of this Commonwealth for the pay of assessors who are required, under the compulsory school law, approved May 16, 1895 (P. L. 72), to make an enumeration of children between the ages of eight and thirteen years. The county commissioners, in a few instances, as I am informed, have taken the position that the county is not liable for the payment of the district assessors in making the enumeration of school children, for the reason that the act

of Assembly, which requires the work to be performed, does not provide in positive terms that the county shall pay the same.

It is contended by the persons who take this position that a county is never liable for the costs of a criminal case, or services of a public officer unless made so by the express provisions of an act of Assembly. The rule invoked is too strongly stated; it has its foundation in the history of criminal proceedings. Criminal actions were formerly prosecuted in the name of the King, who paid no costs. After the time of the Revolution the Commonwealth stood in place of the King. Hence the rule followed that it paid no costs without being required to do so by an act of Assembly. It is quite true that the same rule has been applied to some extent in matters of a civil character, but its rigidity must be somewhat relaxed when applied to the ordinary affairs of a county.

A better statement of the rule may be found in the language of Justice Sterrett in the case of *Wayne county v. Waller*, 90 P. S. 105, wherein it is stated: "In this State we have always proceeded on the safe principle of requiring statutory authority, either in express terms or by necessary implication, for all such claims upon the public treasury." If the rule that a county is never liable except upon the express authority of an act of Assembly is to be of universal application, it would necessarily follow that many officers who are now paid out of the county funds would find themselves in the position of having no such express legislative authority upon which to base a claim for services against the county. A history of the legislation providing for the election of assessors, specifying the duties to be performed by them, and fixing their compensation, answers substantially the question your inquiry raises.

The act relating to counties and townships and county and township officers, approved the 15th day of April, A. D. 1834 (P. L. 553), provides, among other things, for the election of township assessors. This is the parent act on the subject of township officers, the later ones being but supplemental to the original. Section 89 of said act provides as follows:

"It shall be the duty of each assessor and assistant assessor to keep an account of the several days by him actually employed in the performance of his duties, and to make return of the same to the commissioners of the county, verified by his oath or affirmation, and for each day necessarily so employed he shall receive the sum of one dollar."

The act of 1834, above mentioned, was amended by the act of May 24, A. D. 1887 (P. L. 195), wherein it is provided, with reference to the pay of assessors, as follows:

"It shall be the duty of each assessor and assistant assessor to keep an account of the several days by him actually employed in the performance of his duties and to make return of the same to the commissioners of the county, verified by his oath or affirmation, and for each day necessarily so employed shall receive the sum of two dollars."

The act of June 16, A. D. 1891 (P. L. 298), provides for the election of an assistant assessor for the purpose of the registration of voters in townships and boroughs containing more than one election district wherein but one assessor for valuation resides. This act provides that the assistant assessor in each of the election districts shall perform all the duties relating to electors now required to be performed by assessors in boroughs and townships having but one election district. There is no provision, however, in this act of Assembly as to the amount of compensation such assistant assessor shall receive or who shall pay for such services. The act is silent upon this important question. It has been the uniform practice of the counties since the approval of the act of 1834 to pay the assessors for the time spent in the performance of their duties, as required by that act of Assembly. For more than half a century the several counties of the Commonwealth have paid the assessors under the provisions of this law, although it is not specifically provided therein that the county is liable. The act of 1887 increased the compensation of assessors, but remained as silent as the act of 1834 upon the question of who should pay for the services rendered. Under the act of 1891 the assistant assessors have been paid out of the county funds, although there is no express authority for so doing. But, under the rule laid down by Justice Sterrett, the county is liable by necessary implication.

Section 4 of what is known as "The Compulsory School Law" provides for the registration of all children between the ages of eight and thirteen years, which enumeration is to be returned to the county commissioners of the proper county, and by them certified to the secretary of the school board of the proper district, whose duty it is to furnish the principal or teacher of each school with a correct list of all children in his district subject to the provisions of this act. It is then further provided as follows: "and the said assessors shall be paid a per diem compensation for their services a sum equal to the compensation paid under existing laws for assessors of election, said services not to exceed ten days."

All assessors are township officers and they perform such duties as the law requires of them. It is part of their duty to make a valuation of property, both real and personal, upon which taxes are levied. The registration of voters, the enrolment of men fit for military duty, the registration of births and deaths, and the enumeration of children between the ages of eight and thirteen years are some of the duties to be performed by them under the provisions of various acts of Assembly. The act of 1834, and its supplements, provide for the valuation of property and the registration of voters. The one hundred and eleventh section of the act of April 13, A. D. 1887 (P. L. 44), provides for the enrolment of persons fit for military duty. The act of June 6, A. D. 1893, provides for the registration of births and deaths

by the district assessor. In the performance of all these duties the assessors act under the supervision of the county commissioners and make a return to them of all work done under the provisions of law.

In my view of the question, section 4 of the compulsory school law, requiring the assessors to make an enumeration of school children between the ages named, is an enlargement of the powers and duties of district assessors, and, since the work is done under the supervision of the county commissioners by authority of law, it seems to be a reasonable conclusion that the county is liable for the payment of the services rendered by the assessors. This construction is strengthened by the fact that the district assessor makes the enumeration of school children at the same time he makes a valuation of property for purposes of taxation and a registration of voters. The county is certainly liable for the time spent by the assessor in making a valuation of property and registration of voters, and, since the registration of school children is made at the same time, it would be very difficult to decide what portion of his time was spent in making the valuation of property and how much of it was left to be devoted to the registration of school children. If the county should be held not liable for the payment of the services of assessors under the compulsory school law, then would we have the anomalous situation of an assessor being paid by the county for part of a day spent in making a valuation of property for the purposes of taxation and the registration of voters, while part of the same day, spent in the enumeration of school children by the same officer, could not be paid out of the county funds. This certainly was not the intention of the law, and there is no rule known to me that will require such an interpretation of this act of Assembly. This position is substantially sustained in the case of *Corr v. Lackawanna County*, 163 P. S. 57.

It is argued, with some force, that the compulsory school law concerns cities, boroughs and townships, and that the county should not be liable for the enforcement of any of its provisions. While there may be something of equity in this position, it is legally unsound. The same objection could be raised as to the payment of assessors who make a valuation of the property in a district. It is the custom of nearly every school district in the Commonwealth to take the valuation of property made by the assessor and returned to the county commissioners as the basis of the tax levied for school purposes. It has never been contended, however, that the county should not pay the assessor for his services in making the valuation of property because the school district received the benefit of that service and made its assessment of taxes upon the valuation thus made. It was no doubt the intention of the framers of the compulsory school law to provide an easy and convenient method of obtaining the enumeration of the school children of each district between the ages of eight and

thirteen years. It was apparent to the legislative body that this could be most readily done by the assessors at the same time they performed their other duties. Hence the law imposed this additional burden upon the district assessors and required that they should make return of their work to the county commissioners, and provided the same compensation for that service as for other services under the law. To hold, under these circumstances, that the county is not liable for the payment of the district assessors in making the enumeration of school children would be doing violence to every principle of justice and to all rules concerning the interpretation of statutes.

I am of opinion, therefore, that the district assessor, in making the enumeration of school children and returning the same to the county commissioners, under the provisions of the compulsory school law, is entitled to receive his per diem compensation for this service, taken in connection with such other services as he performs under the authority of law, out of the funds of the proper county.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

STATE MEDICAL BOARD—APPLICANT FOR LICENSE—ELIGIBILITY—
Act of May 18, 1893.

A medical student who has attended two years' course of instruction in the Philadelphia College of Pharmacy, and two additional years of study at the Jefferson Medical College, is within the provisions of the act of May 18, 1893, P. L. 94, which require the applicant to attend three regular courses of lectures in different years in some legally incorporated medical college or colleges, and if, in addition, he has studied medicine at least one year, he is entitled to appear before the medical examining board as a candidate for license.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 17, 1896.*

JAMES W. LATTI, *Secretary Medical Council of Pennsylvania:*

Sir: The Medical Council, through their clerk, have submitted for my consideration and reply a letter addressed to your Board by Mr. F. A., of Philadelphia. The material parts of this letter are as follows:

"I desire to appear before the State Medical Examining Board of Pennsylvania as a candidate for registration at their next spring meeting, and write you for some information as to the requirements of applicants. I am a senior student at the Jefferson Medical College and hope to graduate next May, and would like to know whether or not I will be eligible for the State Board examination after that time * * * I matriculated as a student of medicine at the Jefferson Medical College in September, 1894, and expect to graduate in May next, when I will have spent just two full terms at the college. In 1893, after a two years' course, I graduated from the Philadelphia

College of Pharmacy, and after entering Jefferson College was credited with my pharmaceutical course in the branches of chemistry, pharmacy and materia medica, but I was required to attend the lectures and pass the examinations of the remaining branches of the first year's course at the Jefferson Medical College, these branches being physiology, histology and anatomy. After passing the examinations on these branches I was credited with having completed my first year's course. My second year's course was completed last spring, having passed all the examinations required. Now, if I graduate next spring, although I will have spent but two full terms at the medical school, you see that I have been required to attend the lectures of and pass all the examinations of the first, second and third terms * * * I have spent over a year with a preceptor, and for three years was connected with the Polyclinic Hospital of this city as apothecary, where I had unusual advantages as a student of medicine."

The act of Assembly approved 18th May, 1893, entitled "An act to establish a Medical Council and three State Boards of Medical Examiners," etc., provides in section 3 that "after the first day of July, 1895, such applicants must have pursued the study of medicine for at least four years, including three regular courses of lectures in different years in some legally incorporated medical college or colleges prior to the granting of said diploma or foreign license. Such proof shall be made, if required, upon affidavit."

The applicant graduated from the Philadelphia College of Pharmacy in 1893, after a two years' course therein. When he entered Jefferson Medical College in September, 1894, he was credited with his pharmaceutical course in the branches of chemistry, pharmacy and materia medica, and attended the lectures and passed his examinations in the remaining branches of the first year's college course, viz: physiology, histology and anatomy. The practical question raised in this case is whether, because of the fact that he attended lectures and passed his examinations in physiology, histology and anatomy, branches which, I understand, belong to the first year's college course, the year he was taking the second year's course of lectures, the applicant is excluded from the provisions of the law.

Reading the act literally, it might be held that "the three regular courses of lectures in different years in some legally incorporated medical college or colleges" means the regular three years' course in such college, but I think the better opinion is that, if he attended a course of lectures in the Philadelphia College of Pharmacy one year, or, as in this case, two years, and the second and third years' lectures in the Jefferson Medical College, he brings himself within the provisions of the act, reasonably interpreted. The act does not require that the entire three years shall be spent in one college. The language is "college or colleges," and, even though some of the branches of the first year's course in the medical college are not included in the pharmaceutical course, I think the law has been complied with if

the remaining branches are, as in the case at hand, covered by the student and examinations duly passed, although at the same time taking a regular second year's course in the medical college.

I am, therefore, of the opinion that, in so far as the law requires the applicant to attend "three regular courses of lectures in different years in some legally incorporated medical college or colleges," this applicant has complied with its provisions and is entitled to appear before the proper medical examining board, if, in addition to such attendance upon lectures, he has studied medicine for at least one year, the provision of the statute being that he "must have pursued the study of medicine for at least four years, including three regular courses of lectures in different years in some legally incorporated medical college or colleges."

I return herewith all the papers submitted.

Very respectfully,

HENRY C. McCORMICK,
Attorney General.

LIMITED PARTNERSHIPS UNDER ACT OF MARCH 21, 1836, P. L. 143—
DUTY TO REGISTER AND REPORT—Act of June 8, 1891, P. L. 229.

A limited or special partnership, organized under the act of March 21, 1836, or subsequent acts of the same character, is not required to register in the office of the Auditor General, and make reports to that department for the purposes of taxation, under the act of June 8, 1891.

TAXATION OF LIMITED PARTNERSHIPS—Act of June 8, 1891.

The act of June 8, 1891, requiring reports of the capital stock, number of shares, etc., to the Auditor General in November of every year, with appraisement of the value of the stock, etc., refers only to corporations and limited partnerships formed under the act of June 2, 1874, P. L. 271, and its supplements; such bodies alone possess the officers, president, chairman, secretary or treasurer, who are required to make reports enjoined by the act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *April 30, 1896.*

AMOS H. MYLIN, *Auditor General:*

Sir: I am in receipt of yours of the 29th inst., inquiring whether limited partnerships, so-called, created under the act of 21st March, 1836 (P. L. 143), are included in the provisions of the act of June 7, 1879 (P. L. 112), the act approved June 1, 1889 (P. L. 420), entitled "A further supplement to an act, entitled 'An act to provide revenue by taxation,' approved the seventh day of June, Anno Domini one thousand eight hundred and seventy-nine," and the act approved the 8th day of June, 1891 (P. L. 229), supplementary to the last named act, requiring limited partnerships to register in the office of the

Auditor General and make reports to that Department for the purposes of taxation.

The act of 21st March, 1836, although entitled "An act relative to limited partnerships," does not, in my opinion, authorize such a limited partnership as is contemplated by the acts of 1879, 1889 and 1891, above referred to. By the act of 1836 there must be one or more general partners without limit as to liability, but, upon performance of certain conditions, fully set forth in the act, there may be a special partner or partners contributing specific sums to the common stock, and who are not liable for the debts of the partnership beyond the funds so contributed by him or them to the capital. The limitation of liability as to one or more special partners who make their investments in no wise limits the personal liability of the general partners for the debts of the concern. The act of 1836 was evidently a device enacted in law for the purpose of enabling one or more persons, called special partners, to invest their money in a general partnership without becoming liable beyond the amounts of their investments, thus relieving them from the obligations attaching to the partnership relation.

We find legislation of much the same character in the act of 6th of April, 1870 (P. L. 56), which provides that persons may loan money to a partnership upon agreement to receive a share of the profits of such business as compensation for the use of the money so loaned in lieu of interest, "and such agreement, or the reception of profits under such agreement, shall not render the person or persons making such loans liable as a co-partner in such business to the creditors of such individual, firm, association or corporation except as to the money so loaned." Again, by the act of 15th June, 1871 (P. L. 389), it is provided that "individuals * * * employing labor may give to employes, in addition to regular wages, or in lieu thereof, a conditional interest in the profits of the business, to be regulated and determined by agreement between the parties, and the employe receiving such conditional share of profits shall not, by reason thereof, be deemed liable for the debts or losses of the business, nor have any voice in the management, except in so far as may be clearly defined in the Constitution or agreement under which the association is organized or operations conducted."

Independently of the acts of 1870 and 1871, the investment upon condition of sharing the profits derived from the business, or the profits in lieu of wages, would undoubtedly make the persons so investing or receiving wages general partners, with full liability as such. Those acts of Assembly limited, in one case, the liability of the investor to the amount of his investment, though permitting him to receive a share of the profits, and, in the other, permits the employe to receive profits in lieu of wages without any liability as a partner.

The associations organized under the acts of 1870 and 1871 are "limited partnerships," as I think, in precisely the same sense as partnerships created under the act 1836 with general and special partners.

By an act, entitled "An act authorizing the formation of partnership associations, in which the capital subscribed shall alone be responsible for the debts of the association, except under certain circumstances," approved June 2, A. D. 1874 (P. L. 271), limited partnerships, in the proper sense, were for the first time authorized in Pennsylvania. By that act any three or more persons desiring to conduct any lawful business or occupation may form a limited partnership by subscribing and contributing capital thereto, which "capital shall alone be liable for the debts of the association." The act requires that the articles of association be recorded in the proper county, and that they shall set forth the full names of the persons subscribing, the amount of capital subscribed by each, the total amount of capital and when and how to be paid, the character of the business, the name of the association, with the word "limited" added thereto as part of the same, &c., &c.

By a compliance with the terms of the act of 1874 and its supplements, the liability of each subscriber to a limited partnership is fixed by the amount subscribed, and it is a quasi corporation, as was said by the Supreme Court in *Coal Company v. Rodgers*, 108 P. S. 147. It has many of the characteristics of a corporation. The interests are declared by the act of Assembly to be personal estate and may be transferred under such rules and regulations as the association may prescribe, and the death of a partner does not dissolve the partnership. Moreover, the act provides for the election of not less than three nor more than five managers of the association, one of whom shall be the chairman, one the treasurer, and one the secretary, or one may be both treasurer and secretary, who shall hold their respective offices for one year and until their successors are duly installed.

The language of the act of 8th June, 1891, section 4, requiring reports to the Auditor General by corporations, limited partnerships, &c., is as follows:

"That hereafter * * * it shall be the duty of the president, chairman or treasurer of every corporation having capital stock, every joint-stock association or limited partnership whatsoever, now or hereafter organized or incorporated by or under any law of this Commonwealth * * * to make a report in writing to the Auditor General in the month of November, one thousand eight hundred and ninety-two, and annually thereafter, stating specifically:

"First. Total authorized capital stock.

"Second. Total authorized number of shares," &c., &c.

And providing further:

"In every case any two of the following named officers of such corporation, limited partnership, or joint-stock association, namely: The president, chairman, secretary and treasurer, after being duly sworn

or affirmed, &c., shall, between the first and fifteenth days of November of each year, estimate and appraise the capital stock of said company at its actual value in cash," &c.

It would seem that the reports to the Auditor General, required by this act, were from corporations and limited partnerships having an organization with such officers as president, chairman, secretary and treasurer. The limited or special partnerships created by the acts of 1836, 1870 and 1871 do not have such officers, none are required by law, and in practice no such thing is known. It will be noted that the act refers to an officer called "chairman," and this clearly has reference to the officer provided by the limited partnership act of 1874.

For these reasons, and many others that might be assigned, I am of the opinion that limited partnerships referred to in the revenue laws are such as are formed under the provisions of the act of 1874 and its supplements, and do not comprehend within their meaning the limited partnerships or special partnerships created under the act of 1836, or the subsequent acts of the same character above referred to.

Respectfully yours,

HENRY C. McCORMICK,
Attorney General.

CHARTERS OF INSURANCE COMPANIES—COMBINATION OF FIRE, LIFE AND ACCIDENT INSURANCE NOT ALLOWED—Act of May 23, 1895, P. L. 116.

It is the settled policy of the Commonwealth not to permit a single corporation to engage in the business of fire, life and accident insurance at one and the same time. The act of May 23, 1895, makes no change in this respect.

An application for a charter under the act of May 23, 1895, which contains in its statement of purpose a life and property insurance, therefore, cannot be granted.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *May 15, 1896.*

JAMES H. LAMBERT, *Insurance Commissioner:*

Sir: This Department is in receipt of the certificate filed by the Mutual Casualty Company of America, asking that it be erected into a corporation under the provisions of the act of Assembly approved the 23d day of May, A. D. 1895. This company desires to be incorporated under clause 3 of section 1 of the act of Assembly aforesaid. In the sixth paragraph of the certificate filed the general objects of the company are said to be:

"To make insurance upon the health of individuals and against personal injury, disablement or death resulting from travel, or general accidents by land or water, or accidents resulting from the pursuit of any trade or business, and against injuries of every nature and description to persons or property, causing loss, damage or liability arising from any unknown or contingent event whatever."

This statement of purpose follows the phraseology of the act of Assembly except that it omits the very important provision which states "except the perils and risks enumerated in the first, second and fourth paragraphs of this section." This omission is fatal to the application if there were no other reason for refusing to approve the certificate. If this company should be incorporated with a statement of purpose as broad and comprehensive as the language hereinbefore quoted suggests it might do all kinds of insurance. Fire insurance is not even excepted. It certainly was not the intention of the Legislature, in passing the act of 1895, to permit the incorporation of an insurance company for the transaction of all kinds of insurance business. It has been the settled policy of the Commonwealth since the approval of the act of 1876 not to permit a company to engage in the business of fire, life and accident insurance at one and the same time. It has been thought wise to keep the different kinds of insurance separate and apart. I find nothing in the act of 1895 which, properly understood, will change the rule in this respect.

The third clause, it is true, will permit the incorporation of companies to insure property against the risks of accidents and other contingencies not provided in the first, second and fourth clauses of that act of Assembly. It will also permit the incorporation of a company to make insurance upon the health of individuals and against personal injury, disablement and death resulting from accidents, but it does not necessarily follow that both kinds of insurance can be transacted by the same company.

I am of opinion, therefore, that, construing the third clause of the act of 1895 in *pari materia* with other legislation upon this subject, a company should not be incorporated to transact both kinds of insurance business. The company must elect either to do an insurance business upon the health of individuals or upon property on the accident basis. I therefore return the enclosed certificate with the suggestion that the statement of purpose be amended so as to eliminate that provision which provides for accident insurance upon the property of members of the company.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

ALDERMEN—WARD OFFICERS—Acts of March 22, 1877, and May 23, 1889.

Where the Governor, on the erection of a new ward in a city of the third class, appointed an alderman under the act of March 22, 1877, section 3, P. L. 12, there is no vacancy in said office to be filled at a special election ordered by the court under article III, section 3, of the act of May 23, 1889, P. L. —.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 3, 1896.*

FRANK REEDER, *Secretary of the Commonwealth:*

Sir: I am in receipt of your communication of the 30th of April, relating to the power of the Governor to commission an alderman in the Tenth ward of the city of Harrisburg. At your request this Department gave a hearing to G. W. Snyder and John S. Machamer, both of whom appeared by counsel. The facts as stated in your communication, and not disputed by counsel, are as follows:

At the election held February 18, 1896, in Susquehanna township, Dauphin county, George W. Snyder was elected a justice of the peace for said township, filed his acceptance with the prothonotary of said county and a commission was issued to him as justice of the peace for said township for the regular term of five years, to be computed from the first Monday of May, 1896.

In March, 1896, by order of the court of Dauphin county a part of Susquehanna township was annexed to the city of Harrisburg and created into a new ward designated the Tenth. Mr. Snyder resides in that portion of Susquehanna township which thus became the Tenth ward of the city of Harrisburg. After the erection of said ward, to wit, April 6, 1896, the Governor appointed John S. Machamer alderman for said ward, who was duly commissioned to serve until the first Monday of May, 1897. A special election for ward officers for the Tenth ward was ordered by the court to be held April 14, 1896, and Mr. Snyder was elected alderman for said ward. He filed with the prothonotary of Dauphin county his acceptance of the office. The prothonotary certified to the State Department the election of Mr. Snyder and his acceptance of said office and demanded a commission, which was refused by your Department. Whereupon you requested the Attorney General to inform your Department "whether Mr. Snyder was duly elected alderman in and for the Tenth ward of the city of Harrisburg at the special election held April 14, 1896."

Your inquiry, I assume, relates to the right and duty of the Governor to commission Mr. Snyder as alderman. His election as alderman in February last is conceded, if under the law there was any such office to be filled. If the Governor had power to appoint and commission on April 6, 1896, the appointee would be entitled to hold his office until the first Monday of May succeeding the next ward election, namely, the first Monday of May, 1897. That the Governor had such power seems clear. The third section of the act of March 22, 1877 (P. L. 12), provides that "If any vacancy shall take place after any ward,

district, borough or township election by reason of the erection of any new ward * * * such vacancy shall be filled by appointment by the Governor until the first Monday of May succeeding the next ward * * * election."

It is contended, however, that the fifth section of article three of the act of May 23, 1889, entitled "An act providing for the incorporation and government of cities of the third class," repeals the act of 1877. The provision of that act reads as follows: "And said court shall, in case of the creation of a new ward, appoint the election officers and place for holding the first election of ward officers, and for that purpose may order a special election, if said court shall deem the same necessary."

Whether alderman is or is not a ward office it is scarcely necessary to discuss, for the reason that a vacancy in the specific office of alderman must be filled by appointment by the Governor, as required by the act of 1877. The order of court directing the election must be construed as referring to such "ward offices" as the voters had power at the time named to fill, and as I am of the opinion that on April 14, 1896, the day of the special election, there was no vacancy in the office of alderman in the Tenth ward of the city of Harrisburg, Mr. Snyder, who claims to have been elected, cannot be commissioned.

I reach this conclusion with some regret, because Mr. Snyder appears to have been the choice of a majority of the people as expressed at that election; but under my view of the law I cannot advise that there is any authority to issue the commission.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

POWERS OF BOARD OF MANAGERS OF INDUSTRIAL REFORMATORY—“CONTRACT LABOR”—Acts of June 13, 1883 (P. L. 112), and April 28, 1887 (P. L. 63).

While it is the power and duty of the board of managers of the Industrial Reformatory at Huntingdon to employ necessary instructors in such trades as will be useful to the inmates after their discharge, the board has no legal right to enter into an arrangement with the instructor, to take the product of the labor of the inmates and remunerate their services by payment of a sum agreed upon.

Such arrangement presents a clear case of "contract labor," absolutely forbidden by the acts above cited.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *June 11, 1896.*

CADWALADER BIDDLE, *Secretary, Board of Public Charities, 122½ Chestnut Street, Philadelphia, Pa.*

Sir: I am in receipt of yours of the 4th inst., enclosing copy of memorandum furnished you by the managers of the "Pennsylvania Industrial Reformatory," at Huntingdon, by which it appears that a certain person proposes "to give instruction in the trade or industry named (the manufacture of a line of plumbers' supplies), he to furnish the necessary machinery, the Reformatory to furnish the buildings with the necessary steam power, he, likewise, to furnish the material entering into the manufacture of such articles as would be made and would, if so desired, take the product, arranging for the remuneration of services of the inmates so instructed by the payment of such sum as may be agreed upon for the production of each article in a good and workmanlike manner."

Through the State Board of Public Charities the board of trustees of the Reformatory request my opinion as to whether under the existing laws of our State it would be legal to employ the convicts at the Reformatory in the manner above suggested.

By an act of Assembly, entitled "An act to abolish the contract system in the prisons and reformatory institutions of Pennsylvania, and regulate the wages of inmates," approved 13th of June, 1883, P. L. 112, it is provided:

"Section 1. That at the expiration of existing contracts the board of inspectors, wardens or other officers of State prisons and reformatory institutions are directed to employ the convicts under their control for and in behalf of the State.

"Section 2. The chief officers of the various reformatory institutions deriving their support wholly or in part from the State, are hereby directed at the expiration of existing contracts, to employ the inmates of said institutions for and in behalf of such institutions, and no labor shall be hired out by contract."

The act of Assembly entitled "An act in relation to the imprisonment, government and release of convicts in the Pennsylvania Industrial Reformatory at Huntingdon," approved 28th of April, 1887, P. L. 63, provides amongst other things, in section 11 that "The contract system of labor shall not exist in any form whatever in said reformatory, but the prisoners shall be employed by the Commonwealth."

While I have no doubt of the power or the duty of the board of managers to employ necessary instructors in such trades and vocations as will be useful to the inmates after their discharge, and incur the necessary expense attending the employment of such instructors, I cannot agree that the board of managers have any legal right to

enter into any arrangement with the instructor, so-called, to take the product of the labor of the inmates and remunerate the services of such inmates "by the payment of such sum as may be agreed upon for the production of each article in a good and workmanlike manner."

If I understand correctly the memorandum submitted, it presents a clear case of "contract labor." A certain person proposes to the managers that he will furnish the material entering into the manufacture of a line of plumbers' supplies, and asks that the inmates of the Reformatory be employed manufacturing the finished article at such price for their services as may be agreed upon. It does not present the case of employing instructors within the meaning of the law, even though it be admitted that the kind of employment proposed would instruct the inmates in a useful occupation. Instead of the instructor being recompensed by salary paid by the State, it is proposed that he remunerate the inmates for their services to him. The act of 1887, referred to above, is emphatic in its terms: The contract system of labor shall not exist in any form whatever in said reformatory, but the prisoners shall be employed by the Commonwealth."

Under the arrangement proposed, the inmates, during the time they are at work, would necessarily be under the control of a person beneficially interested in the product of their labor. To all intents and purposes the inmates would be employed by him, but the act of Assembly provides "that the prisoners shall be employed by the Commonwealth." I am of the opinion, therefore, that the plan proposed, however desirable it may seem to the board of managers, would be accomplishing by indirection what the law absolutely forbids.

Respectfully yours,

HENRY C. McCORMICK,
Attorney General.

STATE NORMAL SCHOOLS—ALLOWANCE TO PUPILS UPON GRADUATION.

The date of graduation fixes the status of graduates of State normal schools with reference to allowance of fifty dollars from the Commonwealth. A graduate who has not attained the full age of seventeen years when he graduates is not entitled to the allowance.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 2, 1896.*

NATHAN C. SCHAEFFER, *Superintendent of Public Instruction:*

Sir: Your communication of recent date, addressed to the Attorney General, making inquiry whether the fifty dollars allowed by law to graduates of State normal schools can be given to persons who have graduated under the age of seventeen years, has been duly considered.

Under the law you are not authorized to pay any student who graduates under the full age of seventeen years the fifty dollar allowance.

You desire to know further whether this fee can be paid to a student who graduates under the age of seventeen years, but who does not make the demand until he has arrived at the proper age.

The date of graduation fixes the status of the student in reference to this allowance. If he has attained the full age of seventeen the day he graduates, or prior to that time, he is entitled to the fifty dollar allowance; if he is not seventeen upon the day of his graduation, he is not entitled to the same. The plain provisions of the law cannot be set aside by any subterfuges, as, for instance, the withholding of a diploma until the student arrives at the required age. The law means what it says and must not be cheated by sharp practices.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

ANNUAL REPORTS—PUBLICATION OF REPORT OF FORESTRY COMMISSIONER.

The head of a department can publish his report in one or different parts, and the Secretary of Agriculture can, if he deem it wise, publish the report of the Forestry Commissioner as Part II of his annual report.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 7, 1896.*

THOMAS J. EDGE, *Secretary of Agriculture:*

Sir: Your communication of recent date, addressed to the Attorney General, asking whether the report of the Forestry Commissioner can be printed as Part II of your annual report, has been given due consideration by this Department.

It is my opinion that it is largely a question of discretion in the head of a department to decide whether he will publish his report in one or in different parts. In many instances the publication of the whole report in one volume would make it undesirable and inconvenient. In such cases I can see no valid reason why the head of a department may not choose to publish his report in different parts. In the case of the report of the Forestry Commissioner I am informed that it is large enough to make a volume of interesting reading matter in itself, and hence I am of opinion that you can have it published as Part II of your annual report if you deem it wise to do so. Should you decide to publish your report in different parts, of course the presumption is that it takes all the parts to make the whole, and you would be entitled to have as many published for each part as for the whole.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

ALDERMEN—COMMISSIONS OF—ACCEPTANCE—FILING OF—Act of April 13, 1859 (P. L. 592).

Edward L. Moore, elected alderman in February, 1896, filed his acceptance with the prothonotary within the prescribed period, but the prothonotary insisting that no acceptance had been filed, the office was declared vacant and Moore was commissioned as alderman until first Monday of May, 1897. Subsequently the prothonotary discovered the original acceptance and notified the Secretary of the Commonwealth.

Held, that a commission for the full term of five years should issue to Moore, the prior commission to fill a vacancy being superseded by the new commission.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *July 27, 1896.*

DANIEL H. HASTINGS, *Governor:*

Sir: I am in receipt of your communication of 17th inst., relating to the case of Edward L. Moore. I am advised that Edward L. Moore was duly elected an alderman of the Fourth ward of the city of Lock Haven, at the regular election in February last; that said Moore claimed to have filed with the prothonotary of Clinton county an acceptance of his office within thirty days after the election and desired to be commissioned according to law for a term of five years from and after the first Monday of May, 1896. The prothonotary still insisting that no acceptance had been filed with him, the office was declared vacant and said Moore was commissioned as alderman until the first Monday of May, 1897, which commission he now holds. I am advised further that you are now informed by the prothonotary of Clinton county that, as a matter of fact, Mr. Moore did file his acceptance of said office as alderman within the thirty days, as required by law, to wit, on the fourth day of March, 1896, and you attach the original acceptance to your letter of inquiry. This raises the question of whether or not Mr. Moore is now entitled to a commission to run five years from the first Monday of May, 1896, notwithstanding that he holds a commission that will expire on the first Monday of May, 1897.

By the act of Assembly approved April 13, 1859, P. L. 592, it is provided as follows:

“Every person hereafter elected to the office of justice of the peace or alderman shall, within thirty days after the election, if he intends to accept said office, give notice thereof in writing to the prothonotary of the common pleas of the proper county, who shall immediately inform the Secretary of the Commonwealth of said acceptance; and no commission shall issue until the Secretary of the Commonwealth has received the notice aforesaid.”

It will be observed that the above act of Assembly requires the alderman to file his acceptance with the prothonotary within thirty days after the election, which I regard as a condition precedent to his being entitled to the commission. Mr. Moore did so, whereupon his title to the office for a period of five years was perfect. The commis-

sion that the act of Assembly provides shall be issued is simply the evidence of his title. The default in this case was clearly of the prothonotary in mislaying the written acceptance of Mr. Moore, who was in no wise responsible for it.

I am, therefore, of the opinion that the original acceptance, which I return herewith, should be filed with the prothonotary of Clinton county, that the prothonotary should then immediately inform the Secretary of the Commonwealth of the acceptance and that a commission should issue to Mr. Moore for a period of five years from and after the first Monday of May, 1896, the outstanding commission in the hands of Mr. Moore being superseded by the new commission when issued, and it should so appear on the records in the office of the Secretary of the Commonwealth.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

BOARD OF COMMISSIONERS OF PUBLIC GROUNDS AND BUILDINGS—
POWERS OF—Section 12, article III of Constitution, act of March 26, 1895 (P. L. 22).

If in the schedule for 1896, duly advertised and contracts awarded, there appear such work and material as can be used in repairing the hall of House of Representatives in the manner desired, the Board under the provisions of the above act, has full authority to make the repairs by requiring such greater quantity of work and materials already contracted for as may be necessary.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, PA., *July 31, 1896.*

To the Board of Commissioners of Public Grounds and Buildings:

Gentlemen: Replying to the letter of your secretary under date of July 30th, I respectfully submit the following:

1. I am of the opinion that there is no legal authority which would warrant you in advertising for bids for the improvement of the acoustics of the hall of the House of Representatives. It is true that by section 12 of article III of the Constitution it is provided, amongst other things, that "The repairing and furnishing of the halls and rooms used for the meetings of the General Assembly and its committees shall be performed under contract to be given to the lowest responsible bidder, below such maximum price and under such regulations as shall be prescribed by law * * * and all such contracts shall be subject to the approval of the Governor, Auditor General and State Treasurer."

For the purpose of carrying out this provision of the Constitution the act of March 26, 1895 (P. L. 22), was passed and is the legislative regulation for the letting of contracts by the Board of Commissioners

of Public Grounds and Buildings. By the second section of the act it is made the duty of the Board "on the second Tuesday of May of each and every year, by advertisement inserted daily until the day of letting of contracts in twelve newspapers, &c., to invite sealed proposals for contracts to furnish all stationery, &c., and for repairing, altering, improving, furnishing or refurnishing, and all other matters or things required for the public grounds and buildings, legislative halls and rooms connected therewith, &c., said proposals to be delivered to the Board of Public Grounds and Buildings on or before twelve o'clock meridian, on the first Tuesday of June following the date of advertisement, who shall, on the said first Tuesday of June, at twelve o'clock meridian, open and publish said proposals, and as soon thereafter as possible award the contracts to the lowest responsible bidder on each of the items of the several classifications of the schedule."

This has been done for the year 1896, and I am of the opinion that the authority given by the act for this year has been exhausted.

2. As to whether or not such improvements or repairs may be made under the existing schedules of 1896, upon which bids have been made, accepted and contracts awarded, an entirely different question arises.

By section 5 of the act of Assembly above referred to, it is made the duty of the Superintendent of Public Grounds and Buildings "on or before the first day of April in each year to notify the heads of the several departments, &c., to furnish lists of all furniture and furnishings, stationery, supplies, repairs, alterations or improvements, fuel, and all other matters or things that may be needed by their respective departments, &c., for the fiscal year beginning on the first Tuesday of June of each year," and the act requires the Superintendent to prepare similar lists for the needs of the public grounds and buildings and the Executive mansion. It is also provided by the same act that "the quantities given in the lists or schedule shall be the estimated maximum quantity that is likely to be required during the year; but the lists or schedules shall in all cases provide that the goods shall be furnished in greater or less quantity and at such times as the needs of the department, etc., shall require.

If in the schedules for 1896, duly advertised and contracts awarded, there appear such work and material as can be used for the purpose of repairing the hall of the House of Representatives in the manner desired, I am of the opinion that, under the clause of the act just quoted, your Board has full authority to make the repairs by requiring such greater quantity of the work and materials already contracted for as may be necessary.

Respectfully yours,

HENRY C. McCORMICK,
Attorney General.

COUNTY SUPERINTENDENT—SALARY OF—Act of April 29, 1878 (P. L. 33).

The superintendent of schools in any county is entitled to receive as compensation \$4.50 for each and every school in his jurisdiction on the day of his election in strict accordance with the terms of the act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Sept. 16, 1896.*

NATHAN C. SCHAEFFER, *Superintendent of Public Instruction:*

Sir: Your communication of the 11th inst., asking for an opinion upon the question of the amount of salary to which Prof. E. F. Porter, who has been recently elected superintendent of schools of Fayette county, is entitled, has been received.

The act of 29th day of April, A. D. 1878 (P. L. 33), provides that the superintendent of schools in any county shall be entitled to receive as compensation for his services four dollars and fifty cents for each school in his jurisdiction at the time of his election.

I am of the opinion that this provision of the law must be strictly construed, and that a superintendent is entitled to receive a compensation of four dollars and fifty cents for each and every school in his jurisdiction on the day of his election. Inasmuch, therefore, as the directors of the borough of Uniontown participated in the election of Mr. Porter, it must necessarily follow that the schools represented by them were within his jurisdiction at the time of his election, and that they should be counted in estimating his salary.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

COUNTY TREASURER—COMMISSION OF UPON PERSONAL PROPERTY TAXES—Acts of March 25, 1831 (P. L. 208), June 1, 1889 (P. L. 427).

Notwithstanding the act of March 31, 1876 (P. L. 13), the county treasurer of Allegheny county is entitled to a commission of one per cent. upon gross amount of tax paid into State Treasury by the terms of the acts above mentioned, and under the decisions reported in 125 Pa. State Reports, 583, and 157 *Ibid.* 544, the method of making payment of such commission is largely within the discretion of the accounting officers of the Commonwealth.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Sept. 17, 1896,*

AMOS. H. MYLIN, *Auditor General* AND B. J. HAYWOOD, *State Treasurer:*

Gentlemen: This Department has been asked for an opinion upon the question of the right of the treasurer of Allegheny county to receive a commission of one per cent. upon the gross amount of the tax upon personal property assessed and levied annually in said county.

The eighth section of the act of 25th March, A. D. 1831 (P. L. 208), provides, *inter alia*, as follows:

“And it shall also be the duty of the treasurer of each county upon the settlement of his account as aforesaid, to pay into the State Treasury the amount so received by him, for which the treasurer of the county shall be allowed one per cent. upon the amount so paid by him.”

The treasurer of the county of Allegheny has received a one per cent. commission, as provided by the act of Assembly aforesaid, from the time of its approval down to the year 1894. In the meantime, however, the revenue act of 1889 was passed, which contained a proviso to the seventeenth section (P. L. 1889, p. 427), as follows:

“Provided, That city or county treasurers shall be permitted to retain for their use from the gross sum of money paid by them into the State Treasury the commissions named and prescribed by existing laws.”

It will be noticed that this act contemplated the payment by the State to the county treasurer of a commission such as was authorized by existing laws. The existing law referred to in the case now under consideration must be the act of 25th March, 1831, above mentioned.

It is contended, however, that the treasurer of the county of Allegheny, under the provisions of the act of 31st March, 1876 (P. L. 13), providing that the officers of said county should receive salaries instead of fees, repeals the commissions provided for in the acts hereinbefore set out. This question has been adjudicated in the case of *Philadelphia v. Martin*, 125 P. S., 583, where, in the syllabus, it is stated:

“A county treasurer, in acting for the Commonwealth in the collection of its revenues and accounting for the same, performs distinct and separate duties imposed upon him by the law, and in such services he does not act in his capacity as a county officer, but as the officer, agent or employe of the Commonwealth.”

This decision of the Supreme Court seems to be conclusive of the question raised as to the right of the treasurer of the county of Allegheny to receive his commission from the State for the collection of the personal property tax. Justice Dean, in the case of *Commonwealth v. Philadelphia County*, 157 P. S. 544, while holding that the city treasurer was not the agent of the Commonwealth in the collection of tax, reaffirms the doctrine of the *Martin* case, above referred to, so far as the right of the county treasurer to receive commissions is concerned, in the following language:

“*Philadelphia v. Martin*, 125 Pa., 583, cited by counsel for the county, is not in conflict with *Schuylkill County v. The Commonwealth*, for the question there was altogether different from this. It was: Does the commission which the State is required to pay to the county treasurer belong to the officer or to the county? The answer was, to the officer. The decision is authority on that point alone.”

Under the provisions of these acts of Assembly and the decisions of the courts thereon, it is quite clear that the commission should be

allowed the treasurer of said county. The only question that now remains to be settled is the method of making such payment. His right to receive the commission having been established, it is a matter of secondary importance as to the method employed in making the payment of the same. I am of opinion that it is within the purview of the authority of the accounting officers of the Commonwealth to establish a rule about the method in which the payment should be made that will meet the substantial ends of justice. Whether it is deducted by the county and then paid to the county treasurer, or whether the whole amount of this tax is paid into the State Treasury and then the commission be allowed the county treasurer, or whether the accounting officers require the county commissioners to pay to the county treasurer the commissions to which he is entitled, is a question largely within the discretion of the accounting officers. Such a rule should be adopted as will require the payment of the commissions to which the county treasurer is entitled.

Very respectfully,

JOHN P. ELKIN,
Deputy Attorney General.

INDEPENDENT PARTY OF ALLEGHENY COUNTY.

CERTIFICATES OF NOMINATION—PRESIDENTIAL ELECTORS—MEMBERS OF CONGRESS—STATE SENATORS—MEMBERS OF THE HOUSE OF REPRESENTATIVES.

The right to make nominations for Presidential electors depends upon the vote of the State at large. The Independent party to entitle it to file certificate of nomination for Presidential electors must show that at the "election next preceding" it polled in the State at least "two per centum of the largest entire vote for any office cast in the State." Such right cannot be based upon the vote cast in Allegheny county alone.

The Independent party having had no candidates in the several legislative, senatorial and congressional districts at the "election next preceding," there necessarily can be no returns upon which the Secretary of the Commonwealth can find that such party has the right under the law to file such certificates.

The vote cast by the Independent party for coroner at the election of 1896, in Allegheny county gives no power whatever to such party to claim the right to file nomination certificates for either the legislative, senatorial or congressional districts that may be in whole or in part comprised within the territorial limits of Allegheny county.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Oct. 1, 1896.

FRANK REEDER, *Secretary of the Commonwealth:*

Sir: I am in receipt of your communication of 30th ult., asking my opinion as to your duty under the following state of facts:

The Independent party of Allegheny county has offered to file in

your Department certificates of nomination for Presidential electors and for members of Congress in the 22d, 23d and 24th districts, and for Senators for the 43d and 45th Senatorial districts. Also members of the Legislature for the 1st, 2d, 3d, 5th, 6th, 7th and 8th Legislative districts. All of the certificates of nomination except those for Presidential electors and for member of Congress in the 24th district apply exclusively to offices within the territorial limits of the county of Allegheny. The applicants claim the right to file these certificates because of the fact, that at the general election in the fall of 1895 in Allegheny county the Independent party cast between nine thousand and ten thousand votes for the office of coroner, it being admitted that such vote was largely in excess of two per centum of the entire vote of the county. Upon this state of facts the following questions arise:

First. As to whether the vote for coroner in the county of Allegheny entitles the Independent party to file a certificate of nomination for Presidential electors.

Second. Whether such vote for coroner entitles the electors to file certificates by the same convention for the two Congressional districts within the limits of Allegheny county and for the 24th Congressional district, comprising the counties of Washington, Fayette, Greene and a part of Allegheny county, all of said certificates being certified by the same officers.

Third. Whether the Independent party has the right to file such certificates of nomination in the respective Senatorial and Legislative districts within the county of Allegheny.

The vote upon which the right to file such Congressional, Senatorial and Legislative certificates of nomination is based does not appear upon the election returns from such districts, but is estimated by the prothonotary of Allegheny county by a sworn statement from the returns in his office from the wards and precincts contained within such districts respectively.

By the second section of the act of 1893, commonly known as the Baker Ballot law, it is provided as follows:

“Any convention of delegates, or primary meeting of electors or caucus held under the rules of a political party, or any board authorized to certify nominations representing a political party, which, at the election next preceding, polled at least two per centum of the largest entire vote for any office cast in the State, or in the electoral district or division thereof for which such primary meeting, caucus, convention or board desires to make or certify nominations, may nominate one candidate for each office which is to be filled in the State, or in the said district or division, at the next ensuing election by causing a certificate of nomination to be drawn up and filed, as hereinafter provided.”

It is under this provision of the act that the Independent party

claims the right to file the certificates of nomination for the various offices above referred to.

The first question that arises is, whether the electors of Allegheny county in convention assembled, can nominate Presidential electors which under the law are to be voted for by the electors of the State at large. While it may be true that if the Independent party so-called, had cast a sufficient number of votes at the "election next preceding" equal to "two per centum of the largest entire vote for any office cast in the State," and that office being one upon which all the electors of the State were called upon to vote, the nomination certificate might be held valid, but we are confronted with the admitted fact that the convention nominating the Presidential electors in the case in hand was composed entirely of citizens of Allegheny county, basing their right to nominate upon a vote of the Independent party for coroner limited to Allegheny county alone, and we feel obliged, therefore, to reach the conclusion that the right to make such nomination for Presidential electors must depend upon the vote of the State at large cast by the Independent party at the "election next preceding," and not upon the vote cast by such party limited to the county of Allegheny.

The language of the second section already quoted refers to "Two per centum of the largest entire vote for any office cast in the State, or in the electoral district or division thereof, for which such primary meeting, caucus, convention or board desires to make or certify nominations." We feel clear, under a fair construction of this language, that to nominate Presidential electors the party nominating must have cast "two per centum of the largest entire vote for any office cast in the State at the election next preceding." So far as the right to nominate Presidential electors is concerned by the Independent party, it must be a party that cast at least two per centum of the largest entire vote for any office cast in the State. Presidential electors under our system are voted for by the electors of the State at large, and in our view, the party seeking to file a certificate of nomination for such Presidential electors must base its right to file such certificate upon the vote at the election "next preceding," equal to "two per centum of the largest entire vote for any office cast in the State." Or, to state it differently: The Independent party, in the case in hand, to entitle it to file the certificate of nomination for Presidential electors must show that at the "election next preceding" it polled in the State at least "two per centum of the largest entire vote for any office cast in the State." As it appears to have been a local name for a party organization, limited to the county of Allegheny, we are of the opinion that as such it has no right to file a certificate of nomination for Presidential electors, and that it is the duty of the Secretary of the Commonwealth to reject such nomination certificate.

The second and third questions may be answered together. The seven Legislative districts, the 43d and 45th Senatorial districts and the 22d and 23d Congressional districts, are wholly within the county of Allegheny, and the 24th district is in part in the county of Allegheny. The Independent party claims the right to file certificates of nomination for all these Legislative, Senatorial and Congressional districts because by calculation of the different wards and precincts in the districts respectively, it is found that on the vote for coroner in 1895, more than two per centum of the vote cast in each district was cast for the candidate for coroner nominated by the Independent party. To show this they produce the affidavit of a county official, who has made an examination of the returns, that such is the fact. We think, however, that the proper interpretation of the second section of the act of 1893, taken in connection with the other provisions in the act, has reference to the vote of the party seeking to file the certificate of nomination in the districts respectively as such. If the Independent party had no candidates in the several Legislative, Senatorial and Congressional districts at the "election next preceding," there necessarily can be no returns upon which the Secretary of the Commonwealth can find that such party has the right under the law to file such certificates. We are of the opinion, therefore, that the vote of the Independent party for the office of coroner at the fall election of 1895 in Allegheny county gives no power whatever to such party to claim the right to file nomination certificates for either the Legislative, Senatorial or Congressional districts that may in whole or in part be comprised within the territorial limits of Allegheny county. By section six of the act of 1893 it is made the duty of the officer or officers, to whom any nomination certificate or paper is brought for the purpose of filing, "to examine the said certificate or paper, and if it lacks sufficient signatures or be otherwise manifestly defective, it shall not be filed," etc. The right to file at all depends upon the political party having polled at least "two per centum of the largest entire vote cast for any office in the electoral district or division for which such primary meeting, caucus, convention or board desires to make or certify nominations;" and as to this I am of the opinion it is the duty of the Secretary of the Commonwealth to inquire and act accordingly. This being our view of the matter, we advise that the certificates of nomination for the several Legislative, Senatorial and Congressional districts offered to be filed by the Independent party of Allegheny county should be rejected. We are confirmed in this view of the law by the language of section 3 of the act of 1893 relating to the nomination of candidates by nomination papers. That section provides:

"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 general 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 papers 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. Each elector signing a nomination paper shall add to his signature his place of residence and occupation, and no person may subscribe to more than one nomination for each office to be filled."

This section provides for the nomination of candidates by petition of citizens, and it will be observed that where the nomination is for a State office, electors throughout the State may sign such nomination paper, but in all other nominations the electors who petition must be electors of the district or division to represent which the candidate is to be nominated.

Taking the case in hand as an illustration: A candidate for Congress in the 22d district could not run upon nomination papers signed by electors outside of the district, and the same is true of the Senatorial and Legislative districts. The provisions of the act carefully guard against candidates running upon nomination papers unless the electors petitioning are resident within the district, as it is made necessary by the act that "each elector signing a nomination paper shall add to his signature his place of residence and occupation." The act clearly contemplates a nomination by a State convention in case of a State officer, and by a district convention in case of Legislative, Senatorial or Congressional nomination. If it be necessary, as it appears to be, that a candidate for office to run upon nomination papers should be asked by the electors only of the district that he is to represent, it might well be argued further that a nominating convention nominating candidates for Congress in three Congressional districts, certified by the same president and secretaries, could scarcely be within the purview of the act and could hardly be regarded as a convention of the party of the district which alone should be authorized to make the nomination. Such convention might be composed wholly of representatives from one Congressional district, yet if these nominations were to be held good the nomination of a candidate for Congress in a particular district or districts might be made by a convention without a single representative from the district for which he is nominated.

For these reasons and others that might be mentioned, we are of the opinion that all the nomination certificates referred to in your letter of the 30th ult. should be rejected. If we are in error in this matter, we are glad to know that no injustice can be done any candidate because it is provided in section 6 of the act that your action in refusing to receive a certificate or paper may be reviewed by the

court of common pleas of the county by a writ of mandamus to compel its reception as of the date when it was brought to your office.

Very respectfully,

HENRY C. McCORMICK,
Attorney General.

INSANE HOSPITAL—APPROPRIATIONS FOR—"MAINTENANCE" DEFINED.

The word "maintenance" defined in the act of Assembly approved July 3, 1895 (P. L. 441), making an appropriation for the care and treatment of the chronic insane, includes the cost of the restoration, as nearly as may be of buildings used for hospital purposes and destroyed by fire, of same general character and approximate value as the old.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Oct. 27, 1896.

CADWALLADER BIDDLE, *General Agent and Secretary Board of Public Charities, 1224 Chestnut Street, Philadelphia, Pa.:*

Dear Sir: I am in receipt of yours of 12th inst., in which you say that you have been asked to approve an item in the maintenance account of the Danville Hospital, covering the difference between the amount received from the insurance and the cost of the re-erection of the buildings, consisting of barn, cattle sheds and other outbuildings belonging to the above institution, which were totally destroyed by fire.

The act of Assembly approved July 3, 1895 (P. L. 441), making an appropriation for the care and treatment of the indigent insane, provides, amongst other things, "that the words 'care, treatment and maintenance' used in this act shall be construed to mean medical and surgical treatment, and nursing, food and clothing and absolutely necessary repairs to the present buildings." Under a literal construction of this provision it would seem that the appropriation would cover the repair of the buildings if they had been partly destroyed by fire but not in case of their total destruction. No question would probably be raised even though ninety per cent. of the the buildings were destroyed if they could be repaired. The cost of such repairs would clearly come within the literal provision of the act.

In the case under consideration, however, the barn, cattle sheds and other outbuildings were entirely destroyed by fire. These buildings are absolutely necessary, as I assume, in order that the crops may be properly saved and the horses, cattle and other live stock properly housed. They constitute a part of the hospital plant, so to speak, and their restoration is essentially important.

I am disposed, therefore, to hold that the word "maintenance," although defined in the act to mean "medical and surgical treatment, and nursing, food and clothing, and absolutely necessary repairs

to the present buildings," includes the cost of the restoration, as nearly as may be, of the buildings destroyed, and of the same general character and approximate value. Not only do I believe that such rebuilding is warranted by the words "absolutely necessary repairs to the present buildings," but it may be well read in this case in connection with the word "food" for the inmates, which is largely raised upon the large farms connected with the hospital, these buildings being necessary to preserve the same.

This interpretation of the act in question is supported by an opinion delivered by Hon. W. U. Hensel, Attorney General, on November 21, 1893, defining the word "maintenance." Amongst other things, he says: "A fair and liberal construction of an 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," &c. (Report of the Attorney General, 1893, page 60).

I therefore advise that you would be warranted in approving such an expenditure of money as might be necessary to cover the difference between the insurance received and the cost of new buildings, as nearly as may be, of the same general character and quality as the old.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

KEYSTONE LAUNDRY COMPANY'S CHARTER.

WORDS AND PHRASES—MECHANICAL.

The word "mechanical" is defined as appertaining to or exhibiting constructive power; of or pertaining to mechanism or machinery; also dependent upon the use of machinery; to do something by mechanical means.

CORPORATIONS—ACT OF 1874—LAUNDRY, WHEN A MECHANICAL BUSINESS.

A laundry business, to be conducted by the use of machines and mechanical instruments, falls within the clause of the act of 1874, permitting the formation of corporations for "the carrying on of any mechanical, mining, quarrying or manufacturing business."

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, PA., Nov. 25, 1896.

FRANK REEDER, *Secretary of the Commonwealth:*

Sir: Yours of the 13th inst., enclosing the application of the Keystone Laundry Company to be incorporated under the provisions of the act entitled "An act to provide for the incorporation and regulation of certain corporations," approved 29th of April, 1874, and the several supplements thereto, and asking my opinion whether the application is within the provisions of said act, has been received.

The certificate states the purpose to be "cleansing, bleaching, starching and smoothing textile fabrics by the use of machines and mechanical instruments, and the application of skilled manual operation." The question raised is whether or not the purpose of the proposed corporation is a "mechanical business" within the meaning of the corporation act. The language of the eighteenth clause of the second section of the act of 1874 authorizes the creation of corporations for "the carrying on of any mechanical, mining, quarrying or manufacturing business." The signification of the word "mechanical," as given by the Century Dictionary, is "appertaining to or exhibiting constructive power; of or pertaining to mechanism or machinery; also dependent upon the use of mechanism; of the nature or character of a machine or machinery: as mechanical inventions or contrivances; to do something by mechanical means."

It is fair to assume, from the language of the certificate, that the corporation is to do a laundry business by the use of machines and mechanical instruments, and not by manual labor as formerly, before the invention of the machinery commonly used for such work. Webster defines a mechanic to be "one who works machines or instruments; a workman or laborer other than agricultural," and the word "mechanical" as "pertaining to, governed by, or in accordance with mechanics or the laws of motion; depending upon mechanism or machinery." The business of the proposed corporation is a useful and necessary one and in all our cities and larger towns is performed by machinery. The result is brought about by the use of machines and mechanical processes, and I can see no reason why this business should be excluded in construing the phrase "mechanical business" in the act of 1874. I am, therefore, of the opinion that, if in all other respects the certificate conforms to the requirements of law, the charter should be granted.

Your letter asks further that this Department indicate how far you may go in the incorporation of companies to do a mechanical business. This is understood to be a general inquiry, and I think it would be well to decide each case as it arises, determining each application upon its own facts. My view, however, of the case submitted, as above given, will advise you of our interpretation of the phrase "mechanical business," and the application to particular cases as they arise will, I think, not be difficult.

Very respectfully yours,

HENRY C. McCORMICK,
Attorney General.

MARRIED PERSONS' PROPERTY ACT.

MARRIED WOMAN—STATUTES CONSTRUED—ACTS OF 1887 AND 1893—CORPORATIONS.

A married woman is not disqualified by reason of her coverture from being one of the five corporators in a proposed corporation.

Acts of June 3, 1887, P. L. 332, and June 8, 1893, P. L. 344, construed and the decisions interpreting same reviewed.

Opinion of Attorney General in Piso Company's charter, 3 Dist. Reps. 812, dissented from.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Nov. 25, 1896.

FRANK REEDER, *Secretary of the Commonwealth:*

Sir: I am in receipt of your communication under date of September 8, 1896, in which you ask to be advised whether, under the act of June 3, 1887, known as "the married persons' property act," or the act of June 8, 1893, which repealed and replaced the former, a married woman can be named as one of the five corporators in a proposed corporation.

I have given this subject careful investigation and consideration, and, with much reluctance, feel obliged to reach a conclusion at variance with the holding of one of my predecessors in office, whose learning and ability entitle his opinions to the highest respect.

The act of Assembly approved June 3, 1887, P. L. 332, is entitled "An act relating to husband and wife, defining the rights to and power over their property, to make conveyances and contracts, authorizing them to sue and be sued upon their contracts and for torts, and defining the interest of husband and wife in the estate of each by will or otherwise."

The first section provides "that hereafter marriage shall not be held to impose any disability on or incapacity in a married woman as to the acquisition, ownership, possession, control, use or disposition of property of any kind in any trade or business in which she may engage, or for necessities, and for the use, enjoyment and improvement of her separate estate, real and personal, or her right and power to make contracts of any kind, and to give obligations binding herself therefor; but every married woman shall have the same right to acquire, hold, possess, improve, control, use or dispose of her property, real and personal, in possession or expectancy, in the same manner as if she were a feme sole, without the intervention of any trustee, and with all the rights and liabilities incident thereto, except as herein provided, as if she were not married. * * * Provided, however, That a married woman shall have no power to mortgage or convey her real estate, unless her husband join in such mortgage or conveyance."

By section 2 it is provided that "a married woman shall be capable of entering into and rendering herself liable upon any contract relating to any trade or business in which she may engage * * * in all respects as if she were a feme sole, and her husband need not be joined with her as plaintiff or defendant or be made a party to any action, suit or legal proceeding of any kind brought by or against her in her individual right."

The act of June 8, 1893, P. L. 344, is entitled "An act relating to husband and wife, enlarging her capacity to acquire and dispose of property, to sue and be sued, and to make a last will, and enabling them to sue and to testify against each other in certain cases."

The first section of this act, although differing in phraseology, is very similar in effect to the first section of the act of 1887, above cited. In this second section, it is provided that "hereafter a married woman may, in the same manner and to the same extent as an unmarried person, make any contract in writing or otherwise which is necessary, appropriate, convenient or advantageous to the exercise or enjoyment of the rights and powers granted by the foregoing section; but she may not become an accommodation endorser, maker, guarantor or surety for another, and she may not execute or acknowledge a deed or other written instrument conveying or mortgaging her real property, unless her husband join in such mortgage or conveyance." Section 3 provides that "hereafter a married woman may sue and be sued civilly in all respects and in any form of action, and with the same effect and results and consequences as an unmarried person," etc. Section 6 repeals the married persons' property act, approved June 3, 1887, and all other acts inconsistent with the act of 1893.

I cite both the acts of 1887 and 1893, although the former is repealed by the latter, because the similarity in their tenor makes applicable to the act of 1893 the decisions of the Supreme Court construing the act of 1887. This becomes manifest by a reading of the two acts of Assembly, but is made essentially important by the decision of our Supreme Court in the case of *Nuding et. al. v. Urich*, 169 Pa. 289, wherein it is held that the later act "was intended to remove some doubts about the construction of the first, and to place the rights and powers of married women upon a broader, more comprehensive and better defined basis than was accomplished by the act of 1887. The title of the act of 1893 expressly states, as one of the objects of the act, the enlarging her capacity to acquire and dispose of property."

In *Brooks et. al. v. Merchants' National Bank*, 125 Pa. 394, it is held that "promissory notes given subsequently to the act of June 3, 1887, by a firm of which a married woman is a member, in renewal of notes given by the same firm prior to said act, are valid as against

the married woman, the moral obligation to pay the original notes being a sufficient consideration for the renewals."

In *Koechling v. Henkel*, 144 Pa. 215, it is held that "since the passage of the act of June 3, 1887, a married woman may engage in business and enter into contracts in regard to it or in regard to the management of her separate estate as fully as a feme sole, and she may confess a judgment for an indebtedness whenever by her contract she may subject herself to a liability to be sued;" and it is further held in the same case that "so general is her power to contract now that her inability is the exception rather than the rule." To the same effect is *Latrobe B. & L. Ass'n v. Fritz*, 152 Pa. 224.

In *Milligan v. Phipps*, 152 Pa. 208, a case where a mechanic's lien had been entered against the property of a married woman, it was held that it was not necessary that the fact of coverture should be averred, and that the improvement is necessary for the preservation and enjoyment of her separate estate, and the court says: "It matters not, since the passage of the act of 1887, whether the erection of this building is necessary for the preservation or enjoyment of her separate estate. The act in question has made her the judge of its necessity. If we concede that it is not necessary, but, on the contrary, a foolish expenditure of money, it must be remembered that the act of Assembly now permits her to do foolish things. It has emancipated her from the shackles of the common law, so far as her separate property is concerned, and permits her to stand alone and exercise her own judgment."

In *Steffen v. Smith*, 159 Pa. 207, Mr. Chief Justice Sterrett, delivering the opinion of the court, uses the following language in construing the act of 1887: "The purpose of the Legislature was broad and liberal and must be interpreted in a like spirit. With the exception of such disabilities as are particularly specified in or contemplated by the provisions of the act, married women were emancipated from their common law disabilities and authorized to incur contract liabilities as if they were feme sole; and such has been the trend of our decisions whenever questions have arisen since the passage of the act."

In *Gockley v. Miller*, 162 Pa. 271, Mr. Justice Sterrett, again speaking for the court, construing the act of 1887, says: "We have uniformly held that its provisions have worked a radical change in the contractual capacity of married women, and hence many of the authorities which were applicable to questions arising before its passage are now inapplicable. * * * Instead of being strictly and narrowly exceptional as it was under the act of 1848, her capacity to contract has practically become the general rule."

The subscription to the capital stock of a corporation, whereby a married woman becomes an incorporator, is a contract upon her part to pay the sum so subscribed. Under the act of 1893 she has the

power of "rendering herself liable upon a contract relating to any trade or business in which she may engage * * * and for suing and being sued, either upon such contract or for torts done to or committed by her, in all respects as if she were a feme sole." Such contract is limited to the amount of the subscription, and is clearly not prohibited by any provision of the act of 1893. If she may make a subscription to the capital stock of a corporation and be liable on such contract, it would seem that she would be fully qualified as an original subscriber or incorporator and liable as such.

By the provisions of the act of 1893, a married woman "may not become accommodation endorser, maker, guarantor or surety for another, and she may not execute or acknowledge a deed or other written instrument conveying or mortgaging her real property, unless her husband join in such mortgage or conveyance." She is given the powers of a feme sole, with the exceptions above stated. The power to make a contract as a subscriber to the capital stock of a corporation is not within the exceptions. It would seem that she has all other contractual powers but those excepted, and this view is sustained by the Supreme Court in *Adams v. Gray*, 154 Pa. 261, wherein it is held that, "with the exception of such disabilities as are particularly specified in or contemplated by the provisions of the act, they are emancipated from their common law disabilities and authorized to incur contract liabilities, &c., as if they were feme sole."

That a married woman may now enter into the partnership relation and, as a result, become individually liable for all the debts of the firm, is made clear in *Brooks v. Merchants' National Bank*, supra. To hold that she may not enter into a contract to become a member of a corporation, with limited liability on her part, would seem to be a limitation upon her power in contravention of all the authorities above cited.

I am, therefore, of opinion that a married woman is not disqualified by reason of her coverture from being one of the five corporators in a proposed corporation.

Respectfully yours,

HENRY C. McCORMICK,
Attorney General.

VACANCIES—A TEMPORARY ABSENCE FROM THE DISTRICT CREATES NO VACANCY IN THE OFFICE OF JUSTICE OF THE PEACE.

A vacancy in office is not created by the temporary absence from the district of a justice of the peace, regularly elected and commissioned, if he did not intend to gain a residence elsewhere.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Dec. 11, 1896.*

DANIEL H. HASTINGS, *Governor:*

Dear Sir: In answer to the enclosed communication of B. F. Longenecker, a justice of the peace for the township of Bloomfield, in the county of Bedford, I have the honor to submit the following:

I am informed that Mr. Longenecker was duly elected and commissioned as justice of the peace in 1895 for a term of five years. Having been so commissioned, nothing but death, removal for cause, resignation or removal from the district can vacate his office. It further appears, however, that in March, 1896, he left the township in which he was elected and for which he was commissioned, for a temporary residence in another district. In his letter addressed to you, he positively states that his absence from the district was only temporary and that he did not intend to gain a residence elsewhere. The courts have frequently decided that residence is a question of intention, and if Mr. Longenecker did not intend to leave the township permanently and obtain a residence in another district, the law will not impute to him motives which he did not have. If he did not obtain a residence elsewhere, he could not be said to have vacated his office on this account. McKinney's Justice, Vol. 1, page 108, recognizes this principle. It is my opinion, therefore, that under the statement of facts contained in the letter above referred to, Mr. Longenecker has the right to continue to act as justice of the peace under his commission.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

COMMISSIONER OF BANKING—REPORT OF—DISTRIBUTION.

The publication and distribution of Part II of the report of the Commissioner of Banking should be made under the act of April 16, 1887 (P. L. 54), except as that act is modified by the act of June 24, 1895 (P. L. 244).

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., *Dec. 12, 1896.*

THOMAS ROBINSON, *Superintendent of Public Printing, Harrisburg, Pa.:*

Dear Sir: In answer to your communication of the 11th inst., addressed to the Attorney General, and asking for an opinion upon the question of the proper method of distributing Part II of the report

of the Commissioner of Banking for 1895, I have the honor to submit the following:

The act of April 16, A. D. 1887 (P. L. 54), Section 4, provides for the publication by the Auditor General of a report on banks and savings institutions. The number of volumes to be printed and the method of distributing the same were regulated by this act of Assembly. This remained the law until the act of February 11, 1895 (P. L. 2), was passed. By section 10 of this act the powers and duties of the Auditor General were transferred in general terms to the Commissioner of Banking. The act of 1895 is silent upon the question of the publication of a report. I see no difficulty, however, in construing the act of 1887 and the act of 1895 in *pari materia*. As above stated, the act of 1887 provides for the publication of the report and the method of distributing the same, while the act of 1895 designates another officer to perform the duties imposed upon the Auditor General by the act of 1887. The act of 1887 did not give the Auditor General the right to make a distribution of the report published under authority of the same. It must certainly follow that the Commissioner of Banking has no greater right under the act of 1895 than the Auditor General had under the act of 1887.

For these and other reasons I am of opinion that the publication and distribution of the report should be made under the authority of the act of 1887, except as that act is modified by the act of June 24, A. D. 1895 (P. L. 244). This latter act refers only to the number of reports to be allotted to the State Librarian.

Very respectfully yours,

JOHN P. ELKIN,
Deputy Attorney General.

STATE BOARD OF UNDERTAKERS—POWERS AND DUTIES OF—Act of June 7, 1895 (P. L. 167).

The jurisdiction of the Board is limited to cities of the classes named in the act.

The place of business not the residence of the applicant for examination is the test of licensure.

All applicants who certify their intention to engage in the business of undertaking in the cities designated must be examined by the Board.

Licenses can only be granted to individuals actively engaged in the practical work of undertaking.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, PA., Dec. 22, 1896.

J. LEWIS GOOD, *President State Board of Undertakers:*

Sir: In answer to the questions pertaining to the duties of your Board, which have been addressed to the Attorney General for his consideration, I have the honor to submit the following:

1. The act of June 7; A. D. 1895 (P. L. 167), which created the State Board of Undertakers, applies only to cities of the first, second

and third classes. Your Board is limited in its jurisdiction, by the terms of the act which created it, to cities of the classes named, and it has no right to give a license to anyone except those who do business in said cities. It is not necessary, however, that the undertaker be a resident of the cities named. The test is the place where he does the business. Any person who does business, or who desires to do business in cities of the classes above mentioned, has a right to present himself for examination by your Board and if found qualified and competent a license should be granted him.

2. It is the duty of your Board, in my opinion, to examine all applicants who certify to the fact that they intend to engage in the business of undertaking in cities of the first, second and third classes. In other words, under the law no undertaker has the right to engage in business in those cities who does not have a license. It necessarily follows that if your Board refuses to examine a person not already engaged in the business, it would raise a barrier against all outside undertakers who have not already been issued a license to do business in said cities. This certainly is not the intention of the law. I can see no reason why any person who desires to begin the business of undertaking in the cities of the classes above mentioned does not have the right to present himself to your Board for examination, and if found duly qualified a license should be granted him. I do not mean to say that every person who presents himself should be examined by your Board, but all persons who are willing to certify that it is their intention to engage in the business of undertaking in a city of the first, second or third class should be examined and a license granted if found competent.

3. I have already given an opinion to the effect that only those members of a partnership who actually engage in the work of an undertaker need be licensed. This is the answer to your third inquiry.

4. No one has a right to engage in business as an undertaker within the meaning of the law who does not have a license from your Board. On the other hand, you should not grant a license to anyone except it is his bona fide intention to engage in business as an undertaker.

5. I am of opinion that the law does not interfere with the right of a dealer in furniture, or any other dealer, to receive orders for funeral work and turn them over to a licensed undertaker. So long as the practical work is done by an undertaker who is properly licensed and qualified, I do not think it is the business of your Board to inquire into the method through which he receives his business.

6. No person has the right to take charge of a funeral and do the work of an undertaker in cities of the first, second and third classes without being licensed.

7. No one has a right to place out a sign as an undertaker or assistant without being properly licensed. To do so is in violation of the law.

8. What has already been said is a sufficient answer, in my opinion, to this question. If the manager of a business engages in the practical work of undertaking he must be licensed, but if he does work simply as a business manager and does not do any of the work of a practical undertaker it is not necessary that he should be licensed.

All of which is respectfully submitted.

JOHN P. ELKIN,
Deputy Attorney General.

SCHEDULE A.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Greabing & Lyon,	Tax, net earnings, 1893,	\$56 02	Suit pending.
Henry W. Armstrong,	Tax, net earnings, 1893,	38 28	Paid.
McCandless & Scott,	Tax, net earnings, 1893,	19 83	Paid.
G. D. Roach,	Tax, net earnings, 1893,	12 00	Insolvent.
Pittsburg and Western Railway Company,	Tax on capital stock,	47,893 73	Paid.
Pittsburg and Western Railway Company,	Tax on gross receipts,	37,946 72	Paid.
Pittsburg and Western Railway Company,	Tax on loans,	13,383 63	Paid.
Harry Conn, John D. Reese and John M. Davis, of Johnstown, Pa., sureties,	Claim for State moneys alleged to have been embezzled.	271 82	Paid.
Charles Coats, treasurer of Potter county,	Balance on annual statement,	41 30	Paid.
Sam'l S. Laughlin, register and recorder of Clarion county,	Balance on annual statement,	99 24	Paid.
The commissioners of Schuylkill county,	Claim for boarding, etc., indig- ent insane.	719 86	Paid.
The directors of the poor of Schuylkill county,	Claim for boarding, etc., indig- ent insane.	658 85	Paid.
Frank J. Moody,	Tax on net earnings,	75 00	Insolvent.
Harrison Snyder and Son,	Tax on net earnings,	118 18	Paid.
Harrison Snyder and Son,	Tax on net earnings,	956 55	Withdrawn by Auditor General.
Altoona, Clearfield and Northern Railroad Company, ..	Penalty,	5,000 00	Suit pending.
New York, Susquehanna and Western Railroad Com- pany,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Pittsburg and Castle Shannon Railroad Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
The Grand View Traction Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
White Electric Traction Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Etna and Glenshaw Street Railway Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Dravosburg and Elizabeth Street Railway Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.

Lackawanna Valley Rapid Transit Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Hill Top Traction Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
North Philadelphia Passenger Railway Company,	Penalty,	5,000 00	Defunct.
Mt. Washington Street Railway Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Dravosburg, Mendelssohn and Elizabeth Street Railway Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Allegheny Valley Street Railway Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Nunnery Hill Incline Plane Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Columbia, Ironville and Mt. Joy Street Railway Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Philadelphia Rapid Transit Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Grand View Avenue Street Railway Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Northumberland, Bloomsburg and Scranton Railway Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Nanticoke and Newport Railroad Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Somerset County Railroad Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Ulysses and Pine Creek Railroad Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Athens and South Waverly Railroad Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Homestead and Streets Run Railroad Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Portage Creek and Rich Valley Railroad Company,	Penalty,	5,000 00	Judgment for Commonwealth.
Streets Run and Dravosburg Railroad Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Susquehanna Railroad Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Bellevue and Pittsburg Street Railway Company,	Penalty,	5,000 00	Judgment for Commonwealth.
Reynoldton and Port Vue Traction Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Central Passenger Railroad Company,	Penalty,	5,000 00	Withdrawn by Sec. of Int. Aff.
Columbia county,	Claim for board, etc., indigent insane.	279 82	Suit pending.
Hestonville, Mantua and Fairmount Passenger Railroad Company,	Tax on gross receipts,	1,891 24	Paid.
Hestonville, Mantua and Fairmount Passenger Railroad Company,	Tax on capital stock,	12,505 67	Paid.
Hestonville, Mantua and Fairmount Passenger Railroad Company,	Tax on loans,	5,415 94	Paid.
Automatic Sprinkler Mutual Fire Insurance Company, of Philadelphia,	Penalty,	1,000 00	Judgment for Commonwealth, in hands of receiver.
Reliable Mutual Fire Insurance Company, of Philadelphia,	Penalty,	1,000 00	Judgment for Commonwealth, in hands of receiver.
Rittenhouse Mutual Fire Insurance Company, of Philadelphia,	Fee for filing annual statement,	20 00	Paid.
Builders' Mutual Fire Insurance Company, of Philadelphia,	Fee for filing annual statement,	20 00	Paid.
Wissahickon Mutual Fire Insurance Company, of Philadelphia,	Fee for filing annual statement,	20 00	Paid.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Palm Garden Improvement Company,	Tax on loans,	269 52	Paid.
Palm Garden Improvement Company,	Tax on capital stock,	218 70	Paid.
Point Bridge Company,	Tax on loans,	4,988 00	Withdrawn by Auditor General.
Point Bridge Company,	Tax on capital stock,	5,298 03	Withdrawn by Auditor General.
Pittsburg and Birmingham Traction Company,	Tax on capital stock,	5,100 00	Paid.
Pittsburg and Birmingham Traction Company,	Tax on capital stock,	3,900 00	Paid.
Pittsburg and Birmingham Traction Company,	Tax on capital stock,	4,800 00	Pending.
Pittsburg and Birmingham Traction Company,	Tax on loans,	5,402 60	Paid.
Pittsburg and Birmingham Traction Company,	Tax on loans,	5,259 32	Pending.
Pittsburg and Birmingham Traction Company,	Tax on loans,	5,442 40	Pending.
Nelson Stranberg, late captain Co. E., Ninth regt., N. G. P., and Wm. Gardner and John F. Evans, his sureties,	Claim for State moneys not properly accounted for.	435 92	Pending.
Bosshardt and Wilson Company,	Tax on loans,	380 00	Judgment for Commonwealth, in hands of receiver.
Pittsburg and Western Railway Company,	Tax on loans,	3,386 99	Paid.
Pittsburg and Western Railway Company,	Tax on gross receipts,	6,695 47	Paid.
Pittsburg and Northern Railroad Company,	Tax on capital stock,	22 50	Paid.
Pittsburg and Northern Railroad Company,	Tax on gross receipts,	6 28	Paid.
Manville Covering Company,	Tax on capital stock,	12 50	Paid.
LaRoche Electric Works,	Tax on capital stock,	187 50	Pending; in hands of assignee.
LaRoche Electric Works,	Tax on loans,	41 15	Pending; in hands of assignee.
LaRoche Electric Works,	Tax on loans,	66 50	Pending; in hands of assignee.
LaRoche Electric Works,	Bonus,	312 50	Pending; in hands of assignee.
Mitchell Manufacturing Company,	Bonus,	312 50	Defunct.
Kensington Electric Company,	Tax on loans,	66 88	Paid.
Kensington Electric Company,	Tax on capital stock,	660 03	Paid.
Eastern Pennsylvania Phonograph Company,	Tax on capital stock,	236 92	Paid.
Beech Valley Coal and Iron Company,	Bonus,	625 00	Paid.
Danielville Slate Company,	Tax on loans,	95 00	Paid.
Pittsburg and Belleverson Coal Company,	Tax on capital stock,	725 00	Pending; in hands of receiver.
Pittsburg and Belleverson Coal Company,	Tax on loans,	357 20	Pending; in hands of receiver.
Mont Alto Iron Company,	Tax on capital stock,	200 15	Insolvent.

Mont Alto Iron Company,	Tax on loans,	1,715 70	Insolvent.
Somerset and Johnsonburg Manufacturing Company, ..	Tax on loans,	738 14	Pending.
Lackawanna Electric Power Company,	Tax on capital stock,	151 25	Paid.
Lackawanna Electric Power Company,	Tax on capital stock,	151 25	Pending.
Lackawanna Electric Power Company,	Tax on loans,	100 32	Pending.
Collingdale Land and Improvement Company,	Tax on capital stock,	39 00	Pending.
Kensington Electric Company,	Tax on capital stock,	660 03	Pending.
Kensington Electric Company,	Tax on loans,	66 88	Pending.
York Haven Paper Company,	Tax on loans,	1,136 96	Pending.
Huntingdon Electric Light Company,	Tax on capital stock,	303 60	Pending.
Huntingdon Electric Light Company,	Tax on loans,	476 52	Pending.
Bloomsburg Banking Company,	Tax on net earnings,	598 50	Pending.
Chester Lumber and Coal Company,	Tax on capital stock,	168 75	Judgment for Commonwealth; before Board of Public Acc'ts.
Chester Lumber and Coal Company,	Tax on capital stock,	375 00	Judgment for Commonwealth; before Board of Public Acc'ts.
Bethlehem and South Bethlehem Street Railway Com- pany,	Tax on capital stock,	100 00	Judgment; paid.
Bethlehem and South Bethlehem Street Railway Com- pany,	Tax on capital stock,	40 00	Judgment; paid.
Bethlehem and Allentown Street Railway Company, ..	Tax on capital stock,	50 00	Judgment; paid.
Bethlehem and Allentown Street Railway Company, ..	Tax on capital stock,	20 00	Judgment; paid.
Hyde Land Company,	Tax on capital stock,	10 00	Paid.
Hyde Land Company,	Tax on capital stock,	130 00	Paid.
Hyde Land Company,	Tax on capital stock,	100 00	Paid.
Hyde Land Company,	Tax on loans,	35 14	Paid.
Hyde Land Company,	Tax on loans,	35 14	Paid.
Consumers' Gas Company (Wilkes-Barre),	Tax on capital stock,	78 26	Suit discontinued.
Consumers' Gas Company (Wilkes-Barre),	Tax on capital stock,	262 50	Suit discontinued.
Consumers' Gas Company (Wilkes-Barre),	Tax on loans,	42 75	Suit discontinued.
Chester Land and Improvement Company,	Tax on capital stock,	219 15	Judgment for Commonwealth.
Chester Land and Improvement Company,	Tax on capital stock,	219 15	Judgment for Commonwealth.
Chester Land and Improvement Company,	Tax on capital stock,	365 25	Judgment for Commonwealth.
Chester Land and Improvement Company,	Tax on capital stock,	365 25	Judgment for Commonwealth.
Chester Land and Improvement Company,	Tax on capital stock,	365 25	Judgment for Commonwealth.
Chester Land and Improvement Company,	Tax on loans,	108 02	Judgment for Commonwealth.
Chester Land and Improvement Company,	Tax on loans,	94 06	Judgment for Commonwealth.
Chester Land and Improvement Company,	Tax on loans,	86 93	Judgment for Commonwealth.
Chester Land and Improvement Company,	Tax on loans,	243 20	Judgment for Commonwealth.
Chester Land and Improvement Company,	Tax on loans,	245 10	Judgment for Commonwealth.
Chester Land and Improvement Company,	Tax on loans,	241 67	Judgment for Commonwealth.
The Commercial Loan and Trust Company,	Tax on capital stock,	283 57	Defunct.
The Commercial Loan and Trust Company,	Tax on loans,	54 37	Defunct.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
The Allentown Electric Light and Power Company,	Tax on capital stock,	1,125 05	Judgment; paid.
The Allentown Electric Light and Power Company,	Tax on capital stock,	1,099 95	Judgment; paid.
The Allentown Electric Light and Power Company,	Tax on gross receipts,	213 11	Judgment; paid.
The Allentown Electric Light and Power Company,	Tax on gross receipts,	179 30	Judgment; paid.
Melrose Land and Improvement Company,	Tax on capital stock,	167 66	Paid.
Melrose Land and Improvement Company,	Tax on capital stock,	287 00	Paid.
M. Enz Brewing Company,	Tax on capital stock,	73 53	Judgment for Commonwealth.
M. Enz Brewing Company,	Tax on loans,	91 20	Judgment for Commonwealth.
Scranton Traction Company,	Tax on capital stock,	1,000 00	Paid.
Scranton Traction Company,	Tax on gross receipts,	926 16	Paid.
Scranton Traction Company,	Tax on gross receipts,	1,103 33	Paid.
Columbia Electric Light Company,	Tax on capital stock,	331 50	Paid.
Columbia Electric Light Company,	Tax on loans,	114 00	Paid.
Columbia Electric Light Company,	Tax on loans,	114 00	Paid.
Columbia Electric Light Company,	Tax on gross receipts,	96 57	Paid.
Columbia Electric Light Company,	Tax on gross receipts,	86 41	Paid.
Imperial Slate Company,	Tax on capital stock,	145 04	Paid.
Imperial Slate Company,	Tax on capital stock,	145 04	Paid.
Imperial Slate Company,	Tax on capital stock,	157 50	Paid.
Imperial Slate Company,	Tax on capital stock,	157 50	Paid.
Imperial Slate Company,	Tax on capital stock,	99 00	Paid.
Imperial Slate Company,	Tax on capital stock,	202 50	Paid.
Burrell Improvement Company,	Tax on capital stock,	1,433 93	Partly paid.
Burrell Improvement Company,	Tax on capital stock,	1,252 50	Paid.
Burrell Improvement Company,	Tax on loans,	74 61	Paid.
Burrell Improvement Company,	Tax on loans,	41 80	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on capital stock,	144 00	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on capital stock,	417 50	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on capital stock,	386 12	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on capital stock,	240 00	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on loans,	114 00	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on loans,	152 00	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on loans,	310 01	Paid.

Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on loans,	266 10	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on gross receipts,	27 91	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on gross receipts,	81 53	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on gross receipts,	122 47	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on gross receipts,	94 13	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on gross receipts,	127 70	Paid.
Mt. Jewett, Kinzua and Rittersville Railroad Company,	Tax on gross receipts,	139 84	Paid.
McKeesport and Wilmerding Land Company,	Tax on capital stock,	260 00	Paid.
McKeesport and Wilmerding Land Company,	Tax on capital stock,	253 37	Paid.
Northumberland Improvement Company,	Tax on capital stock,	172 80	Defunct.
Northumberland Improvement Company,	Tax on capital stock,	220 73	Defunct.
Northumberland Improvement Company,	Tax on capital stock,	220 73	Defunct.
Northumberland Improvement Company,	Tax on loans,	135 09	Defunct.
Northumberland Improvement Company,	Tax on loans,	146 49	Defunct.
Northumberland Improvement Company,	Tax on loans,	155 04	Defunct.
McKeesport and Wilmerding Land Company,	Tax on loans,	205 80	Paid.
McKeesport and Wilmerding Land Company,	Tax on loans,	210 80	Paid.
Burrell Water Company,	Tax on capital stock,	1 00	Paid.
Burrell Water Company,	Tax on capital stock,	16 85	Paid.
Burrell Water Company,	Tax on capital stock,	60	Paid.
Gettysburg Electric Railway Company,	Tax on gross receipts,	60 11	Judgment for Commonwealth; in hands of receiver.
Gettysburg Electric Railway Company,	Tax on gross receipts,	13 92	Judgment for Commonwealth; in hands of receiver.
Gettysburg Electric Railway Company,	Tax on gross receipts,	63 32	Judgment for Commonwealth; in hands of receiver.
Gettysburg Electric Railway Company,	Tax on loans,	718 20	Judgment for Commonwealth; in hands of receiver.
Gettysburg Electric Railway Company,	Tax on loans,	760 00	Judgment for Commonwealth; in hands of receiver.
Gettysburg Electric Railway Company,	Tax on capital stock,	500 00	Judgment for Commonwealth; in hands of receiver.
Gettysburg Electric Railway Company,	Tax on capital stock,	500 00	Judgment for Commonwealth; in hands of receiver.
Blue Mountain Railroad Company,	Tax on capital stock,	512 50	Judgment for Commonwealth.
Gallitzin Electric Light Company,	Tax on capital stock,	5 33	Judgment for Commonwealth.
Gallitzin Electric Light Company,	Tax on loans,	53 20	Judgment for Commonwealth.
Gallitzin Electric Light Company,	Tax on loans,	26 60	Judgment for Commonwealth.
Electric Light, Heat and Power Company, Gettysburg,	Tax on gross receipts,	19 00	Judgment for Commonwealth.
Electric Light, Heat and Power Company, Gettysburg,	Tax on gross receipts,	20 07	Judgment for Commonwealth.
Electric Light, Heat and Power Company, Gettysburg,	Tax on gross receipts,	9 36	Judgment for Commonwealth.
Electric Light, Heat and Power Company, Gettysburg,	Tax on capital stock,	2 50	Judgment for Commonwealth.
Electric Light, Heat and Power Company, Gettysburg,	Tax on capital stock,	48 95	Judgment for Commonwealth.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Iron City and Hammondville Improvement Company, ..	Tax on capital stock,	150 00	Judgment for Commonwealth.
Iron City and Hammondville Improvement Company, ..	Tax on loans,	25 64	Judgment for Commonwealth.
Altoona, Clearfield and Northern Railroad Company, ...	Tax on gross receipts,	73 30	Judgment for Commonwealth; in hands of receiver.
Altoona, Clearfield and Northern Railroad Company, ...	Tax on capital stock,	106 88	Judgment for Commonwealth; in hands of receiver.
Altoona, Clearfield and Northern Railroad Company, ...	Tax on loans,	118 42	Judgment for Commonwealth; in hands of receiver.
Avondale Marble Company,	Tax on loans,	248 69	Judgment for Commonwealth.
East Park Land Company,	Tax on capital stock,	22 65	Paid.
Avondale Marble Company,	Tax on capital stock,	875 00	Judgment for Commonwealth.
Peoples' Incandescent Light Company, Meadville,	Tax on gross receipts,	60 29	Paid.
Peoples' Incandescent Light Company, Meadville,	Tax on gross receipts,	59 58	Paid.
Peoples' Incandescent Light Company, Meadville,	Tax on gross receipts,	56 12	Paid.
Peoples' Incandescent Light Company, Meadville,	Tax on gross receipts,	55 12	Paid.
Peoples' Incandescent Light Company, Meadville,	Tax on gross receipts,	52 47	Paid.
Peoples' Incandescent Light Company, Meadville,	Tax on loans,	41 80	Paid.
Peoples' Incandescent Light Company, Meadville,	Tax on loans,	66 00	Paid.
Peoples' Incandescent Light Company, Meadville,	Tax on capital stock,	225 50	Paid.
Peoples' Incandescent Light Company, Meadville,	Tax on capital stock,	205 00	Paid.
Peoples' Incandescent Light Company, Meadville,	Tax on capital stock,	220 00	Paid.
American Railway Publishing Company,	Tax on capital stock,	123 56	Defunct.
Lewisburg Light, Heat and Power Company,	Tax on gross receipts,	11 53	Paid.
Lewisburg Light, Heat and Power Company,	Tax on gross receipts,	10 66	Paid.
Lewisburg Light, Heat and Power Company,	Tax on gross receipts,	9 74	Paid.
Anthracite Electric Light and Power Company,	Tax on gross receipts,	31 17	Paid.
Excelsior Flint Glass Company,	Tax on capital stock,	44 50	Paid.
Excelsior Flint Glass Company,	Tax on loans,	51 30	Paid.
Athens, Sayre and Waverly Electric Street Railway Company,	Tax on capital stock,	45 00	Judgment for Commonwealth.
Glen Willow Ice Manufacturing Company,	Tax on capital stock,	120 31	Withdrawn by Auditor General.
Allentown Passenger Railway Company,	Tax on capital stock,	20 00	Judgment; paid.
Allentown Passenger Railway Company,	Tax on capital stock,	50 00	Judgment; paid.

Catasauqua Gas Company,	Tax on capital stock,	86 45	Paid.
Catasauqua Electric Light and Power Company,	Tax on capital stock,	170 00	Paid.
Nicholson Water Company,	Tax on capital stock,	113 30	Paid.
American Buttonhole, Overseaming and Sewing Machine Company,	Tax on loans,	182 40	Paid.
Dushore Water Company,	Tax on capital stock,	2 00	Judgment for Commonwealth.
Nippono Park Association,	Tax on capital stock,	26 21	Judgment for Commonwealth.
Nippono Park Association,	Tax on capital stock,	10 50	Judgment for Commonwealth.
Columbia Coal Company,	Tax on capital stock,	74 97	Judgment for Commonwealth.
Alder Run Coal Company,	Tax on capital stock,	75 00	Judgment for Commonwealth.
Hanover Light, Heat and Power Company,	Tax on gross receipts,	44 49	Paid.
Hanover Light, Heat and Power Company,	Tax on gross receipts,	25 41	Paid.
Hanover Light, Heat and Power Company,	Tax on gross receipts,	40 36	Paid.
Hutchinson Storage Yard Company,	Tax on capital stock,	11 78	Defunct.
Catasauqua and Northern Street Railway Company,	Tax on capital stock,	7 00	Judgment; paid.
Catasauqua and Northern Street Railway Company,	Tax on capital stock,	7 00	Judgment; paid.
Reading Brewing Company,	Tax on capital stock,	450 00	Paid.
Sheridan Iron Company,	Tax on loans,	821 95	Defunct.
Westmoreland and Cambria Natural Gas Company,	Tax on loans,	Suit pending.
Rochester Homestead Loan and Trust Company,	Tax on capital stock,	25 20	Paid.
Rochester Homestead Loan and Trust Company,	Tax on loans,	10 12	Paid.
Rochester Homestead Loan and Trust Company,	Tax on loans,	2 85	Paid.
Penn Incline Plane Company,	Tax on gross receipts,	79 71	Judgment for Commonwealth.
Penn Incline Plane Company,	Tax on gross receipts,	89 22	Judgment for Commonwealth.
Penn Incline Plane Company,	Tax on capital stock,	577 50	Judgment for Commonwealth.
Penn Incline Plane Company,	Tax on capital stock,	150 00	Judgment for Commonwealth.
Penn Incline Plane Company,	Tax on loans,	356 25	Judgment for Commonwealth.
Penn Incline Plane Company,	Tax on loans,	356 25	Judgment for Commonwealth.
Percy Mining Company,	Tax on capital stock,	60 00	Paid.
Percy Mining Company,	Tax on capital stock,	99 00	Judgment for Commonwealth.
Percy Mining Company,	Tax on capital stock,	90 00	Judgment for Commonwealth.
Percy Mining Company,	Tax on capital stock,	54 00	Judgment for Commonwealth.
Percy Mining Company,	Tax on capital stock,	45 00	Judgment for Commonwealth.
Percy Mining Company,	Tax on capital stock,	150 00	Partly paid.
Percy Mining Company,	Tax on capital stock,	30 00	Paid.
Percy Mining Company,	Tax on capital stock,	26 23	Paid.
Prospect Land Company,	Tax on capital stock,	183 75	Paid.
Phoenix Mining and Manufacturing Company,	Tax on capital stock,	37 50	Defunct.
Phoenix Mining and Manufacturing Company,	Tax on loans,	108 53	Defunct.
Riverton Water Company,	Tax on capital stock,	3 33	Paid.
Riverton Water Company,	Tax on capital stock,	100 00	Paid.
Rittersville Hotel Company,	Tax on capital stock,	150 00	Judgment; paid.
Rittersville Hotel Company,	Tax on capital stock,	200 00	Judgment; paid.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Rittersville Hotel Company,	Tax on loans,	20 26	Judgment; paid.
Conneaut Lake Exposition Company,	Tax on capital stock,	114 95	Paid.
Conneaut Lake Exposition Company,	Tax on loans,	71 50	Discontinued.
Electric City Land Improvement Company,	Tax on capital stock,	62 50	Partly paid.
Allentown and Bethlehem Rapid Transit Company, ...	Tax on gross receipts,	574 89	Judgment; paid.
Allentown and Bethlehem Rapid Transit Company, ...	Tax on gross receipts,	758 04	Judgment; paid.
Allentown and Bethlehem Rapid Transit Company, ...	Tax on loans,	304 00	Judgment; paid.
Allentown and Bethlehem Rapid Transit Company, ...	Tax on loans,	13 30	Judgment; paid.
Allentown and Bethlehem Rapid Transit Company, ...	Tax on capital stock,	1,050 00	Judgment; paid.
Allentown and Bethlehem Rapid Transit Company, ...	Tax on capital stock,	2,100 00	Judgment; paid.
Brady's Bend Coal and Iron Company,	Tax on capital stock,	2 08	Paid.
Kraus-Merkel Malting Company,	Tax on capital stock,	319 90	Paid.
Municipal Gas Light Company,	Tax on capital stock,	60 60	Defunct.
Municipal Gas Light Company,	Tax on capital stock,	60 60	Defunct.
Municipal Gas Light Company,	Tax on capital stock,	12 00	Defunct.
Municipal Gas Light Company,	Tax on capital stock,	15 00	Defunct.
Arnholt and Schafer Brewing Company,	Tax on capital stock,	1,575 00	Paid.
Scranton Stone Company,	Tax on capital stock,	100 00	Judgment for Commonwealth.
Union Storage Company,	Tax on capital stock,	2,500 00	Paid.
Union Storage Company,	Tax on loans,	83 89	Paid.
Middleburg Water Company,	Tax on capital stock,	9 37	Judgment for Commonwealth.
Bloomsburg Furniture Company,	Tax on capital stock,	3 00	Paid.
Bloomsburg Furniture Company,	Tax on loans,	78 66	Paid.
Allentown and Lehigh Valley Traction Company,	Tax on capital stock,	1,575 00	Judgment; paid.
Allentown and Lehigh Valley Traction Company,	Tax on gross receipts,	389 04	Judgment for Commonwealth.
Allentown and Lehigh Valley Traction Company,	Tax on gross receipts,	756 33	Judgment for Commonwealth.
American Bangor Slate Company,	Tax on capital stock,	240 00	Suit pending.
American Bangor Slate Company,	Tax on capital stock,	240 00	Suit pending.
American Bangor Slate Company,	Tax on capital stock,	255 00	Suit pending.
American Bangor Slate Company,	Tax on capital stock,	240 00	Suit pending.
American Bangor Slate Company,	Tax on capital stock,	252 00	Suit pending.
American Bangor Slate Company,	Tax on capital stock,	298 42	Suit pending.
American Bangor Slate Company,	Tax on capital stock,	300 00	Suit pending.

American Bangor Slate Company,	Tax on capital stock,	300 00	Suit pending.
Troy Hill Inclined Plane and Bridge Company,	Tax on capital stock,	120 00	Paid.
Troy Hill Inclined Plane and Bridge Company,	Tax on loans,	285 00	Paid.
Troy Hill Inclined Plane and Bridge Company,	Tax on loans,	285 00	Paid.
Troy Hill Inclined Plane and Bridge Company,	Tax on loans,	299 25	Paid.
Troy Hill Inclined Plane and Bridge Company,	Tax on loans,	299 25	Paid.
Troy Hill Inclined Plane and Bridge Company,	Tax on loans,	299 25	Paid.
Waynesboro Water Company,	Tax on capital stock,	120 00	Paid.
Waynesboro Water Company,	Tax on capital stock,	120 00	Paid.
Waynesboro Water Company,	Tax on capital stock,	200 00	Paid.
Waynesboro Water Company,	Tax on capital stock,	287 67	Paid.
Waynesboro Water Company,	Tax on loans,	105 45	Paid.
Waynesboro Water Company,	Tax on loans,	105 45	Paid.
Waynesboro Water Company,	Tax on loans,	144 40	Paid.
Waynesboro Water Company,	Tax on loans,	171 00	Paid.
Waynesboro Gas Light Company,	Tax on loans,	47 50	Judgment for Commonwealth.
Columbian Land and Improvement Company,	Tax on capital stock,	60 50	Paid.
Columbian Land and Improvement Company,	Tax on capital stock,	60 50	Paid.
West Ridge Coal Company,	Tax on capital stock,	350 00	Paid.
Westminster Coal Company,	Tax on loans,	19 00	Paid.
Westminster Coal Company,	Tax on capital stock,	15 00	Paid.
T. B. Clark & Company, incorporated,	Tax on capital stock,	5 00	Paid.
T. B. Clark & Company, incorporated,	Tax on loans,	34 77	Paid.
T. B. Clark & Company, incorporated,	Tax on loans,	33 06	Paid.
T. B. Clark & Company, incorporated,	Tax on loans,	29 83	Paid.
Scranton Rapid Transit Company,	Tax on capital stock,	3 00	Judgment for Commonwealth.
Scranton Rapid Transit Company,	Tax on capital stock,	10 00	Judgment for Commonwealth.
Wilson Snyder Manufacturing Company,	Tax on loans,	185 25	Judgment for Commonwealth.
Wilson Snyder Manufacturing Company,	Tax on loans,	157 47	Judgment for Commonwealth.
Wilson Snyder Manufacturing Company,	Tax on loans,	120 41	Judgment for Commonwealth.
Scranton Suburban Railway Company,	Tax on loans,	45 60	Discontinued.
Scranton Suburban Railway Company,	Tax on loans,	30 40	Discontinued.
Scranton Suburban Railway Company,	Tax on capital stock,	330 30	Discontinued.
Scranton Suburban Railway Company,	Tax on capital stock,	333 30	Discontinued.
Scranton Passenger Railway Company,	Tax on capital stock,	25 00	Discontinued.
Scranton Passenger Railway Company,	Tax on capital stock,	125 00	Discontinued.
Standard Coal Company,	Tax on capital stock,	642 50	Judgment for Commonwealth.
Standard Coal Company,	Tax on loans,	222 68	Judgment for Commonwealth.
Standard Coal Company,	Bonus,	375 00	Judgment for Commonwealth.
West Philadelphia Steam Heat Company,	Tax on capital stock,	2 79	Judgment for Commonwealth.
West Philadelphia Steam Heat Company,	Tax on capital stock,	28 57	Judgment for Commonwealth.
Wilkes-Barre and Suburban Street Railway Company,	Tax on capital stock,	500 00	Paid.
Wilkes-Barre and West Side Railway Company,	Tax on capital stock,	500 00	Paid.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Wilkes-Barre and Kingston Passenger Railway Company,	Tax on capital stock,	500 00	Paid.
Industry Savings and Life Insurance Company,	Tax on capital stock,	12 00	Judgment for Commonwealth; insolvent.
Industry Savings and Life Insurance Company,	Tax on capital stock,	12 00	Judgment for Commonwealth; insolvent.
Industry Savings and Life Insurance Company,	Tax on capital stock,	6 00	Judgment for Commonwealth; insolvent.
Industry Savings and Life Insurance Company,	Tax on capital stock,	6 00	Judgment for Commonwealth; insolvent.
Industry Savings and Life Insurance Company,	Tax on capital stock,	13 00	Judgment for Commonwealth; insolvent.
Oil City Electric Company,	Tax on capital stock,	99 00	Paid.
Oil City Electric Company,	Tax on capital stock,	135 00	Paid.
Oil City Electric Company,	Tax on capital stock,	420 75	Paid.
Oil City Electric Company,	Tax on gross receipts,	88 92	Paid.
Oil City Electric Company,	Tax on gross receipts,	73 04	Paid.
Oil City Electric Company,	Tax on gross receipts,	79 99	Paid.
Oil City Electric Company,	Tax on gross receipts,	75 05	Paid.
Oil City Electric Company,	Tax on gross receipts,	77 18	Paid.
Oil City Electric Company,	Tax on loans,	160 55	Paid.
Olyphant Trust Company,	Tax on capital stock,	221 90	Judgment for Commonwealth.
Olyphant Trust Company,	Bonus,	62 50	Judgment for Commonwealth.
Olyphant Trust Company,	Bonus,	93 75	Judgment for Commonwealth.
Olyphant Trust Company,	Bonus,	93 75	Judgment for Commonwealth.
Scranton and Carbondale Traction Company,	Bonus,	12 50	Paid.
Scranton and Carbondale Traction Company,	Bonus,	2,487 50	Discontinued.
Scranton and Carbondale Traction Company,	Bonus,	2,487 50	Discontinued.
Electric Light, Heat and Power Company, Gettysburg,	Bonus,	31 25	Suit pending.
Chester Land and Improvement Company,	Bonus,	125 00	Partly paid.
Burrell Water Company,	Bonus,	247 50	Judgment for Commonwealth.
Gallitzin Electric Light Company,	Bonus,	25 00	Judgment for Commonwealth.
Mitchell Manufacturing Company,	Bonus,	1 25	Defunct.

Mitchell Manufacturing Company,	Bonus,	311 25	Defunct.
Avondale Marble Company,	Bonus,	312 50	Paid.
Mutual Brewing Company, of Philadelphia,	Bonus,	87 50	Paid.
Mutual Brewing Company, of Philadelphia,	Bonus,	87 50	Paid.
Alder Run Coal Company,	Bonus,	37 50	Judgment for Commonwealth.
Prospect Land Company,	Bonus,	37 50	Paid.
Dushore Water Company,	Bonus,	20 00	Judgment for Commonwealth.
Columbia Coal Company,	Bonus,	25 00	Judgment for Commonwealth.
Mine Hill Coal Company,	Bonus,	93 75	Paid.
Pennsylvania Paint and Ochre Company,	Bonus,	12 50	Judgment for Commonwealth.
Pennsylvania Paint and Ochre Company,	Bonus,	175 00	Judgment for Commonwealth.
Pennsylvania Paint and Ochre Company,	Bonus,	175 00	Judgment for Commonwealth.
Rittersville Hotel Company,	Bonus,	62 50	Judgment for Commonwealth; paid.
Brady's Bend Coal and Iron Company,	Bonus,	1,250 00	Paid.
Allentown and Bethlehem Rapid Transit Company,	Bonus,	500 00	Judgment; paid.
Allentown and Lehigh Valley Traction Company,	Bonus,	1,875 00	Judgment for Commonwealth.
Allentown and Lehigh Valley Traction Company,	Bonus,	3,125 00	Judgment for Commonwealth.
Allentown and Lehigh Valley Traction Company,	Bonus,	3,125 00	Judgment for Commonwealth.
Westminster Coal Company,	Bonus,	62	Paid.
Westminster Coal Company,	Bonus,	124 38	Judgment for Commonwealth.
Westminster Coal Company,	Bonus,	124 37	Partly paid.
West End Electric Company,	Bonus,	6 25	Judgment for Commonwealth.
West End Electric Company,	Bonus,	56 25	Judgment for Commonwealth.
West End Electric Company,	Bonus,	56 25	Judgment for Commonwealth.
Morehead & McClean Company,	Tax on loans,	1,108 63	Suit pending.
Birmingham Fire Insurance Company,	Tax on capital stock,	915 78	Before Board of Public Ac- counts.
Bloomsburg Carpet Works,	Tax on loans,	190 00	Partly paid.
Bloomsburg Carpet Works,	Tax on loans,	190 00	Partly paid.
Bloomsburg Carpet Works,	Tax on loans,	142 50	Partly paid.
Cheswick Land Company,	Tax on capital stock,	20 12	Paid.
Cheswick Land Company,	Tax on capital stock,	32 32	Paid.
Cheswick Land Company,	Tax on capital stock,	36 45	Paid.
Bellevue and Glenfield Natural Gas Company,	Tax on capital stock,	225 00	Paid.
Bellevue and Glenfield Natural Gas Company,	Tax on capital stock,	210 00	Paid.
Bellevue and Glenfield Natural Gas Company,	Tax on capital stock,	245 00	Paid.
Curwensville Lumber Company,	Tax on capital stock,	6 98	Paid.
Curwensville Lumber Company,	Tax on capital stock,	49 58	Paid.
Curwensville Lumber Company,	Tax on loans,	247 00	Suit pending.
Curwensville Lumber Company,	Tax on loans,	247 00	Suit pending.
Curwensville Lumber Company,	Tax on loans,	285 00	Suit pending.
Chest Creek Coal and Coke Company,	Tax on loans,	57 00	Judgment for Commonwealth.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Chest Creek Coal and Coke Company,	Tax on loans,	57 00	Judgment for Commonwealth.
Chest Creek Coal and Coke Company,	Tax on loans,	46 27	Judgment for Commonwealth.
Chest Creek Coal and Coke Company,	Tax on capital stock,	50 00	Judgment for Commonwealth.
Chest Creek Coal and Coke Company,	Tax on capital stock,	50 00	Judgment for Commonwealth.
Chest Creek Coal and Coke Company,	Tax on capital stock,	500 00	Judgment for Commonwealth.
Chest Creek Coal and Coke Company,	Tax on capital stock,	255 00	Judgment for Commonwealth.
Bethlehem Electric Light Company,	Tax on loans,	68 78	Paid.
Bethlehem Electric Light Company,	Tax on loans,	68 78	Paid.
Bethlehem Electric Light Company,	Tax on gross receipts,	74 49	Paid.
Bethlehem Electric Light Company,	Tax on gross receipts,	64 63	Paid.
Bethlehem Electric Light Company,	Tax on gross receipts,	60 42	Paid.
Bethlehem Electric Light Company,	Tax on gross receipts,	48 59	Paid.
Bethlehem Electric Light Company,	Tax on gross receipts,	76 76	Paid.
Bethlehem Electric Light Company,	Tax on gross receipts,	85 75	Paid.
Bethlehem Electric Light Company,	Tax on capital stock,	487 00	Paid.
Bethlehem Electric Light Company,	Tax on capital stock,	638 08	Verdict for defendant.
Clearfield Coal Company,	Tax on loans,	85 50	Suit pending.
Clearfield Coal Company,	Tax on capital stock,	90 00	Suit pending.
Clearfield Coal Company,	Tax on capital stock,	90 00	Suit pending.
Clearfield Coal Company,	Tax on capital stock,	210 00	Suit pending.
Mitchell Coal and Coke Company,	Tax on capital stock,	250 00	Judgment for Commonwealth.
Mitchell Coal and Coke Company,	Tax on capital stock,	450 00	Judgment for Commonwealth.
Mitchell Coal and Coke Company,	Tax on loans,	235 60	Judgment for Commonwealth.
Mitchell Coal and Coke Company,	Tax on loans,	247 00	Judgment for Commonwealth.
Hostetter Coke Company,	Tax on capital stock,	1,200 00	Paid.
Hostetter Coke Company,	Tax on capital stock,	1,440 00	Paid.
Hostetter Coke Company,	Tax on capital stock,	1,800 00	Paid.
Hostetter Coke Company,	Tax on capital stock,	2,160 00	Paid.
Thompson Run Coal Company,	Tax on capital stock,	232 50	Paid.
Thompson Run Coal Company,	Tax on capital stock,	232 50	Paid.
Phoenix Glass Company,	Tax on loans,	731 65	Judgment for Commonwealth.
Phoenix Glass Company,	Tax on capital stock,	212 50	Discontinued.
Phoenix Glass Company,	Tax on capital stock,	203 57	Discontinued.

Phoenix Glass Company,	Tax on capital stock,	270 00	Discontinued.
Phoenix Glass Company,	Tax on capital stock,	405 00	Discontinued.
Phoenix Glass Company,	Tax on capital stock,	161 10	Paid.
Phoenix Glass Company,	Tax on capital stock,	90 75	Paid.
Pittsburg and Belleverson Coal Company,	Tax on capital stock,	135 00	Suit pending.
Pittsburg and Belleverson Coal Company,	Tax on capital stock,	285 00	Suit pending.
Pittsburg and Belleverson Coal Company,	Tax on capital stock,	262 59	Suit pending.
Pittsburg and Belleverson Coal Company,	Tax on loans,	33 78	Suit pending.
Pittsburg and Belleverson Coal Company,	Tax on capital stock,	562 25	Suit pending.
Diamond Street Omnibus Company,	Tax on gross receipts,	262 82	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on gross receipts,	365 15	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on gross receipts,	367 34	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on gross receipts,	476 49	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on gross receipts,	109 34	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on gross receipts,	281 50	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on capital stock,	325 00	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on capital stock,	25 00	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on capital stock,	322 25	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on loans,	190 00	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on loans,	95 00	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Tax on loans,	95 00	Judgment for Commonwealth.
Northampton Slate Company,	Tax on capital stock,	90 30	Suit pending.
Northampton Slate Company,	Tax on capital stock,	111 00	Suit pending.
Northampton Slate Company,	Tax on capital stock,	112 50	Suit pending.
Northampton Slate Company,	Tax on capital stock,	67 50	Suit pending.
Northampton Slate Company,	Tax on capital stock,	4 50	Suit pending.
Northampton Slate Company,	Tax on loans,	54 34	Suit pending.
Northampton Slate Company,	Tax on loans,	21 38	Suit pending.
Northampton Slate Company,	Tax on loans,	39 90	Suit pending.
Northampton Slate Company,	Tax on loans,	14 25	Suit pending.
Schuylkill Electric Railway Company,	Tax on capital stock,	375 00	Paid.
Schuylkill Electric Railway Company,	Tax on loans,	361 00	Paid.
Union Switch and Signal Company,	Tax on capital stock,	2,025 00	Partly paid.
Union Switch and Signal Company,	Tax on capital stock,	900 00	Partly paid.
Union Switch and Signal Company,	Tax on capital stock,	300 00	Partly paid.
Union Switch and Signal Company,	Tax on loans,	760 67	Partly paid.
Union Switch and Signal Company,	Tax on loans,	419 52	Partly paid.
Union Switch and Signal Company,	Tax on loans,	609 05	Partly paid.
Oxford Land and Improvement Company,	Tax on capital stock,	60 46	Judgment for Commonwealth.
Oxford Land and Improvement Company,	Tax on capital stock,	238 75	Judgment for Commonwealth.
Oxford Land and Improvement Company,	Tax on capital stock,	78 24	Judgment for Commonwealth.
Oxford Land and Improvement Company,	Tax on loans,	99 34	Judgment for Commonwealth.
Fifth Street Bridge and Viaduct Company,	Tax on capital stock,	25 00	Paid.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Fifth Street Bridge and Viaduct Company,	Tax on capital stock,	25 00	Paid.
Fifth Street Bridge and Viaduct Company,	Tax on capital stock,	25 00	Paid.
Mt. Vernon Coal Company,	Tax on loans,	167 20	Judgment for Commonwealth.
Mt. Vernon Coal Company,	Tax on loans,	91 20	Judgment for Commonwealth.
Mt. Vernon Coal Company,	Tax on loans,	91 20	Judgment for Commonwealth.
Mt. Vernon Coal Company,	Tax on loans,	38 00	Judgment for Commonwealth.
Huntingdon Gas Company,	Tax on loans,	31 78	Judgment for Commonwealth.
Huntingdon Gas Company,	Tax on loans,	31 78	Judgment for Commonwealth.
Huntingdon Gas Company,	Tax on capital stock,	44 50	Judgment for Commonwealth.
Stoneboro and Chautauqua Lake Ice Company,	Tax on capital stock,	162 07	Paid.
Stoneboro and Chautauqua Lake Ice Company,	Tax on capital stock,	34 80	Paid.
Spring City Gas Light Company,	Tax on capital stock,	7 50	Judgment for Commonwealth.
Spring City Gas Light Company,	Tax on capital stock,	62 50	Judgment for Commonwealth.
Spring City Gas Light Company,	Tax on capital stock,	62 50	Judgment for Commonwealth.
Spring City Gas Light Company,	Tax on capital stock,	62 50	Judgment for Commonwealth.
Spring City Gas Light Company,	Tax on loans,	15 20	Judgment for Commonwealth.
Spring City Gas Light Company,	Tax on loans,	22 04	Judgment for Commonwealth.
Lock Haven Illuminating, Power and Heating Company,	Tax on capital stock,	52 50	Paid.
Lock Haven Illuminating, Power and Heating Company,	Tax on capital stock,	52 50	Paid.
Lock Haven Illuminating, Power and Heating Company,	Tax on capital stock,	87 50	Paid.
Lock Haven Illuminating, Power and Heating Company,	Tax on loans,	44 46	Paid.
Lock Haven Illuminating, Power and Heating Company,	Tax on loans,	49 87	Paid.
Lock Haven Illuminating, Power and Heating Company,	Tax on loans,	66 50	Paid.
Lock Haven Illuminating, Power and Heating Company,	Tax on loans,	62 70	Paid.
Faraday Heat, Power and Light Company,	Tax on gross receipts,	24 91	Paid.
Faraday Heat, Power and Light Company,	Tax on gross receipts,	19 39	Paid.
Faraday Heat, Power and Light Company,	Tax on gross receipts,	22 75	Paid.
Faraday Heat, Power and Light Company,	Tax on gross receipts,	19 75	Paid.
Faraday Heat, Power and Light Company,	Tax on gross receipts,	14 09	Paid.
Faraday Heat, Power and Light Company,	Tax on gross receipts,	9 87	Paid.
Faraday Heat, Power and Light Company,	Tax on gross receipts,	10 05	Paid.
Faraday Heat, Power and Light Company,	Tax on gross receipts,	3 40	Paid.
Faraday Heat, Power and Light Company,	Tax on loans,	38 00	Paid.

Faraday Heat, Power and Light Company,	Tax on loans,	22 28	Paid.
Faraday Heat, Power and Light Company,	Tax on capital stock,	141 10	Paid.
Faraday Heat, Power and Light Company,	Tax on capital stock,	125 10	Suit pending.
Faraday Heat, Power and Light Company,	Tax on capital stock,	39 33	Paid.
Faraday Heat, Power and Light Company,	Tax on capital stock,	4 77	Partly paid.
Edison Electric Illuminating Company (Williamsport),	Tax on capital stock,	498 45	Paid.
Edison Electric Illuminating Company (Williamsport),	Tax on loans,	148 20	Paid.
Edison Electric Illuminating Company (Williamsport),	Tax on gross receipts,	153 61	Paid.
Edison Electric Illuminating Company (Williamsport),	Tax on gross receipts,	72 35	Paid.
Edison Electric Illuminating Company (Williamsport),	Tax on gross receipts,	147 49	Paid.
Gallitzin Coal and Coke Company,	Tax on capital stock,	250 00	Suit pending.
Gallitzin Coal and Coke Company,	Tax on capital stock,	150 00	Suit pending.
Gallitzin Coal and Coke Company,	Tax on loans,	42 75	Suit pending.
Crew Levick Company,	Tax on capital stock,	430 19	Paid.
Crew Levick Company,	Tax on capital stock,	641 65	Paid.
Crew Levick Company,	Tax on capital stock,	800 00	Paid.
Pennsylvania Plate Glass Company,	Tax on capital stock,	2,689 00	Judgment for Commonwealth.
Pennsylvania Plate Glass Company,	Tax on loans,	1,167 80	Judgment for Commonwealth.
Pennsylvania Plate Glass Company,	Tax on loans,	712 50	Judgment for Commonwealth.
Standard Coal Company,	Tax on capital stock,	642 50	Suit pending.
Standard Coal Company,	Tax on loans,	222 68	Suit pending.
Somerset and Johnsonburg Manufacturing Company,	Tax on loans,	57 00	Defunct.
Somerset and Johnsonburg Manufacturing Company,	Tax on loans,	235 60	Defunct.
Somerset and Johnsonburg Manufacturing Company,	Tax on loans,	671 04	Defunct.
Schenley Park Land Company,	Tax on capital stock,	250 00	Paid.
Schenley Park Land Company,	Tax on loans,	41 80	Paid.
Schenley Park Land Company,	Tax on loans,	66 50	Paid.
Security Homestead and Loan Company,	Tax on loans,	45 60	Judgment for Commonwealth.
Security Homestead and Loan Company,	Tax on capital stock,	60 00	Judgment for Commonwealth.
St. Clair Water Company,	Tax on capital stock,	63	Paid.
St. Clair Water Company,	Tax on capital stock,	38	Paid.
St. Clair Water Company,	Tax on capital stock,	50 00	Paid.
St. Clair Water Company,	Tax on capital stock,	50 00	Paid.
Sandy Ridge Brick Company,	Tax on capital stock,	22 86	Judgment for Commonwealth.
Sandy Ridge Brick Company,	Tax on loans,	70 94	Judgment for Commonwealth.
Railroad Lighting and Manufacturing Company,	Tax on capital stock,	801 76	Defunct.
Valley Coal Mining Company,	Tax on capital stock,	75 00	Paid.
Valley Coal Mining Company,	Tax on loans,	23 47	Paid.
Westmoreland Specialty Company,	Tax on capital stock,	208 59	Judgment for Commonwealth.
Westmoreland Specialty Company,	Tax on capital stock,	140 35	Judgment for Commonwealth.
Westmoreland Specialty Company,	Tax on loans,	53 01	Judgment for Commonwealth.
Raystown Branch Coal Company,	Tax on capital stock,	225 00	Paid.
Raystown Branch Coal Company,	Tax on capital stock,	375 00	Paid.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Raystown Branch Coal Company,	Tax on capital stock,	375 00	Paid.
Raystown Branch Coal Company,	Tax on capital stock,	375 00	Paid.
Raystown Branch Coal Company,	Tax on loans,	10 54	Paid.
Raystown Branch Coal Company,	Tax on loans,	1 14	Paid.
Hughesville Water Company,	Tax on capital stock,	5 00	Paid.
Hughesville Water Company,	Tax on loans,	23 75	Paid.
Hughesville Water Company,	Tax on loans,	76 00	Paid.
Iron Hall Building Company,	Tax on capital stock,	33 35	Defunct.
Iron Hall Building Company,	Tax on capital stock,	47 40	Defunct.
Iron Hall Building Company,	Tax on capital stock,	102 48	Defunct.
Iron Hall Building Company,	Tax on loans,	208 05	Defunct.
Iron Hall Building Company,	Tax on loans,	208 05.	Defunct.
Glen Mills Stone Quarrying and Crushing Company,	Tax on capital stock,	337 50	Judgment for Commonwealth.
York Haven Paper Company,	Tax on loans,	276 45	Paid.
York Haven Paper Company,	Tax on loans,	383 80	Paid.
York Haven Paper Company,	Tax on loans,	516 80	Paid.
York Haven Paper Company,	Bonus,	375 00	Paid.
Diamond Drill Machine Company,	Bonus,	425 00	Discontinued.
W. F. Shaw Company,	Bonus,	187 50	Defunct.
Shohola Manufacturing Company,	Bonus,	250 00	Suit pending.
Schuykill Water Company,	Bonus,	9,375 00	Defunct.
Penn Anthracite Coal Company,	Bonus,	2,500 00	Judgment for Commonwealth; insolvent.
Quaker City Slate Company,	Bonus,	312 50	Judgment for Commonwealth.
Wyoming Oil Company,	Bonus,	281 25	Judgment for Commonwealth.
Joseph Kohule Brewing Company,	Tax on capital stock,	505 00	Paid.
Joseph Kohule Brewing Company,	Tax on capital stock,	505 00	Paid.
Joseph Kohule Brewing Company,	Bonus,	250 00	Paid.
Houtzdale Water Company,	Tax on capital stock,	35 73	Partly paid.
Houtzdale Water Company,	Tax on loans,	30 81	Paid.
Houtzdale Water Company,	Tax on capital stock,	22 50	Paid.
Houtzdale Water Company,	Tax on loans,	30 81	Paid.
Houtzdale Water Company,	Tax on capital stock,	37 50	Partly paid.

Houtzdale Water Company,	Tax on loans,	30 81	Judgment for Commonwealth; before Board of Public Accts.
Houtzdale Water Company,	Tax on capital stock,	11 75	Judgment for Commonwealth; before Board of Public Accts.
Houtzdale Water Company,	Tax on capital stock,	11 77	Judgment for Commonwealth; before Board of Public Accts.
Houtzdale Water Company,	Tax on loans,	27 77	Judgment for Commonwealth; before Board of Public Accts.
Houtzdale Water Company,	Tax on loans,	27 81	Judgment for Commonwealth; before Board of Public Accts.
Houtzdale Water Company,	Tax on capital stock,	11 77	Judgment for Commonwealth; before Board of Public Accts.
Bedford Mineral Springs Company,	Bonus,	730 00	Judgment for Commonwealth.
Bosshardt & Wilson Company,	Bonus,	62 50	Judgment for Commonwealth.
Bosshardt & Wilson Company,	Tax on loans,	236 73	Judgment for Commonwealth.
Standard Coal and Coke Company,	Bonus,	125 00	Judgment for Commonwealth.
Solicitors' Loan and Trust Company,	Tax on loans,	137 56	Judgment for Commonwealth.
Solicitors' Loan and Trust Company,	Tax on capital stock,	2,625 00	Judgment for Commonwealth.
United Anthracite Collieries Company of Pennsylvania,	Bonus,	2,487 50	Defunct.
DuBois Electric Light, Power and Heat Company,	Bonus,	162 50	Judgment for Commonwealth.
DuBois Electric Light, Power and Heat Company,	Tax on loans,	58 10	Judgment for Commonwealth.
DuBois Electric Light, Power and Heat Company,	Tax on loans,	57 00	Judgment for Commonwealth.
DuBois Electric Light, Power and Heat Company,	Tax on gross receipts,	44 39	Judgment for Commonwealth.
DuBois Electric Light, Power and Heat Company,	Tax on gross receipts,	41 40	Judgment for Commonwealth.
DuBois Electric Light, Power and Heat Company,	Tax on gross receipts,	48 00	Judgment for Commonwealth.
DuBois Electric Light, Power and Heat Company,	Tax on capital stock,	99 75	Judgment for Commonwealth.
DuBois Electric Light, Power and Heat Company,	Tax on capital stock,	175 00	Judgment for Commonwealth.
DuBois Traction Passenger Railway Company,	Tax on capital stock,	25 00	Judgment for Commonwealth.
DuBois Traction Passenger Railway Company,	Tax on loans,	152 00	Judgment for Commonwealth.
DuBois Traction Passenger Railway Company,	Tax on capital stock,	62 50	Judgment for Commonwealth.
DuBois Traction Passenger Railway Company,	Tax on loans,	152 00	Judgment for Commonwealth.
DuBois Traction Passenger Railway Company,	Tax on gross receipts,	19 38	Judgment for Commonwealth.
DuBois Traction Passenger Railway Company,	Tax on gross receipts,	25 75	Judgment for Commonwealth.
Sandy Ridge Brick Company,	Bonus,	62 50	Judgment for Commonwealth.
Diamond Street Omnibus Company,	Bonus,	337 50	Judgment for Commonwealth.
Pittsburg and Belleverson Coal Company,	Bonus,	212 50	Suit pending.
St. Clair Water Company,	Bonus,	621 25	Paid.
Wissahickon Mutual Fire Insurance Company, of Philadelphia,	Fees of office,	20 00	Partly paid.
Builders' Mutual Fire Insurance Company, of Philadelphia,	Fees of office,	20 00	Paid.
Lackawanna Valley Electric Light and Power Company,	Bonus,	187 50	Pending.
Diamond Steel Company,	Bonus,	62 50	Defunct.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Keystone Fibre Company,	Bonus,	125 00	Judgment for Commonwealth.
Model Heating Company,	Bonus,	125 00	Pending.
Haverford Water Company,	Bonus,	247 50	Defunct.
National Hedge and Wire Fence Company, of Lancaster County,	Bonus,	75 00	Judgment for Commonwealth.
Hubley Manufacturing Company,	Bonus,	250 00	Paid.
Lower Merion Water Company,	Bonus,	1,247 50	Defunct.
Radnor Water Company,	Bonus,	247 50	Defunct.
Nation's Mower and Reaper Company,	Bonus,	625 00	Insolvent.
Morris Ridge Coal Company,	Bonus,	162 50	Defunct.
Travis Manufacturing Company,	Bonus,	250 00	Pending.
Pyroleum Appliance Company,	Bonus,	125 00	Pending.
Pennsylvania Hedge Company,	Bonus,	187 50	Judgment for Commonwealth.
Pittsburg Tool Steel Company,	Bonus,	125 00	Defunct.
Standard Manufacturing Company,	Bonus,	87 50	Judgment for Commonwealth.
Norristown, Bridgeport and Conshohocken Traction Company (now Schuylkill Valley Traction Company),	Bonus,	612 50	Paid.
Burke & McFetridge Company,	Bonus,	187 50	Partly paid.
American Safety Lamp and Mine Supply Company,	Bonus,	125 00	Judgment for Commonwealth.
Scranton and Pittston Traction Company,	Bonus,	1,312 50	Judgment for Commonwealth.
Lackawanna Valley Rapid Transit Company, Carbon-dale,	Bonus,	1,987 50	Pending.
Fort Pitt Traction Company,	Bonus,	3,750 00	Pending.
Hostetter Connellsville Coke Company,	Tax on loans,	5,513 04	Paid.
Hostetter Connellsville Coke Company,	Tax on loans,	5,406 58	Paid.
Claymont Telephone Company,	Bonus,	375 00	Defunct.
Caledonia Coal Company,	Tax on loans,	84 55	Judgment for Commonwealth.
Caledonia Coal Company,	Tax on capital stock,	110 02	Judgment for Commonwealth.
Burke & McFetridge Company,	Tax on loans,	63 33	Partly paid.
Burke & McFetridge Company,	Tax on loans,	6 34	Partly paid.
Lackawanna Valley Rapid Transit Company,	Tax on gross receipts,	145 37	Pending.
Lackawanna Valley Rapid Transit Company,	Tax on gross receipts,	169 52	Pending.
Lackawanna Valley Rapid Transit Company,	Tax on gross receipts,	249 20	Pending.

Gallitzin Water Company,	Tax on loans,	10 64	Discontinued.
Gallitzin Water Company,	Tax on loans,	22 80	Discontinued.
Gallitzin Water Company,	Tax on capital stock,	58 00	Discontinued.
Gallitzin Water Company,	Tax on loans,	14 44	Discontinued.
Gallitzin Water Company,	Tax on capital stock,	58 00	Discontinued.
Rush Brook Coal Company,	Tax on loans,	292 90	Paid.
Rush Brook Coal Company,	Tax on loans,	325 53	Paid.
Rush Brook Coal Company,	Tax on loans,	354 67	Paid.
Rush Brook Coal Company,	Tax on capital stock,	300 00	Paid.
Rush Brook Coal Company,	Tax on capital stock,	375 00	Paid.
Danielsville Slate Company,	Tax on loans,	59 85	Paid.
Danielsville Slate Company,	Tax on loans,	95 00	Paid.
Danielsville Slate Company,	Tax on loans,	95 00	Paid.
Danielsville Slate Company,	Tax on loans,	140 60	Paid.
Blue Mountain Railroad Company,	Tax on capital stock,	2,590 07	Judgment for Commonwealth.
Bangor Superior Slate Company,	Tax on loans,	28 50	Paid.
Bangor Superior Slate Company,	Tax on loans,	10 83	Paid.
Bangor Superior Slate Company,	Tax on loans,	55 86	Paid.
Bangor Superior Slate Company,	Tax on loans,	57 00	Paid.
Bangor Superior Slate Company,	Tax on loans,	57 00	Paid.
Bangor Superior Slate Company,	Tax on loans,	57 00	Paid.
Cable Lock and Novelty Company,	Bonus,	122 50	Judgment; paid.
Cartwright Lumber Company,	Bonus,	437 50	In hands of receiver.
Cartwright Lumber Company,	Tax on capital stock,	125 00	In hands of receiver.
Frankford Avenue Merchants' Electric Light Company (now Kensington Electric Company),	Bonus,	250 00	Partly paid.
Kensington Electric Company,	Tax on loans,	60 80	Partly paid.
Lackawanna Electric Power Company,	Tax on loans,	45 60	Before Board of Public Accts.
Lackawanna Electric Power Company,	Tax on capital stock,	197 81	Partly paid.
Lackawanna Electric Power Company,	Tax on loans,	45 60	Before Board of Public Accts.
Collingdale Land and Improvement Company,	Tax on loans,	186 20	Judgment for Commonwealth.
Collingdale Land and Improvement Company,	Tax on capital stock,	27 77	Judgment for Commonwealth.
Collingdale Land and Improvement Company,	Tax on capital stock,	30 25	Judgment for Commonwealth.
Collingdale Land and Improvement Company,	Tax on capital stock,	35 50	Judgment for Commonwealth.
Natalie Anthracite Coal Company,	Bonus,	4,993 75	Defunct.
United Traction Company of Pennsylvania,	Bonus,	125 00	Judgment for Commonwealth.
Western Manufacturing Company,	Bonus,	31 25	Judgment for Commonwealth.
Scranton and Wilkes-Barre Consolidated Coal Company,	Bonus,	125 00	Pending.
Williams Drill and Compressor Manufacturing Company,	Bonus,	125 00	Defunct.
Carlin Manufacturing Company,	Bonus,	62 50	Judgment for Commonwealth.
Liberty Homestead Loan and Trust Company,	Bonus,	18 75	Pending.
Keystone Fuel Gas Company, of Williamsport,	Bonus,	125 00	Paid.
McAmilty Mill Furnishing Company,	Bonus,	93 75	Judgment for Commonwealth.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Pittsburg and Northwestern Coal Company,	Bonus,	50 00	Judgment for Commonwealth.
Shannon Manufacturing Company,	Bonus,	93 75	Paid.
East Side Coal Company,	Bonus,	31 25	Partly paid.
J. S. Carroll Manufacturing Company,	Bonus,	125 00	Defunct.
Safe Harbor Match Company,	Bonus,	187 50	Judgment for Commonwealth.
Scranton Land and Improvement Company,	Bonus,	21 87	Defunct.
National Sanitary Furnace Company,	Bonus,	62 50	Pending.
Penn Manor Shaft Company,	Bonus,	453 12	Paid.
Wilkes-Barre Gun Company,	Bonus,	62 50	Defunct.
Seif-Bosworth Cigar Company,	Bonus,	37 50	Partly paid.
Marble Hill Quarry Company,	Bonus,	175 00	Defunct.
Black Granite Brick Company,	Bonus,	245 00	Defunct.
Philadelphia Ice Manufacturing Company,	Bonus,	307 50	Judgment for Commonwealth.
Crown Slate Company,	Bonus,	156 25	Paid.
J. Ellwood Lee Company,	Bonus,	875 00	Paid.
Walnut Run Coal Company,	Bonus,	400 00	Pending.
J. D. Shields Company,	Bonus,	106 25	Pending.
Glassport Land Company,	Bonus,	624 37	Paid.
Hotel Metropole Company,	Bonus,	125 00	Pending.
Rittenhouse Company,	Bonus,	187 50	Pending.
Central Stove Company,	Bonus,	125 00	Pending.
Pneumatic Fire Alarm Telegraph Company,	Bonus,	312 50	Pending.
Paxton Flour Mills Company,	Bonus,	312 50	Paid.
T. C. Avis Basket Company,	Bonus,	62 50	Defunct.
American Fuel Economizer Company, of Pennsylvania,	Bonus,	125 00	Pending.
Beaver Valley Theatre Company,	Bonus,	75 00	Pending.
Washington and Lake Erie Gas Coal Company,	Bonus,	187 50	Pending.
Homestead Ice Company,	Bonus,	31 25	Paid.
Paisley Woolen Company,	Bonus,	50 00	Pending.
Dent Hardware Company,	Bonus,	31 25	Paid.
Braddock Wire Company,	Bonus,	500 00	Paid.
Electric Pavillion Company,	Bonus,	311 25	Pending.
Hughes & Gauthrop Company,	Bonus,	125 00	Defunct.

Scranton Stone Company,	Bonus,	612 50	Pending.
Holland Manufacturing Company,	Bonus,	25 00	Pending.
Pittsburg Printing Company,	Bonus,	75 00	Defunct.
Fallston Pottery Company,	Bonus,	50 00	Pending.
Huntingdon Electric Light Company,	Tax on loans,	42 75	Pending.
Huntingdon Electric Light Company,	Tax on capital stock,	28 80	Pending.
Tremont Water and Gas Company,	Tax on loans,	37 05	Partly paid.
Tremont Water and Gas Company,	Tax on loans,	49 40	Partly paid.
Tremont Water and Gas Company,	Tax on loans,	33 03	Partly paid.
Tremont Water and Gas Company,	Tax on loans,	82 27	Pending.
Tremont Water and Gas Company,	Tax on loans,	49 40	Pending.
Tremont Water and Gas Company,	Tax on capital stock,	1 31	Pending.
Tremont Water and Gas Company,	Tax on capital stock,	1 31	Pending.
Tremont Water and Gas Company,	Tax on capital stock,	1 31	Pending.
Bartram Hotel Company,	Bonus,	375 00	Paid.
Bartram Hotel Company,	Tax on loans,	760 00	Paid.
Bartram Hotel Company,	Tax on capital stock,	750 00	Paid.
Pittsburg Incline Plane Company,	Tax on loans,	950 00	Pending.
Pittsburg Incline Plane Company,	Tax on capital stock,	1,250 00	Pending.
Pittsburg Incline Plane Company,	Tax on loans,	950 00	Pending.
Pittsburg Incline Plane Company,	Tax on capital stock,	1,250 00	Pending.
Rittersville Hotel Company,	Tax on capital stock,	100 00	Paid.
Oliver Iron and Steel Company,	Bonus,	750 00	Paid.
Oliver Iron and Steel Company,	Bonus,	500 00	Paid.
Oliver Iron and Steel Company,	Bonus,	500 00	Paid.
Oliver Iron and Steel Company,	Bonus,	687 50	Paid.
Charleroi Plate Glass Company,	Bonus,	625 00	Paid.
Charleroi Plate Glass Company,	Bonus,	625 00	Paid.
Carroll Porter Boiler and Tank Company,	Bonus,	62 50	Paid.
Spring Hill Stone Company,	Bonus,	6 25	No information.
Washington Carbon Company,	Bonus,	212 50	Pending.
Washington Carbon Company,	Bonus,	212 50	Pending.
Franklin Printing Company,	Bonus,	18 75	Paid.
Franklin Printing Company,	Bonus,	18 75	Paid.
Middletown and Hummelstown Stone Quarry Company,	Bonus,	100 00	Defunct.
Middletown and Hummelstown Stone Quarry Company,	Bonus,	100 00	Defunct.
Frankstown Ferry Company, of Pittsburg,	Bonus,	2 56	No information.
Waynesburg, Graysville and Jacksonburg Telephone Company,	Bonus,	4 06	Paid.
Waynesburg, Graysville and Jacksonburg Telephone Company,	Bonus,	4 06	Paid.
Luberg Manufacturing Company,	Bonus,	125 00	In hands of assignee.
Harrisburg Boiler and Manufacturing Company,	Bonus,	25 00	Defunct.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Harrisburg Boiler and Manufacturing Company,	Bonus,	56 25	Defunct.
Harrisburg Boiler and Manufacturing Company,	Bonus,	56 25	Defunct.
Harrisburg Boiler and Manufacturing Company,	Bonus,	125 00	Defunct.
Harrisburg Boiler and Manufacturing Company,	Bonus,	125 00	Defunct.
Penn Safe Deposit and Trust Company,	Bonus,	125 00	Insolvent.
American Monument Company, of Pittsburg,	Bonus,	37 50	No information.
Titusville Electric Light and Power Company,	Bonus,	125 00	Paid.
World Manufacturing Company,	Bonus,	18 75	Defunct.
Bellevue Light and Power Company,	Bonus,	1 25	No information.
Chadwick Leather Company,	Bonus,	37 50	Defunct.
Kountz Brothers' Company,	Bonus,	1 25	Paid.
Kountz Brothers' Company,	Bonus,	186 25	Paid.
Philadelphia, Chester, Wilmington Lewes Steamship Company,	Bonus,	187 50	No information.
Lackawanna Slate Company,	Bonus,	31 25	Paid.
Mercantile Journal Company,	Bonus,	3 12	Paid.
Cycling Publishing Company,	Bonus,	6 25	Paid.
Farmers' Bank, of Lebanon,	Bonus,	62 50	Paid.
Tannage Patent Company,	Bonus,	80 00	Paid.
Rawthorne Engraving and Printing Company,	Bonus,	15 00	Paid.
Ellwood Water Company,	Bonus,	6 25	Pending.
Ellwood Water Company,	Bonus,	56 25	Pending.
Ellwood Water Company,	Bonus,	56 25	Pending.
Ellwood Water Company,	Bonus,	62 50	Pending.
P. J. Cunningham Company,	Bonus,	37 50	Paid.
P. J. Cunningham Company,	Bonus,	37 50	Pending.
Bedford Mineral Springs Company,	Bonus,	365 00	Judgment for Commonwealth.
Bedford Mineral Springs Company,	Bonus,	365 00	Judgment for Commonwealth.
Collingdale Land and Improvement Company,	Bonus,	22 50	Pending.
Cambria Lumber Company,	Bonus,	311 25	Pending.
Wilde & Thomas Brewing Company,	Bonus,	500 00	Paid.
Wilde & Thomas Brewing Company,	Bonus,	250 00	Paid.
Wilde & Thomas Brewing Company,	Bonus,	250 00	Paid.

Trolley*Company of Philadelphia,	Bonus,	12 50	No information.
Erie Soap Company,	Bonus,	31 25	No information.
Lebanon County Hedge and Wire Fence Company,	Bonus,	18 75	No information.
U. S. Storage, Warehouse and Van Company,	Bonus,	62 50	No information.
Elizabeth Natural Gas Company,	Bonus,	75	No information.
Curwensville Light and Power Company,	Bonus,	20 00	No information.
Fraternal Hall Association,	Bonus,	25 00	No information.
Crescent Homestead Loan and Trust Company,	Bonus,	18 75	Defunct.
Gondola Real Estate and Improvement Company,	Bonus,	31 25	Paid.
Williamsport Shirt Company,	Bonus,	12 50	Insolvent.
Foreman & Boothe Bros. Manufacturing Company,	Bonus,	12 50	No information.
Chartiers Electric Light Company,	Bonus,	6 25	Defunct.
Fallston Fire Clay Company,	Bonus,	62 50	Paid.
Pittsburg Land Company,	Bonus,	25 00	Defunct.
Eureka Ice Company,	Bonus,	31 25	Paid.
Eureka Laundry Company,	Bonus,	12 50	No information.
Mahanoy Junction Land and Improvement Company,	Bonus,	6 25	Paid.
Mahanoy Junction Land and Improvement Company,	Bonus,	118 75	Paid.
Mahanoy Junction Land and Improvement Company,	Bonus,	118 75	Paid.
New York and Schuylkill Land Company,	Bonus,	25 00	No information.
Delta Electric Light Company,	Bonus,	6 25	Paid.
Clearfield Quarrying Company,	Bonus,	1 25	Paid.
Clearfield Quarrying Company,	Bonus,	38 75	Paid.
Clearfield Quarrying Company,	Bonus,	38 75	Paid.
Peerless Bottle Filling Machine Company,	Bonus,	18 75	No information.
United Oil Company,	Bonus,	31 25	No information.
Enterprise Cigar Company,	Bonus,	12 50	No information.
Trevoise Model Brick Manufacturing Company,	Bonus,	25 00	Defunct.
Ice Manufacturing Company of Germantown,	Bonus,	62 50	Paid.
Mutual Artificial Ice Company,	Bonus,	50 00	No information.
Smith Car Journal Oiler Company,	Bonus,	12 50	Defunct.
Schuylkill Lighting Company,	Bonus,	62 50	No information.
South Side Electric Light, Heat and Power Company, of Scranton,	Bonus,	15 00	Defunct.
Delaware Lighting Company,	Bonus,	62 50	No information.
Red Lion Electric Light Company,	Bonus,	1 50	Paid.
Perkasie Industrial Establishment,	Bonus,	5 00	Paid.
Marionville Citizens' Light and Heat Company,	Bonus,	1 25	No information.
Reading and Northampton Slate Company,	Bonus,	25 00	No information.
Gamewell Alarm Company,	Bonus,	125 00	Pending.
Shamokin Market House Company,	Bonus,	2 50	Paid.
Dauphin Axle Company,	Bonus,	31 25	Pending.
West End Electric Company, of Philadelphia,	Bonus,	300 00	Paid.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
Elliott Plant Company,	Bonus,	6 25	No information.
Elliott Plant Company,	Bonus,	118 75	No information.
Milton Ferry Company,	Bonus,	1 25	No information.
Douglass Ferry Company,	Bonus,	63	No information.
Pittston Pressed Brick Company,	Bonus,	19 00	Paid.
Robella Oil Company,	Bonus,	12 50	Pending.
Thompson & Thompson Company,	Bonus,	31 25	Defunct.
Northwestern Ice Manufacturing Company,	Bonus,	18 75	Defunct.
Williamsport Opera House Company,	Bonus,	12 50	Pending.
Citizens' Homestead, Loan and Trust Company,	Bonus,	18 75	No information.
Magnet Boiler Cleaner Company,	Bonus,	125 00	No information.
Ridley Electric Light and Power Company,	Bonus,	6 25	Paid.
Eastern Oil Company,	Bonus,	62 50	No information.
American Household Magazine,	Bonus,	6 25	Defunct.
Delaware County Improvement Company,	Bonus,	1 25	No information.
Gem Slate Company,	Bonus,	125 00	No information.
North American Delivery Company,	Bonus,	12 50	No information.
Newville Oil Company,	Bonus,	12 50	No information.
Mifflin Water Company,	Bonus,	25 00	No information.
Dauphin County Hedge and Wire Fence Company,	Bonus,	31 25	Defunct.
Truth Publishing Company,	Bonus,	25 00	Defunct.
Harrisburg Steam Stone Company,	Bonus,	50 00	Defunct.
Strong & Green Cycle Manufacturing Company,	Bonus,	62 50	No information.
Allen Cement Company,	Bonus,	187 50	Defunct.
Davis Manufacturing Company,	Bonus,	15 00	Paid.
C. W. Hill Company,	Bonus,	18 75	No information.
Tionesta Boom and Improvement Company,	Bonus,	6 25	Defunct.
Wilkes-Barre Iron Company,	Bonus,	31 25	No information.
Royal Gas Company, of Philadelphia,	Bonus,	650 00	Withdrawn.
Susquehanna Zeitung Publishing Company,	Bonus,	62	No information.
Mauch Chunk Electric Light Company,	Bonus,	1 86	No information.
Sunday Republic Publishing Company,	Bonus,	12 50	No information.
Carlton's Blended Tea Company,	Bonus,	125 00	Defunct.

Robert Smith India Pale Ale Brewing Company,	Bonus,	343 75	Paid in part.
Robert Smith India Pale Ale Brewing Company,	Bonus,	343 75	Paid in part.
Duquesne Furniture Company,	Bonus,	6 25	No information.
Duquesne Furniture Company,	Bonus,	10 00	No information.
Duquesne Furniture Company,	Bonus,	10 00	No information.
Ligonier Stone Company,	Bonus,	7 50	No information.
Ligonier Stone Company,	Bonus,	67 50	No information.
Ligonier Stone Company,	Bonus,	67 50	No information.
Coraopolis Electric Lighting Company,	Bonus,	6 25	Paid.
Norristown Traction Company,	Bonus,	125 00	No information.
Upper Trout Run Improvement Company,	Bonus,	1 25	Paid.
Central Lime Company,	Bonus,	7 50	Defunct.
Mechanical Novelties Company,	Bonus,	37 50	No information.
Pickett Extension Table Company,	Bonus,	156 25	Paid.
Duquesne Water Company,	Bonus,	12 50	No information.
Keystone Cigar Company,	Bonus,	12 50	Pending.
Keystone Cigar Company,	Bonus,	50 00	Pending.
Keystone Cigar Company,	Bonus,	50 00	Pending.
Specialty Glass Company,	Bonus,	12 50	No information.
Specialty Glass Company,	Bonus,	12 50	No information.
Dauphin Coal Gas and Oil Developing Company, of Pennsylvania,	Bonus,	1 50	No information.
Standard Whiting Company,	Bonus,	25 00	No information.
Falls Creek Coal Company,	Bonus,	125 00	No information.
Merchants' Detective and Collecting Company,	Bonus,	1 25	No information.
Pennsylvania and New York Telephone Company,	Bonus,	62 50	No information.
Buffalo Coal and Coke Company,	Bonus,	62 50	Defunct.
Perry Smelting Company,	Bonus,	37 50	No information.
Portage Coal and Coke Company,	Bonus,	31 25	Defunct.
Myersdale Water Company,	Bonus,	6 25	Defunct.
Mineral Grinding Company,	Bonus,	62 50	No information.
National Electric Railway Company,	Bonus,	125 00	No information.
Lawrenceville Homestead, Loan and Trust Company,	Bonus,	18 75	No information.
Bennett Water Company,	Bonus,	1 25	Withdrawn.
Bennett Water Company,	Bonus,	123 75	Withdrawn.
Bennett Water Company,	Bonus,	123 75	Withdrawn.
Bennett Electric Light Company,	Bonus,	1 25	Paid.
Lansdale Milk Condensing Company,	Bonus,	6 25	No information.
Selinsgrove Creamery Company,	Bonus,	3 75	No information.
Washington Mining and Improvement Company,	Bonus,	62 50	No information.
Carlisle Electric Light, Power and Steam Heating Com- pany,	Bonus,	6 25	Defunct.

SCHEDULE A—Continued.

LIST OF CLAIMS RECEIVED FROM AUDITOR GENERAL AND OTHERS IN 1895 AND 1896.

Name of Party.	Nature of Claim.	Amount.	Remarks.
East End Homestead, Loan and Trust Company,	Bonus,	18 75	No information.
Oliver Iron and Steel Company,	Bonus,	687 50	Paid.
Black Diamond Coal and Coke Company,	Bonus,	62 50	No information.
Monroetown Manufacturing Company,	Bonus,	31 25	No information.
Progressive Publishing Company,	Bonus,	37 50	Defunct.
Kendrick Light and Heating Company,	Bonus,	31 25	No information.
Penn Bridge Company,	Bonus,	62 50	Paid.
Penn Bridge Company,	Bonus,	62 50	Paid.
Pittsburg Shoe Company,	Bonus,	31 25	No information.
Auburn Bolt and Nut Works,	Bonus,	37 50	Pending.
Eddystone Water Company,	Bonus,	1 25	Paid.
Eddystone Water Company,	Bonus,	23 75	Paid.
Fidelity Storage and Warehouse Company,	Bonus,	281 25	Pending.
Enterprise Brewing Company,	Bonus,	187 50	No information.
Keystone Spice Supply Company,	Bonus,	43 75	Defunct.
Segal Manufacturing and Paper Company,	Bonus,	62 50	Paid.
Long Level Ferry Company, of York,	Bonus,	62	Paid.
Co-operative Hat Manufacturing Company,	Bonus,	25 00	No information.
Consolidated Pennsylvania Cigar Association,	Bonus,	31 25	No information.
Melrose Land and Improvement Company,	Bonus,	156 25	Paid.
M. Enz Brewing Company,	Bonus,	187 50	Paid.
McKeesport and Wilmerding Land Company,	Bonus,	250 00	Paid.
Riverton Water Company,	Bonus,	12 50	Paid.
Middleburg Water Company,	Bonus,	31 25	Pending.
Valley Coal and Mining Company,	Bonus,	6 25	Paid.
Lock Haven Illuminating Power and Heating Company,	Bonus,	6 25	Paid.
Lock Haven Illuminating Power and Heating Company,	Bonus,	6 25	Paid.
Grauch Brewing Company,	Bonus,	345 00	Suit pending.
Grauch Brewing Company,	Tax on loans,	43 53	Suit pending.
Gettysburg Electric Light, Heat and Power Company, ..	Bonus,	28 75	Suit pending.
South Shore Street Railway Company,	Penalty,	5,000 00	Pending.
River View Electric Railway Company,	Penalty,	5,000 00	Pending.

Pittsburg, Arlington Heights and St. Clair Railway Company,	Penalty,	5,000 00	Pending.
Pittsburg Passenger Railway Company,	Penalty,	5,000 00	Pending.
Directors of the poor, Conyngham and Centralia poor district, Columbia county,	Board, maintenance, etc.,	340 43	Pending.
Standard Coal Company,	Capital stock tax,	642 50	Pending.
Standard Coal Company,	Tax on loans,	253 36	Pending.
West Penn Coal and Coke Company,	Tax on loans,	180 50	Insolvent.
West Penn Coal and Coke Company,	Tax on capital stock,	20 00	Insolvent.
Altoona, Clearfield and Northern Railway Company,	Tax on gross receipts,	18 35	In hands of receiver.
Altoona, Clearfield and Northern Railway Company,	Tax on gross receipts,	17 65	In hands of receiver.
Altoona, Clearfield and Northern Railway Company,	Tax on gross receipts,	12 14	In hands of receiver.
Altoona, Clearfield and Northern Railway Company,	Tax on gross receipts,	60 98	In hands of receiver.
Altoona, Clearfield and Northern Railway Company,	Tax on gross receipts,	61 03	In hands of receiver.
Altoona, Clearfield and Northern Railway Company,	Tax on gross receipts,	41 16	In hands of receiver.
Altoona, Clearfield and Northern Railway Company,	Tax on gross receipts,	3 80	In hands of receiver.
Altoona, Clearfield and Northern Railway Company,	Tax on gross receipts,	31 49	In hands of receiver.
Altoona, Clearfield and Northern Railway Company,	Tax on gross receipts,	58 06	In hands of receiver.

SCHEDULE B.
SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1895.		
Jan. 3,	Kingston Coal Company,	\$1,170 00
Jan. 3,	Kingston Coal Company,	1,530 00
Jan. 5,	Annora Coal Company,	128 75
Jan. 5,	Annora Coal Company,	295 00
Jan. 5,	Citizens' Electric Illuminating Company,	30 00
Jan. 5,	Citizens' Electric Illuminating Company,	268 63
Jan. 5,	Mount Lookout Coal Company,	953 70
Jan. 5,	Honey Brook Water Company,	5 75
Jan. 9,	American Water Works and Guarantee Company, Ltd.,	81 39
Jan. 9,	Connellsville Water Company,	59 00
Jan. 9,	Old Bangor Slate Company,	1,404 10
Jan. 9,	Elk Tanning Company,	2,371 03
Jan. 9,	Union Tanning Company,	2,131 78
Jan. 9,	West Philadelphia Passenger Railway Company,	2,080 42
Jan. 9,	Union Passenger Railway Company,	1,668 49
Jan. 9,	Seventeenth and Nineteenth Streets Passenger Rail- way Company,	190 00
Jan. 9,	Philadelphia Traction Company,	2,106 29
Jan. 9,	Philadelphia City Passenger Railway Company,	550 24
Jan. 9,	Empire Passenger Railway Company,	380 00
Jan. 9,	Continental Passenger Railway Company,	686 86
Jan. 9,	Catharine and Bainbridge Streets Passenger Railway Company,	285 00
Jan. 10,	Wm. Cramp & Sons' Ship and Engine Building Com- pany,	233 59
Jan. 10,	Huntingdon and Broad Top Mountain Railroad and Coal Company,	2,879 72
Jan. 10,	Huntingdon and Broad Top Mountain Railroad and Coal Company,	2,551 12
Jan. 10,	Rush Brook Coal Company,	255 00
Jan. 10,	Penn Tanning Company,	3,220 81
Jan. 10,	New York, Susquehanna and Western Railroad Com- pany,	3,261 85
Jan. 11,	Duquesne Traction Company,	947 60
Jan. 11,	Valentine Iron Company,	1,334 00
Jan. 14,	Keystone Coal Company,	175 50
Jan. 14,	F. L. Ober & Bro. Brewing Company, Ltd.,	6 00
		*\$33,241 62
Jan. 17,	Tarentum Water Company,	\$130 00
Jan. 24,	John W. Haney Transfer Company, Ltd.,	69 77
Jan. 28,	Adams Express Company,	3,214 51
Jan. 28,	Crane Iron Company,	186 20
Jan. 28,	Crane Iron Company,	101 60
Feb. 18,	Sayre Water Company,	58 50
Feb. 27,	Oil Well Supply Company, Ltd.,	1,131 81
Feb. 27,	Oil Well Supply Company, Ltd.,	1,184 87
March 8,	Huntingdon and Broad Top Mountain Railroad and Coal Company,	4,159 97
April 23,	Western Cemetery Association, of York,	31 05
April 26,	Goodwin Gas Stove and Meter Company,	5,516 75
April 30,	American Telephone and Telegraph Company,	164 71
April 30,	Rawthorne Engraving and Printing Company,	16 57
May 1,	Lehigh Valley Railroad Company,	40,000 00
May 1,	Delaware, Lackawanna and Western Railroad Com- pany,	75,000 00
May 2,	Mercantile Journal Company,	3 44
May 2,	Charleroi Plate Glass Company,	1,337 50
May 2,	Pennsylvania General Electric Company,	1,515 50
May 2,	Franklin Printing Company,	41 42
May 3,	East Bangor Consolidated Slate Company,	300 00
May 7,	Farmers' Bank, of Lebanon,	69 06

* This amount was collected during the closing days of Hon. W. U. Hensel's term.

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1895.		
May 7,	Carroll Porter Boiler and Tank Company,	68 23
May 7,	Cycling Publishing Company,	6 90
May 10,	Lackawanna Slate Company,	34 53
May 10,	Tannage Patent Company,	88 40
May 17,	Kountz Brothers' Company,	198 75
May 28,	Perkasie Industrial Establishment,	6 01
May 29,	Eureka Ice Company,	37 50
May 29,	Ice Manufacturing Company, of Germantown,	74 37
June 3,	Fallston Fire Clay Company,	74 68
June 3,	John Bardsley, late treasurer of Philadelphia county,	287 66
June 3,	Pittsburg and Western Railway Company,	15,960 00
June 4,	Delaware, Lackawanna and Western Railroad Com- pany,	69,610 49
June 4,	Lehigh Valley Railroad Company,	38,119 31
June 5,	Oliver Iron and Steel Company,	963 75
June 10,	Red Lion Electric Light and Power Company,	1 86
June 14,	Charleroi Coal Company,	125 00
June 19,	Pittsburg and Western Railway Company,	421 16
July 8,	Westinghouse Electric and Manufacturing Company,	100 00
July 8,	International Navigation Company,	100 00
July 9,	Ridley Electric Light and Power Company,	7 68
July 9,	Philadelphia Mortgage and Trust Company,	141 89
July 9,	W. W. Kertz & Co.,	4,297 74
July 16,	Erie and Western Transportation Company,	100 00
Aug. 6,	Samuel S. Laughlin, register and recorder of Clarion county,	94 59
Aug. 8,	Hillside Cemetery Company,	359 44
Aug. 29,	Eagle Valley Tanning Company,	72 00
Sept. 9,	Hillside Cemetery Company,	43 20
Sept. 9,	Hillside Cemetery Company,	94 93
Sept. 9,	Hillside Cemetery Company,	287 50
Sept. 13,	Pittsburg and Western Railway Company,	10,110 00
Sept. 16,	Hillside Cemetery Company,	1 72
Sept. 16,	Hillside Cemetery Company,	3 79
Sept. 16,	Hillside Cemetery Company,	11 50
Sept. 17,	Penn Bridge Company,	75 00
Sept. 17,	Penn Bridge Company,	71 25
Sept. 24,	Oliver Iron and Steel Company,	597 50
Sept. 25,	New York, Susquehanna and Western Railroad Com- pany,	113 00
Sept. 30,	Harry Conn, late captain company H, Fifth regiment, N. G. P.,	21 82
Oct. 8,	Edison Electric Light and Power Company,	149 47
Oct. 9,	The Honeybrook Novelty Company,	35 85
Oct. 11,	Segal Manufacturing and Paper Company,	90 62
Nov. 13,	Pittsburg and Western Railway Company,	7,459 89
Nov. 19,	Eddystone Water Company,	27 33
Nov. 20,	Henry W. Armstrong,	38 90
Nov. 26,	Harrison Snyder & Son,	112 69
Dec. 2,	Kensington Improvement Company,	572 21
Dec. 17,	Oliver Iron and Steel Company,	567 50
1896.		
Jan. 16,	New York, Lake Erie and Western Railroad Company,	613 92
Jan. 16,	New York, Lake Erie and Western Coal and Railroad Company,	209 99
Jan. 16,	New York, Pennsylvania and Ohio Railroad Company,	31 63
Jan. 16,	Tioga Railroad Company,	262 91
Jan. 16,	New York, Lake Erie and Western Railroad Company,	709 70
Jan. 16,	Tioga Railroad Company,	271 81
Jan. 16,	Northern Electric Light and Power Company,	406 00
Jan. 16,	United States Electric Lighting Company,	393 34
Jan. 16,	Philadelphia Electric Lighting Company,	203 58
Jan. 16,	Edison Electric Light Company, of Philadelphia,	6,232 78
Jan. 16,	Northern Electric Light and Power Company,	2,425 65
Jan. 16,	Philadelphia Electric Lighting Company,	343 34
Jan. 16,	Westinghouse Electric and Manufacturing Company,	500 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1896.		
Jan. 16,	Hestonville, Mantua and Fairmount Passenger Railroad Company,	11,910 17
Jan. 16,	Hestonville, Mantua and Fairmount Passenger Railroad Company,	4,879 23
Jan. 16,	Hestonville, Mantua and Fairmount Passenger Railroad Company,	1,801 19
Jan. 22,	Harry Conn, late captain Fifth regiment, N. G. P.,	250 00
Jan. 24,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	144 00
Jan. 24,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	417 50
Jan. 24,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	338 50
Jan. 24,	Germantown Electric Light Company,	419 07
Jan. 29,	Hyde Land Company,	10 00
Jan. 29,	Hyde Land Company,	143 00
Jan. 29,	Hyde Land Company,	104 00
Jan. 29,	Hyde Land Company,	41 06
Jan. 29,	Hyde Land Company,	35 14
Jan. 30,	Gondolo Real Estate and Improvement Company,	38 12
Feb. 1,	Dawes Manufacturing Company,	17 95
Feb. 4,	Upper Trout Run Improvement Company,	1 51
Feb. 4,	Shamokin Market House Company,	3 01
Feb. 5,	Mahanoy Junction Land and Improvement Company,	6 25
Feb. 5,	Mahanoy Junction Land and Improvement Company,	118 75
Feb. 5,	Mahanoy Junction Land and Improvement Company,	118 75
Feb. 7,	Lewisburg Light, Heat and Power Company,	11 53
Feb. 7,	Lewisburg Light, Heat and Power Company,	10 66
Feb. 7,	Lewisburg Light, Heat and Power Company,	9 74
Feb. 10,	P. J. Cunningham Company,	42 37
Feb. 11,	Anthracite Electric Light and Power Company,	31 17
Feb. 11,	Catasauqua Electric Light and Power Company,	188 70
Feb. 12,	Long Level Ferry Company,	89
Feb. 12,	Waynesburg, Graysville and Jacksonville Telephone Company,	9 21
Feb. 12,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	47 62
Feb. 12,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	240 00
Feb. 12,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	114 00
Feb. 12,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	48 38
Feb. 13,	Oliver Iron and Steel Company,	725 31
Feb. 13,	Lewisburg Light, Heat and Power Company,	72
Feb. 13,	Lewisburg Light, Heat and Power Company,	66
Feb. 13,	Lewisburg Light, Heat and Power Company,	60
Feb. 13,	American Buttonhole, Overseaming and Sewing Machine Company,	182 40
Feb. 17,	Union Storage Company,	2,500 00
Feb. 17,	Union Storage Company,	83 89
Feb. 19,	Melrose Land and Improvement Company,	164 06
Feb. 19,	M. Enz Brewing Company,	192 18
Feb. 19,	American Buttonhole, Overseaming and Sewing Machine Company,	168 78
Feb. 19,	Bloomsburg Furniture Company,	79 66
Feb. 19,	Rochester Homestead Loan and Trust Company,	25 20
Feb. 19,	Rochester Homestead Loan and Trust Company,	10 12
Feb. 19,	Rochester Homestead Loan and Trust Company,	2 85
Feb. 19,	Troy Hill Inclined Plane and Bridge Company,	120 00
Feb. 19,	Troy Hill Inclined Plane and Bridge Company,	285 00
Feb. 19,	Troy Hill Inclined Plane and Bridge Company,	285 00
Feb. 19,	Troy Hill Inclined Plane and Bridge Company,	299 24
Feb. 19,	Troy Hill Inclined Plane and Bridge Company,	299 25
Feb. 19,	Troy Hill Inclined Plane and Bridge Company,	299 25
Feb. 19,	West Ridge Coal Company,	350 00
Feb. 21,	Prospect Land Company,	183 75
Feb. 24,	Catasauqua Gas Company,	95 81
Feb. 24,	Electric City Land and Improvement Company,	62 50
Feb. 24,	Oliver Iron and Steel Company,	703 42
Feb. 24,	McKeesport and Wilmerding Land Company,	286 25
Feb. 24,	Reading Brewing Company,	608 10
Feb. 24,	Clearfield Quarrying Company,	1 50
Feb. 24,	Clearfield Quarrying Company,	44 17

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1896.		
Feb. 24,	Clearfield Quarrying Company,	46 50
Feb. 24,	Rochester Homestead Loan and Trust Company,	11 78
Feb. 24,	Rochester Homestead Loan and Trust Company,	4 58
Feb. 24,	Rochester Homestead Loan and Trust Company,	58
Feb. 24,	Hanover Light, Heat and Power Company,	45 37
Feb. 24,	Hanover Light, Heat and Power Company,	25 91
Feb. 24,	Hanover Light, Heat and Power Company,	41 16
Feb. 25,	Brady's Bend Coal and Iron Company,	2 17
Feb. 25,	Pittston Pressed Brick Company,	21 94
Feb. 25,	Pittsburg and Western Railway Company,	4,054 82
Feb. 25,	Burrell Water Company,	1 00
Feb. 25,	Burrell Water Company,	16 85
Feb. 25,	Burrell Water Company,	60
Feb. 25,	Scranton Traction Company,	1,000 00
Feb. 25,	Scranton Traction Company,	928 16
Feb. 25,	Scranton Traction Company,	1,103 33
Feb. 25,	Riverton Water Company,	3 33
Feb. 25,	Riverton Water Company,	105 00
Feb. 25,	Riverton Water Company,	122 07
Feb. 25,	People's Incandescent Light Company,	62 70
Feb. 25,	People's Incandescent Light Company,	69 23
Feb. 25,	People's Incandescent Light Company,	60 29
Feb. 25,	People's Incandescent Light Company,	64 96
Feb. 25,	People's Incandescent Light Company,	66 91
Feb. 25,	People's Incandescent Light Company,	51 49
Feb. 25,	People's Incandescent Light Company,	88 37
Feb. 25,	People's Incandescent Light Company,	233 91
Feb. 25,	People's Incandescent Light Company,	257 30
Feb. 25,	People's Incandescent Light Company,	259 82
Feb. 25,	John Bardsley, late treasurer of Philadelphia,	12,224 43
Feb. 25,	John Bardsley, late treasurer of Philadelphia,	2,238 85
Feb. 25,	Arnholt & Schaefer Brewing Company,	1,575 00
Feb. 25,	Scranton Suburban Railway Company,	45 60
Feb. 25,	Scranton Suburban Railway Company,	30 40
Feb. 25,	Scranton Suburban Railway Company,	333 33
Feb. 25,	Scranton Suburban Railway Company,	333 30
Feb. 25,	Scranton Passenger Railway Company,	25 00
Feb. 25,	Scranton Passenger Railway Company,	125 00
March 3,	West End Electric Company,	357 00
March 5,	Delta Electric Light Company,	7 47
March 6,	Arnholt & Schaefer Brewing Company,	164 32
March 6,	Bloomsburg Furniture Company,	61
March 6,	Bloomsburg Furniture Company,	3 00
March 6,	Bennett Electric Light Company,	1 25
March 6,	John Bardsley, late treasurer of Philadelphia,	5,115 50
March 6,	John Bardsley, late treasurer of Philadelphia,	895 52
March 9,	Pickett Extension Table Company,	156 25
March 9,	McKeesport and Wilmerding Land Company,	319 19
March 9,	McKeesport and Wilmerding Land Company,	252 24
March 11,	T. B. Clark & Co., Incorporated,	5 00
March 11,	T. B. Clark & Co., Incorporated,	34 77
March 11,	T. B. Clark & Co., Incorporated,	33 06
March 11,	T. B. Clark & Co., Incorporated,	29 83
March 13,	Coraopolis Electric Lighting Company,	7 59
March 17,	Chester Land and Improvement Company,	223 75
March 17,	T. B. Clark & Co.,	45
March 17,	T. B. Clark & Co.,	12 09
March 17,	T. B. Clark & Co.,	8 44
March 17,	T. B. Clark & Co.,	2 95
March 23,	Prospect Land Company,	37 50
March 23,	Avondale Marble Company,	312 50
March 24,	Columbia Land and Improvement Company,	76 19
March 24,	Columbia Land and Improvement Company,	67 61
March 26,	Avondale Marble Company,	33 75
March 26,	Lehigh Valley Railroad Company,	55,000 00
March 30,	Germantown Passenger Railway Company,	17,500 00
March 30,	Edison Electric Light Company, of Philadelphia,	9,500 00

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1896.		
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	33 19
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	65 47
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	40 22
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	10 32
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	25 34
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	129 20
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	343 69
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	275 45
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	34 84
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	92 06
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	138 28
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	106 38
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	144 19
March 30,	Mt. Jewett, Kinzua and Rittersville Railroad Company,	154 61
March 31,	Mutual Brewing Company,	97 44
March 31,	Mutual Brewing Company,	92 19
April 6,	Scranton and Carbondale Traction Company,	1,237 50
April 8,	Erie and Western Transportation Company,	9,000 00
April 8,	Waynesboro Water Company,	126 22
April 8,	Waynesboro Water Company,	154 94
April 8,	Waynesboro Water Company,	170 93
April 8,	Waynesboro Water Company,	206 49
April 8,	Waynesboro Water Company,	188 24
April 8,	Waynesboro Water Company,	173 48
April 8,	Waynesboro Water Company,	236 80
April 8,	Waynesboro Water Company,	342 90
April 9,	Lehigh Valley Railroad Company,	23,670 69
April 9,	Empire Passenger Railway Company,	3,900 00
April 13,	Lehigh Traction Company,	340 33
April 15,	Bloomsburg Land Improvement Company,	144 34
April 17,	Nicholson Water Company,	113 30
April 20,	Imperial Slate Company,	453 29
April 27,	Hestonville, Mantua and Fairmount Passenger Railroad Company,	292 75
May 6,	Delaware, Lackawanna and Western Railroad Company,	50,000 00
May 6,	Huntingdon and Broad Top Mountain Railroad Company,	4,633 00
May 13,	Angell Oil Company,	95 30
May 20,	Conneaut Lake Exposition Company,	127 59
May 27,	Palm Garden Improvement Company,	324 44
May 27,	Palm Garden Improvement Company,	148 56
May 27,	Palm Garden Improvement Company,	209 86
May 28,	National Kaolin Company,	103 68
June 2,	Philadelphia Coal and Coke Company,	146 98
June 4,	Kensington Improvement Company,	500 00
June 5,	Delaware, Lackawanna and Western Railroad Company,	56,143 48
June 10,	Wilkes-Barre and Suburban Street Railway Company,	592 50
June 10,	Wilkes-Barre and West Side Railway Company,	585 00
June 10,	Wilkes-Barre and Kingston Passenger Railway Company,	585 00
June 12,	Edison Electric Illuminating Company, Williamsport,	498 45
June 12,	Edison Electric Illuminating Company, Williamsport,	148 20
June 15,	Raystown Branch Coal Company,	225 00
June 15,	Raystown Branch Coal Company,	375 00
June 15,	Raystown Branch Coal Company,	375 00
June 15,	Raystown Branch Coal Company,	375 00
June 15,	Raystown Branch Coal Company,	10 54
June 15,	Raystown Branch Coal Company,	1 14
June 18,	St. Clair Water Comapny,	63
June 18,	St. Clair Water Comapny,	38
June 18,	St. Clair Water Comapny,	50 00
June 18,	St. Clair Water Comapny,	50 00
June 22,	Pittsburg and Birmingham Traction Company,	5,402 60
June 22,	Pittsburg and Birmingham Traction Company,	5,100 00
June 23,	Raystown Branch Coal Company,	6 07

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1896.		
June 23,	Raystown Branch Coal Company,	10 12
June 23,	Raystown Branch Coal Company,	10 12
June 23,	Raystown Branch Coal Company,	10 12
June 23,	Raystown Branch Coal Company,	28
June 23,	Raystown Branch Coal Company,	03
June 23,	Hughesville Water Company,	6 44
June 23,	Hughesville Water Company,	31 40
June 23,	Hughesville Water Company,	94 93
June 23,	Schenley Park Land Company,	258 75
June 23,	Schenley Park Land Company,	46 18
June 23,	Schenley Park Land Company,	69 70
June 25,	Oil City Electric Company,	103 95
June 25,	Oil City Electric Company,	149 85
June 25,	Oil City Electric Company,	16 10
June 25,	Oil City Electric Company,	84 43
June 25,	Oil City Electric Company,	86 44
June 25,	Oil City Electric Company,	166 16
June 29,	Valley Coal and Mining Company,	6 25
June 29,	Valley Coal and Mining Company,	96 75
June 29,	Valley Coal and Mining Company,	30 27
July 1,	St. Clair Water Company,	23
July 1,	St. Clair Water Company,	09
July 1,	St. Clair Water Company,	6 50
July 1,	St. Clair Water Company,	1 00
July 1,	Burrell Water Company,	23
July 1,	Burrell Water Company,	3 87
July 1,	Burrell Water Company,	39
July 2,	Anthracite Electric Light and Power Company,	22 03
July 6,	East Park Land Company,	30 80
July 8,	Columbia Electric Light Company,	372 94
July 8,	Columbia Electric Light Company,	128 25
July 8,	Columbia Electric Light Company,	119 13
July 8,	Columbia Electric Light Company,	100 92
July 8,	Columbia Electric Light Company,	90 30
July 10,	Fifth Street Bridge and Viaduct Company,	26 75
July 10,	Fifth Street Bridge and Viaduct Company,	26 75
July 10,	Fifth Street Bridge and Viaduct Company,	26 75
July 11,	Crew Levick Company,	55 92
July 11,	Crew Levick Company,	44 91
July 11,	Crew Levick Company,	136 00
July 13,	St. Clair Water Company,	706 97
July 14,	McKeesport and Wilmerding Land Company,	283 77
July 14,	McKeesport and Wilmerding Land Company,	231 88
July 14,	Bellevue and Glenfield Natural Gas Company,	225 00
July 14,	Bellevue and Glenfield Natural Gas Company,	210 00
July 14,	Houtzdale Water Company,	46 27
July 14,	Houtzdale Water Company,	30 96
July 14,	Houtzdale Water Company,	26 10
July 14,	Houtzdale Water Company,	30 96
July 14,	Houtzdale Water Company,	9 53
July 15,	Stoneboro and Chatauqua Lake Ice Company,	162 07
July 15,	Stoneboro and Chatauqua Lake Ice Company,	34 80
July 17,	Lock Haven Illuminating, Power and Heating Co.,	57 22
July 17,	Lock Haven Illuminating, Power and Heating Co.,	57 22
July 17,	Lock Haven Illuminating, Power and Heating Co.,	95 28
July 17,	Lock Haven Illuminating, Power and Heating Co.,	48 46
July 17,	Lock Haven Illuminating, Power and Heating Co.,	54 35
July 17,	Lock Haven Illuminating, Power and Heating Co.,	72 48
July 17,	Lock Haven Illuminating, Power and Heating Co.,	68 34
July 17,	Lock Haven Illuminating, Power and Heating Co.,	12 50
July 20,	West Ridge Coal Company,	42 00
July 20,	Prospect Land Company,	44 10
July 20,	Prospect Land Company,	5 62
July 20,	Troy Hill Inclined Plane and Bridge Company,	28 80
July 20,	Troy Hill Inclined Plane and Bridge Company,	66 98
July 20,	Troy Hill Inclined Plane and Bridge Company,	68 40
July 20,	Troy Hill Inclined Plane and Bridge Company,	94 27

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1896.		
July 20,	Troy Hill Inclined Plane and Bridge Company,	71 82
July 20,	Troy Hill Inclined Plane and Bridge Company,	71 82
July 20,	Bethlehem Electric Light Company,	68 78
July 20,	Bethlehem Electric Light Company,	68 78
July 20,	Bethlehem Electric Light Company,	74 49
July 20,	Bethlehem Electric Light Company,	64 63
July 20,	Bethlehem Electric Light Company,	60 42
July 20,	Bethlehem Electric Light Company,	48 59
July 20,	Bethlehem Electric Light Company,	76 76
July 20,	Bethlehem Electric Light Company,	85 75
July 20,	Bethlehem Electric Light Company,	487 00
July 23,	Edison Electric Illuminating Co., of Williamsport,	34 15
July 23,	Edison Electric Illuminating Co., of Williamsport,	74
July 23,	Edison Electric Illuminating Co., of Williamsport,	161 29
July 23,	Edison Electric Illuminating Co., of Williamsport,	74 83
July 23,	Edison Electric Illuminating Co., of Williamsport,	2 21
July 24,	Delaware, Susquehanna and Schuylkill Railroad Co.,	15,229 16
July 28,	Waynesboro Water Company,	4 04
July 29,	Percy Mining Company,	67 80
July 29,	Percy Mining Company,	41 10
July 29,	Percy Mining Company,	32 26
July 29,	Percy Mining Company,	75 23
Aug. 4,	Union Storage Company,	234 11
Aug. 14,	Melrose Land and Improvement Company,	192 78
Aug. 14,	Melrose Land and Improvement Company,	304 22
Aug. 18,	Brady's Bend Coal and Iron Company,	1,300 00
Aug. 24,	Joseph Kohnle Brewing Company,	540 35
Sept. 1,	Westminster Coal Company,	21 09
Sept. 1,	Westminster Coal Company,	16 80
Sept. 1,	Westminster Coal Company,	68
Sept. 1,	Westminster Coal Company,	30 00
Sept. 1,	Schuylkill Electric Railway Company,	388 12
Sept. 1,	Schuylkill Electric Railway Company,	373 63
Sept. 15,	Faraday Heat, Power and Light Company,	27 22
Sept. 15,	Faraday Heat, Power and Light Company,	21 19
Sept. 15,	Faraday Heat, Power and Light Company,	24 86
Sept. 15,	Faraday Heat, Power and Light Company,	21 58
Sept. 15,	Faraday Heat, Power and Light Company,	15 40
Sept. 15,	Faraday Heat, Power and Light Company,	10 78
Sept. 15,	Faraday Heat, Power and Light Company,	10 98
Sept. 15,	Faraday Heat, Power and Light Company,	3 71
Sept. 15,	Faraday Heat, Power and Light Company,	15 98
Sept. 15,	Faraday Heat, Power and Light Company,	24 35
Sept. 21,	Joseph Kohnle Brewing Company,	515 10
Sept. 23,	Pittsburg and Western Railway Company,	6,373 16
Sept. 23,	Pittsburg and Western Railway Company,	14,339 93
Sept. 23,	Pittsburg and Western Railway Company,	15,724 13
Sept. 23,	Pittsburg and Western Railway Company,	444 11
Sept. 23,	Pittsburg and Western Railway Company,	818 28
Sept. 24,	Robert Smith India Pale Ale Brewing Company,	187 50
Sept. 25,	Mine Hill Coal Company,	106 81
Oct. 1,	Pittsburg and Western Railway Company,	1,087 37
Oct. 1,	Pittsburg and Western Railway Company,	1,816 26
Oct. 1,	Pittsburg and Western Railway Company,	875 21
Oct. 1,	Pittsburg and Western Railway Company,	15 00
Oct. 1,	Pittsburg and Western Railway Company,	7 50
Oct. 1,	Pittsburg and Western Railway Company,	2 91
Oct. 1,	Pittsburg and Western Railway Company,	3 37
Oct. 5,	McCandless & Scott,	22 69
Oct. 7,	York Haven Paper Company,	326 45
Oct. 7,	York Haven Paper Company,	433 80
Oct. 7,	York Haven Paper Company,	516 80
Oct. 7,	York Haven Paper Company,	375 00
Oct. 9,	Burrell Improvement Company,	1,081 76
Oct. 9,	Burrell Improvement Company,	1,484 21
Oct. 9,	Burrell Improvement Company,	91 77
Oct. 9,	Burrell Improvement Company,	51 41

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1896.		
Oct. 9.	Hostetter Connellsville Coke Company,	5,513 04
Oct. 9.	Hostetter Connellsville Coke Company,	5,406 58
Oct. 12.	Pennsylvania Company,	58,908 92
Oct. 19.	Norristown, Bridgeport and Conshohocken Traction Company,	612 50
Oct. 19.	Glassport Land Company,	624 37
Oct. 19.	Dent Hardware Company,	31 25
Oct. 19.	Frankford Avenue Merchants' Electric Light Co.,	250 00
Oct. 19.	Kensington Electric Company,	60 80
Oct. 20.	Paxton Flour Mills Company,	476 56
Oct. 21.	Schuykill Valley Traction Company,	140 00
Oct. 21.	Norristown, Bridgeport and Conshohocken Traction Company,	61 56
Oct. 22.	J. Ellwood Lee Co.,	875 00
Oct. 22.	Homestead Ice Company,	31 25
Oct. 23.	Rush Brook Coal Company,	336 84
Oct. 23.	Rush Brook Coal Company,	416 68
Oct. 23.	Rush Brook Coal Company,	503 63
Oct. 23.	Rush Brook Coal Company,	354 00
Oct. 23.	Rush Brook Coal Company,	378 75
Oct. 26.	Hubley Manufacturing Company,	275 00
Oct. 26.	J. Ellwood Lee Co.,	100 61
Oct. 27.	Dent Hardware Company,	16
Oct. 28.	Joseph Kohnle Brewing Company,	290 00
Oct. 30.	Penn Manor Shaft Company,	462 29
Nov. 5.	Eastern Pennsylvania Phonograph Company,	15 00
Nov. 5.	Eastern Pennsylvania Phonograph Company,	211 80
Nov. 5.	Curwensville Lumber Company,	8 04
Nov. 5.	Curwensville Lumber Company,	63 16
Nov. 5.	Crown Slate Company,	19 00
Nov. 5.	Homestead Ice Company,	3 43
Nov. 6.	Burke & McPetridge Company,	137 50
Nov. 6.	Burke & McPetridge Company,	63 33
Nov. 6.	Burke & McPetridge Company,	6 34
Nov. 9.	Manville Covering Company,	12 50
Nov. 12.	Bartram Hotel Company,	410 62
Nov. 12.	Bartram Hotel Company,	760 00
Nov. 12.	Bartram Hotel Company,	750 00
Nov. 16.	Glassport Land Company,	15 60
Nov. 17.	Keystone Fuel Gas Company, of Williamsport,	147 50
Nov. 17.	Kensington Electric Company,	66 88
Nov. 17.	Kensington Electric Company,	660 03
Nov. 18.	Hostetter Coke Company,	1,200 00
Nov. 18.	Hostetter Coke Company,	1,440 00
Nov. 18.	Hostetter Coke Company,	1,800 00
Nov. 18.	Hostetter Coke Company,	2,160 00
Nov. 24.	Tremont Water and Gas Company,	37 05
Nov. 24.	Tremont Water and Gas Company,	49 40
Nov. 24.	Tremont Water and Gas Company,	63 55
Nov. 25.	Excelsior Flint Glass Company,	54 73
Nov. 25.	Excelsior Flint Glass Company,	34 05
Nov. 25.	Beach Valley Coal and Iron Company,	400 00
Nov. 27.	Excelsior Flint Glass Company,	29 04
Dec. 1.	Phoenix Glass Company,	362 47
Dec. 1.	Phoenix Glass Company,	218 70
Dec. 2.	Faraday Heat, Power and Light Company,	25 55
Dec. 2.	Faraday Heat, Power and Light Company,	154 22
Dec. 2.	Faraday Heat, Power and Light Company,	52 93
Dec. 2.	Faraday Heat, Power and Light Company,	2 80
Dec. 3.	Danielsville Slate Company,	59 85
Dec. 3.	Danielsville Slate Company,	95 00
Dec. 3.	Danielsville Slate Company,	95 00
Dec. 3.	Danielsville Slate Company,	140 60
Dec. 3.	Danielsville Slate Company,	95 00
Dec. 8.	Lackawanna Electric Power Company,	151 25
Dec. 8.	Lackawanna Electric Power Company,	137 50
Dec. 8.	Cheswick Land Company,	35 81

SCHEDULE B—Continued.

SCHEDULE OF COLLECTIONS.

Year.	Name.	Amount.
1896.		
Dec. 8,	Cheswick Land Company,	53 00
Dec. 8,	Cheswick Land Company,	56 86
Dec. 14,	David R. Anderson, register and recorder of Fayette county,	1,343 46
Dec. 14,	Bangor Superior Slate Company,	28 50
Dec. 14,	Bangor Superior Slate Company,	10 83
Dec. 14,	Bangor Superior Slate Company,	55 86
Dec. 14,	Bangor Superior Slate Company,	57 00
Dec. 14,	Bangor Superior Slate Company,	57 00
Dec. 14,	Bangor Superior Slate Company,	57 00
Dec. 16,	Mahanoy City, Shenandoah, Girardville and Ashland Street Railway Company,	31 00
Dec. 16,	Mahanoy City, Shenandoah, Girardville and Ashland Street Railway Company,	400 00
Dec. 17,	Oil City Electric Company,	365 40
Dec. 17,	Oil City Electric Company,	93 36
Dec. 17,	Oil City Electric Company,	81 94
Dec. 17,	Oil City Electric Company,	71 48
Dec. 21,	Braddock Wire Company,	597 50
Dec. 21,	Thompson Run Coal Company,	72 07
Dec. 21,	Thompson Run Coal Company,	41 85
Dec. 23,	State Line and Sullivan Railroad Company,	1,078 28
Dec. 23,	Shanon Manufacturing Company,	103 59
Dec. 23,	Cable Lock and Novelty Company,	134 13
Dec. 24,	Bethlehem and South Bethlehem Street Railway Co., ..	112 00
Dec. 24,	Bethlehem and South Bethlehem Street Railway Co., ..	42 60
Dec. 24,	Bethlehem and Allentown Street Railway Company, ..	56 00
Dec. 24,	Bethlehem and Allentown Street Railway Company, ..	21 30
Dec. 24,	Allentown Electric Light and Power Company,	1,242 80
Dec. 24,	Allentown Electric Light and Power Company,	1,176 94
Dec. 24,	Allentown Electric Light and Power Company,	226 96
Dec. 24,	Allentown Electric Light and Power Company,	185 57
Dec. 24,	Allentown Passenger Railway Company,	21 40
Dec. 24,	Allentown Passenger Railway Company,	56 00
Dec. 24,	Catasauqua and Northern Street Railway Company, ..	7 49
Dec. 24,	Catasauqua and Northern Street Railway Company, ..	7 87
Dec. 24,	Ritersville Hotel Company,	168 00
Dec. 24,	Ritersville Hotel Company,	212 00
Dec. 24,	Ritersville Hotel Company,	22 74
Dec. 24,	Ritersville Hotel Company,	66 40
Dec. 24,	Ritersville Hotel Company,	100 50
Dec. 24,	Allentown and Lehigh Valley Traction Company,	1,685 25
Dec. 24,	Allentown and Bethlehem Rapid Transit Company, ..	533 75
Dec. 24,	Allentown and Bethlehem Rapid Transit Company, ..	612 25
Dec. 24,	Allentown and Bethlehem Rapid Transit Company, ..	849 00
Dec. 24,	Allentown and Bethlehem Rapid Transit Company, ..	320 61
Dec. 24,	Allentown and Bethlehem Rapid Transit Company, ..	14 89
Dec. 24,	Allentown and Bethlehem Rapid Transit Company, ..	1,123 50
Dec. 24,	Allentown and Bethlehem Rapid Transit Company, ..	2,352 00
Total,		\$823,472 34
Commissions collected during 1895 and 1896,		21,738 82
		\$845,211 16

SCHEDULE C.
QUO WARRANTOS.

Name of Party.	Action Taken.
Hon. Charles E. Rice, et al., judges, etc.,	Refused.
Monongahela Water Company,	Pending.
U. B. Mutual Aid Society of Pennsylvania.	Refused.
Sun Illuminating Company, of Pittsburgh.	Pending.
Union Passenger Railway Company and Philadelphia Traction Company.	Refused.
M. E. Church, of Williamstown, Dauphin county.	Refused.
Consolidated Gas Company, of Pittsburgh.	Refused.
Pittsburg Illuminating Company,	Allowed. Judgment for defendant. In Supreme Court.
Alex. Scott, sheriff of Schuylkill county,	Refused.
A. M. E. Union church, of Philadelphia,	Refused.
Omnibus Company General, Electric Traction and People's Traction Companies.	Pending.
Ft. Pitt Street Railway Company,	Refused.
The Fireside Beneficial and Security Association, of Pittsburgh.	Proceedings discontinued.
Commonwealth Mutual Life Insurance Company, of Pennsylvania.	Proceedings stayed.
The Sexennial League,	Allowed.
Moyamensing and Penrose Ferry Road Passenger Railway Company.	Allowed.
Benjamin Ross Severn, controller of Schuylkill county.	Refused.
Thos. E. Samuels, et al., auditors of Schuylkill county.	Allowed.
Peckover Improved Stone Saw Company and Peckover Saw Company.	Allowed. Judgment of ouster.
Crystal Lake Street Railway Company,	Allowed. Judgment of ouster.
Cambria Iron Company,	Refused.
James O'Brien et al., justices of the peace in and for Shenandoah and Mahanoy City.	Allowed. Judgments of ouster.
Pittston Pressed Brick Company,	Refused.
Independent School District of Derry Township (Westmoreland county).	Allowed. Pending in Dauphin Common Pleas Court.

SCHEDULE C—Continued.

QUO WARRANTOS.

Name of Party.	Action Taken.
W. W. Spigelmeyer, Assessor of Lewis township (Union county).	Refused.
Patrick J. Cain et al., claiming to be directors of Conyngham and Centralia Poor District (Columbia county).	Refused.
Titusville and Pit Hole Plank Road Company.	Refused.
Fidelity Mutual Life Association, of Philadelphia.	Under advisement.
Citizens' Street Railway Company,	Allowed. Pending in Dauphin Common Pleas Court.
Cold Stream Water Company,	Allowed.
Quakertown and Eastern Railroad Company.	Refused.
Towanda Coal Company,	Allowed. Judgment of ouster.
Bloss Coal Mining and Railroad Company.	Allowed. Judgment of ouster.
Aramingo Avenue Passenger Railway Company.	Allowed. Judgment of ouster.
West Girard Avenue Passenger Railway Company.	Allowed. Judgment of ouster.
Cambria and Somerset Street Passenger Railway Company.	Allowed. Judgment of ouster.
Montgomery Avenue and Berks Street Passenger Railway Company.	Allowed. Judgment of ouster.
Old York Road Passenger Railway Company.	Allowed. Judgment of ouster.
Fair Hill Passenger Railway Company,	Allowed. Judgment of ouster.
Wilcox and Rocky Run Railroad Company.	Allowed. Judgment of ouster.
Philadelphia Suburban Passenger Railway Company.	Allowed. Judgment of ouster.
Wyoming Oil Company,	Allowed. Judgment of ouster.
Kane Oil Field Railroad Company, ...	Allowed. Judgment of ouster.
Phoenix Railway Company,	Allowed. Judgment of ouster.
Philadelphia Fire Insurance Company,	Allowed. Proceedings discontinued.
People's Mutual Life and Relief Association, of York.	Allowed. Pending in Dauphin Common Pleas Court.

SCHEDULE D.
LIST OF EQUITY CASES.

Name of Party.	Action Taken.
The Commonwealth of Pennsylvania, v. Phoenix Savings and Loan Association.	Bill filed. Preliminary injunction awarded and continued until further order.
Frank Handley, v. Frank Reeder, Secretary of the Commonwealth, and Joseph G. Richmond et al., commissioners of the county of Philadelphia.	Bill filed. Preliminary injunction awarded and finally dissolved.
William L. Cassin v. Frank Reeder, Secretary of the Commonwealth, and Joseph G. Richmond et al., commissioners of the county of Philadelphia.	Bill filed. Preliminary injunction awarded and finally dissolved.

SCHEDULE E.
MANDAMUS PROCEEDINGS.

Commonwealth, ex rel., John T. Harris, v. Daniel H. Hastings, Governor of Pennsylvania.	Judgment for respondent.
Philadelphia Metallic Furniture Company, v. Board of Commissioners of Public Grounds and Buildings.	Judgment for respondent.
Commonwealth, ex rel., Henry C. McCormick, Attorney General, v. Frank Reeder, Secretary of the Commonwealth.	Judgment for Commonwealth. Reversed by Supreme Court.
J. H. Cheatham and Henry Landis, M. D., v. Henry C. McCormick, Attorney General (Reading Traction Co.).	Judgment for plaintiffs. Reversed by Supreme Court.
J. H. Cheatham and Henry Landis, M. D., v. Henry C. McCormick, Attorney General (Reading and Womelsdorf Electric Railway Co.).	Judgment for plaintiffs. Reversed by Supreme Court.
George T. Murray v. Board of Commissioners of Public Grounds and Buildings.	Pending.
Commonwealth, ex rel., Fred. C. Leonard, v. Frank Reeder, Secretary of the Commonwealth.	Opinion of court filed, settling practice of Department. No decree.
Commonwealth, ex rel., William D. Phelan, v. Frank Reeder, Secretary of the Commonwealth.	Peremptory mandamus awarded.

SCHEDULE F.

LIST OF CASES ARGUED IN THE SUPREME COURT OF PENNSYLVANIA
DURING THE YEARS 1895-6.

May Term, 1895.

Commonwealth, appellee, v. Order of Solon,	Affirmed.
Commonwealth, appellee, v. Merchants' and Manufacturers' National Bank,	Affirmed.
Commonwealth, appellant, v. Keystone Benefit Association,	Affirmed.
Commonwealth, appellee, v. National Bank of the Republic (in re Goodwin Gas Stove and Meter Company),	Affirmed.
Commonwealth, appellee, v. Order of Solon,	Discontinued.
Commonwealth, appellee, v. Wm. G. Shields, register of wills, Philadelphia county,	Reversed.
Commonwealth, appellee, v. Jas. W. Latta, clerk of quarter sessions of Philadelphia county,	Reversed.
Commonwealth, appellee, v. Wm. B. Mann, prothonotary of Philadelphia county,	Reversed.
Commonwealth, appellee, v. Thos. Green, recorder of Philadelphia county,	Reversed.
Commonwealth, appellee, v. Hillside Cemetery Company,	Affirmed.
Commonwealth, appellee, v. County of Allegheny,	Reversed.
Commonwealth, appellee, v. A. L. Stanton, clerk of courts of Luzerne county,	Reversed.
Commonwealth, appellee, v. Edison Electric Light and Power Company, of Erie, Pa.,	Affirmed.
Commonwealth, ex rel., W. S. Kirkpatrick, Attorney General, appellee, v. American Life Insurance Company,	Affirmed.
Commonwealth, appellee, v. Delaware, Susquehanna and Schuylkill Railroad Company,	Judgment of non pros.

May Term, 1896.

Commonwealth, ex rel., Henry C. McCormick, Attorney General, appellee, v. Frank Reeder, Secretary of the Commonwealth,	Reversed.
J. H. Cheetham and Henry Landis, M. D., appellees, v. Henry C. McCormick, Attorney General of the Commonwealth of Pennsylvania,	Reversed.
J. H. Cheetham and Henry Landis, M. D., appellees, v. Henry C. McCormick, Attorney General of the Commonwealth of Pennsylvania,	Reversed.
Commonwealth, appellee, v. David R. Anderson, register and recorder of Fayette county,	Affirmed.
Commonwealth, ex rel., Henry C. McCormick, Attorney General, appellee, v. Jeremiah Toomey,	Affirmed.
Commonwealth, ex rel., Henry C. McCormick, Attorney General, appellee, v. Walter W. Rynkiewicz,	Affirmed.
Commonwealth, ex rel., Henry C. McCormick, Attorney General, appellee, v. Wm. H. Shoemaker,	Affirmed.
Commonwealth, ex rel., Henry C. McCormick, Attorney General, appellee, v. T. T. Williams,	Affirmed.
Commonwealth, ex rel., Henry C. McCormick, Attorney General, appellee, v. Isaac Morgan,	Affirmed.
Commonwealth, ex rel., W. U. Hensel, Attorney General, appellee, v. Provident Bicycle Association,	Affirmed.

SCHEDULE G.

LIST OF CASES PENDING IN THE SUPREME COURT OF PENNSYLVANIA.

Commonwealth, appellee, v. Martin S. Fry, clerk of quarter sessions and oyer and terminer courts, Lancaster county.
Commonwealth, appellee, v. B. F. W. Urban, late clerk of quarter sessions court, Lancaster county.
Commonwealth, ex rel., Henry C. McCormick, Attorney General, appellant, v. Pittsburg Illuminating Company.

SCHEDULE H.

LIST OF CASES PENDING IN UNITED STATES SUPREME COURT WHICH WHICH WERE HEARD AND DISPOSED OF DURING THE YEARS 1895-6.

Commonwealth, appellee, v. New York, Pennsylvania and Ohio Railroad Company, gross receipts, 1889, ...	Affirmed.
Commonwealth, appellee, v. Tioga Railroad Company, gross receipts, 1889,	Affirmed.
Commonwealth, appellee, v. New York, Lake Erie and Western Railroad Company, gross receipts, 1889,	Affirmed.
Commonwealth, appellee, v. New York, Lake Erie and Western Coal and Railroad Company, gross receipts, 1889,	Affirmed.

SCHEDULE I.

LIST OF CASES PENDING IN UNITED STATES SUPREME COURT.

Commonwealth, appellee, v. Merchants' and Manufacturers' National Bank, capital stock, 1893.

SCHEDULE J.

LIST OF CASES PENDING IN UNITED STATES CIRCUIT COURT.

Third National Bank, of Pittsburg, v. Amos H. Mylin, Auditor General, and Samuel M. Jackson, State Treasurer, capital stock, 1894.
 People's National Bank, of Pittsburg, v. Amos H. Mylin, Auditor General, and Samuel M. Jackson, State Treasurer, capital stock, 1894.
 First National Bank, of Pittsburg, v. Amos H. Mylin, Auditor General, and Samuel M. Jackson, State Treasurer, capital stock, 1894.
 Merchants' and Manufacturers' National Bank, of Pittsburg, v. Amos H. Mylin, Auditor General, and Samuel M. Jackson, State Treasurer, capital stock, 1894.

SCHEDULE K.

LIST OF APPEALS FILED SINCE JANUARY 1, 1895.

Name.	Amount.	Remarks.
Kensington Improvement Company, .	\$562 50	C. S. 1892. Paid.
Kensington Improvement Company, .	1,406 25	C. S. 1893. Partly paid.
Baltimore Product Commission, L't'd,	130 52	C. S. 1893. Verdict for def't.
American Telephone and Telegraph Company,	172 82	C. S. 1894. Paid.
Commonwealth Title Insurance and Trust Company,	677 76	G. R. Verdict for def't
Delaware, Lackawanna and Western Railroad Company,	145,840 99	C. S. 1894. Paid.
Lehigh Valley Railroad Company,	79,525 27	C. S. 1894. Paid.
W. W. Kurtz & Co., bankers,	4,512 62	Net earnings, 1879-92. Paid.
International Navigation Company, Pennsylvania Company,	105 00	C. S. 1894. Paid.
Mt. Penn Gravity Railroad Company, Samuel M. Seaton, prothonotary of Butler county,	61,621 30 220 00	C. S. 1888-94, inc. Paid. C. S. 1894. Pending.
Erie and Western Transportation Co., Coal Ridge Improvement and Coal Co., Delano Land Company,	373 88 105 00 76 00 4,025 52	Fees of office, 1894. Verdict for def't. C. S. 1894. Paid. L. T. 1894. Verdict for def't. L. T. 1894. Verdict for def't.
North Branch Steel Company,	19 95	L. T. 1894. Paid.
Pennsylvania and New York Canal and Railroad Company,	26,134 42	L. T. 1894. Verdict for def't.
Rockhill Iron and Coal Company,	1,716 26	L. T. 1894. Verdict for def't.
Edison Electric Light Company, Philadelphia,	11,079 73	C. S. 1894. Verdict for def't.
Philadelphia Mortgage and Trust Co., Old Bangor Slate Company,	148 98 1,175 00	C. S. 1894. Paid. C. S. 1894. Verdict for def't.
Crystal Spring Water Company,	4,000 00	C. S. 1894. Verdict for def't.
People's Passenger Railway Company, Eagle Valley Tanning Company,	244,900 00 75 00	C. S. 1894. Verdict for def't. C. S. 1894. Paid.
Hillside Cemetery Company,	43 20	C. S. 1891. Paid.
Hillside Cemetery Company,	94 93	C. S. 1892. Paid.
Hillside Cemetery Company,	287 50	C. S. 1894. Paid.
East Broad Top Railroad and Coal Company,	1,937 98	L. T. 1894. Verdict for def't.
Westinghouse Electric and Manufac- turing Company,	105 00	C. S. 1894. Paid.
Philadelphia Warehousing and Cold Storage Company,	380 00	L. T. 1894. Verdict for def't.
New York, Susquehanna and West- ern Railroad Company,	118 65	L. T. 1894. Paid.
Omnibus Company, General,	76 00	L. T. 1894. Verdict for def't.
Western Union Telegraph Company, .	212 80	L. T. 1894. Verdict for def't.
Delaware, Susquehanna and Schuyl- kill Railroad Company,	48,333 33	C. S. 1894. Partly paid.
Investment Company, of Philadelphia, Investment Trust Company, of Phila- delphia,	1,255 16 115 58	Compensation of bank ex- aminers. Verdict for def't. Compensation of bank ex- aminers. Verdict for def't.
Baltimore and Harrisburg Railroad Company (Western Extension),	1,200 00	C. S. 1894. Verdict for Com.
Martin S. Fry, clerk quarter sessions and oyer and terminer courts, Lan- caster county,	1,283 41	Fees of office. Judgt. for Com. In Supreme Court.
Pennsylvania Packing and Provision Company,	300 00	C. S. 1895. Judgt. for def't.
Philadelphia and Darby Railway Co., Philadelphia City Passenger Railway Company,	380 00 1,148 00	L. T. 1895. Paid. L. T. 1895. Paid.
Thirteenth and Fifteenth Streets Pas- senger Railway Company,	2,360 00	L. T. 1895. Paid.
Angell Oil Company,	416 66	C. S. 1895. Paid.
Lehigh Traction Company,	2,000 89	L. T. 1895. Paid.
Brackenridge Coal Company,	105 00	C. S. 1895. Paid.
Delaware, Lackawanna and Western Railroad Company,	106,950 65	C. S. 1895. Judgt. for Com. Paid.

SCHEDULE K—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1895.

Name.	Amount.	Remarks.
Lehigh Valley Railroad Company, . . .	79,854 23	C. S. 1895. Paid.
Germantown Passenger Railway Co., .	17,525 00	C. S. 1895. Paid.
Jessup and Moore Paper Company, . . .	125 00	C. S. 1893. Verdict for def't.
Union Improvement Company,	9,716 67	C. S. 1895. Judgt. for Com.
Erie and Western Transportation Co.,	9,005 00	C. S. 1895. Paid.
Huntingdon and Broad Top Mountain Railroad and Coal Company,	4,664 65	L. T. 1895. Paid.
Empire Passenger Railway Company,	4,095 00	C. S. 1895. Paid.
State Line and Sullivan Railroad Co.,	1,078 28	C. S. 1895. Paid.
Shoenberger Steel Company,	872 51	L. T. 1895. Verdict for def't.
Edison Electric Light Company, of Philadelphia,	9,600 00	C. S. 1895. Paid.
American Academy of Music Co., . . .	3,703 05	C. S. 1895. Judgt. for Com.
Allegheny Heating Company,	5,000 00	C. S. 1895. Pending.
Bell Telephone Company, of Philadel- phia,	12,292 60	C. S. 1895. Pending.
Bangor Fidelity Slate Company,	1,117 50	C. S. 1895. Judgt. for Com.
Bethlehem Iron Company,	4,566 27	C. S. 1895. Judgt. for Com.
Central District and Printing Tele- graph Company,	8,869 76	C. S. 1895. Pending.
Central Transportation Company, . . .	5,326 36	C. S. 1895. Pending.
Clearfield Bituminous Coal Corpora- tion,	3,217 94	L. T. 1895. Pending.
Caledonia Mining and Manufacturing Company,	1,250 00	C. S. 1895. Verdict for def't.
Dunmore Iron and Steel Company, . . .	1,869 75	C. S. 1895. Judgt. for Com.
Elk Tanning Company,	52,133 76	C. S. 1895. Judgt. for Com.
Electric Traction Company,	62,275 50	C. S. 1895. Judgt. for Com.
Hecla Coke Company,	1,263 46	C. S. 1895. Judgt. for Com.
International Navigation Company, . .	2,791 84	C. S. 1895. Verdict for def't.
Leechburg Coal and Coke Company, . .	136 12	C. S. 1895. Pending.
Lackawanna Iron and Steel Company,	7,058 59	C. S. 1895. Judgt. for Com.
Lackawanna Store Association, L't'd,	2,500 00	C. S. 1895. Judgt. for Com.
Manor Gas Coal Company,	760 00	L. T. 1892. Pending.
Manor Gas Coal Company,	760 00	L. T. 1893. Pending.
Manor Gas Coal Company,	760 00	L. T. 1895. Pending.
Mahanoy City, Shenandoah, Girard- ville and Ashland Street Railway Company,	117 80	L. T. 1891. Paid.
Mahanoy City, Shenandoah, Girard- ville and Ashland Street Railway Company,	631 60	L. T. 1892. Paid.
Meadville Gas and Water Company,	200 00	C. S. 1894. Pending.
Meadville Gas and Water Company,	250 00	C. S. 1895. Pending.
Ontario, Carbondale and Scranton Railway Company,	6,593 85	C. S. 1895. Pending.
Philadelphia Company,	372 40	L. T. 1893. Judgt. for Com.
Philadelphia Company,	9,744 40	C. S. 1895. Pending.
Pennsylvania Coal Company,	70,756 91	C. S. 1895. Verdict for Com.
Philadelphia Finance Company	1,967 82	C. S. 1895. Verdict for Com.
Penn Tanning Company,	58,148 36	C. S. 1895. Verdict for Com.
People's Traction Company,	31,660 34	C. S. 1895. Verdict for Com.
People's Traction Company,	31,731 74	C. S. 1894. Pending.
Phoenix Brewing Company, of Pitts- burgh,	570 00	L. T. 1893-5, inclusive. Pend- ing.
Pennsylvania Steel Company,	2,340 28	C. S. 1895 (4½ mos). Pending.
Pennsylvania Steel Company,	3,900 47	C. S. 1895 (7½ mos). Pending.
A. & P. Roberts Company,	2,692 03	L. T. 1895. Pending.
Sheffield Gas Company,	300 00	C. S. 1895. Verdict for def't.
Stroudsburg Land and Improvement Company,	175 00	C. S. 1895. Pending.
Tioga Railroad Company,	2,455 41	L. T. 1893. Pending.
Tioga Improvement Company,	1,000 00	C. S. 1895. Pending.
Tuna Oil Company,	700 98	C. S. 1895. Pending.
Union Tanning Company,	43,149 50	C. S. 1895. Verdict for Com.

SCHEDULE K—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1895.

Name.	Amount.	Remarks.
Wilkes-Barre and Scranton Railway Company,	5,413 05	C. S. 1895. Pending.
Northern Central Railway Company,	15,734 68	L. T. 1895. Pending.
Chester Freight Line Company,	666 66	C. S. 1895. Verdict for def't.
John C. Miller Brewing Company,	5,191 92	C. S. 1895. Pending.
Bethlehem Electric Light Company, ..	638 08	C. S. 1892. Verdict for def't.
Scranton Lace Curtain Manufacturing Company,	285 00	L. T. 1895. Verdict for Com.
Scranton Lace Curtain Manufacturing Company,	285 00	L. T. 1894. Verdict for def't.
New York and Lehigh Coal Company, ..	2,000 00	C. S. 1895. Pending.
Walburn Land Company,	1,040 02	C. S. 1895. Pending.
Allentown Terminal Railroad,	950 00	L. T. 1895. Pending.
Beech Creek Railroad Company,	50,486 44	C. S. 1895. Pending.
Berwick Store Company, Limited, ..	1,150 00.	C. S. 1895. Pending.
Black Creek Improvement Company, ..	8,333 33	C. S. 1895. Pending.
Buffalo and Susquehanna Railroad Company,	9,017 79	C. S. 1895. Pending.
Carbon Coal Company,	2,295 00	C. S. 1895. Pending.
Catherine and Bainbridge Street Railway Company,	570 00	L. T. 1895. Verdict for Com.
Citizens' Gas Company,	800 00	C. S. 1894. Verdict for Com.
Citizens' Gas Company,	860 00	C. S. 1895. Verdict for Com.
Continental Passenger Railway Co., ..	1,346 00	L. T. 1895. Verdict for Com.
Cranberry Improvement Company, ...	4,400 00	C. S. 1895. Pending.
Dunbar Furnace Company,	205 92	C. S. 1895. Verdict for Com.
Dunbar Furnace Company,	1,413 57	L. T. 1895. Verdict for Com.
Dunkirk, Allegheny Valley and Pittsburgh Railroad Company,	9,874 93	C. S. 1895. Pending.
Electric Traction Company,	1,094 94	L. T. 1895. Pending.
Empire Passenger Railway Company, ..	760 00	L. T. 1895. Verdict for Com.
Fall Brook Railway Company,	22,766 14	C. S. 1895. Pending.
Green and Coates Streets, Philadelphia, Passenger Railway Company, ..	407 85	L. T. 1895. Pending.
Highland Coal Company,	5,714 16	C. S. 1895. Pending.
Johnsonburg and Bradford Railroad Company,	1,488 96	C. S. 1895. Pending.
Lehigh Valley Coal Company,	41,913 13	L. T. 1895. Pending.
Mid-Valley Supply Company, L't'd, ..	466 66	C. S. 1895. Pending.
New York, Susquehanna and Western Coal Company,	1,624 77	C. S. 1895. Pending.
Old Bangor Slate Company,	653 03	C. S. 1895. Verdict for Com.
Pennsylvania and New York Canal and Railroad Company,	30,138 30	L. T. 1895. Pending.
Philadelphia Traction Company,	4,527 00	L. T. 1895. Verdict for Com.
Pine Creek Railway Company,	29,392 28	C. S. 1895. Pending.
Rochester and Pittsburgh Coal and Iron Company,	12,000 00	C. S. 1895. Pending.
St. Mary's Gas Company,	750 00	C. S. 1895. Verdict for Com.
Seventeenth and Nineteenth Streets Passenger Railway Company,	380 00	L. T. 1895. Verdict for Com.
Silver Brook Coal Company,	2,750 00	C. S. 1895. Pending.
South Bethlehem Supply Company, Limited,	1,200 00	C. S. 1895. Pending.
Union Passenger Railway Company, ..	3,277 28	L. T. 1895. Verdict for Com.
Upper Lehigh Supply Company, L't'd, ..	500 00	C. S. 1895. Pending.
Welsbach Light Company,	500 00	C. S. 1895. Verdict for Com.
West Philadelphia Passenger Railway Company,	4,041 44	L. T. 1895. Verdict for Com.
William Wharton, Jr., & Co., Incorporated,	1,246 64	C. S. 1895. Verdict for Com.
Wilkes-Barre and Scranton Railway Company,	1,108 40	L. T. 1895. Pending.
Annora Coal Company,	845 88	L. T. 1895. Verdict for def't.
Buffalo, Bradford and Pittsburgh Railroad Company,	5,690 55	C. S. 1895. Pending.

SCHEDULE K—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1895.

Name.	Amount.	Remarks.
Blossburg Coal Company,	4,525 00	C. S. 1895. Verdict for Com.
Hillside Coal and Iron Company,	30,000 00	C. S. 1895. Pending.
Moosic Mountain and Carbondale Railroad Company,	1,807 12	C. S. 1895. Verdict for Com.
Jefferson Railroad Company,	28,025 83	C. S. 1895. Pending.
Lehigh and Wilkes-Barre Coal Co., ..	154,953 53	C. S. 1895. Pending.
Northwestern Coal and Iron Co.,	2,775 80	L. T. 1895. Pending.
Northwestern Mining and Exchange Company,	15,000 00	C. S. 1895. Pending.
Millers' Pennsylvania Extract Co., ...	247 00	L. T. 1895. Pending.
New York, Lake Erie and Western Coal and Railroad Company,	20,000 00	C. S. 1895. Pending.
New York, Pennsylvania and Ohio Railroad Company,	172,402 88	C. S. 1895. Pending.
Penn Tanning Company,	545 16	L. T. 1895. Verdict for def't.
Sugar Run Railroad Company,	355 08	C. S. 1895. Verdict for Com.
Tioga Railroad Company,	19,826 08	C. S. 1895. Verdict for Com.
Shoenberger Steel Company,	1,321 94	C. S. 1895. Verdict for def't.
Allegheny Valley Railroad Company,	18,315 71	L. T. 1895. Pending.
Independent Refining Company, L't'd,	130 00	C. S. 1895. Verdict for def't.
Manor Gas Coal Company,	760 00	L. T. 1894. Pending.
Manor Gas Coal Company,	808 35	C. S. 1895. Pending.
Bagdad Coal and Coke Company,	750 00	C. S. 1895. Pending.
Haddon Coal Company,	266 87	C. S. 1895. Pending.
McKinley-Lanning Loan and Trust Company,	756 39	L. T. 1895. Pending.
McKinley-Lanning Loan and Trust Company,	840 00	C. S. 1895. Verdict for Com.
North Branch Steel Company,	118 94	L. T. 1895. Pending.
Sugar Run Railroad Company,	400 83	C. S. 1894. Verdict for Com.
Pennsylvania Salt Manufacturing Co.,	300 00	C. S. 1895. Pending.
Germania Refining Company,	33 50	C. S. 1895. Verdict for def't.
Penn Refining Company, Limited, ..	133 50	C. S. 1895. Verdict for def't.
Schuylkill Traction Company,	500 00	C. S. 1895. Verdict for def't.
Mahanoy City, Shenandoah, Girard- ville and Ashland Street Railway Company,	151 05	L. T. 1893. Pending.
Frick Company,	580 37	L. T. 1890-1. Verdict for def't.
Merchants' National Bank, of Phila- delphia,	3,104 00	C. S. 1896. Pending.
First National Bank, Darby,	280 00	C. S. 1896. Pending.
Blossburg Coal Company,	1,544 00	L. T. 1895. Pending.
Bethlehem Iron Company,	5,000 62	L. T. 1895. Pending.
Tioga Railroad Company,	2,455 41	L. T. 1895. Pending.
Buffalo, Bradford and Pittsburg Rail- road Company,	2,258 40	L. T. 1895. Pending.
Dunkirk, Allegheny Valley and Pitts- burg Railroad Company,	1,318 28	L. T. 1895. Pending.
Jefferson Railroad Company,	12,288 00	L. T. 1895. Pending.
Lehigh-Luzerne Coal Company,	2,668 34	L. T. 1895. Verdict for def't.
Long Valley Coal Company,	598 24	C. S. 1895. Pending.
New York, Lake Erie and Western Coal and Railroad Company,	4,328 00	L. T. 1895. Pending.
People's Passenger Railroad Co.,	2,831 52	L. T. 1895. Pending.
West End Coal Company,	1,250 00	C. S. 1895. Pending.
Northwestern Mining and Exchange Company,	3,331 42	L. T. 1895. Pending.
Coal Ridge Improvement and Coal Company,	76 00	L. T. 1895. Verdict for def't.
Union Traction Company, Philadel- phia,	26,802 40	L. T. 1895. Pending.
Allentown Gas Company,	368 60	L. T. 1892. Verdict for Com.
Allentown Gas Company,	368 60	L. T. 1893. Verdict for Com.
Allentown Gas Company,	368 60	L. T. 1894. Verdict for Com.
Carbon Coal Company,	380 00	L. T. 1895. Pending.
Cambria Iron Company,	10,514 91	C. S. 1895. Verdict for Com.

SCHEDULE K—Continued.

LIST OF APPEALS FILED SINCE JANUARY 1, 1895.

Name.	Amount.	Remarks.
Lehigh Valley Railroad Company, ...	108,253 76	L. T. 1895. Pending.
The United Gas Improvement Co., ..	3,886 22	L. T. 1895. Verdict for Com.
William Mann Company,	169 41	C. S. 1895. Verdict for def't.
People's Street Railway Company, of		
Luzerne county,	3,852 37	Bonus. Pending.
Welsbach Light Company,	347 04	L. T. 1895. Verdict for def't.
Morris and Essex Mutual Coal Co., ..	875 00	C. S. 1895. Pending.
Cayuta Wheel and Foundry Co.,	298 65	C. S. 1895. Pending.
Westinghouse Electric and Manufac-		
turing Company,	26,840 97	C. S. 1895. Pending.
Northern Coal and Iron Company, ...	3,930 00	L. T. 1895. Verdict for def't.
Delaware, Susquehanna and Schuyl-		
kill Railroad Company,	25,000 00	C. S. 1895. Pending.
Lauer Brewing Company, Limited, ..	2,440 55	C. S. 1895. Pending.

SCHEDULE L.

PROCEEDINGS HAVE BEEN INSTITUTED BY THIS DEPARTMENT AGAINST THE FOLLOWING INSURANCE COMPANIES AND BUILDING AND LOAN ASSOCIATIONS.

Name.	Result.
Aetna Mutual Live Stock Insurance Company, of Philadelphia,	Temporary receiver appointed and continued by consent.
State Standard Building and Loan Association, of Pittsburg,	Dissolved. Receiver.
The Freehold Building and Loan Association, of Pittsburg,	Dissolved. Receiver.
A. A. Alles Building and Loan Association, of Pittsburg,	Dissolved. Receiver.
The Home Protective Building and Loan Association, of Pittsburg,	Temporary receiver appointed and afterwards discharged.
The Provident Mutual Live Stock Insurance Company,	Dissolved. Receiver.
Conestoga Mutual Live Stock Insurance Company, ..	Dissolved. Receiver.
Phoenix Savings and Loan Association, of Pittsburg, ..	Dissolved. Receiver.
The Hamilton Savings Fund and Loan Association, ..	Dissolved. Receiver.
The Twin Cities National Building and Loan Association, of Pittsburg and Allegheny,	Dissolved. Receiver.
Milton Mutual Fire Insurance Company, of Milton, Pa.,	Dissolved. Receiver.
The Mechanics' and Workingmen's Building and Loan Association, of York, Pa.,	Dissolved. Receiver.
Anchor Building and Loan Association, of York, Pa., ..	Dissolved. Receiver.
The Century Mutual Fire Insurance Company, of Philadelphia,	Discontinued.
The Grocers' Mutual Fire Insurance Company,	Dissolved. Receiver.
Penn Building and Loan Association, of York, Pa., ..	Dissolved. Receiver.
Triumph Premium Building and Loan Association, of Allegheny City,	Dissolved. Receiver.
Williamsport Mutual Fire Insurance Company,	Dissolved. Receiver.
Union Building and Loan Association, of York, Pa., ..	Discontinued.
German Premium Building and Loan Association, No. 2, of Allegheny City,	Dissolved. Receiver.
The Eastern Mutual Fire Insurance Company, of Philadelphia,	Dissolved. Receiver.
Cornwall Mutual Fire Insurance Company,	Discontinued.
The Central Pennsylvania Mutual Fire Insurance Company, of Williamsport,	Discontinued.
Commonwealth Mutual Fire Insurance Company, of Philadelphia,	Dissolved. Receiver.
Niagara Mutual Fire Insurance Company, of Philadelphia,	Dissolved. Receiver.
Atlantic Mutual Fire Insurance Company, of Philadelphia,	Dissolved. Receiver.
Rittenhouse Mutual Fire Insurance Company, of Philadelphia,	Dissolved. Receiver.
Continental Mutual Fire Insurance Company,	Dissolved. Receiver.
Germania Mutual Fire Insurance Company, of Philadelphia,	Dissolved. Receiver.
Automatic Sprinkler Mutual Fire Insurance Company,	Dissolved. Receiver.
Reliable Mutual Life Insurance Company, of Philadelphia,	Dissolved. Receiver.
Thaddeus Koscuisko Building and Loan Association, ..	Proceedings pending.
Aurora Fire Insurance Company,	Proceedings pending.
Builders' Mutual Fire Insurance Company,	Proceedings pending.
Real Estate Mutual Fire Insurance Company,	Proceedings pending.
Tradesmen's Mutual Fire Insurance Company,	Dissolved. Receiver.
Wissahickon Mutual Fire Insurance Company,	Proceedings pending.
Reserve Premium and Loan Association,	Dissolved. Receiver.

SCHEDULE M.

INSURANCE COMPANY CHARTERS APPROVED.

- Automatic Mutual Fire Insurance Company, Philadelphia, August 23, 1895.
 Automatic Sprinkler Mutual Fire Insurance Company, Philadelphia, September 17, 1895.
 Apollo Mutual Fire Insurance Company, Apollo, March 5, 1896.
 Abington Mutual Fire Association, Clark's Green, Lackawanna county, June 8, 1896.
 Bedford Mutual Fire Insurance Company, Bedford, April 29, 1896.
 Colonial Mutual Fire Insurance Company of Philadelphia, Philadelphia, February 13, 1895.
 Century Mutual Fire Insurance Company, Philadelphia, February 27, 1895.
 Cornwall Mutual Fire Insurance Company, Lebanon, April 24, 1895.
 Cambria County Mutual Fire Insurance Company of Patrons of Husbandry, Loretto, Cambria county, August 1, 1895.
 Commonwealth Mutual Fire Insurance Company, Philadelphia, September 18, 1895.
 Denver Mutual Cyclone Insurance Company, Denver, Lancaster county, November 1, 1895.
 Central Accident Insurance Company, Pittsburg, January 30, 1895.
 Electric Mutual Casualty Association, Scranton, March 31, 1896.
 Farmers' Alliance and Industrial Union Mutual Fire Insurance Company, Coudersport, March 22, 1895.
 Factory Mutual Fire Insurance Company, Philadelphia, June 25, 1895.
 Globe Mutual Fire Insurance Company, Philadelphia, February 19, 1895.
 Grocers' Mutual Fire Insurance Company, Philadelphia, June 25, 1895.
 Husbandman's Mutual Fire Insurance Company, Philadelphia, February 26, 1895.
 Industrial Mutual Fire Insurance Company of Philadelphia, Philadelphia, March 13, 1895.
 Lansdale Mutual Fire and Storm Insurance Company, Lansdale, Montgomery county, April 29, 1896.
 Lawn Mutual Fire, Storm and Lightning Company of Lawn, Pa., Lawn, Lebanon county, September 8, 1896.
 Mutual Casualty Company of America, Philadelphia, May 27, 1896.
 Mendon Grange Mutual Fire Insurance Company, Mendon, Westmoreland county, February 17, 1896.
 Niagara Mutual Fire Insurance Company, Philadelphia, July 31, 1895.
 Old Guard Mutual Fire and Storm Insurance Company, Lancaster, December 9, 1896.
 Pennsylvania Lumbermen's Mutual Fire Insurance Company, Philadelphia, February 26, 1899.
 Philadelphia Mutual Fire Insurance Company, Philadelphia, July 29, 1895.
 Protective Mutual Fire Insurance Company, Philadelphia, August 23, 1895.
 Pittsburg Life Insurance Company, Pittsburg, August 14, 1896.
 Real Estate Mutual Fire Insurance Company, Philadelphia, February 9, 1895.
 Reamstown Mutual Fire Insurance Association, Reamstown, Lancaster county, April 10, 1895.
 Rittenhouse Mutual Fire Insurance Company of Pennsylvania, Philadelphia, July 13, 1895.
 Reliable Mutual Fire Insurance, Philadelphia, September 17, 1895.
 Security Mutual Fire Insurance Company, Philadelphia, March 1, 1895.
 Southwestern Mutual Fire Association of Fayette County, High House, Fayette county, April 3, 1895.
 Schuylkill Fire Insurance Company, Philadelphia, August 29, 1895.
 Sunbury Mutual Fire Insurance Company, Sunbury, April 6, 1896.
 Traders' and Bankers' Mutual Life Association, Scranton, March 31, 1896.
 Trolley Mutual Accident Company, Philadelphia, August 30, 1895.
 Trevorton Mutual Fire Insurance Company, Trevorton, Northumberland county, April 18, 1895.
 Wissahickon Mutual Fire Insurance Company, Philadelphia, March 26, 1895.
 Western Pennsylvania Mutual Fire Insurance Company, New Castle, June 25, 1895.
 Wrightsville and Hellam Mutual Fire Insurance Company, Wrightsville, April 29, 1896.

SCHEDULE N.

LIST OF CASES PENDING WHEN PRESENT ATTORNEY GENERAL CAME INTO OFFICE AND WHICH HAVE SINCE BEEN DISPOSED OF.

Name of Case.	Nature of Claim.	Result.
Pittsburg and Western Railway Company,	Capital stock,	Paid.
Merchants' and Manufacturers' National Bank,	Capital stock,	In Supreme Court of United States.
Keystone Benefit Association,	Order to show cause, etc.,	Judgment for defendant.
New York, Pennsylvania and Ohio Railroad Company,	Gross receipts,	Paid.
Tioga Railroad Company,	Gross receipts,	Paid.
New York, Lake Erie and Western Railroad Co.,	Gross receipts,	Paid.
New York, Lake Erie and Western Coal and Railroad Co.,	Gross receipts,	Paid.
Reading Malt Company, Limited,	Capital stock,	Verdict for defendant.
Northern Electric Light and Power Company,	Capital stock,	Paid.
Philadelphia Electric Light Company,	Capital stock,	Paid.
Edison Electric Light and Power Company,	Capital stock,	Paid.
Edison Electric Light Company or Philadelphia,	Capital stock,	Paid.
Germantown Electric Light Company,	Capital stock,	Paid.
Northern Electric Light and Power Company,	Capital stock,	Paid.
Philadelphia Electric Light Company,	Capital stock,	Paid.
United States Electric Lighting Company,	Capital stock,	Paid.
Hillside Cemetery Company,	Capital stock,	Paid.
Philadelphia Coal and Coke Company,	Capital stock,	Paid.
East Bangor Consolidated Slate Company,	Capital stock,	Paid.
National Kaolin Company,	Capital stock,	Paid.
Delaware, Susquehanna and Schuylkill Railroad Co.,	Capital stock,	Paid.
Exchange National Bank, of Pittsburg,	Capital stock,	Awaiting decision of U. S. Sup. Ct. in similar case.
First National Bank, of Pittsburg,	Capital stock,	Awaiting decision of U. S. Sup. Ct. in similar case.
Merchants' and Manufacturers' National Bank,	Capital stock,	Awaiting decision of U. S. Sup. Ct. in similar case.
People's National Bank,	Capital stock,	Awaiting decision of U. S. Sup. Ct. in similar case.
Third National Bank,	Capital stock,	Awaiting decision of U. S. Sup. Ct. in similar case.
Bloomsburg Land Improvement Company,	Capital stock,	Paid.
Western Cemetery Association, of York, Pa.,	Capital stock,	Paid.
Provident Bicycle Association, of Philadelphia,	Quo warranto,	Judgment for the defendant.
Oil Well Supply Company,	Capital stock,	Paid.
Oil Well Supply Company,	Capital stock,	Paid.

SCHEDULE N—Continued.

LIST OF CASES PENDING WHEN PRESENT ATTORNEY GENERAL CAME INTO OFFICE AND WHICH HAVE SINCE BEEN DISPOSED OF.

Name of Case.	Nature of Claim.	Result.
Pennsylvania General Electric Company,	Capital stock,	Paid.
Gardner, Morrow & Co.,	Penalty,	Judgment for Commonwealth.
Huntingdon and Broad Top Railroad Company,	Tax on loans,	Paid.
Tarentum Water Company,	Capital stock,	Paid.
Adams Express Company,	Capital stock,	Paid.
Wm. G. Shields, register of Philadelphia county,	Fees of office,	Judgment for defendant.
James W. Latta, clerk, quarter sessions, Philadelphia,	Fees of office,	Judgment for defendant.
Philip V. Weaver, register of Luzerne county,	Fees of office,	Judgment for defendant.
J. C. Weigand, prothonotary of Luzerne county,	Fees of office,	Judgment for defendant.
Thomas Green, recorder of deeds, Philadelphia county,	Fees of office,	Judgment for defendant.
A. L. Stanton, clerk, quarter sessions, Luzerne county,	Fees of office,	Judgment for defendant.
Wm. B. Mann, prothonotary common pleas, Philadel- phia,	Fees of office,	Judgment for defendant.
County of Allegheny,	Fees of office,	Judgment for defendant.
American District Telegraph Company,	Capital stock,	Pending.
John W. Haney Transfer Company, Limited,	Capital stock,	Paid.
National Bank of the Republic (in re Goodwin Gas Stove and Meter Company),	Capital stock,	Paid.

COMPENDIUM
OF THE
GENERAL RULES OF PRACTICE
IN THE
SEVERAL DEPARTMENTS
OF THE
STATE GOVERNMENT
OF THE
COMMONWEALTH OF PENNSYLVANIA.

I.

OFFICE OF THE ATTORNEY GENERAL.

The Attorney General is the legal adviser of the Governor, the heads of Departments and of the various State boards, heads of State institutions, mine inspectors and other State officials, and, when requested, furnishes orally or in writing formal opinions on questions arising in the administration of the State Government. The written opinions are published bi-ennially in his report to the Legislature, and those rendered upon matters of public interest have been included in this appendix. The nature and extent of the Attorney General's duties do not permit him to furnish legal advice to individuals other than those officially connected with the State government.

The Attorney General receives for collection from the Auditor General and State Treasurer all claims due the Commonwealth from any source, whereupon he proceeds to collect the same by suit or otherwise as he deems most conducive to the interests of the Commonwealth, and pays over to the State Treasurer all moneys immediately upon his receipt of the same. While most of these claims are transmitted to him for collection by the State Treasurer and Auditor General, as aforesaid, it is his duty to collect any claims due the Commonwealth which may be certified to him by any other State official or board. He has the right of access at all times to the books and papers in the offices of the Auditor General and State Treasurer, and, in his discretion, may cause a settlement and collection of moneys appearing to be due thereby. In conjunction with the Auditor General and State Treasurer, forming what is commonly known as the "Board of Public Accounts," he revises and re-settles accounts for tax or any other debt due the State, whether from corporations, city or county officers or individuals. Upon formal request of the Insurance Commissioner or the Commissioner of Banking, accompanied by evidence showing insolvency or a business conducted contrary to law, it becomes the duty of the Attorney General to proceed by a suggestion for an order to show cause, in the Dauphin county court, against insolvent and illegally conducted insurance companies, trust companies and building and loan associations, with a view to the winding up of their business and the appointment of receivers. He also has authority under the law to compromise and adjust, before or after suit, any claims due the Commonwealth which have been certified to him for collection, upon such terms as he deems to the best interests of the Commonwealth.

He examines the proposed charters of incorporation of banks and insurance companies, the amendments or renewals of such charters, and if he finds that they conform to law he approves the same. He has power generally to act for the Commonwealth in all litigation to which it may be a party, but he is never concerned officially in any criminal action. He also prosecutes writs of quo warranto and other extraordinary legal remedies in the name of the Commonwealth. The Attorney General is a member of the Board of Property, the Board of Public Accounts, the Board of Pardons and the Medical Council of the State. The functions of these Boards are fully set forth in their appropriate places in this report.

The practice of the Department upon application for writs of quo warranto or mandamus or other extraordinary legal process is as follows:

Upon receipt of petition or application, requesting the Attorney General to institute said proceedings, a certain day is fixed as a time of hearing. Notice of the application and the time of hearing, together with a copy of the petition or application, is required to be served by the petitioner upon the respondent. At the time fixed for the hearing the respective parties are heard in person or by counsel at the Attorney General's office in Harrisburg. Testimony is taken either orally or by affidavit, and if a *prima facie* case is made out by the complainant, the Attorney General allows the writ asked for by a simple order to that effect, without filing a formal opinion setting forth the reasons for his action. If the writ requested is thus allowed he files his suggestion or bill in the court of common pleas of Dauphin county, which court, under the act of 1870 (P. L. 57), is endowed with special jurisdiction to hear and determine all cases and proceedings in which the Commonwealth is a party. While the general practice is to institute all proceedings of this character in said court, the complainant can, by giving sufficient reason therefore, institute the proceedings at the relation of the Attorney General in his own proper county. If it shall appear to the Attorney General in his discretion that the petitioner or complainant has not made out a *prima facie* case, he will refuse the application by simple notification that the writ has been refused without giving reasons. The hearing of these cases by the court presents no peculiarities, the quo warranto cases being heard upon suggestion and answer and the equity cases upon bill and answer as in the courts of other counties. The nature of the various proceedings referred to is indicated in this report, pages 9 to 20.

The practice with regard to settlements for taxes and other claims is as follows:

These claims come into the hands of the Attorney General only by certification from the Auditor General after settlement made by that official in conjunction with the State Treasurer. If the debtor, after

having received a copy of the settlement from the Auditor General, neglects to take an appeal therefrom to the court of common pleas of Dauphin county within sixty days after the approval of such settlement by the State Treasurer, the Auditor General certifies said settlement to the Attorney General for immediate collection, and without further delay an action of assumpsit is brought upon this settlement in the Dauphin county court. The summons obtained from the prothonotary of said court is sent for service to the sheriff of the county in which the office or residence of the debtor is located, together with a copy of the settlement filed in the suit. The sheriff makes his return of service through this Department to the prothonotary, and if the claim is not paid or adjusted and no formal affidavit of defense is filed, judgment is taken upon the return day for the amount of tax or claim, together with interest thereon, at the rate of 12 per cent. from sixty days after the date of settlement, Attorney General's commissions at 5 per cent. and costs of suit. If a formal affidavit of defense is filed before the return day, the case is included in a trial list which is prepared semi-annually when warranted by the accumulation of suits, and tried at a special session of common pleas fixed by the court of Dauphin county. If, however, the debtor should, within sixty days after settlement, file with the Auditor General a formal appeal from the settlement, the said appeal, together with a specification of the legal objections to said settlement, is filed in the office of the prothonotary at Harrisburg, and the proceeding is also included in the trial list above mentioned. The practice in settlements for bonus on charters or increase of capital stock is the same as in other claims except that the interest charged is but 6 per cent. from the date when the bonus becomes due.

The trial of suits of the Commonwealth for unpaid taxes, bonus and other claims presents some peculiarities. The Dauphin county court, as mentioned above, has special jurisdiction under the act of 1870. Under the act of April 22, 1874 (P. L. 109), all tax cases may be tried without the intervention of a jury by filing in the proper office a stipulation to that effect, and nearly all of the Commonwealth's cases are thus tried. Testimony is taken either orally or by affidavit. Many cases are tried entirely by affidavits. As in all other cases either party has the right of appeal from the opinion and finding of the court, and all such appeals are argued before the Supreme Court at its annual session in Harrisburg unless advanced by special order. Cases which involve consideration of the Federal Constitution may be further appealed to the United States Courts, but such appeals are infrequent.

II.

OFFICE OF SECRETARY OF THE COMMONWEALTH.

The Secretary of the Commonwealth is the head of the Department of State.

Section 15, of Article 2, of the Constitution of 1790, provides that a secretary should be appointed and commissioned during the Governor's continuance in office, if he should so long behave himself well; that he should keep a fair register of all the official acts and proceedings of the Governor, and should, when required, lay the same, and all papers, minutes and vouchers relative thereto, before either branch of the Legislature, and perform such other duties as should be enjoined upon him by law.

The act of March 12th, 1791, provides as follows: "The following duties be enjoined upon the secretary of the Commonwealth in addition to those prescribed in the Constitution: First, he shall keep the great and less seal of the State, and affix them, respectively, as the case may require, to all public instruments, to which the attestation of the Governor's signature now is, or shall hereafter be required by law. Secondly, he shall collect and pay over to the State Treasurer, quarterly, the fees heretofore usually collected by the secretary of the late supreme council. Third, all bonds and recognizances, which now are, or hereafter shall be, by law directed to be given to this Commonwealth for the faithful discharge of any office, commission or public trust, shall be taken by the Secretary in the name of the Commonwealth for the uses in the same respectively expressed * * *."

This officer is, therefore, the keeper of the great and less seals of the State and affixes them to such instruments as the law requires, and attests the Governor's signature to all official papers. He attests and makes a record of all proclamations issued by the Governor. He is the custodian of the laws of the Commonwealth and of the records of all the official acts of the Governor. He has charge of the publication of the laws enacted by the Legislature and signed by the Governor, and of the veto messages of the Governor, and also keeps a record of all fines and forfeited recognizances remitted by Executive order.

All applications for charters for corporations for profit, under the general corporation laws of the Commonwealth, are filed with the Secretary of the Commonwealth, by whom they are examined before they are approved by the Governor, and before letters patent incorporating the subscribers and their associates into a body corporate are issued. Likewise all changes of name and all amendments to charters of cor-

porations of this class, all proceedings for the merger or consolidation, for the increase or decrease of capital stock, and for the increase of indebtedness of corporations for profit, or for their re-organization after a judicial sale, are submitted to this officer for approval before they become operative. All proceedings of this nature and all decrees of dissolution of corporations of this class must be filed in the office of the Secretary of the Commonwealth.

The act of April 23d, 1874, provides that it shall not be lawful for any foreign corporation to do any business in this Commonwealth until it shall have filed in the office of the Secretary of the Commonwealth a statement, under the seal of the corporation, signed by the president or secretary thereof, showing the title and object of such corporation, the location of its office or offices, and the name or names of its authorized agent or agents therein, and the enforcement of this act devolves upon the Secretary of the Commonwealth.

He is the custodian of the official bonds of State and county officers and notaries public, and of the returns of elections for presidential electors and other State officers, and such county officers as receive executive commissions, which commissions are signed by the Governor and sealed and attested by the Secretary of the Commonwealth.

All applications for requisitions to procure the inter-state extradition of persons charged with or convicted of crime are laid before the Secretary of the Commonwealth, by whom they must be examined and approved before the Governor will direct the requisition to be issued.

RULES GOVERNING APPLICATION FOR LETTERS PATENT, ETC.

CORPORATIONS OF THE SECOND CLASS.

The following rules governing the applications for and the granting of letters patent, and concerning the practice of this office with reference to corporations, founded upon the acts of Assembly and the opinions of the Attorney General, are submitted for the guidance of those interested.

Notices.

The notice of an intention to apply for a charter must give the names of five subscribers, designate the time when application will be made to the Governor for the charter, the act of Assembly under which it is made, and the purpose proposed.

Twenty-one days' notice must be given of the intended application, by advertisement in two newspapers of general circulation, printed in the county where the corporate functions are to be exercised.

Legal or technical publications are not regarded as in this class; but additional publication can be made in them, if desired.

The proof of the publication of the notice must be filed in this office upon the maturity of the certificate.

Filing of Certificate.

The certificate of organization should be on file in this office during the period of publication and the fee for letters patent and bonus fee should accompany the application.

This rule greatly facilitates business, as applications are examined when received, and needed changes or corrections can thus be made before the maturity of the notice.

Re-advertisement will be required on applications received thirty days after the time designated in the notice.

Attorneys or others who have forwarded papers to this office, and on which no further action has been taken, will, after sixty days from such receipt, be requested to complete the same, or they will be either returned, or certified to the Attorney General for such action as he may deem proper.

Contents of Certificate and Statement of Purpose.

The certificate must have at least five subscribers, three of whom must be citizens of this Commonwealth, and be acknowledged and verified by at least three of the subscribers before the recorder of deeds or a notary public.

The object of the corporation should be restricted to the purpose set forth distinctly in one clause of the incorporation act, and be so concisely stated as to avoid all diversity.

Special care should be taken that **ONLY THE PURPOSE IS STATED** and **NOT THE POWERS** which come to the corporation by grant of law.

Certificates for enumerated objects and "other purposes," for mining for "minerals;" "dealing in," for "buying and selling real estate," when manufacturing companies are referred to; and certificates containing indefinite, irrelevant or unnecessary statements will not be approved.

Whenever the certificate of organization of a proposed corporation is received and is found not to be in proper form, it will be promptly returned for correction. When thus returned, a new certificate conforming to the law and to the requirements of this office should at once be prepared, executed and forwarded for approval.

The designated place of business of the corporation is where the corporate functions are to be exercised, and only one office can be named as such.

A married woman may be named as a director, treasurer or one of the five subscribers to the articles of incorporation.

Time of Application.

Charters will not be granted on Saturday, or on any legal holiday, as the State Treasury is closed on these days.

Protests and Hearings.

Protests against the issuing of letters patent upon any application, should be filed in this office as soon after the first publication of notice as practicable. The protest should briefly set forth the ground of opposition and the interest of the protestants; and must be specific, giving the full and correct name of the company against whose application it is filed, and designating the date when the application is advertised to be made. A day for hearing will then be appointed, at which time all parties will be heard by counsel or in person.

Increase and Decrease of Stock and Indebtedness.

Returns of election upon increase or decrease of capital stock should not be combined with the returns of election upon increase or decrease of indebtedness. The return of the president or treasurer as to the actual making of the authorized increase or decrease should be made separately from the election return, and not attached thereto, and is required by law to be made within thirty days after the actual increase or decrease. The return of increase should specify the terms thereof, whether for cash, for materials, labor or property.

Waivers of notice of publication should be accompanied by the affidavit of the secretary, showing that the persons subscribing to the waiver are the owners of all the capital stock of the corporation.

Co-operative Associations.

Co-operative associations are corporations, and are subject to all the requirements of the corporation laws as to bonus and fees due the State. The amount of the original capital must be specified in the articles of association. The purpose of the association and the terms upon which persons may become members should be clearly and succinctly stated.

Foreign Corporations.

Foreign corporations which have an established agent, office or place of business in this State, or send their traveling agents, salesmen or solicitors into this State for the purpose of soliciting trade, or send their goods to merchants, or houses in this State, to be sold on commission, should file a statement locating an office and naming an agent, upon whom process may be served.

Bonus and Fees.

Upon the granting of a charter the whole bonus, which is one-third of one per centum of the capital stock, is payable through this office by all corporations except railroad, turnpike, bridge and cemetery companies and building and loan associations; and checks or drafts therefor should be drawn to the order of the "State Treasurer;" all other checks and drafts should be drawn to the order of the "Secretary of the Commonwealth." The statement of fees will be found below.

Blank Forms.

Blanks for applications for charters, proof of publication, increase or decrease of capital stock or indebtedness, president's returns, waivers and statements by foreign corporations, etc., will be furnished on application.

FEES.

Statement of fees for filing and recording certain papers in the office of the Secretary of the Commonwealth, and for the issuing of letters patent to corporations:

For filing and recording papers relating to—

Enlargement of territory of natural gas company,	\$15 00
Extension of route of street railway,	15 00
Election return on increase or decrease of capital stock or indebtedness, when notice of meeting has been published for 60 days,	30 00
Same, when publication of notice has been waived,	35 00
Return of president or treasurer of actual increase or decrease of capital stock or indebtedness,	5 00
Certificate of dissolution of a corporation,	10 00
Foreign corporations, statement of location of office,	10 75
Acceptance of Constitution and act of Assembly,	10 00
Change of corporate name,	10 00
Re-organization after judicial sale, including acceptance of the Constitution,	40 00
Articles of co-operative associations (including copies),	26 00
Agreements for merger and consolidation,	55 00

For letters patent for—

Re-charter, including acceptance of Constitution or act,	40 00
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Note—All fees must be paid in full, and also the whole bonus, before papers can be marked filed and recorded, or letters patent can be issued by the Governor.

Insurance companies, including statements,	37 00
Railroad companies (steam or street),	82 00
Amendment to charter, except to railroad companies,	30 00
All other corporations,	30 00

The act of June 15, 1897, fixes bonus on charters and upon authorized increase of capital stock at one-third of one per cent., payable in advance.

BUREAU OF COMMISSIONS.

The work in the office of the Secretary of the Commonwealth relating to commissions is in charge of the commission clerk.

It is his duty to issue commissions to all officials elected by popular vote, who, by law are entitled to receive them. State officials, judges of the various courts, city and county officers and justices of the peace, for full terms of service, come under this head, and commissions are issued based upon the election returns.

Aldermen and justices of the peace elect must give notice in writing to the prothonotary, within thirty days after election, of intention to accept said office, and based solely upon the certificate of the prothonotary, showing election and acceptance, are commissions issued for the full term of five years. Elections for aldermen or justices of the peace held at any other time than the third Tuesday of February are null and void.

Appointed officials, such as department officers, trustees and managers of State Hospitals and asylums, members, directors, etc., of various State boards, commissioners of deeds, notaries public, policemen, etc., are commissioned only upon receipt of written orders from the Governor, and for such terms as fixed by law.

Petitions, etc., requesting such appointments, must be sent to the Governor. If favorably considered orders are issued by the Governor to the commission clerk of the State Department to make commissions in accordance therewith.

Blank forms of application for the appointment of notaries public only are furnished by the Executive Department upon request.

Other forms must be prepared by the applicants. Where fees are by law made payable before appointments can be made, such fees must always accompany petitions of applicants.

Notaries public, when appointed during the recess of the Senate, are commissioned until the end of the next session of the Senate. When confirmed by the Senate the term is four years from the date of such confirmation. A notary public must give bond and lift commission within thirty days after appointment, otherwise the appointment will be null and void.

Vacancies in the office of alderman and justice of the peace occurring by reason of the erection of any new ward, borough or township, or from the neglect or refusal to file acceptance with the prothonotary, or lift commission, within the time fixed by law, or by death, resignation or otherwise, can be filled only by the Governor until the first Monday of May following the next (spring) election. Commissions of aldermen and justices of the peace must be lifted within sixty days from the date thereof, or the office will become vacant.

The bonds and recognizances of sheriffs and coroners, and the bonds of prothonotaries, registers of wills, recorders of deeds, and clerks of the several courts, must have the sureties approved by the judges of the court of common pleas and also by the Governor, and be filed in the office of the Secretary of the Commonwealth before commissions can issue.

The bonds and oaths of notaries public are to be filed in the office of the Secretary of the Commonwealth. The bonds must have two sufficient sureties, and they must make the affidavit as endorsed thereon.

The oath authorized by the Constitution to be administered to all State officers and judges of the Supreme Court and Superior Court must be filed in the office of the Secretary of the Commonwealth.

Military commissions are also prepared upon receipt of written orders from the Governor and Adjutant General.

The average number of all commissions issued each year is above three thousand, and the number is constantly and rapidly increasing. A complete and accurate record is kept of all commissions, carefully classified and arranged.

All official bonds given to the Commonwealth, if found correct by the commission clerk, are approved by the Governor, then classified and duly filed in the State Department.

Letters and inquiries relating to appointments, commissions, bonds, etc., are promptly answered by the commission clerk.

Two assistants aid in performing the work intrusted to this bureau of the State Department.

RULES OF PRACTICE RELATING TO REQUISITIONS.

The application for the requisition must be made by the district or prosecuting attorney for the county or district in which the offense was committed, and must be in duplicate original papers, or certified copies thereof.

The following must appear by the certificate of the district or prosecuting attorney:

- (a.) The full name of the person for whom extradition is asked, to-

gether with the name of the agent proposed, to be properly spelled, in Roman capital letters, for example: JOHN DOE.

(b.) That in his opinion the ends of public justice require that the alleged criminal be brought to this State for trial at the public expense.

(c.) That he believes he has sufficient evidence to secure the conviction of the fugitive.

(d.) That the person named as agent is a proper person, and that he has no private interest in the arrest of the fugitive.

(e.) If there has been any former application for a requisition for the same person, growing out of the same transaction, it must be so stated, with an explanation of the reasons for a second request, together with the date of such application, as near as may be.

(f.) If the fugitive is known to be under either civil or criminal arrest in the state or territory to which he is alleged to have fled, the fact of such arrest and the nature of the proceedings on which it is based must be stated.

(g.) That the application is not made for the purpose of enforcing the collection of a debt, or for any private purpose whatever, and that if the requisition applied for be granted, the criminal proceedings shall not be used for any of said objects.

(h.) The nature of the crime charged, with a reference, when practicable, to the particular statute defining and punishing the same.

(i.) If the offense charged is not of recent occurrence, a satisfactory reason must be given for the delay in making the application.

1. In all cases of fraud, false pretenses, embezzlement or forgery, when made a crime by the common law, or any penal code or statute, the affidavit of the principal complaining witness or informant that the application is made in good faith, for the sole purpose of punishing the accused, and that he does not desire or expect to use the prosecution for the purpose of collecting a debt, or for any private purpose, and will not directly or indirectly use the same for any of said purposes, shall be required, or a sufficient reason be given for the absence of such affidavit.

2. Proof by affidavit of facts and circumstances satisfying the Executive that the alleged criminal has fled from the justice of the State, and is in the State on whose Executive the demand is requested to be made, must be given. The fact that the alleged criminal was in the State where the alleged crime was committed at the time of the commission thereof, and is found in the State upon which the requisition was made, shall be sufficient evidence in the absence of other proof, that he is a fugitive from justice.

3. If an indictment has been found, certified copies, in duplicate, must accompany the application.

4. If an indictment has not been found by a grand jury, the facts and circumstances showing the commission of the crime charged, and that

the accused perpetrated the same, must be shown by affidavit taken before a magistrate (a notary public is not a magistrate within the meaning of the statutes), and that a warrant has been issued and duplicate certified copies of the same, together with the returns thereto, if any, must be furnished with the application.

5. The official character of the officer taking the affidavits or depositions and of the officer who issued the warrant must be duly certified.

6. Upon the renewal of an application, for example: On the ground that the fugitive has fled to another state, not having been found in the state on which the first was granted, new or certified copies of papers in conformity with the above rules must be furnished.

7. In case of any person who has been convicted of any crime, and escapes after conviction, or while serving his sentence, the application may be made by the jailor, sheriff, or other officer having him in custody, and shall be accompanied by certified copies of the indictment or information, record of conviction, and sentence, upon which the person is held, with the affidavit of such person having him in custody, showing such escape, with the circumstances attending the same.

8. No requisition will be made for the extradition of any fugitive except in compliance with these rules.

ADDITIONAL SUGGESTIONS.

1. At the Interstate Extradition Conference, held in New York, in August, 1887, it was resolved by the representatives of the several States: "That it is the sense of this conference that the Governors of the demanding states discourage proceedings for the extradition of persons charged with petty offenses, and that, except in special cases, under aggravating circumstances, no demand should be made in such cases."

2. Requisitions will not issue in cases of fornication and bastardy, desertion (except under special and aggravated circumstances), nor in any case to aid in collecting a debt or enforcing a civil remedy, nor in cases in which the offense is of such a trivial character as to leave a doubt as to the issuing of a mandate thereon by the executive of another state or territory; nor in a case of seduction, until an indictment is found and the relations of the parties clearly established, so as to leave no doubt that the case is one of seduction, and not of fornication and bastardy.

3. Requisitions will not be issued on petition alone, but the copies of record and affidavits required by the preceding rules must in every case be furnished; and this regulation will be applied with special strictness in all cases where the charge is cheating, obtaining money

by false pretenses, embezzlement and the like. False and deceitful representations must be particularly set forth.

4. All papers presented in connection with an application for a requisition must be in duplicate.

5. The agent should, when possible, be the sheriff of the county or his deputy.

6. Each application must be accompanied with the legal fee of one dollar.

III.

AUDITOR GENERAL'S DEPARTMENT.

The office of Auditor General was created by the act of March 17, 1809, which act abolished the offices of Comptroller General and Register General and divided the duties theretofore belonging to said offices between the State Treasurer and a new officer, created under the provisions of said act, known as the Auditor General. The act of March 30, 1811, extended and perfected the system of accounting thus inaugurated. In 1821 the office of Escheator General was abolished, and the duties which had appertained to that office were transferred to the Auditor General. Various additional duties were imposed upon the Auditor General from time to time, by subsequent legislation, but he was relieved of so much thereof as related to the public lands by the creation of the Department of Internal Affairs, under the new Constitution, and, in 1873, he was also relieved from all duties in connection with foreign insurance companies, through the creation of the Insurance Department. The formation of the Banking Department, in 1891, also relieved him from all duties in connection with banks, except the collection of taxes therefrom.

The duties of the Auditor General are, in fact, not only those of an auditor, but those of a comptroller as well, since the approval of his settlements by the State Treasurer extends, in practice at least, only to the verification of computations, and does not relate to the basis of settlement. He also, in the direct payment of certain appropriations, exercises some of the functions of a disbursing officer.

The duties of the Auditor General may be considered, for the sake of convenience, under the following heads:

1. Settlement for taxes made directly with taxables.
2. Settlements with officers who collect taxes.
3. Duties in connection with the payment of moneys variously appropriated.

4. Miscellaneous.

1. Settlement for taxes, made directly against taxables.

The Auditor General makes settlements directly against taxables for the following taxes:

1. Tax on the capital stock of corporations, or on the interests in limited partnership or joint stock associations.

2. Tax on county, municipal, borough and corporate loans.

3. Tax on gross receipts of transportation, transmission and electric light companies.

4. Tax on the stock of banks.

5. Tax on the gross premiums of domestic insurance companies with capital stock.

6. Tax on the net earnings or income of brokers, private bankers and unincorporated banks and savings institutions.

7. Tax on the matured shares of building and loan associations.

8. Excise tax on the gross receipts of express companies.

9. Tax on the gross receipts of notaries public in Philadelphia county.

The Auditor General "makes settlements," or in other words, assesses all of these taxes on the basis of sworn reports required to be made by the taxables, which reports are made on blanks supplied by the Auditor General at the proper times. All corporations or persons subject to any of these taxes are required to register in the Auditor General's Department(giving, if corporations, the names thereof, amount of authorized capital, amount of paid-in capital, and the names thereof, amount of authorized capital, amount of paid-in capital, and the names and addresses of the president, secretary and treasurer. These registries furnish the Auditor General with the data necessary to enable him to send the proper blanks, upon which to make reports, to the taxables. Blanks on which to make reports are sent out as follows: ,

Capital stock and loans tax blanks on or about the first day of November of each year. The capital stock report is to be executed for the year ended the first Monday of November, and taxables have until December 31 following in which to make their reports. The tax year for the loans tax is the calendar year.

Blanks on which to make reports of gross receipts and gross premiums are sent out on or about the 31st day of December and the 29th of June, respectively. Taxables have thirty days from those dates, respectively, in which to report.

Blanks on which to make the reports of express companies for excise tax on gross receipts, and blanks for reports of matured stock of building and loan associations are sent out on or about December 31st in each year.

Blanks for reports of net earnings or income are sent out about the first day of November.

Blanks for reports of gross receipts of notaries public are sent out on or about December 15th of each year.

On the receipt of these reports they are filed, as of the date of their receipt. They are then taken up in regular order, and the amount of tax due on each ascertained and stated in the form of a settlement, or statement of account, which statement of account, duly signed by the Auditor General, is thereupon forwarded to the State Treasurer for his approval and signature. On its return, an entry is made of the tax upon the books of the department and a certified copy of the settlement is then made and sent to the taxable, who then has sixty days within which to appeal to the court of common pleas of Dauphin county. If an appeal is not taken within said period of sixty days the settlement becomes final. Interest at the rate of twelve per cent. per annum runs on all unpaid taxes from the expiration of said sixty days.

2. Settlements with officers who collect taxes.

The State taxes and licenses which are not paid directly into the State Treasury, but which are collected by county officers and by them paid into the Treasury, are as follows:

1. State tax on personal property.
2. Tax on collateral inheritances.
3. Tax on direct inheritances.
4. Licenses.
5. Tax on writs, wills, etc.
6. Tax on fees of office.

The Auditor General keeps accounts with the treasurers of each county for the personal property tax collected by them, and separate accounts with the same officers for the license moneys which they collect. He also keeps a collateral inheritance tax account with the register of wills of each county, and a separate account with each of said officers of the direct inheritance tax moneys collected by them. He also keeps accounts with all prothonotaries, clerks of courts, registers and recorders, of the taxes on writs, wills, deeds, etc., collected by them. He also keeps other accounts with these officers of the amounts received by them from fees of office, the State being entitled to one-half of all such fees received by each officer, after first deducting two thousand dollars per annum, and all necessary office expenses, from the gross amount of such fees.

3. Duties in connection with the disbursement of moneys.

The Auditor General pays by warrant the salaries of all judicial officers of the State, and keeps accounts with such officers. He also pays directly by warrant the salaries and expenses of all inspectors of coal mines and certain other public officers. He disburses the appropriations made to penal, charitable and educational institutions. These appropriations are paid quarterly, and the acts making the ap-

propriations usually provide that such a sum, "or so much thereof as may be necessary," shall be disbursed, quarterly reports to be made by the institutions receiving the appropriations. This requires the Auditor General to carefully examine such reports in order to ascertain how much of the amounts appropriated "may be necessary." The Auditor General keeps an appropriation book in which all the amounts appropriated by the Legislature are entered in accounts with the beneficiaries thereof, on which accounts the amounts paid from time to time on account of said appropriations are debited.

4. Miscellaneous.

The Auditor General, on informations of escheats being given him, appoints escheators, collects the amounts received from escheated estates and pays the expenses of escheats. The Auditor General is a member, *ex officio*, of the Board of Public Accounts, of the Board of Revenue Commissioners, of the Board of Commissioners of Public Grounds and Buildings and of the State Military Board, which last named Board supervises the expenditures of the appropriations made for the National Guard. Besides the duties hereinbefore enumerated, the Auditor General performs such special duties as are imposed upon him from time to time by special acts of Assembly, he being usually charged with any duty which does not come specifically within the province of any other State officer.

The reports made to the Auditor General for purposes of taxation are not public records, in the usual acceptation of the term, and copies of such reports or information therefrom, are furnished only to parties in interest, such as stockholders or officers of the company making the report whereof a copy is required, or their counsel, and such copies or information are furnished to these only at the discretion of the Auditor General. Where copies of reports are required for use in litigation, subpoenas must be served upon the Auditor General, requiring their production. It would be extremely difficult, if not impossible, to get corporations to make full and correct returns of their affairs, if their reports were open to the inspection of their rivals in business or of the public generally. Hence the necessity for the method of procedure above described.

By concurrent resolution, approved May 23, 1891 (P. L., p. 413), all borough, city, county or State officers, authorized to collect or receive licenses or taxes for the Commonwealth, are required to make returns of the same on the first of every month to the Auditor General.

THE BOARD OF PUBLIC ACCOUNTS.

Section 16 of the act of March 30, 1811, provides that the Auditor General and State Treasurer may revise accounts settled by them, if

requested so to do within twelve months from the date of the settlement thereof, "but after that time no settlement on which a final discharge has been made shall be opened." The act of April 8, 1869 (P. L., p. 19), however, gives the Auditor General, State Treasurer and Attorney General authority to open all accounts whenever settled that may have been erroneously or illegally settled, and to settle the same according to law. These officers, when acting under the provisions of said act of 1869 are known as the Board of Public Accounts.

The Board of Public Accounts has no stated meetings, it being called together by its chairman, the Auditor General, whenever the public business may require. To procure the re-settlement of an account of more than one year's standing, it is necessary to file with the clerk of the Board, who is always an officer of the Auditor General's Department, a petition, under oath, addressed to the Board, setting forth in detail all the facts in connection with the claim thereby preferred, giving the facts in detail as to the original settlement; setting forth such matters and things as, in the opinion of the petitioner, go to show that the account was improperly settled, and stating the basis upon which it is requested that a re-settlement shall be made. This petition must be accompanied by such evidence, under oath, as the nature of the case permits. Petitioners are permitted to be present in person, or by counsel, at the meeting of the Board, and to make such oral argument as they may see fit. The action of the Board is final in all cases, no appeal lying therefrom.

IV.

TREASURY DEPARTMENT.

All payments of moneys to the Commonwealth should be made to the State Treasurer, except where such moneys are paid for commissions or fees to other departments, or where accounts are in the hands of the Attorney General for collection.

All checks and drafts for taxes due the State should be made payable to the order of the "Commonwealth of Pennsylvania," or to the order of the "State Treasurer."

The State Treasurer issues receipts, countersigned by the Auditor General, for all moneys received by him, stating the class of taxes paid and the year for which such tax was levied.

Payments made by county officers and others on account of the Commonwealth and credit settlements to corporations are not receipted for by the State Treasurer, but adjusted by the Auditor General in the settlement with his Department.

Records are kept of daily receipts and payments and of deposits. Monthly reports are made to the Auditor General, showing the business of the Treasury for the month and the balance of cash on hand. Monthly reports are also made to the Auditor General, showing where and in what amounts the moneys of the Commonwealth are deposited. These reports are verified by affidavits of the State Treasurer, and also, by sworn statement from the banks wherein such moneys are deposited.

At the end of each fiscal year, November 30th, a report is published by the State Treasurer, containing a detailed statement of all moneys received, from whom and for what purpose, and also a detailed statement of all payments made on appropriations with a classified summary of monthly receipts and payments, and also, a classified summary of total receipts and payments for the year.

Accounts are kept with the corporations, of tax on capital stock, loans, gross receipts, and with county officers, of licenses, collateral inheritance tax, tax on writs and fees of office.

All settlements of accounts for taxes and for the drawing of warrants by the Auditor General are approved jointly by the Auditor General and State Treasurer.

Office hours, April 1st to October 1st, from eight o'clock A. M. to four o'clock P. M. October 1st to April 1st, from nine o'clock A. M. to five o'clock p. m. Office not open for business on Saturdays.

V.

DEPARTMENT OF INTERNAL AFFAIRS.

Under the administration of James W. Latta, Secretary, the Department is organized into bureaus, as follows:

Land Office Bureau.

Bureau of Assessment and Taxes.

Bureau of Industrial Statistics.

Bureau of Railways.

Bureau of Mines.

The Medical Council of Pennsylvania is also connected with the Department. In addition to the bureaus named, there is a Bureau of Vital Statistics and a State Weather Service Bureau, which, however, lack of proper legislation to enforce the collection of the data contemplated when they were organized by the acts of June 3, 1885, and May 13, 1887, respectively. For some reason no appropriations have been made for their support, and the returns made upon the subject referred

to in the acts authorizing their existence, are of a meagre and unsatisfactory nature. The bureaus first enumerated comprise the greater portion of the work of the Department.

LAND OFFICE BUREAU.

The legal profession is more closely connected with this bureau than with any of the other bureaus of the Department, for under its immediate custody are the land office records pertaining to the early Colonial history, the records of titles under the proprietaries, the records of titles given by the Commonwealth after the passage of the divesting act, records relating to applications for land, granting of warrants, original surveys and patents, proceedings before the Board of Property, records of public roads and the boundary lines between the counties and between the State of Pennsylvania and adjoining States, together with much other valuable data concerning the history of the Commonwealth.

The duties that many years ago devolved upon the Secretary of the Land Office, the Surveyor General and other State officials, relative to the granting of lands to settlers and purchasers, have since the adoption of the Constitution of 1873 been imposed upon the Secretary of Internal Affairs. While the lands of the Commonwealth have been very largely disposed of there are still many contests that involve questions of location and preemption right brought to the attention and requiring the consideration and determination of the Secretary of Internal Affairs. No records have ever been kept in the Department, or formerly, under the Secretary of the Land Office, or the Surveyor General, to show what vacant lands the Commonwealth has been or is possessed of, and yet every year there are applications filed for vacant or unappropriated lands, and the disposition of these applications, where no caveats are filed against them is made by the Secretary of Internal Affairs. Where caveats are filed against granting warrants under such applications, the Board of Property is called upon to pass upon the questions that arise by reason of the filing of such papers.

The old laws that existed a century ago with reference to applications for vacant lands and their disposition by the officers of the land office have been considerably modified by the act of 1874, which is generally taken as a guide in such cases.

APPLICATIONS FOR VACANT LANDS.

There are now no large bodies of vacant land—that is, land not

already appropriated by warrant and survey—within the limits of Pennsylvania. Small tracts, however, are yet frequently discovered in various sections of the State for which office rights have never been granted, and which by law remain open for sale by the officers of the land bureau. For such tracts of vacant land, warrants, under certain conditions, can be granted to any person who may apply for the same in proper form.

An application filed in the office of the Secretary of Internal Affairs is the inception of title to all vacant lands within the State. The application must contain a full description of the land.* The forms now in use giving the location by township and county, and also; in descriptive form, the names of the owners of adjoining tracts on the North, South, East and West, as the surroundings of the land may require; and to suit circumstances, the adjoining tracts may be given in the names of the original or warrantee owners or in the names of present owners. The application must also contain the affidavit of a disinterested witness, specifying whether the land is improved or not, and if improved, how long since the improvement was made, in order that interest may be charged from that time. It is important to fix the date of improvement, because if the time is not fixed in the application, the land officers are compelled to charge interest on lands within the purchase of 1768, from the 1st day of March, 1770, and within previous purchases from the 1st day of March, 1755.¶ On improved land North and West of the Ohio and Allegheny rivers and Conewango creek, within the purchase of 1784, interest, when date of improvement is not fixed in the application, can only be charged from the year 1797. It is also necessary for the applicant to declare under oath that he believes that no warrant or other office right has ever issued for land for which he applies, or if such right has previously issued, after giving full particulars in relation thereto, to state that he verily believes that it has been abandoned. These affidavits must be taken before a justice of the peace of the township in which the land is situated, or, if the land should be situated partly in one township and partly in another, before a justice of the township in which the larger part of it is situated. Should there be no justice in the township, the affidavits may be made before a justice of an adjoining township or borough, in which case, the fact that there is no justice in the township in which the land lies must be certified by the justice by whom the oaths are administered. A person deposing to the facts set forth in an application, who shall knowingly have sworn falsely is made liable to the penalties of perjury. It is also provided in the case of improved lands, or lands upon which settlements have been made, that warrants for such lands can only be granted to the person or persons respectively who made the improvements or settlements, their legal representa-

*See Act of April 14, 1874, P. L. 58.

¶See Act of March 28, 1814, Smith's Laws, Vol. VI, page 207.

tives or assigns, upon proof of ownership of the improvement, right or settlement. After the application has been duly prepared, it is then to be forwarded to the Secretary of Internal Affairs, and with it must be transmitted the proper amount of purchase money, at the rate of 26 2-3 cents an acre for all lands lying south and east of the Ohio and Allegheny rivers and Conewango creek, and for all lands lying North and West of the mentioned streams, at the rate of 20 cents an acre. In addition to the purchase money a warrant fee of \$5.00, must also accompany the application. It is then made the duty of the applicant to give at least thirty days notice of the filing of his application with the Secretary of Internal Affairs, by publication once a week for three successive weeks, in one or more newspapers of the county in which the land is situated and nearest its location. This notice must contain a full description of the land as set forth in the application, and proof must be furnished that such notice has been given before a warrant can be issued. The custom of the bureau is to compute the thirty days from the date of the last publication, and after the expiration of that time, a warrant will in all cases be issued, unless in the meantime a caveat has been entered against the granting of the same. A caveat will stay the application until the Board of Property, after a hearing on citation, directs the warrant to be issued. Should the Board decide against issuing the warrant, the amount of the purchase money and the warrant fee transmitted with the application will be returned to the applicant.

SURVEYS.

A warrant authorizes the survey of vacant lands only, as they alone belong to the Commonwealth to grant; but whether the lands applied for are vacant or not, the land officers do not undertake to examine, and in most instances do not possess the means of ascertaining. Of this the applicant must judge for himself. If he know them to be appropriated by prior right it is against conscience to take out a warrant for them or to have them surveyed as vacant. But he may assert the invalidity of a former grant and insist on a survey. In that case the deputy surveyor ought, if it be known to him, to note it in his books and return of survey. All warrants when issued are directed to the county Surveyor of the county in which the land is situated, and it becomes the duty of that officer, within a reasonable time, to go upon the ground and make and return a survey of the land described, and also note the adjoiningers mentioned in order to show that the warrant has been properly executed. Having finished the survey and plotted it, the surveyor ought to return it to the office of the Secretary of In-

ternal Affairs. This is an important part of his duty. Many regulations and laws have from time to time required it, and from its omission frequent disputes have occurred. The deputy surveyor, however, is not obliged to return the survey until his fees and expenses are paid; and if the failure to return is occasioned by the neglect or refusal of the party to defray them, any loss thereby sustained is imputable to him, and not to the officer. The regulation of the proprietaries and the acts of Assembly concur in directing the return to be made on paying for the survey. If the party pay or tender the fees, it is the duty of the surveyor to return the survey in a convenient time, and the neglect or fraud of the surveyor will not affect his rights. But it lies on the party to show that the want of the return was not occasioned by any fault or neglect of his own; and, if there is nothing to show that the surveying fees were paid, the inference is that they were not paid. The deputy, being a sworn officer, is, *prima facie*, presumed to have done his duty.

The surveyor may survey and return any surplus not exceeding one hundred acres above the quantity mentioned in the warrant. Where surplus is thus returned the purchase money for it must be paid before the survey can be accepted, notice of which should be given to the owner of the warrant to enable him to comply with the law in that respect. If from his investigations the surveyor finds there is an interference with older rights, he is required to make a note upon his return of survey of the facts, and such note will act as a caveat and stay further proceedings in the case for a period of two years, unless within that time a citation be issued to have the matter at issue determined by the Board of Property.

PATENTS.

A patent is a deed from the Commonwealth, under its great seal, conveying to the grantee all its rights in the land, describing it by metes and bounds, and it passes, as respects the Commonwealth, the complete legal title, all the preparatory measures of warrant, application, survey and acceptance being merged in the patent. The granting of a patent is *prima facie* evidence that all the previous requisites have been complied with. Before a patent can be issued the purchase money due, and the patent fee, must be paid; and the land is thenceforth discharged from the lien which till then exists. Generally, the rights of the grantee are concluded by the lines and boundaries described in the patent, though perhaps in a special case there might be an exception.

Third persons claiming by warrant, application, settlement or other-

wise may show that the patent was wrongfully issued to the patentee; or rather, that he is trustee for him who has the right, the material consideration being, not who has the patent, but to whom it ought to have been granted—for the land officers, in issuing the patent, act merely in a ministerial capacity, and cannot change the rules of law or rights of parties. And even though he who has the patent sell to a bona fide purchaser without notice, the vendee is in no better situation. His claim under the patent may be contested by one having a better right by settlement, warrant or location. These titles are not equities within the ordinary rule of being unavailing against a purchaser of the legal title. A patent founded on a fraudulent survey, or obtained by misrepresentations and deceit, is void against third persons affected by it.

A patent, however, has always been received in evidence in the first instance, to show that the legal title was out of the Commonwealth. The question whether it is good is a subsequent one.

The following are the regulations adopted by the Bureau for the issuing of patents:

1. The patent must issue to the actual owner of the land, or party holding title under the warrantee, or to the executors, trustees, or heirs and legal representatives of the person in whom title was vested at death, or to the guardians of minor children of the deceased.

2. Warrantees who remain the owners of the land warranted and surveyed to them can obtain patents in their own names (if no caveat remains undetermined), without furnishing any brief or statement of title, upon payment of back purchase money, interest and fees.

3. Executors, trustees and guardians representing the warrantee, or his heirs, who apply for patents, must produce evidence of their appointment as such.

4. When the land has passed out of the ownership of the original warrantee, or party who took out the office right, the applicant for patent will be required to furnish evidence of ownership.

5. The present owner of a part of a tract of land surveyed in pursuance of any given warrant, desiring to have a patent in his own name can obtain it by having the county surveyor make return of survey of such part. In making the survey, the county surveyor must, besides giving the courses and distances and quantity of acres in the particular part, indicate the residue of the original tract by dotted lines. The applicant will only be required to pay his proportion of the whole amount due on the tract, with fees. Evidence of ownership must accompany application.

6. When an unpatented original tract has been sold and sub-divided the several owners may unite in an application and statement of title for a patent, and, upon payment of amount due, with patent and other fees, a patent will issue to them, the said applicants, their heirs and as-

signs, according to their respective rights and interests, without setting forth therein the particular interest of each.

7. In cases where it is difficult to submit the evidence of title required by this department in order to obtain a patent, any one or more of the owners of the unpatented tract can, through this department, discharge the lien against said tract by the payment of the purchase money, interest and fees shown to be due by the land lien docket, and the interest since accrued, and patent can at any time afterward be issued to those entitled to it, upon proof of ownership.

8. The accounts in the lien dockets are calculated to June 1, 1868, if to the amount due, as shown in its proper column, there be added the interest accruing from June 1, 1868, to the date of forwarding the docket to the prothonotary, at the rate given in the column of rate per cent. of interest, and on this sum interest be calculated at the rate of six per cent. from the time of forwarding the docket until the date of the application for patent, it will give the amount required to procure a patent. But interest is not charged on patent or other fees.

A statement of the amount due on any particular tract or tracts, or any other information in relation thereto, will be promptly furnished on application to this Department.

Persons sending money to the Department of Internal Affairs for payment of arrears on unpatented lands and for records, etc., should send by registered letter, postal order, or express. Drafts, checks, or post office money orders must be made payable to the order of the Secretary of Internal Affairs.

BOARD OF PROPERTY.

The land office was established by the Proprietary of the Province, and certain officers were constituted a Board of Property to investigate and settle questions arising in its administration. The office was closed during the early years of the Revolution, but was re-opened under the Commonwealth in 1781 for the completion of titles commenced before the 10th day of December, 1776.

Pursuant to the directions contained in the act of first day of April, 1784, the Land Office was opened on the 1st day of July following for the sale of unappropriated lands purchased of the Indians, and the officers of the several branches thereof were enjoined to perform their duties "agreeable to the former customs and usages of the said offices."

The Board is now composed of the Attorney General, Secretary of the Commonwealth and Secretary of Internal Affairs. Two members constitute a quorum. Stated meetings are held in the Department of

Internal Affairs, at ten o'clock A. M., on alternate months, beginning with January. Adjourned or special meetings are held whenever the business of the Board requires.

When a citation has been issued at the instance of either the caveator or the caveatee, under a caveat filed against the granting of a warrant, the party at whose instance the citation has been issued is required to serve notice upon the opposite party at least thirty days prior to the next regular meeting of the Board of Property, and if it is desired to take testimony on commission, to give the opposite party ten days' notice of the time and place when and where such testimony is to be taken. A return of such notice shall be made on or before the day the Board meets for the consideration of the cases which are brought to issue before it. Testimony so taken may be read before the Board, and filed with other papers in the case at issue, and shall remain as a part of the record of the proceedings of the Board for all time. Oral testimony may also be taken before the Board on any question presented for consideration. Each party may be represented by one or more counsel, as desired, and argument may be made the same as in court. If the question pending before the Board be with reference to the granting of a warrant, its action is considered final. That is, the party applying for the warrant has no right of appeal, and is generally considered as having no grounds upon which to commence an action of ejectment against his successful competitor. Where a case is brought before the Board involving questions of accepting surveys or granting of patents, the action of the Board is not final, for under the provisions of the act of 1792 the defeated party on a question of granting a patent is allowed six months within which to bring an action of ejectment at law to further contest his rights in the premises. During the period of six months the issuing of the patent is stayed, and if an action of ejectment be commenced within that time the issuing of the patent is further stayed until the final determination is made by the courts. In addition to the determination of the rights of applicants to warrants, or to questions arising out of caveats against the acceptance of the returns of survey, or the granting of patents, the Board is also authorized and required to hear and determine all cases of controversy referring to irregularity in the granting of titles by the Commonwealth, proceedings with reference to escheats, rights of pre-emption and imperfect titles granted by the Commonwealth, and petitions for resurveys. It is not often, however, that where patents have been granted after final settlement and payment of the purchase money, interest and fees due the Commonwealth, the Board will attempt to recall the patents so granted. Its legal right to do so is seriously questioned, and whatever disputes may arise between owners of land, with reference to the improvident or erroneous granting of patents, should be settled by the courts, for if the patent be impro-

vidently or erroneously granted, and is in the name or custody of the wrong person, such person only becomes the custodian for the rightful owner or rightful custodian. There are instances where patents have been recalled, but there is no process by which they can be recalled, unless by the voluntary act of the holder. Instances are rare in which any proceedings have been taken by the Board with reference to the recalling or cancellation of patents where the right of third parties were in any degree interfered with.

REGULATIONS.

The following rules have been adopted to regulate proceedings before the Board:

I. A caveat may be entered against the granting of a warrant, acceptance of a survey, or granting of a patent. It must be in writing, and addressed to the Secretary of Internal Affairs. A particular form is not required, but the application, survey, or other office right against which it is entered, together with the reasons for filing the same, should be distinctly stated.

II. A caveat entered against the granting of a warrant on any application on file bars the issuing of a warrant, unless, after a hearing upon a citation, the Board should dismiss the same.

III. No caveat, note on survey, nor writing in the nature of a caveat, shall continue to bar the issuing of a patent to the person or persons against whom such caveat may be entered during a longer period than two years, unless the parties interested in the land shall within the term mentioned take out a citation thereon, in order to bring such dispute to a decision and prosecute the same to effect.

IV. A citation will be issued on a pending caveat on the application of any party in interest. Thirty days' notice must be given to the opposite party of the time at which the case will be heard by the Board, and either party desiring to take the deposition of witnesses to be read at the hearing is required to give the other ten days' notice of the time and place for the taking of such depositions.

V. The party who enters a caveat becomes plaintiff in the issue joined, and at the hearing shall open the case and may make the concluding argument.

VI. A petition for the re-hearing of a case that has been heard and decided will not be considered unless the party presenting the same shall furnish evidence that the opposite party has had at least ten days' notice of the intention to present said petition.

VII. A petition for an order of re-survey must recite the name of the warrantee, and date of warrant upon which former survey was made, and state the reasons for such re-survey.

VIII. Depositions of witnesses submitted to the Board become a part of the record, and cannot be withdrawn.

IX. Citations must be returned to the Department of Internal Affairs on or before the days fixed therein for the hearing of the cases in which they are issued. All acceptances of notice and agreements to continue cases must be in writing.

X. Parties will be heard in person or may be represented by counsel, as they may elect.

XI. The fees to be charged for the use of the Commonwealth in business relating to the Board are as follows:

Entering caveat,	\$1 00
Issuing citation,	1 00
Recording application for re-survey,	1 00
Order of re-survey,	1 00
Copy of action or determination of Board,	1 00

XII. All communications for the Board should be addressed to the Secretary of Internal Affairs.

MISCELLANEOUS INFORMATION.

The endorsement, similar to this: "Returned, etc., February 22, 1815," frequently found on copies of warrants and surveys, does not mean the date at which the return of survey was received at this office, but the date at which the Surveyor General made a return of the tract to the Secretary of the Land Office for patenting. And when such indorsement is found on the back of a copy of a warrant or survey, even at the date at which the office of the Secretary of the Land Office was discontinued, it is evidence, in perhaps ninety-nine cases out of one hundred, that the tract is patented. Some exceptions have been found. Why the custom of marking the warrants and surveys thus was introduced when a tract was patented, after the office of the Secretary of the Land Office was abolished on the 10th of May, 1844, is not apparent. This custom was discontinued on the 1st of January, 1868, and the indorsement, "Patented to 18..," was substituted.

A mistaken idea, prevalent with many people not familiar with the Land Office, is that the Department has connected drafts, showing the location of every tract of land surveyed in the several counties, and that, therefore, whatever of vacant land there may be in the State can be readily found at this office, and that information can, without difficulty, be given as to the adjoining surveys of any named tract, without advising the Department of the names and dates of the war-

rants upon which such surveys were made. Had the lands of the Commonwealth been first surveyed and afterwards sold, this idea would have been correct, but the very reverse was the fact, for the lands were sold and warrants for subsequent surveys issued. And, because of this policy, the Department has only single and unconnected copies of the surveys. Unless a given survey calls for warrantee adjoiners, it would be work altogether out of proportion to the fees allowed to undertake to search out all the warrants and surveys, perhaps for a whole county, in order to find the adjoining tracts, or search for a supposed vacant piece of land; but the task is comparatively easy when the party seeking the information learns, as he readily can from the county surveyor, or persons in the neighborhood the names of all the surrounding warrantees and dates of warrants, and communicates that data to the department.

It will be observed, from the foregoing, that in communication with the department, it is of the first importance to give the name of the warrantee and date of warrant of the survey or patent about which inquiry is made; but when the date of warrant cannot be given, the party asking for official copies or information should give quantity of acres, location, the warrantee name of adjoining tract, or tracts, and any other data in his possession that will aid in searching for the tract.

In addition to the consideration of questions arising in proceedings incident to the granting of original titles there are many other important questions relating to the completion of titles heretofore partially granted by the Commonwealth. There are thousands of instances all over the State where applications have been made, or warrants granted, and the applicants and warrantees have entered into possession of the land applied for or granted, and no final settlement has been made to the Commonwealth, and no patent granted confirmatory of such titles. The legal profession is frequently brought into contact with the Land Office Bureau in making briefs of titles, for in the searches made it is often discovered that a title is not complete from the Commonwealth, and in many cases that a considerable amount of purchase money and fees is due the Commonwealth, in addition to the fact that no patent has been granted confirming the preliminary title under application and warrant. To enable the owners of such unpatented lands to perfect their titles a land lien docket was provided for each county, under the act of May 20, 1864, and its several supplements, by which a list of all unpatented lands in each county was provided and certified by the then Surveyor General to the prothonotary of the county. In this lien docket is found the number of the tracts, the name of the applicant or warrantee, the amount of land applied for, the amount returned by the surveyor, the amount paid and the amount due at the time the docket was made up. From the time these dockets were sent to the counties, the amounts so ascertained to

be due the Commonwealth have been subject to an annual interest charge of six per cent. Settlement of these claims is important to all purchasers of unpatented land, for while a title may be good as to all others, it is defective as against the Commonwealth, unless a final settlement is made, the purchase money, interest and fees paid and a patent granted as the final link in the chain of original title from the Commonwealth. Frequently attorneys in making brief of title forget this important link in the chain of title, and sooner or later suffer embarrassment for their lack of care in discharging their duty to their clients.

In this connection it is important to add that there are many cases where liens are entered on lands for which the Commonwealth has been fully paid under older titles, and upon presentation of petition, accompanied with surveys showing location of interfering tracts upon the ground, the Secretary of Internal Affairs, by virtue of the provisions of the act of April 15, 1869, is authorized to release and discharge the lien of the Commonwealth on any lands on which any liens have been improvidently, incorrectly or erroneously entered. In other words, provision is made by law whereby the entire amounts due the Commonwealth may be paid, if justly due; or if liens are improperly entered, authority is given for the discharge of such liens upon the presentation of facts which will warrant such discharge.

BUREAU OF ASSESSMENT AND TAXES.

This Bureau contains the records of the State and county rates and levies, as made in the several assessment districts throughout the counties, cities, boroughs and townships of the Commonwealth. A compilation is made annually exhibiting the total assessment value of both real and personal property returned as taxable for State or county purposes; also an exhibit of the total amount of real estate in the State exempt from taxation, and a record of the number of acres of cleared and timbered land within the limits of the State. In addition to this, collections are made from the several boards of county commissioners, showing the amount of the taxes collected for all purposes, whether the same be for the maintenance of State, city, county, borough or township governments, and includes every species of taxes collected, except those specially levied for the construction of sewers, paving of streets, etc. The several boards of county commissioners are charged with the duty of collecting and returning the data to the department for compilation, and are subject to penalty for a failure or refusal to comply with the laws imposing these duties upon them.

County commissioners may be compelled to make these reports by mandamus.

The report of this Bureau is published as Parts I and II of the department reports.

BUREAU OF INDUSTRIAL STATISTICS.

In the Constitutional provision establishing the Department of Internal Affairs, provision is made for a Bureau of Industrial Statistics as one of the bureaus of the department. Under the Constitutional provision and the laws that have been passed in pursuance thereof, the Bureau of Industrial Statistics is charged with the duty of making an impartial inquiry into the relations existing between capital and labor with reference to advancing social condition and industrial welfare of all classes of working people, and from such investigations to offer from time to time any practical suggestions with reference to their further improvement or advancement. To aid the Chief of the Bureau in the discharge of the duties thus imposed upon him, all corporations, firms or individuals engaged in mining, manufacturing or other business, and all persons working for wages within the Commonwealth, are required to furnish such statistical information as the Chief of said Bureau, under the direction of the Secretary of Internal Affairs, may demand. Power is given to the Chief of said Bureau, or any authorized employe thereof, to issue subpoenas, administer oaths and take testimony in all matters relating to the duties imposed by law upon said Bureau. All corporations, firms or individuals doing business within the Commonwealth are liable to a penalty for refusal or failure to comply with the demands of the Bureau with reference to the collection of data on the subjects over which the Bureau has control. Except in the case of the failure of corporations, firms or individuals to comply with the law referred to, the legal profession has but little occasion to transact business with the Bureau of Industrial Statistics.

The report of the Bureau is designated as Part III of the department reports.

BUREAU OF RAILWAYS.

Under Section 11, Article 17, of the Constitution the State supervision of railroad, canal and other transportation companies is conferred upon the Secretary of Internal Affairs, and among other duties imposed by the fundamental law is that of requiring annual reports or

special reports at any time when in the opinion of the Secretary, the public interests will be conserved by obtaining such reports. Investigations and inquiries may be made of these corporations with reference to any questions that arise concerning the public in relation to the transportation of commodities upon railways doing business within the limits of the Commonwealth. The act of May 11, 1874, enlarged to some extent the duties of the Secretary over those provided in the fundamental law. In addition to railroad, canal and other transportation companies, the act of 1874 provides that the Secretary shall also exercise a watchful supervision over banking, mining, manufacturing and other business corporations of the State, to see that they confine themselves strictly within their corporate limits, and in case any citizen or citizens shall charge, under oath, any corporation with transcending its corporate functions or encroaching upon the rights of individual citizens, the Secretary shall carefully investigate such charges, and may require from any corporation, against which a complaint has been made, a special report. After having made such investigation in answer to complaint filed in the Department, the Secretary, if he believes the charges are just, and the matters complained of are beyond the ordinary province of individual redress, certifies his opinion to the Attorney General of the State, whose duty it shall be by proper proceedings at law to redress the wrongs complained of, and the expense of such proceedings shall be borne by the Commonwealth.

The immediate execution of the laws, with reference to transportation and other corporations, devolves upon the Superintendent of the Bureau of Railways. Where complaints are filed against corporations for transcending their corporate functions or encroaching upon individual rights, the matters complained of are concisely set forth in a petition or complaint and returned, verified by the oath of the party or parties making the complaint. The usual practice in such cases is to notify the corporation complained of to make answer under oath, or to appoint a time and place for a hearing, and to notify all parties in interest to appear and give testimony with reference to the matters complained of. A record is made of the proceedings in the case, together with the conclusions arrived at from the investigation, and filed in the Bureau. If in the opinion of the Secretary the matters complained of have been substantiated and they are beyond the ordinary province of individual redress at law, the case is certified to the Attorney General for his action. In all such investigations either or both parties may be represented by counsel.

The annual reports required from steam railway, street railway, canal, telegraph and telephone corporations involve a large amount of labor, and are under the custody of the Superintendent of the Bureau, whose duty it is to compile, edit and publish them. The blank forms for annual reports are forwarded to the corporations on or before the

first day of June each year, and they are prepared, as required by existing laws, to cover the fiscal year beginning June 1 and ending May 31. A failure or refusal to make these annual reports on or before the 31st day of August, on the forms prescribed and in the manner and at the time required by the rules and regulations of the Department and the laws of the Commonwealth, imposes a penalty on the delinquent corporation of \$5,000. Delinquent corporations, as required by law, are certified to the Attorney General for the collection of the penalty. No defense has thus far availed to relieve the corporation in the proceedings to collect the penalty by the Attorney General, where it appears that the delinquent corporation has been furnished with the blanks upon which to make the annual report, or has been notified either by letter or person to make the report. The law requiring these reports is so certain in its terms and so exacting in its provisions with reference to the time and character of the reports to be made, that a failure to comply with its provisions must necessitate the imposition of the penalty.

The legal profession is occasionally called upon to defend corporations against the impositions of the penalty.

The report of this Bureau is designated Part IV of the Department reports.

BUREAU OF MINES.

For many years the laws of the Commonwealth have provided for Mine Inspectors in both the Anthracite and Bituminous coal regions, the inspectors being required to make annual reports to the Secretary of Internal Affairs, upon whom devolved the duty of compiling and publishing the same as one of the reports of the department. No legal supervision, however, was given the Secretary over the inspectors, with reference to the discharge of their duties, until the passage of the act of July 15, 1897, which provides for the establishment of a Bureau of Mines, with a chief having immediate supervision and control of all the mine inspectors of the Commonwealth, with a view of requiring them to perform strictly all the duties imposed upon them by law. Up to the time of the passage of the act establishing the bureau the legal profession has had no opportunity to engage in practice in the Department with reference to the mining laws. It is probable, however, that under the provisions of the act referred to there will be occasion for members of the bar to represent clients in proceedings which may be instituted at law and before the Secretary of Internal Affairs with reference both to mining interests and the officers of the Commonwealth, especially the mine inspectors of the several districts through-

out the Anthracite and Bituminous regions. Complaint may be made under the provisions of this act by ten or more miners against any mine inspector, charging him with neglect of duty or incompetency or malfeasance in office, and upon investigation being made by the chief of the Bureau, and his being satisfied that the charges are well founded, it becomes his duty to petition the court of common pleas or any judge in chambers of the judicial district within which the mine inspector may be employed, which petition shall be accompanied with the charges and testimony produced by the investigation. Upon the filing of such petition with the court a citation in the name of the Commonwealth will be issued requiring the mine inspector against whom complaint is made to appear with witnesses to answer the charges filed against him, and for the purpose of ascertaining the facts in the case the Chief of the Bureau of Mines and the Mine Inspector are authorized to have subpoenas issued to compel the attendance of witnesses upon any trial which may be had before the court, with reference to complaints made against mine inspectors. If the court shall find by the testimony thus taken that the mine inspector is guilty of neglecting his official duties, or is incompetent to perform the duties of his office, or is guilty of malfeasance in office, then the court shall certify the facts to the Governor, and upon receipt of such certification from the court the Governor is required to declare the office of such mine inspector vacant and to appoint his successor, as required by existing laws with reference to vacancies in the office of mine inspectors.

In view of the frequent complaints made against mine inspectors in the discharge of their duties, it is reasonable to expect that much litigation will result from the law authorizing the establishment of the Bureau of Mines, and that the legal profession will be frequently called upon to represent either the defendant mine inspector or the complainant miners in the matters complained of.

Part V of the Department reports covers the mining industry and the supervision of the same so far as it is regulated by existing laws.

MEDICAL COUNCIL OF PENNSYLVANIA.

Under the provisions of the act of May 18, 1893, a Medical Council was established, consisting of the Lieutenant Governor, Attorney General, Secretary of Internal Affairs, Superintendent of Public Instruction, President of the State Board of Health and Vital Statistics, and the Presidents of the three State Boards of Medical Examiners, provided for by the same act, representing the State Medical Society of Pennsylvania, the State Homeopathic Medical Society, and the State Eclectic Medical Society.

The Medical Council has supervision over the examinations conducted by the three Examining Boards of all applicants for license to practice medicine and surgery in the Commonwealth of Pennsylvania, and has power to issue licenses to those who successfully pass the examinations, or who, in lieu of the examination, present satisfactory and properly certified copies of licenses from the State Boards of Medical Examiners, or State Boards of Health, of other States. The State Medical Examining Boards consist of seven members each, appointed by the Governor for a term of three years. Each of the Examining Boards is authorized to take testimony concerning all matters within its jurisdiction, and may adopt (subject to the approval of the Medical Council), such rules, regulations and by-laws as may be necessary for the transaction of the business for which it was created. The Boards are required to hold at least two examinations each year. The Medical Council keeps separate accounts of all fees received from physicians applying for license to practice medicine and surgery, and in accordance with the requirements of the law pays over to the different boards all such fees. The Council passes upon the questions submitted by the three boards for each examination, and selects such as are to be used. The examinations, covering the branches of anatomy, physiology, hygiene, chemistry, surgery, obstetrics, pathology, diagnosis, therapeutics, practice of medicine and materia medica, are conducted in writing, and an official report, signed by the president, secretary and each acting member of the Board, stating the examinations, average of each candidate in each branch, the general average and the result of the examination, is filed with the Medical Council. The report embraces all the examination papers, questions and answers thereto. All such papers are kept for reference in the office of the Secretary for a period of five years. Upon receipt of the report the secretary has prepared and issued to the successful applicants, the State license necessary for the practice of their profession. Under the provisions of this act all persons desiring to enter upon the practice of medicine and surgery in Pennsylvania must undergo examination, unless exempted by reason of their holding satisfactory certificates from adjoining States. All applications, with the fee of \$25, must be filed with the Secretary of the Council, and all applicants must possess as a qualification for entering the examinations a diploma from a legally incorporated medical college of the United States, or a diploma or license conferring the full right to practice all the branches of medicine and surgery in some foreign country.

The Superintendent of Public Instruction and the Secretary of Internal Affairs have acted as President and Secretary, respectively, of the Council continuously since its organization. The office of the Council is located in the Department of Internal Affairs.

VI.

THE INSURANCE DEPARTMENT.

The law under which the Insurance Department was established, was approved the 4th day of April, 1873, supplemental acts having been passed from time to time, enlarging and more clearly defining the powers of the head of the Department in the discharge of his duties. An act was also passed and approved May 1st, 1876, providing for the incorporation and regulation of insurance companies, and relating to insurance agents and brokers and foreign insurance companies. The Insurance Commissioner is appointed by the Governor with the advice and consent of the Senate, the tenure being for three years. He is the chief executive officer of the Department, and his duties are to see that the insurance laws are faithfully executed. The Deputy Commissioner, during the absence or inability of the Commissioner, performs the duties imposed by law upon the Commissioner. The office force is composed of three clerks, whose duties are assigned them as necessities of the work may require.

It is required that each insurance company shall file with the Commissioner a certified copy of its charter, and an annual statement of its financial condition, verified by the officers of the company.

Joint-stock, fire, marine, life, accident or casualty and guarantee or surety companies of other states or countries must, in addition to filing charter and annual statement, as required of Pennsylvania companies, file a power of attorney, designating some citizen of Pennsylvania to accept service of legal process, and stipulating that process served upon such attorney or upon the Insurance Commissioner, or upon some person named by him, shall be accepted as valid service upon the company. Such stipulation cannot be revoked so long as the company has any liability in this State.

Each company must obtain from the Commissioner a certificate of authority or license to do business in this State, and each certificate must be renewed annually.

Life or accident companies doing business upon the assessment plan are required, in addition to the foregoing, to file an affidavit of the president and secretary of the company or association, setting forth that said company or association has paid and is able to pay its policies or certificates to the full limit named therein. It must also file a copy of its policy or certificate of membership, application and by-laws, and in all the policies of such assessment companies must appear a provision for future assessment of the policy holder in case of necessity.

It is made the duty of the Commissioner to examine into the condi-

tion of companies of this State, from time to time, and for such purpose he may require free access to all books and papers, summon and examine any person oath, which he or any examiner may administer, and ascertain all the facts relative to the condition of the company.

Whenever the Commissioner may have reason to believe that any insurance company of this State is insolvent or fraudently conducted, or that its receipts are not sufficient to carry on the business of the same, or through any non-compliance with any provision of the law it is made his duty to make the fact known to the Attorney General, who shall then apply to the courts for an order requiring the said company to show cause why its business should not be closed.

Joint-stock fire, marine and fire marine companies will be prohibited from doing any business when their capital stock is found to be impaired twenty per centum, after providing for all liabilities and reinsurance reserves. Whenever a company has been found, upon examination, to be so impaired in its capital stock, the Commissioner gives notice to the company to make good its whole capital stock within sixty days, and if this is not done he shall require the company to cease doing new business within this State, and shall thereupon in case the company is organized under the authority of the State, immediately institute legal proceedings, as required in the act, to determine what further shall be done in this case. Any company receiving the aforesaid notice of the Commissioner to make good its whole capital stock within sixty days, shall forthwith call upon its stockholders for such amount as will make its capital equal to the amount fixed by the charter of said company; and in case any stockholder of such company shall neglect or refuse to pay the amount so called for, after notice personally given or by advertisement in such time and manner as the said commissioner shall approve, it shall be lawful for the said company to require the return of the original certificate of stock held by such stockholders, and in lieu thereof to issue new certificates for such number of shares as the said stockholder may be entitled to in the proportion that the ascertained value of the funds of the said company may be found to bear to the original capital of the said company. Whenever the capital stock of any joint-stock, fire or marine insurance company of this State becomes impaired, the Commissioner, may in his discretion, permit the said company to reduce its capital stock and the par value of its shares in proportion to the extent of impairment, but the capital stock shall not be reduced to an amount less than that required by law for the organization of the company.

In the case of life insurance companies the Commissioner is required to ascertain the net value of its policies in force, and to require a reserve to be held sufficient to protect the same.

The Commissioner makes an annual report to the Legislature, giving:—

1st. A summary of the annual statement, showing the condition of every insurance corporation from which reports have been received during the preceding year, ending with the 31st day of December.

2nd. A list of the companies which have been incorporated within the State or to which authority has been granted to do business herein.

3rd. Suggestions as to changes or amendments in the acts of the Legislature relating to such corporations as are under the supervision of the Department.

4th. Receipts and expenditures of the Department for the preceding year.

5th. Receivers' reports and any other information which may be of public interest.

By the act of 1876 provision was made for the incorporation of insurance companies under four (4) classes:

1st. To make insurance either upon the stock or mutual principle, against fire on all kinds of buildings, merchandise and other property, and to effect marine and inland insurance on vessels, cargoes and freights, and on merchandise and other property in course of transportation.

2nd. To make insurance, either upon the stock or mutual principle, upon the lives of individuals, and every insurance appertaining thereto or connected therewith, and to grant and purchase annuities.

3rd. To make insurance, either upon the stock or mutual principle, upon the health of individuals and against personal injury, disablement or death resulting from traveling, or general accidents by land or water, or accidents resulting from the pursuit of any trade or business, and against injuries of every nature and description to persons or property, causing loss, damage or liability, and arising from any unknown or contingent event whatever, except the perils and risks enumerated in the first, second and fourth paragraphs of this section.

4th. To make insurance, either upon the stock or mutual principle, upon the lives of horses, cattle and other live stock.

Charters are issued under this act by the Secretary of the Commonwealth. Articles of association are first sent to the Insurance Commissioner for his approval of the name selected for the corporation, and the papers are then transmitted to the Attorney General for his inspection and approval, and by him forwarded to the Governor, who, upon receiving the same causes letters patent to be issued. Provision is made in the said act for the amendment of charters of these corporations.

Each agent of any insurance company not of this State must obtain from the Commissioner a certificate setting forth that the company has complied with the legal requirements and that he is authorized to do business for such company as its agent. Any one may obtain

license as an insurance broker by the payment of \$10. Agents' certificates and brokers' licenses are renewable annually.

An insurance broker is defined by law to be one who acts or aids in any manner in negotiating contracts of insurance or re-insurance, or places risks or effecting insurance or re-insurance for any person other than himself, receiving compensation therefor, and is not the officer, member or agent of the company or companies in which such insurance is affected.

An agent is one who acts alone for the company which he represents, and his license does not authorize him to solicit business for any other company than the one named therein.

All Supreme or Grand or other bodies constituting the head of any fraternal beneficial society doing business in this State, must file copies of their constitution and laws, make an annual report and appoint the Insurance Commissioner their attorney for service of process.

VII.

BANKING DEPARTMENT OF PENNSYLVANIA.

The law, under which this Department operates, is clearly defined in the title to the act creating it, reading as follows:

"An act creating a Banking Department, defining its purposes and authorities, designating what corporations should be subject to supervision and examination by the Commissioners of said Department; creating the office of Commissioner of Banking, defining his powers and authority, prescribing his duties and fixing his salary; providing for the appointment of a Deputy Commissioner, defining his duties and fixing his salary; authorizing the appointment of clerks, assistants, examiners and other employes of said Department; providing for the registration of foreign corporations receiving deposits or transacting any banking business within this Commonwealth, and providing for their supervision and examination; imposing the payment of certain annual taxes or sums of money upon all corporations (except building and loan associations doing business exclusively within this State), subject to supervision and examination, for the payment of the expenses therefor, and providing for the collection thereof; empowering the administration of oaths in connection with the business of the Department, and providing for the punishment of any false swearing; providing for the making of reports by corporations subject to supervision and examination and the publication thereof, and providing proceedings against such corporations for fail-

ure to make reports; providing for proceedings against such corporations when the capital has been reduced by impairment or otherwise, or when such corporations are doing business contrary to law, or in an unsafe or unauthorized manner, or when any such corporation is insolvent; providing for proceedings against corporations subject to supervision and examination, but without capital stock, when the same are doing business contrary to law, or in an unsafe or unauthorized manner; providing for the appointment of receivers, both temporary and permanent, when necessary, for corporations subject to supervision and examination, and providing for the punishment of certain breaches of duty by the Commissioner, Deputy Commissioner, or any employe of said Department; and also repealing an act, entitled 'An act creating a Banking Department,' approved June eighth, one thousand eight hundred and ninety-one, and also repealing all other laws inconsistent with this act."

OFFICERS, EXAMINERS AND CLERKS.

The Commissioner of Banking discharges the duties devolving upon him in the administration of the law under which the Department is created.

The Deputy Commissioner, during the absence or inability of the Commissioner, performs the duties attached by law to the Commissioner.

The force in the field is comprised of ten examiners.

The office force is composed of three clerks, whose duties are assigned them by the Commissioner or Deputy Commissioner.

EXAMINATIONS. AUTHORITY FOR MAKING THE SAME.

The Commissioner, as often as he deems proper, causes the examination by a qualified examiner or examiners of the books, papers and business affairs, together with all their property, assets, liabilities, etc., of corporations subject to his supervision. The examiners have their authority for so doing in writing signed by the Commissioner or Deputy Commissioner under the seal of the Department.

These examinations may be made under oath and the Commissioner, the Deputy Commissioner and the examiners are empowered and authorized to administer the same.

Upon the failure of any person, officer or employe, subject to examination, to make answer to inquiries, the Attorney General, upon re-

quest of the Commissioner of Banking, makes information thereof to the court of common pleas of the county of Dauphin, whereupon said court, after hearing, makes such orders as occasion requires.

REPORTS AND PUBLICATION OF THE SAME.

Every corporation subject to the supervision of the Department, except building and loan associations doing business exclusively within this State, must make not less than two reports of their condition during each year, on some past date, to be specified in the Commissioner's call for the same. Abstracts of these reports must be published, and proof of such publication must be submitted.

Building and loan associations doing business exclusively within this State are required to make but one report under the call of the Commissioner, and the same is not published.

Special reports may be called for by the Commissioner from any corporation whenever, in his judgment, the same is necessary.

Blank forms of report, schedules, proof of publication, etc., are furnished by the Department.

Reports must be made within five days after the receipt of the call for the same, unless an extension of time is asked for and the same granted by the Commissioner.

FAILURE TO MAKE REPORT AND PENALTY THEREFOR.

In case any corporation fails to make and transmit any of the reports or furnish proof of publication, it shall be subject, at the discretion of the Commissioners, to a penalty of twenty dollars for each day after the prescribed time or the extension thereof by the Commissioner.

PROCEDURE IN CASE OF IMPAIRMENT OF CAPITAL STOCK.

Whenever it appears from any report or examination of any corporation that the capital of such corporation is reduced by impairment or otherwise below the amount required by law, or the articles of incorporation, or below the amount certified to the proper authorities as paid in, the Commissioner has power under his hand and seal of office to require such corporation to make good the deficiency so occurring in

sixty days, and has power to examine such corporation, its books, papers and affairs, to ascertain whether such reduction or impairment has been made good.

If such corporation shall refuse or neglect for sixty days after such requisition has been made, to make good the reduction or impairment of capital, the Commissioner communicates the facts to the Attorney General, who applies to the court of common pleas of the county of Dauphin for an order requiring such corporation to show cause why their business should not be closed, and hears the allegations and proofs of the respective parties, after which the court decrees a dissolution of such corporation, and a distribution of its effects, if said hearing justifies the same, or makes such orders in the matter, as the interest of the public and parties may require.

PROCEDURE IN CASE OF CORPORATIONS HAVING NO CAPITAL STOCK.

Whenever it appears to the Commissioner from any report or examination of any corporation, having no capital stock, and doing business exclusively for the benefit of depositors, or that such corporation has violated its charter or law, or is conducting its business in an unsafe and unauthorized manner, he shall, under his hand and seal of office, direct a discontinuance of such illegal and unsafe or unauthorized practice. Whenever such corporation shall refuse or neglect to comply with such order, or when the Commissioners shall deem it unsafe or inexpedient for any such corporation to continue to transact business, or that any officer or trustee has abused his trust, or been guilty of malversation in his official position, he communicates the fact to the Attorney General, who institutes such proceedings as the case may require in the court of common pleas for the county of Dauphin. This may be for the removal of one or more of the trustees or managers and the substitution of others, or for the transfer of the corporate powers to other persons, or for the withdrawal of its corporate powers, or the consolidation and merger of such corporations with any other corporation of similar character that may be willing to accept of the trust, or for the dissolution of such corporation and distribution of its effects if the court shall so decree.

REFUSAL OF CORPORATIONS TO SUBMIT BOOKS, ETC.

In case any corporation refuses to submit its books, papers and

affairs to the inspection of the Commissioner or his Deputy, or of any examiner, or the officers thereof shall refuse to be examined upon oath, touching the affairs of such corporation, or if any corporation has violated any law of the State binding upon it, the Commissioner refers the same to the Attorney General, who institutes for such causes proceedings against such corporation as recited above.

PROCEDURE WHEN A CORPORATION WITH OR WITHOUT
CAPITAL STOCK IS IN AN UNSAFE AND UNSOUND CONDI-
TION, OR IS CONDUCTING THE BUSINESS OF THE SAME IN
AN UNSAFE AND UNSOUND MANNER.

When the Commissioner finds from any examination of the papers, books, etc., of any corporation, with or without capital stock, that such corporation is in an unsafe or unsound condition to do business, or that its manner of conducting the same is injurious and contrary to the interests of the public, he communicates the facts to the Attorney General, who makes application to the Court of common pleas of the county of Dauphin for the appointment of a receiver to wind up its business under and subject to the order of the court aforesaid. Said court approves the amount and security of bond to be given by said receiver.

If the commissioner, however, at any time deems it necessary for the immediate protection of the depositors, and other creditors of such corporation, he may cite the officers of such corporation to appear before the Attorney General, and, after such hearing, appoint some suitable person as temporary receiver, who shall first give a good and sufficient bond to the Commonwealth with two sureties, to be approved by him, who shall take possession of such corporation's property and business, and retain possession thereof pending like proceedings as before recited which shall be instituted forthwith in the court of common pleas of Dauphin county, at which time the compensation of said receiver shall be fixed by said court.

The Commissioner, after having appointed a temporary receiver, if he deems it best for the interests of all concerned, has power at any time to withdraw said temporary receiver, cancel his appointment and surrender possession of such corporation and its property to such corporation without further proceedings or order.

Whenever a corporation denies that there is a good reason for either of the proceedings as recited, it may file answer in the court of common pleas of Dauphin county, or make application to said court for an order to enjoin further proceedings in the premises, and the Court,

after hearing the allegations and proofs of the respective parties, makes such order in the matter as the interests of the party and the public may require.

FOREIGN CORPORATIONS.

Foreign corporations, under the supervision of the Banking Department, before being permitted to do business in this State must file with the Commissioner of Banking a certified copy of the statement which under the act of April 22d, 1874, they are obliged to file in the office of the Secretary of the Commonwealth.

DUTIES HERETOFORE INCUMBENT UPON THE AUDITOR GENERAL NOW TRANSFERRED TO THE COMMISSIONER OF BANKING.

All business relating to banks, trust companies and savings institutions, saving requirements imposed by law for the purpose of taxation, heretofore incumbent upon the Auditor General, is transferred to and made incumbent upon the Commissioner of Banking.

INFORMATION AS TO REPORTS, FINANCIAL STANDING, ETC., OF CORPORATIONS PROHIBITED.

Neither the Commissioner of Banking nor the Deputy Commissioner nor any employe of the Banking Department, either directly or indirectly, can wilfully publish, exhibit, divulge or make known to any person or persons, any record, report, statement, letter or other matter, fact or thing contained in said Banking Department, or ascertain from the same or from any examination of any corporation subject to the supervision of the Department, excepting only by the publication of the annual report as prescribed below, and any breach thereof is a misdemeanor, and the officer or employe so offending, upon conviction thereof, is liable to pay a fine not exceeding one thousand dollars, and be dismissed from said Department.

ANNUAL REPORT.

The Commissioner makes an annual report to the Governor setting forth—

First. A summary of the state and condition of every corporation from which reports have been received during the preceding year, with such other information in relation to such corporations as, in his judgment, may be useful.

Second. A statement of the corporations, under the supervision of the Banking Department, whose business has been closed during the year, with such information relating thereto as he may deem useful.

Third. Suggestions of amendments to the laws relative to corporations under the supervision of his Department, by which the laws may be improved, and the security of creditors and depositors may be increased.

Fourth. The names and compensation of the clerks and other employes and assistants employed by him, and the whole amount of the expenses of the Banking Department during the year, and also of the revenue received thereby.

CHARTERS FOR BANKS AND SAVINGS INSTITUTIONS.

Charters for these institutions are issued by the Secretary of the Commonwealth. The articles of association are first sent to the Attorney General for his inspection and approval, and referred by him to the Commissioner of Banking, whose duty it is to approve or disapprove of the name selected for such institution. A certificate accompanies the articles of Association. The Commissioner files the same in his office, and a certified copy of the certificate is by him sent to the Governor, who, upon receiving the same, causes letters patent to be issued.

TRUST COMPANIES.

Application for a charter for a trust company, under the act of April 29th, 1874, and the supplements thereto, is made to the Secretary of the Commonwealth, and when such charter is issued the fact thereof is certified to the Commissioner of Banking.

RENEWAL AND EXTENSION OF CHARTERS OF BANKS, SAVINGS BANKS AND TRUST COMPANIES.

Extension of charters for banks, savings institutions and trust companies, is provided for in the act of May 10th, 1889. After a majority in interest of the stockholders, directors, managers or trustees, decide in favor of such renewal or extension, their action is certified to the Secretary of the Commonwealth, together with a statement under oath of the condition of such institution, upon a blank to be furnished by the Commissioner of Banking, with a copy of its charter, etc., who then refers the same to the Governor, Attorney General and Commissioner of Banking, and, upon a certificate being given by them or a majority of them, that such renewal is not inconsistent with the public interests, the Secretary of the Commonwealth issues a certificate under the seal of the Commonwealth that the charter is renewed or extended for a period of twenty years, and the fact thereof is certified to the Commissioner of Banking.

VIII.

DEPARTMENT OF AGRICULTURE.

This Department was created by an act of Assembly approved March 13th, 1895. The second section of said act partially defines its scope in the following language:

“Section 2. That it shall be the duty of the Secretary of Agriculture in such ways as he may deem fit and proper, to encourage and promote the development of agriculture, horticulture, forestry and kindred industries; to collect and publish statistics and other information in regard to the agricultural industries and interests of the State; to investigate the adaptability of grains, fruits, grasses and other crops to the soil and climate of the State, together with the diseases to which they are severally liable and the remedies therefore; to obtain and distribute information on all matters relating to the raising and care of stock and poultry; the best methods of producing wool and preparing the same for market, and shall diligently prosecute all such similar inquiries as may be required by the agricultural interests of the State and as will best promote the ends for which the Department of Agriculture is established. He shall give special attention to such questions relating to the valuation and taxation of farm land, to the variation and diversification in the kinds of crops and methods of cultivation, and their adaptability to changing markets as may arise from time to time,

in consequence of a change of methods, means and rates of transportation, or in the habits or occupation of the people of this State and elsewhere, and shall publish as frequent as practicable, such information thereon as he shall deem useful. In the performance of the duties prescribed by this act, the Secretary of Agriculture shall, as far as practicable, make use of the facilities provided by the State Agricultural Experiment Station, the State Board of Agriculture and the various State and county societies and organizations maintained by agriculturists and horticulturists, whether with or without the aid of the State, and shall as far as practicable, enlist the aid of the State Geological Survey for the purpose of obtaining and publishing useful information respecting the economic relations of geology to agriculture, forestry and kindred industries. He shall make an annual report to the Governor, and shall publish from time to time such bulletins of information as he may deem useful and advisable. Said report and bulletins shall be printed by the State Printer in the same manner as other public documents, not exceeding five thousand copies of any one bulletin."

Section 5 of said act prescribes the following rules relating to the manner in which the time and places for holding "farmers' institutes" shall be arranged:

Section 5. That it shall be the duty of the Superintendent of institutes to arrange them in such manner as to time and places of holding the same, as to secure the greatest economy and efficiency of service, and to this end he shall in each county where such institutes are to be held, confer and advise with the local member of the State Board of Agriculture, together with representatives duly appointed by each county agricultural, horticultural and other like organization with reference to the appointment of speakers and other local arrangements.

The Secretary of Agriculture is also authorized to make such special examinations or investigations as will best promote the agricultural interests of the State, in accordance with the provisions of section 6th of said act, viz:

"Section 6. That the Secretary may at his discretion employ experts for special examinations or investigations, the expenses of which shall be paid by the State Treasurer in the same manner as like expenses are provided by law, but not more than five thousand dollars shall be so expended in any one year."

The fertilizer law of Pennsylvania, approved June 28th, 1879, makes it the duty of this Department to enforce said law, which provides for the collection of license fees and the issuing of license certificates for the sale of commercial fertilizers within the several counties of this Commonwealth. All money received for the payment of such licenses is turned into the State Treasury, where it is kept as a separate and

distinct fund, which is expended for the analyses of samples of such fertilizers as may be found on sale within this State. The following section of the fertilizer law will explain itself, viz:

“Section 2. Every manufacturer or importer of commercial fertilizers as specified in section one of this act, shall on or before the first day of January, next ensuing, or before offering them for sale in this Commonwealth, file annually with the Secretary of the State Board of Agriculture, an affidavit showing the amount of said fertilizer sold within the Commonwealth during the last preceding year, and if the said amount shall be one hundred tons or less, he shall pay to the Treasurer of the State, the sum of ten dollars for each and every article of such commercial fertilizer sold within the State during the last preceding year, and if the said amount shall exceed one hundred tons, and be less than five hundred tons, he or they shall pay the sum of twenty dollars as aforesaid, and if the said amount shall be five hundred tons or more, he or they shall pay the sum of thirty dollars as aforesaid. If such manufacturer or manufacturers, importer or importers, shall not have made any sales within the Commonwealth during the preceding year, he or they shall pay the sum of ten dollars as aforesaid. Every such manufacturer shall at the same time file with the Secretary of the State Board of Agriculture a copy of the analysis required by section one of this act, and shall then be entitled to receive from the Secretary of the State Board of Agriculture, a certificate showing that the provisions of this act have been complied with.”

The administration of the several acts of the Legislature designed to prevent fraud or adulteration in the preparation, manufacture and sale of articles of food is assigned to the Department. This work is made the duty of the Dairy and Food Commissioner, under the direction of the Secretary of Agriculture.

The following laws relating to food adulteration are now being enforced:

1. Act of May 21, 1885: “For the protection of the public health, and to prevent adulteration of dairy products and fraud in the sale thereof.”
2. The act of June 8, 1891: “To prevent fraud in the sale of lard, and providing penalties for the violation thereof.”
3. The act of June 11, 1891: “An act to prevent the adulteration of cider vinegar made wholly from apples, grapes and other fruit, prohibiting the manufacture and sale of vinegar from certain ingredients injurious to health, and providing penalties therefor.”
4. The act of June 26, 1895: “To prohibit the adulteration of milk by the addition of so-called preservatives.”
5. The act of June 26, 1895: “To provide against the adulteration of food, and providing for the enforcement thereof.”

Several additional acts relative to the manufacture and sale of vinegar and cheese were passed by the Legislature of 1897.

The forestry division is an important part of this Department. Among the questions of special interest under investigation are the following: Forestry reservations; how to reclaim waste land by planting trees; physical properties of timber as related to its use; diseases and accidents incident to forest trees, etc.

Also, importance of our water supply to the future industries of the State, and the relation of the forests towards maintaining that supply.

The Division of Economic Zoology has a number of important subjects of investigation in view among which may be named the following: Making investigations, both in the field and laboratory, of birds and mammals, especially of species which are commonly believed to be detrimental to the interests of the farmer, horticulturist and poultryman; to collect information showing the number and species of quadrupeds and birds upon which bounties have been paid by the several counties of the Commonwealth; to make special investigations concerning insects (and remedies for their destruction), which are injurious to fruit trees, small fruits, cereals and garden vegetables.

The State Veterinarian has direct supervision over the enforcement of such legislation as relates to diseases of domestic animals. Thus far his principal work has been confined to investigating the extent to which tuberculosis prevails among the dairy stock of Pennsylvania. Plans and experiments have been devised which it is hoped will decrease its ravages.

The Department is always ready to respond to all inquiries that may reach the office in regard to any of the several subjects referred to, and when unable to give the information desired, will try to refer inquiries to sources where it can be had.

IX.

DEPARTMENT OF PUBLIC INSTRUCTION.

Nearly all the business of the School Department is done by means of blanks giving the prescribed forms in which reports must be made and applications must be filed for State certificates. The Department publishes a digest of school laws and decisions for the guidance of directors and others.

X.

DEPARTMENT OF THE FACTORY INSPECTOR.

The practice in this Department is to furnish blanks and copies of the factory law to all those requiring the same, making out the annual report, and a general supervision of the work.

In cases where the authority of the Department is questioned, the subject in dispute is referred to the law department of the *État*, and in every case their decision has been cheerfully and promptly furnished. Their opinion governs the Department in all cases of dispute.

XI.

THE STATE LIBRARY.

In the early part of the eighteenth century the Provincial Assembly of Pennsylvania formed the nucleus of the present State Library. From time to time, as we find by their proceedings, the Assembly procured some of the most notable works then issued from the English press, thus laying the foundation for the superstructure. Now, these priceless treasures have been in most cases preserved to us. During subsequent decades the same character of works in ponderous tomes were secured. The typographical beauty and copper-plate head and tail pieces of these rareties of the seventeenth and eighteenth centuries are the admiration of book lovers. Here we find "Purchas, His Pilgrims," five folio volumes, London, 1625; "Rymer's *Foedera*," twenty folio volumes, London, 1706; "Corps Universal Diplomatique," twenty-four folio volumes, Amsterdam, 1726; "Clarendon's History of the Rebellion," three folio volumes, London, 1704; "A Complete History of England," in three folio volumes, London, 1719; "Historia de la Conquista de Mexico," by De Solis, printed at Madrid in 1732, with others of as great value in miscellaneous literature. Law was not neglected. Here are the ponderous "Year Books," first printed in 1678; Sir Robert Brooke's "La Grande Abridgement," (old black letter), 1586; Humphrey Winch's "Book of Entries," London, 1680; Leis' "Reports of Divers Resolutions in Law," London, 1659; "Formulare Aglicanum," London, 1702; "Les Commentaries on Reports de Edmund Plowden," London, 1684; Hale's "Pleas of the Crown," printed in the Savoy, 1736; John Lilly's "Reports and Pleadings of Cases in Assise," also printed in the Savoy, 1719. To show that our Provincial Assembly was not unmindful of genealogical descent, or rather of the purity of the blood royal, they procured Anderson's "Royal Genealogies from Adam to these Times," published in London, in 1756.

Upon the change of Government by the Convention of July, 1776, the Assembly and Supreme Executive Council were busy with the momentous events transpiring around them. However, we find that in September, 1777, the latter body issued an order directing the removal of the Library for safe keeping, and the entire collection during the occupancy of Philadelphia by the British was securely sheltered at Easton. This is the first official information we have of the existence of a Library as such. The books remained in Northampton county until there was no further danger from the enemy. During the War of the Revolution, patriotism was at high-water mark, and few, if any books, printed in England, were purchased. At last, however, when peace dawned, interest was manifested and numerous additions made to the collections. As this Library has, therefore, a place in the annals of the struggle for the founding of the Republic, so almost a century later, in the War for the Union, was it once more placed in jeopardy. On the 26th of June, 1863, a few days before the battle of Gettysburg, when it was thought that the army under Lee, would reach the Capitol city, the entire Library was packed in cars and conveyed to Philadelphia, finding a place of safety, from whence, in 1777, it had been removed in order to save it from the British. Upon the adoption of the Constitution of 1790, the Senate and House of Representatives, each for its own use, ordered the purchase of books. By this system three Libraries, all owned by the State, were maintained under the control of co-ordinate branches of the State Government. Upon the removal of the State Capitol to Harrisburg, this plan became inconvenient, frequently both Legislative bodies directing the purchase of the same books, when one copy would have answered for both, for reference. At the session of 1815-16 measures were taken to consolidate the several Libraries, and on the 28th of February, 1816, Governor Snyder approved "An act to provide for the better preservation and increase of the Library of this Commonwealth," when "the Libraries belonging to the Senate and House of Representatives respectively," were added to "the present joint library of the two houses, so as to form hereafter a single Library." The Commissioners of Dauphin county furnished a room in the second story of the court house, where the General Assembly convened from the year 1812, until the erection of the present Capitol building.

The entire Library at that period, probably did not number one thousand volumes.

In December, 1821, the Library was removed to the then, new Capitol building, where it occupied the room in the northwest corner of the building, and subsequently included the room adjoining. In 1829, the first regular catalogue was prepared and printed—the catalogue in existence prior to that time being without date, purporting only to give the number and titles of the books belonging to the Senate and House of Representatives. According to this catalogue (1829) there

were 4,838 volumes in the Library, of which 2,152 were miscellaneous books, 853 law books and 1,833 statute laws and State papers. Ten years later, the second regular catalogue was printed by the joint library committee, the number of books then being estimated at 11,577. From 1816 until the year 1854, the Librarian was chosen by the joint committee on the Library, annually. In the latter year, however, an act was passed, providing for the appointment of a Librarian every three years by the Governor, with the advice and consent of the Senate, and prescribing the duties of the appointee.

REGULATIONS FOR THE GOVERNMENT OF THE STATE LIBRARY ADOPTED BY THE LEGISLATURE.

1. The Board of Trustees of the State Library shall have supervision thereof and power to make rules and regulations for the same, and the Governor, the Secretary of the Commonwealth, and the Attorney General shall, ex-officio, be said trustees. * * * * * They shall meet annually upon the second Monday of December, and at such other times as they may fix for that purpose, and the State Librarian shall act as secretary to the same.

2. The Library rooms shall be open to the public every secular day, except public holidays, between the hours of 9 A. M., and 3 P. M., except during the sessions of the Legislature and of the Supreme Court sitting at Harrisburg, when the Library shall be open as aforesaid between the hours of 9 A. M. and 9 P. M., provided that on Saturdays the Library shall be closed at 12 o'clock noon.

3. The Governor, members of the General Assembly, Justices of the Supreme Court, heads of departments, and officers of the Commonwealth at the seat of government, and such other persons as may be designated by the rules adopted by the Board of Trustees, shall be entitled, under such regulations as the Board of Trustees shall prescribe, to take books from the Library.

RULES FOR THE GOVERNMENT OF THE STATE LIBRARY, ADOPTED BY THE BOARD OF TRUSTEES, JANUARY 22, 1890.

Rule 1.

The State Library is one of reference, and not a circulating library. All persons are permitted to visit the Library and examine and read the books and reviews; but the Librarians shall exercise a proper discrimination as to the delivery of such books as they may judge liable to injury.

Rule 2.

During the time the Library is open, the Librarian or his assistants shall be in attendance. They shall preserve order, and exclude, if necessary, any disorderly person. They shall prevent smoking, loud talking or reading, and all noise inappropriate to the quietness of a place of study.

Rule 3.

It shall be the duty of the Librarian to register in a book provided for that purpose, the names of all persons entitled under the law and these rules, to take books from the Library, the title of the book and the time it is taken out; and he shall give notice to all persons failing to return the same at the specified time in Rule 6.

Rule 4.

Persons entitled under the law to receive books from the Library, cannot transfer that right or privilege to others, nor shall books taken from the Library be loaned to others.

Rule 5.

No book shall be taken from the Library until its title is written and receipt properly signed by the person receiving the same. Neither the Librarian nor his assistants can sign such receipt nor waive the giving of the same.

Rule 6.

No person shall have from the Library at any one time more than two books (or two volumes), and no book shall be retained from the Library for a longer period than two weeks; but this rule shall not apply to heads of Departments desiring works for their personal consultation and use.

Rule 7.

The following works of reference shall not be removed from the Library, except in cases where the head of a department requires the same for consultation, viz: Directories, encyclopedias, newspapers, magazines, maps, pamphlet volumes, illustrated works of art, rare or costly books, books of limited edition, books or other documents presented to the Library for permanent preservation, reports of the Supreme or other courts of last resort of the different States and Territories (except as hereinafter mentioned), manuscripts, engravings and works of an encyclopaedic character.

Rule 8.

During the session of the Legislature, or the sitting of the Supreme

Court in Harrisburg, any law book or book of reference may be taken to any room in the Capitol by any member thereof, and lawyers in attendance on the Supreme Court may be permitted to take such law books as they may wish to the Supreme Court, to be returned within two days, and the persons so receiving the same shall be personally responsible for their safe return.

Rule 9.

Members of the Legislature having in their possession any book, map or other publication belonging to the State Library, shall return the same at least five days previous to the final adjournment; and it shall be the duty of the State Librarian to report to the presiding officers of the Senate and House of Representatives, respectively, two days before such final adjournment, the names of the members of each House, respectively, who have failed or neglected to return the same.

Rule 10.

No cases shall be left open by the Librarian or his assistants, and no one else shall be permitted to take from or replace upon the shelves, any book, map, or other publication.

Rule 11.

Books must be handled with care. Leaves of books must not be turned down, nor any marks whatsoever made on the margin.

(Resolution of Trustees, Nov. 21, 1893.)

The judges of the Twelfth Judicial District are hereby designated as persons entitled to take books from the State Library, for their personal use and reference, in accordance with regulation three.

XII.

BOARD OF PARDONS.

Article IV, Section 9, of the Constitution of 1874, gives the Governor exclusive power to remit fines and forfeitures and to grant reprieves, "but no pardon shall be granted or sentence commuted, except upon the recommendation in writing of the Lieutenant Governor, Secretary of the Commonwealth, Attorney General, and Secretary of Internal Affairs, or any three of them, after full hearing, upon due public notice, and in open session."

RULES OF THE BOARD OF PARDONS.

First. The Board will meet in open session to consider applications on the third Wednesday of each month, at ten o'clock, A. M., in the Supreme Court room, at Harrisburg.

Second. The Board must be furnished with proof that notice of application for pardon has been published once a week for two consecutive weeks, in a newspaper printed in the county or city in which conviction was had; said proof to be made by the affidavit of the publisher of the newspaper that the publication has been made as required by this rule.

Third. Notice of the application must be given to the judge who tried the case, and to the district attorney, or attorney who prosecuted, stating when the application will be made, and the grounds or reasons upon which the application is based, and no grounds other than those contained in such notice will be entertained by the Board. Proof must be made that such notice, with a copy of said reasons, was served upon said judge and district attorney, or attorney who prosecuted.

Fourth. Notices of application for pardon of persons convicted of crimes committed in any city of this Commonwealth must also be given to the mayors and heads of police department of said cities respectively, and proof of the service of such notice be filed in each case.

Fifth. The following papers must accompany every application for pardon:

1. A certified copy of the entire record, including docket entries, minutes of the court, copy of indictments, pleas and all other papers on file relating to the case.

2. The notes of evidence taken on the trial, and letters from responsible persons in the community where the crime was committed, should be furnished. If no notes of testimony were taken that fact should be stated in writing to the Board.

3. A brief statement of the reasons sustaining the application, the facts in the form of a history of the case, and a schedule of papers, will be required in every application for the Record. Four additional copies of the history of the case, reasons, and schedule of papers and letters, must also be filed, so that each member of the Board may have a copy during the argument and consideration of the case.

- Sixth. All applications and correspondence must be addressed to or filed with the recorder or clerk of the Board, at Harrisburg, that the same may be prepared for presentation to the Board at its next session. Applications will only be heard at open sessions of the Board and will not be considered by any individual member thereof. No application will be heard or considered unless the same, and the papers upon which it is based, including proof of notice required, have been filed at least ten days before said session, and in no instance will this rule be relaxed.

Seventh. Application for re-hearing will be placed on the calendar, and will only be heard at open sessions of the Board. In all cases the reasons for a re-hearing or re-consideration must be submitted in writing, at least ten days before the session of the Board, at which the application is to be made, and the name and address of the attorney should be furnished. No application that has been refused by the Board will be re-heard or re-considered, unless substantial grounds for re-opening the case are formally presented and approved by the Board, and when submitted again, the publication and notices required by rules second, third and fourth must be made anew, and proof thereof, together with the additional reasons, filed with the original papers, according to the provisions of rule sixth.

Eighth. All facts relied upon to sustain any allegation, as a ground for pardon, must be proved by depositions taken within the jurisdiction of the court in which the conviction was had, before some person authorized to administer oaths, upon notice to the district attorney and to the attorney who assisted in the prosecution of the case, if any, and no fact will be considered by the Board unless so proved, except such as appear in the record and notes of evidence taken on the trial, the statement of the judge before whom the case was tried, or of the officers or persons connected with the prison in which the applicant shall be detained.

Ninth. All applications properly on file will be considered by the Board, whether represented by counsel or not. Not more than fifteen minutes will be allowed to either side of an application in the oral presentation of the same, except in capital cases, unless by special permission of the Board.

OPINIONS
OF
ATTORNEYS GENERAL,
1871-1894.

OPINIONS OF ATTORNEYS GENERAL, 1871-1894.

BROKERS—TAXATION OF—CLASSES OF DEFINED. The acts of May 15, 1850, and May 16, 1861, furnish the legal authority for taxes upon brokers.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, May 9, 1871.

J. F. HARTRANFT, *Auditor General*:

Sir: I have carefully examined the questions of E. Allison, Esq., treasurer of Beaver county, respecting the laws taxing brokers, propounded in his letter of the 2d inst., referred by you to me.

The points of difficulty appear to be:

1. What are the taxes on brokers and by what law or laws are they imposed?

2. Does the term "bill broker" embrace anything different from that of "exchange broker," or does the latter include the former?

I reply to the first question, that the seventh section of the act of May 15, 1850, Br. Digest 128, Sec. 10, undoubtedly repealed the act of May 27, 1841, so far as it required the payment of a sum certain for commissions, and in lieu thereof, imposed a tax of three per centum upon the annual receipts. The first clause of the ninth section of the same act makes this clear. It is in these words: "Nothing in this act shall be held or taken to repeal any obligation, liability, penalty or duty imposed upon any broker by any existing law of this Commonwealth, except only so far as the amount of the tax for a commission or license."

The first section of the act of May 16, 1861 (Br. Dig. 128, Sec. 13), imposes an additional tax of three per centum upon the gross receipts of brokers of all classes. That this is an addition to the tax of three per cent. for commissions is clear from the words of the fourth section of the same act (Br. Digest, 129, 11), to wit: "All brokers and private bankers shall be required to pay license as heretofore in addition to the amounts which they shall be required to pay under the provisions of this act."

To the second question, I reply that the Legislature certainly intended to designate three distinct classes of brokers by the terms "stock broker," "bill broker" and "exchange broker," for the act defines them. The term "money broker" may or may not embrace "bill broker," according to the facts. If Mr. Allison desires further information, I shall be happy to furnish it.

Very resp'y and truly yours,

F. CARROLL BREWSTER,
Attorney General.

MERCANTILE LICENSES—EXEMPTION IN FAVOR OF MANUFACTURERS—AMENDMENT OF, AND APPEALS FROM, ASSESSMENTS.

The manufacturer can make and sell his own manufactured products without a license. A dealer whose annual sale of foreign wares and merchandise does not exceed \$500 is not liable to tax.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, July 26, 1871.

JOHN McCROSLAND, ESQ. :

Dear Sir: In reply to the questions propounded in yours of July 13, 1871, I submit the following:

1st. You note that you have been instructed "that the manufacturer is free to make and sell his own products to the amount of millions of dollars without any license." Your instructions were correct. See section 10, act May 4, 1841, P. L. 311, Brightley's Digest, page 1001, section 3. Also act April 9, 1870, P. L. 59, in these words: "That hereafter manufacturers and mechanics who shall sell goods, wares or merchandise, other than their own manufacture, not exceeding the sum or value of \$500 per annum shall not be classified or required to pay any annual tax or license fee." The act further provides that if these classes shall sell "goods, &c., to an amount exceeding \$500 they shall be classified in the same manner and pay the same annual tax as is now required to be paid by dealers in foreign merchandise. Of course, "goods" other than their own manufacture.

2. You have been further instructed that the manufacturer "may sell purchased wares and merchandise, in addition to his own manufactures, without any license if the amount of these latter sales do not reach the sum of \$500." I am of opinion that these instructions also are correct under the above cited act of April 9, 1870.

I am also of opinion that "dealers" whose annual sales of foreign wares and merchandise do not exceed the sum of \$500 are not liable to a license fee.

3. You have been instructed also "that when a defendant appears in answer to a summons you have no authority to go behind the appraiser's assessment and the treasurer's claim thereon, and must of necessity quash the whole claim and put the costs on the Commonwealth, or you must give judgment against the defendant for a claim known to be unjust." I can find no fault with these instructions. Injustice cannot well be done; there are too many safeguards.

1. Upon request the assessment may be amended by the appraisers. See section 7, act April 16, 1845, Brightley's Digest, p. 1002, section 10.

2. If not amended or the amendment be not satisfactory the person aggrieved may appeal to the judges of the court of common pleas. See same section.

3. An appeal is provided for from the judgment of the justice of the peace or alderman. Section 2, act 4th March, 1824, Br. Dig., page 1003, section 21.

Very resp'y and truly yours,

F. CARROLL BREWSTER,
Attorney General.

MERCANTILE APPRAISERS—FEES OF IN PHILADELPHIA.

Under the act of May 24, 1871, the mercantile appraisers for the city of Philadelphia are entitled to a fee of sixty-two and one-half cents for every name returned by them to the city treasurer.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, October 18, 1871.

JNO. F. HARTRANFT, *Auditor General*:

Sir: Your communication of the 18th was duly received, calling, as I understand, for my opinion as to whether under the act of 24th May, 1871, the mercantile appraisers for the city of Philadelphia shall be allowed a fee of 62½ cents in all cases returned by them or only in those cases where suits are brought and licenses collected.

In reply, I would state that I have carefully examined this question and am very clearly of opinion that under the third section of the act referred to the mercantile appraisers of Philadelphia are entitled to 62½ cents for every name returned by them to the city treasurer. They have but one duty to perform, viz., to make a return of the names and residences of the persons described by the act, to the city treasurer.

It is not their duty but that of the city treasurer, if it is any one's, to investigate whether the parties returned are duly licensed or not and this clause of the third section has no reference whatever to the duty of the appraisers or their fees.

Very respectfully yours, etc.,

F. CARROLL BREWSTER,
Attorney General.

JUSTICES OF THE PEACE—JUDICIAL OFFICERS—OATH TO SUPPORT THE CONSTITUTION.

Justices of the peace are judicial officers and as such are required to take an oath to support the new Constitution within the prescribed period.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 8, 1874.

M. S. QUAY, *Secretary of the Commonwealth*:

Dear Sir: In answer to letters of inquiry addressed to you, and

referred to me as to whether section 30 of the schedule of the new Constitution; viz: "All State and judicial officers heretofore elected, sworn, affirmed or in office when this Constitution shall take effect, shall severally, within one month after such adoption, take and subscribe an oath or affirmation to support this Constitution," embraces justices of the peace. It applies to "all State and judicial officers" in office at its adoption, who must necessarily have been elected or appointed under the old Constitution or laws enacted in pursuance thereof. Article V, section 1, of the old Constitution—Title Judiciary—provides that "the judicial power of this Commonwealth shall be vested in certain courts therein named and in justices of the peace, and in such other courts as the Legislature may from time to time establish."

The Supreme Court has decided that justices of the peace are judicial officers. They are clearly embraced within the officers designated by section 30 of the schedule of the new Constitution, who shall within one month after its adoption take and subscribe an oath or affirmation to support the new Constitution.

The act of June 21, 1839, provides that justices of the peace shall be sworn or affirmed by the recorders of their proper counties. It would, perhaps, be proper that the oath required under the new Constitution should be taken before the same officers.

Very resp'y, your ob't servant,

SAM. E. DIMMICK,
Attorney General.

PUBLIC OFFICERS—NOTARIES PUBLIC STATE OFFICERS.

Under the provisions of the act of March 5, 1791, the office of notary public is a State office and thereby included within the provisions of section 30 of the schedule of the new Constitution. County officers are not so included.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 9, 1874.

M. S. QUAY, *Secretary of the Commonwealth*:

Sir: In reply to your inquiry, county officers, now in office, are not embraced within the provisions of section 30 of the schedule of the new Constitution.

The act of the 5th of March, 1791, provides "the Governor shall appoint and commission a competent number of persons of known good character, integrity and abilities, as notaries public for the Commonwealth of Pennsylvania," thereby making the office of notary public a State office, and therefore included within the provisions of the said section of the schedule.

Very respectfully,

Your obedient servant,

SAM. E. DIMMICK,
Attorney General.

CONSTITUTIONAL CONVENTION—ORDINANCE OF DECLARED ILLEGAL NOT VALIDATED BY THE ADOPTION OF THE CONSTITUTION BY THE PEOPLE.

The State Treasurer cannot legally pay a warrant regularly drawn for the payment of the expenses of the commission provided by section 4 of an ordinance adopted by the Constitutional Convention on November 3, 1873.

The Supreme Court having decided the fourth section of said ordinance to be "illegal and void," the adoption of the Constitution by the people did not give validity to the same.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 31, 1874.

R. W. MACKAY, *State Treasurer*:

Sir: You have submitted for my opinion whether as State Treasurer you can legally pay Warrant No. 649, payable to Jno. O. James and others therein named "for expenses incurred by commission to conduct the election in Philadelphia," for the sum of six thousand six hundred and fifty-eight dollars, dated December 27, 1873, drawn by the President and Chief Clerk of the late Constitutional Convention, pursuant to a resolution of the same.

The gentlemen to whom payable were named commissioners in section 4 of an ordinance adopted November 3, 1873, by the Convention, entitled "An ordinance for submitting the amended Constitution of Pennsylvania to a vote of the qualified electors thereof," and empowered to "have direction of the election upon this amended Constitution in the city of Philadelphia," and their duties were therein set forth.

The Convention was composed, largely, of distinguished jurists and lawyers, and the ordinance adopted by an almost unanimous vote, and the gentlemen named as commissioners doubtless acted in good faith in accepting and entering upon the duties thereby imposed upon them, and in so doing incurred the expenses covered by this warrant. Whilst in performance of their duties they were enjoined by the Supreme Court, and in the opinion delivered December 5, 1873, the court say "it is therefore clear to our minds that the ordinance relating to the election in the city of Philadelphia is flatly opposed to the act of 1872 and is, therefore, illegal and void."

I assume the injunction was obeyed, and the warrant is for services rendered and expenses incurred prior to the decision of the court. On the 27th of December, after this decision, the Convention directed this warrant to be drawn. The power of the Convention under section 7 of the act of April 11, 1872, calling the same, to regulate its own expenses and issue warrants therefor is very broad, which is enlarged by section 29 of the general appropriation bill, approved April 9, 1873. Whilst such is the case, can it be construed to give it authority to authorize illegal expenditures, or would a State Treasurer be justified in their payment after the highest judicial

tribunal of the State has decided that the ordinance under which expended was "illegal and void?"

The Constitution had this provision in its schedule: Section 32. "The ordinance passed by this Convention, entitled 'An ordinance for submitting the amended Constitution of Pennsylvania to a vote of the electors thereof,' shall be held to be valid for all the purposes thereof."

What is the effect of its subsequent ratification upon this section and the ordinance? That for which the ordinance provided was to go into effect, and be executed, fully ended and determined, before the new Constitution went into operation. If it had provided for the doing of anything after the new Constitution went into effect, the subsequent ratification by the people would perhaps have given validity to so much of it as was to be thereafter executed, but, as before suggested, the difficulty in sustaining the validity of the warrant upon the ground that the subsequent ratification or adoption by the people of the Constitution and schedule gave to the ordinance the force of law, is, that section 4 of the ordinance under which these expenses were incurred had been pronounced illegal and void by the Supreme Court, and when the people voted upon and adopted the Constitution it was with the knowledge that section 4 of the ordinance was not a law but void; that no such law existed, and it certainly is but just and proper to assume when the people ratified and confirmed section 32 of the schedule, they did so in conformity to law, as the law then existed, as determined by the highest judicial tribunal of the Commonwealth. Assuming such to be the case, there was nothing, legally, in existence of section 4 of the ordinance for the adoption or ratification of the people to operate upon. As a matter of fact, so much of the ordinance as provided for the election in Philadelphia was to operate and expire before the Constitution went into effect, as a matter of law it was declared illegal before its object had been accomplished or the Constitution adopted. How can it be said that that which had neither an actual or legal existence when the people voted upon and adopted the Constitution, was by their vote adopted or ratified. Adoption or ratification presupposes something in being or existence which it can operate upon, which it adopts or confirms.

The validity of this ordinance has been the subject of much discussion. It was adopted by a body of eminent ability and has been declared illegal by a court of like ability. To the judgment of the latter we must yield obedience. Does the subsequent action of the people give it validity? Upon its determination depends your duty as to the payment of the warrant. I have considered the question with much care and am of the opinion that the adoption or ratification by the people of the Constitution did not give validity to

section 4 of the ordinance, and as the Supreme Court decided it to be "illegal and void," you have no right to pay the draft.

As the question is a novel one, and the moneys were, doubtlessly, expended honestly and in good faith, and whilst, in my judgment, you have no legal right or discretion to pay the warrant, I am free to say I feel that the gentlemen who expended the moneys have a very strong equitable claim upon the Commonwealth therefor, and would respectfully suggest, if they desire, that every facility be afforded them to have the same determined by the courts without delay.

I am with respect,
Your obedient servant,
SAM. E. DIMMICK,
Attorney General.

JUSTICES OF THE PEACE—NUMBER OF.

No township, borough or district can exceed two justices of the peace unless by a vote of its electors had since the adoption of the new Constitution.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 4, 1874.

M. S. QUAY, *Secretary of the Commonwealth:*

Dear Sir: The provisions of the old and new Constitution are similar as to the number of justices in townships, wards and boroughs, except in the new, "districts" are embraced.

The act of June 21, 1839, enacted to put in force the old constitutional provision as to justices, and authorized the election of two justices in each ward of a borough, and unless restrained, as by special acts some boroughs are, each ward of a borough is entitled to two.

I am of the opinion that the new Constitution avoided all increase by vote of the people heretofore made, and that no township, ward, borough or district can exceed two, unless by a vote of its electors had since the adoption of the new Constitution.

Very respectfully,
Your ob't servant,
SAM. E. DIMMICK,
Attorney General.

CORPORATIONS—RIGHTS OF MANUFACTURING COMPANIES.

The power to manufacture includes the right to purchase materials and to dispose of the manufactured product but not to traffic in articles it has not manufactured.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 13, 1874.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: The act of 21st March, 1873, and the supplement of 18th April, 1873, authorize the incorporation of companies for various kinds of manufacturing.

In such cases the power to manufacture carries with it the right to purchase the necessary materials and to dispose of the manufactured article.

The "Pennsylvania Glue Company" desires incorporation "for the purposes of manufacturing, selling and dealing in glue and the various ingredient materials and compounds which are or may be used in the manufacture of glue."

The franchises the company thus seeks for are not merely to manufacture, but to traffic in articles it has not manufactured, and cannot be obtained under the acts in question.

Very truly yours,

SAM. E. DIMMICK,
Attorney General.

REQUISITION FOR FUGITIVE CRIMINAL—REQUISITES.

The Federal statute of February 12, 1873, prescribes the nature of the demand and the proofs required to be submitted to the Chief Executive in order to secure the rendition of a fugitive criminal.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 14, 1874.

JOHN F. HARTRANFT, *Governor:*

Sir: I have examined the requisition dated April 7, A. D. 1874, made by His Excellency William Allen, Governor of the state of Ohio, upon Your Excellency for the apprehension of William B. Wilkins, William Dickson and James Burns or James Burrows, citizens of Mercer county, this Commonwealth. The requisition recites: "Whereas, It appears by the annexed papers, duly authenticated according to law, that William B. Wilkins, William Dickson and James Burns stand charged by affidavit with the crime of perjury committed in the county of Ashtabula, in said state" (Ohio). The laws of the United States, section 1, act of February 12, 1793, provide that where demand is made for any person as a fugitive from justice of the executive authority of any such state or territory to which such person shall have fled that there shall be produced by the Executive thereof, "the copy of an indictment found or an affidavit made before a magistrate of any state or territory as aforesaid charging the person so demanded with having committed treason, felony or other crime, certified as authentic by the Governor or chief magistrate of the state or territory from whence the person so charged fled."

Your Excellency will observe that when the demand is made the proof required by the act of 1793 to support it, and required to be submitted, is either "the copy of an indictment found or an affidavit charging the person so demanded with having committed treason, felony or other crime, certified as authentic."

In this case there is no indictment nor criminal proceedings instituted so far as the papers submitted show. The proofs submitted consist of several affidavits and the certified copy of a criminal action instituted before J. N. Wright, justice of the peace in and for the county of Ashtabula, Ohio, on behalf of the state of Ohio, against M. C. Burrows for larceny of a mare, the property of George Lowery.

The affidavits, in substance, set forth what purports to have been the evidence given in the hearing of the above case by the parties whose rendition is sought and their acknowledgement in relation to the evidence by them so given, together with the affidavit of one William Rust, that George Lowery never owned the mare, and that M. C. Burrows purchased the mare of James H. McLowel, and also the affidavit of one William J. Keen, that said Wilkins, Dickson and Burnes "are fugitives from justice from the county of Ashtabula aforesaid, that they and each of them fled from said state of Ohio before they could be arrested" and are now residing at their homes in the county of Mercer, in Pennsylvania.

There is no evidence contained in the affidavits submitted that any criminal prosecution has been instituted in the state of Ohio against Wilkins, Dickson and Burnes, or either of them, or warrant issued for their arrest. The affidavits submitted negative the allegation, as well as that they "fled from the state," other than to return after the trial, which they attended as witnesses, to their homes in Mercer county, this State. However these facts may be, there is no charge made in either of the affidavits that Wilkins, Dickson and Burnes, or either of them have "committed treason, felony or other crime" within the state of Ohio. The affidavits submitted do not sustain the allegation set forth in the requisition "that William B. Wilkins, William Dickson and James Burnes stand charged by affidavit with the crime of perjury committed in the county of Ashtabula, said state." There is no charge in either of the affidavits annexed to the requisition of the crime of perjury, or any other crime, against Wilkins, Dickson or Burnes, or either of them.

If the parties were on trial charged with the offense of perjury, it is true the matters set forth in the affidavits would be evidence, if offered, tending to prove the charge, but does not dispense with the plain express requirement of the statute of an affidavit "charging the person so demanded with having committed treason, felony or other crime." The affidavits in this case make no such charge.

The security of every citizen demands a strict compliance with the

provisions of the act, that the charge, and especially when it is based upon mere affidavit, should be clear, express and explicit, and even then exercised with great caution.

For the reason submitted I am clearly of the opinion that you have no authority to comply with the requisition made upon you by His Excellency the Governor of Ohio.

Very respectfully,

Your obedient servant,

SAM. E. DIMMICK,
Attorney General.

CORPORATIONS—LETTERS PATENT.

A turnpike company incorporated prior to adoption of the new Constitution if not legally organized at time of said adoption as required by that instrument to continue its existence, no right exists to issue letters patent thereto.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, May 26, 1874.

M. S. QUAY, *Secretary of the Commonwealth:*

Dear Sir: In reply to your inquiry as to whether letters patent can be issued to the Allentown and Coopersburg Turnpike Company.

This company was incorporated by an act approved March 23, 1854, and supplement thereto approved May 26, 1871, with power to organize under general law relating to turnpikes, etc., of 1849.

If there was a bona fide organization of this company, and business commenced thereunder in good faith, at the time of the adoption of the present Constitution, then it is not affected thereby. But under the act of 1849, letters patent must precede such organization. It could only be organized after they had been received, consequently there could have been no legal organization of this company at the adoption of the new Constitution as required thereby to continue its existence, and no right exists to issue letters patent thereto.

Very respectfully,

Your obedient servant,

SAM. E. DIMMICK,
Attorney General.

IN RE APPLICATIONS OF THE "SHAMOKIN COAL GAS COMPANY," AND "THE SHAMOKIN GAS LIGHT COMPANY," FOR LETTERS PATENT.

- (1) The three weeks' notice required by the act means twenty-one days.
- (2) Company advertising first is entitled to letters patent.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 19, 1874.

JOHN F. HARTRANFT, *Governor:*

Sir: I have carefully examined the facts and law relating thereto

in the matter of the applications made by the "Shamokin Coal Gas Company," and "The Shamokin Gas Light Company" to Your Excellency for letters patent under the provision of the act, entitled "An act to provide for the incorporation and regulation of certain corporations," approved April 29, A. D. 1874.

Section 34 of said act provides for the incorporation of water and gas companies. Clause 3 of said section provides that "the privileges of such incorporation within the district or locality shall be an exclusive one, and no other company shall be incorporated for that purpose until the said corporation shall have realized from its earnings, and divided among its stockholders, during five years, a dividend equal to eight per centum per annum upon its capital stock."

The certificate in each application is for the supplying of the borough of Shamokin with illuminating gas. Under the provisions of the act cited letters patent of incorporation can only issue, at this time, to one company, and the question raised is to which of the parties making application should they issue.

Section 3 of the act provides that "notice of the intention to apply for any such charter shall be inserted in two newspapers of general circulation, printed in the proper county, for three weeks, setting forth briefly the character and object of the corporation to be formed, and the intention to make application therefor," and also provides that the certificate of organization "accompanied with proof of publication of notice as hereinbefore provided shall then be produced to the Governor of this Commonwealth who shall examine the same * * * approve thereof and endorse his approval thereon, and direct letters patent to issue," incorporating the subscribers and their associates, etc.

Each of the applicants claim they have complied with the requirements of the act referred to, and in addition to their legal rights that they have equities which should be considered by Your Excellency.

The equities set up by the "Shamokin Coal Gas Company" are that they procured an act of incorporation from the court of common pleas of Northumberland county, in the name of the "Shamokin Gas Company," on the 8th of November, 1870; that on the 23d of March, 1874, they made a second application to the same court for a charter of incorporation, which is pending.

The equities set up by the "Shamokin Gas Light Company" are, that they made application March 9, 1854, to the court of Northumberland county for a charter of incorporation; that on the 30th of March the town council of the borough of Shamokin authorized I. Desha Patton, one of the incorporators and persons thereafter associated with him, to lay gas pipes in the streets of said borough; that pursuant to said authority and in contemplation of obtaining from said court a charter of incorporation the Shamokin Gas Light Com-

pany, or parties representing same, have laid about seven thousand feet of pipe and have on hand four thousand feet ready to lay, and built gas house, etc., and expended therein about fifteen thousand dollars, and are prepared, within ten days, to furnish the citizens of the borough with gas.

Such in brief are their equities, as submitted. How far Your Excellency might properly consider the same, is unnecessary to decide in this case, as their rights are clearly determinable under the law.

The "Shamokin Coal Gas Company," by the proof of publication submitted, gave notice of its intention to apply for letters patent of incorporation by notice published in the "Sunbury American," and in the "Shamokin Herald," weekly newspapers published in Northumberland county; in the one on the 9th, 16th and 23d of July, and in the other on the 10th, 17th and 24th of July, one notice being dated July 3d, and the other July 10th, and that such application would be made to the Governor on the 25th of July, 1874.

The Shamokin Gas Light Company gave notice of their intention to apply to Your Excellency for letters patent on the 27th day of July, 1874, by publication made in four successive issues of the weekly paper called the Sunbury Gazette, on the 3d, 10th, 17th and 24th days of July, 1874, and by publication made an equal number of times on the same days respectively in the weekly paper called the Northumberland County Democrat.

It is undoubted that the first notice that an application for letters patent would be made was given by the Shamokin Gas Light Company. If the statute had not required such advertisement the company could have made immediate application and thus have become a corporation on or before the 3d day of July, 1874.

Not until one week later did the Shamokin Coal Gas Company give the required notice of its intention to apply also for incorporation.

Under such circumstances it seems to me that the company which gave the first notice acquired a precedence to letters patent, unless it has forfeited its right by some neglect or delay. Has such been the case?

The Shamokin Gas Light Company inserted its first advertisement on the 3d day of July, 1874, and its last on the 24th day; on the 27th day of the same month its application was to be made.

If you exclude the first day in the reckoning of time, the three weeks would not have expired until the end of the 24th day of July and application could not have been made before the twenty-fifth day, that being Saturday, convenience might dictate Monday, the 27th day of July, as the proper time for the transaction of the business. Was this a proper reckoning of time? The provision of law above mentioned requires notice of intention to be inserted in two newspapers "for three weeks." The meaning of this clause cannot be mis-

understood. Its purpose was public information, its object was to invite resistance to all improper applications for corporate franchises. Public policy would not be consulted by shortening the time or lessening the notice. It will be observed that the statute is silent in regard to the number of insertions to be made of the notice. It does not say that three insertions are sufficient; it does direct that notice shall be daily or weekly, but it does not demand that the notice to be given shall be for three weeks. If the phrase, twenty-one days, had been used, no one can doubt that notice for less than twenty-one days would have been insufficient. There is nothing here to indicate that time was used in an unusual sense and it becomes my duty to advise Your Excellency that the word week when used in this statute means the same period of time as seven days, and that the expression "three weeks" does not merely refer to the number of times advertisement must be made, but directs that the notice to be given must be twenty-one days in length. It is true there is a decision on the subject of sheriffs' sales which seems to hold a contrary doctrine. But on examination the language of the act of 1836 on that subject, and that of the present act will be found widely different. In the act of 1874 there is nothing expressly defining the number of times notice is to be advertised. The first named act contains a direction upon that subject, and might seem to authorize a court in holding that where an advertisement had been inserted a certain number of times, the length of notice is not to be regarded, at least such is the opinion of the district court of Philadelphia. Even under such circumstances the correctness of this decision is denied by other courts of this Commonwealth of equal learning and ability. The case of *Early versus Doe*, 16 Howard 610, is a case in point, and fully sustains the construction given to the act of 1874. There it is decided "Where the language of the statute was 'that public notice of the time and place of the sale of real property for taxes due to the corporation of the city of Washington shall be given by advertisement inserted in some newspaper published in said city, once in each week for at least twelve successive weeks,' it must be advertised for twelve full weeks, or eighty-four days."

An application of the rule just laid down will show that the Shamokin Coal Gas Company have in no sense entitled themselves to incorporation.

The first notice given by it was on the 10th day of July, and application was made on the 25th day of the same month. That this notice does not meet the requirements of the act of 1874 is evident.

My opinion therefore is, that the Shamokin Gas Light Company

having first given notice of its intention to apply for incorporation, and for the length of time required by law, is entitled to letters patent.

Very respectfully,

Your obedient servant,

SAM. E. DIMMICK,
Attorney General.

CAPITAL STOCK SUBSCRIBED.

The capital stock need not all be subscribed before letters patent are issued.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 28, 1874.

My Dear Sir: The act of 29th April, 1874, does not, in my opinion, require the entire amount of capital stock to be subscribed before letters patent can issue.

Very truly yours,

LYMAN D. GILBERT,
Deputy Attorney General.

BONUS.

A company having paid a bonus when originally incorporated not required to pay an additional bonus before it can accept the provisions of act of 1874.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, November 9, 1874.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: When a corporation created prior to the passage of the act of 29th April, 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," has paid to the Commonwealth the bonus upon its capital stock, it is not required to pay an additional bonus before it can accept the provisions of that act.

Very respectfully yours,

SAM. E. DIMMICK,
Attorney General.

CAPITAL STOCK—WHAT MUST BE SPECIFIED IN CHARTER.

1. Certificate must state amount of capital stock, number and par value of shares and that ten per centum has been paid in cash.
2. It is not necessary to state that the entire amount of capital stock has been subscribed.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, November 10, 1874.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: Every corporation of the second class except a building and loan association applying for letters patent under the act of Assembly

of 29th April, A. D. 1874, entitled "An act to provide for the incorporation and regulation of certain corporations," must specify in the certificate which that act requires it to make "the amount of its capital stock, if any, and the number and par value of shares into which it is divided" and that ten per centum of the capital stock thereof has been paid in cash to the treasurer of the proposed corporation.

It is not necessary to state that the entire amount of capital stock has been subscribed.

Very respectfully,

Your obedient servant,

SAM. E. DIMMICK,

Attorney General.

PUBLIC OFFICERS—POWER OF REMOVAL BY CHIEF EXECUTIVE.

The right to remove an officer cannot be implied where the appointment by the Governor is for a specified term upon a pecuniary condition.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, November 28, 1874.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: An examination of the acts of Assembly which authorized His Excellency the Governor to appoint and commission Richard Coudy auctioneer for the city of Williamsport, will show that the Governor has no power to revoke the appointment thus made, even upon the petition of citizens of Williamsport, alleging improper conduct on the part of Mr. Coudy.

By the act of Assembly of 11 April, 1840, the Governor was "authorized and required to commission a suitable person in the borough of Williamsport, Lycoming county, as auctioneer," who shall pay a certain sum for his commission and a certain percentage upon his dues when they exceed a specified sum.

The act of Assembly of 13 April, 1868 (Pam. Laws, 1868, page 878), declares that the commissions thus issued shall be for the term of five years from their date, and that the auctioneer shall pay to the treasurer of the Commonwealth the sum of \$125 for each year he shall hold his commission.

In pursuance of these acts of Assembly Richard Coudy was appointed and commissioned on 16th October, 1873, as auctioneer for the city of Williamsport for the term of five years.

It will be observed that the Governor was empowered to select, appoint and commission the auctioneer for that city; that the person receiving the appointment and commission was entitled to retain it for five years upon payment of a specified sum into the State Treasury and that there is no provision made for his removal or the revocation of his appointment.

It is true that where an office is to be held during pleasure, the power to appoint carries with it, in the absence of a contrary provision, the right to remove.

But the right to remove cannot be implied where the appointment is for a specified term, upon a pecuniary consideration.

It is to be regretted that Mr. Coudy has given cause for the complaints made against him, but it must also be remembered that those who have been injured by his conduct have a plain and adequate remedy at law.

Very respectfully yours,

LYMAN D. GILBERT,
Deputy Attorney General.

CORPORATIONS — INCREASE OF CAPITAL STOCK — REQUISITES
UNDER THE ACT OF APRIL 18, 1874.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, December 4, 1874.

M. S. QUAY, *Secretary of the Commonwealth.*

Dear Sir: In reply to letter of William A. Ingham, president of "Rock Hill Iron and Coal Company," of November 20th, and by you referred to me, as to construction of act of April 18, 1874, providing manner of increasing capital stock and indebtedness of corporations, I would say that the act is very clear. It first requires consent of stockholders to increase, and secondly reports of increase; by this is meant an actual increase. The authority to increase does not create the increase required to be reported. Increase is a fact—the power may not be exercised.

There may be facts in this case not developed by the president's letter; I assume he desires to know if authority to increase begets the increase to be reported as an increase.

If no action other than consent of stockholders to increase its capital has been taken, then there is no increase.

The letter of the president states: "We have not yet issued a single share of the new stock," which may be so and yet the stock increased within the spirit if not the letter of the law.

Does he mean that there has been no issue of certificates, which are merely the evidence of indebtedness, or that no stock has been subscribed. If the company, pursuant to the consent of the stockholders, opened its books for subscriptions to its new stock and same, or any portion was subscribed for, to the extent subscribed I think it an increase within the act and to be reported; the subscribers are liable to the company for amount of their several subscriptions and have a right to demand of the company, upon payment, the stock by them subscribed.

I enclose the president's letter, and also the "proposed affidavit," with an amendment to the latter in case there has been subscription to the new stock.

Yours very truly,

SAM. E. DIMMICK,
Attorney General.

PUBLIC OFFICERS—COMMISSIONS OF—RIGHT OF GOVERNOR TO WITHHOLD PENDING AN ELECTION CONTEST.

The Governor cannot decline to issue a commission to an officer merely for the reason that the legality of his election is being tested, unless there is some provision of law directing him to withhold it.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, December 23, 1874.

J. F. HARTRANFT, *Governor*:

Sir: Your Excellency cannot decline to issue a commission to an officer, merely for the reason that the legality of his election is being tested, unless there is some provision of law directing you to withhold it.

The provision upon that subject applies to "prothonotaries, clerks, recorders of deeds and registers of wills," but does not include the "marshal of the city of Scranton."

Mr. Coun, who holds a certificate of election to this office, is therefore entitled to be commissioned, notwithstanding his right to the office is being contested.

If an additional reason were needed in favor of issuing a commission to him, it would be found in the fact that a vacancy in the office of marshal may thereby be prevented.

For the term of Mr. Roesler, the present incumbent, who holds his office by virtue of an appointment made by Your Excellency, in pursuance of the act of Assembly of 15 May, 1874, will expire by its own limitation on the first Monday of January, 1875, and there is no provision of law for him to continue in office until his successor is duly qualified.

Very respectfully yours,

SAM. E. DIMMICK,
Attorney General.

CORPORATIONS—APPLICATIONS FOR CHARTER—PUBLICATION OF NOTICE.

The provisions of section 3 of the act of 29 April, 1874, are complied with even if the newspaper which contains the notice of the intended application is not printed in the place where the corporation is to be located.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 20, 1875.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: If the publication required by the third section of the act of 29 April, 1874, be made "in two newspapers of general circulation printed in the proper county" it is sufficient compliance with the provisions of that section, even if the papers which contain the notice be not printed in the place where the corporation is to be located and its business transacted.

All that the notice must set forth is "the character and object of the corporation to be formed, and the intention to make application therefor."

Very truly yours,

LYMAN D. GILBERT,
Deputy Attorney General.

FERRY COMPANY—INCORPORATION OF.

It is sufficient if the certificate of incorporation states "there is no incorporated ferry in actual use within three thousand feet of the intended location."

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 5, 1875.

JOHN F. HARTRANFT, *Governor:*

Sir: It is not denied that proper publication was made by the Port Trevorton and Herndon Ferry Company of its intention to apply for incorporation and letters patent.

It is not denied that the certificate presented for that purpose is drawn in strict conformity with the provisions of the third section of the act of 29th April, 1874, and states, as directed by the thirty-first section of that act, the stream over which the ferry is to be erected and the place and counties of its location.

It is contended that the certificate fails to specify the distance of the proposed ferry from other incorporated ferries as required by the latter section.

The language of the certificate is that "there is no incorporated ferry in actual use within three thousand feet of this intended location."

This is, in my opinion, a sufficient compliance with the directions of the statute, for the object of stating the distance of a proposed ferry from others previously incorporated, is to prevent an encroachment upon the rights of older ferries in actual use, and this is fully attained when the certificate states that the proposed ferry is at a greater distance from one previously incorporated and in actual use than the law requires.

Your Excellency is therefore advised that this company has com-

plied with the conditions upon which corporate privileges are granted and is entitled to letters patent.

Very respectfully,
 Your obedient servant,
 SAM. E. DIMMICK,
 Attorney General.

CORPORATIONS—Increase of indebtedness.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, February 16, 1875.

M. S. QUAY, *Secretary of the Commonwealth*:

Dear Sir: In reply to letter of C. Stolz, treasurer of the Union Foundry and Manufacturing Company.

Unless the company increases its indebtedness as provided by the act approved April 18, 1874, the Secretary of the Commonwealth and Auditor General have no authority to receive and file returns or reports of increase of stock or indebtedness, and the company is liable to a penalty of \$5,000 for omission to make return. The company had better comply with the law and exchange the bonds duly authorized to be issued for the securities now out. This would be better for the holders of the present indebtedness and relieve the company from all liability for penalty.

Very respectfully,
 Your obedient servant,
 SAM. E. DIMMICK,
 Attorney General.

BUILDING AND LOAN ASSOCIATIONS.

Irrelevant matter should not be stated in certificate.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, February 26, 1875.

M. S. QUAY, *Secretary of the Commonwealth*:

Sir: The certificate presented for the incorporation of "The Mechanics' Saving Fund and Building Association of Pottsville," is irregular and ought not, in my opinion, to be approved, because it contains unnecessary and irrelevant matters.

It not merely sets forth all that section third of the act of 29 April, 1874, requires, but it further states that in accordance with section seventeen of that act, the association has purchased certain real estate and, in payment of it, has issued a number of shares of full paid stock.

Even if it were not a matter of doubt whether the provisions of this latter section applied to corporations of this character, it is very

plain that His Excellency the Governor ought not to be called upon to sanction or disapprove of such transactions.

His duty in examining certificates is merely to see if they conform to the conditions upon which corporate franchises are granted, and certificates ought not to set forth more than is necessary to enable him to discharge that duty.

Very respectfully yours,
 SAM. E. DIMMICK,
 Attorney General.

PUBLIC OFFICERS—ALDERMEN AND JUSTICES OF THE PEACE—
 ELECTION RETURNS—WHERE FILED.

The returns of election of justices of the peace and aldermen should be filed in the prothonotary's office. The persons elected should file their acceptance in the same office.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, March 16, 1875.

E. ARMSTRONG, *Prothonotary of Berks County*:

Dear Sir: Your favor of 13th inst., duly received.

I am of the opinion that section 2 of the act of June 21, 1839, entitled "An act providing for the election of aldermen and justices of the peace," as amended by section 2 of the act of April 13, 1859, is in force, and not affected by the act entitled "A further supplement to the act regulating elections in this Commonwealth," approved January 30, 1874, and the act amendatory thereof, approved February 13, 1874. That the returns of election of justices of the peace and alderman should be filed in the prothonotary's office; that the prothonotary should send certified copy of same to the Secretary of the Commonwealth, and that the persons elected justices of the peace or alderman should give notice to the prothonotary pursuant to said act of 1859, if they accept said office.

Very resp'y yours,
 SAM. E. DIMMICK,
 Attorney General.

APPLICATIONS FOR CHARTER—PUBLICATION OF NOTICE.

1. Notice must be published in each county in which the intended corporation proposes to exercise its corporate franchises.

2. Publication in a newspaper printed in the German language not a compliance with the act.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, March 22, 1875.

JOHN F. HARTRANFT, *Governor*:

Sir: In the matter of the application for the incorporation of a

ferry company, under the name of the "Chartiers Ferry," the certificate sets forth that it is "for the purpose of establishing and maintaining a flat-boat, chain or steam ferry across the Allegheny river at or near the mouth of Chartiers creek."

This application is made under the act of 1874, entitled "An act to provide for the incorporation and regulation of certain corporations."

The Allegheny river at the place designated for the establishment of the ferry, and for some miles below and above said place is the boundary line between the counties of Allegheny and Westmoreland. The notice of application in this case was inserted for three weeks in two newspapers, in English, published in Westmoreland county, and in one newspaper in German, and one in English, published in Allegheny county.

The act requires the notice to be published "in two newspapers of general circulation printed in the proper county," and the first question presented is, the construction to be given to the words "proper county." I am of the opinion that by the words "proper county" is intended the county or counties within which the powers and privileges conferred upon the corporation are authorized to be exercised and must necessarily be used to carry out the purposes and object of its creation; that when, as in the present case, an act of incorporation is sought for a ferry over a stream which is the boundary line between two counties, the notice should be published in two newspapers in each county.

The provisions of the act for the granting of charters of incorporation are very liberal and broad. Under it a company may be chartered to construct a road the entire length of the State, passing through and affecting many counties. Could it be held the publication of a notice in one of the counties, selected by the parties applying therefor was a compliance with the act?

The act provides that the certificate shall set forth, inter alia, "the place or places where its business is to be transacted." The certificate in the present application designates Westmoreland county as such place, with a "general office in the city of Pittsburgh, Pa." Waiving the consideration of the proper interpretation to be given to the language used in relation to its place of business, it is clear the business of the company applying, in this case, for a charter must necessarily be conducted simultaneously in both counties. I do not think a company applying for a charter with authority to construct its works within the territory of two or more counties can by designating one of said counties as its place of business thereby avoid publication of notice in the other counties within which its works are authorized to be erected and enjoyed.

People whose rights are to be affected, whose property may be invaded and taken by corporations created under the provisions of

the act are entitled to notice. The interpretation given the words "proper county" will afford it and is clearly within the spirit of the act.

The parties in the application under consideration recognized that the act required publication in both counties, and so published the same, but it is objected that the publication in Allegheny county was defective—one of the notices being inserted in a German newspaper, and that the law requires all notices to be in the English language in the absence of express legislation providing otherwise.

In *Tyler v. Bowen*, 1 *Pittsburg Reports*, 225, trespass for opening a street, the case turned upon the sufficiency of the notice. The law provided notice to be given in two newspapers. Notice was given in one English and one German paper.

Chief Justice Black, in delivering the opinion of the court, said: "The opinion of a majority of the court is, that publication of a notice like this is not sufficient if made in a German newspaper; that when an act of Assembly provides for notice in a newspaper, it always means an English paper, unless some other be expressly mentioned. I do not concur in this, but of course I am wrong, as minorities always are."

In the case of *Road in Upper Hanover, Montgomery County, v. Wright*, 277, *Lowrie, C. J.*, said: "The road law of this county requires notice of views to be given in two newspapers, and a rule of the court requires the proof of such notice to accompany the report, and thus it appears by the record what notice was given. It was by advertisement in two German papers, and in the German language.

"This court decided long ago in *Tyler v. Bowen*, not reported, that this is not according to law. The law must have a definite meaning, and therefore it cannot mean that public notice may be given in any language that one of the parties may choose to employ, but in the ordinary language of the country which is used in judicial proceedings. It is very proper for the Legislature to provide differently for those parts of the State where the German language prevails; but we cannot do so with safety and certainty."

In the absence of any provision in the act of April 29, 1874, for the publication in German of the notices thereby required, under the decisions of the Supreme Court cited, I am constrained to the opinion that the notice given in the present application was not such as is required by the act.

The other objections urged against the granting of the charter I deemed it unnecessary to consider, as the one of publication is fatal to the application.

With great respect,

Your obedient servant,

SAM. E. DIMMICK,
Attorney General.

COUNTY OFFICERS—QUARTERLY RETURNS OF MONEYS COLLECTED
—Act of May 14, 1874.

The Auditor General and State Treasurer cannot under the act of May 14, 1874, settle an account against a county officer for failure to pay into the treasury moneys collected for the use of the Commonwealth if a proper quarterly return and payment as required by the provisions of said act have been made by such officer.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 17, 1875.

R. W. MACKAY, *State Treasurer*:

Sir: Section 1, act of Assembly 14 May, 1874, requires certain officers there designated who receive money for the use of the Commonwealth from specified sources to make quarterly returns of such money to the Auditor General and State Treasurer, to pay such money into the State Treasury quarterly or to pay the same oftener if the State Treasurer so require.

The only returns they are compelled to make are quarterly ones. The State Treasurer may, if he desires, direct them to pay the money belonging to the Commonwealth into her treasury whenever he thinks proper but he has no authority to exact returns other than once in each quarter.

The failure of said officers to make such returns and payments expose them to certain penalties mentioned in said act, but for a failure merely to pay the money when the State Treasurer requires, after the quarterly return and payment have been properly made the law neglects to provide any penalty.

The fourth section of said act authorizes the State Treasurer and Auditor General to settle the account of any county officer when he shall have failed to make the return required by the third section of the same act. But before they can take this action it is necessary that the quarterly return shall not have been made by such county officer.

My opinion therefore is, that the Auditor General and State Treasurer are not warranted by the provisions of the act of 14 May, 1874, in settling an account against a county officer who has failed to pay into the State Treasury the money belonging to the Commonwealth at the time when required to do so by the State Treasurer if a proper quarterly return and payment as required by the provisions of that act have been made by such officer.

Very truly yours,

LYMAN D. GILBERT,
Deputy Attorney General.

PUBLIC OFFICERS—TERM—VACANCY IN OFFICE.

The sheriff of McKean county died three weeks prior to the general election

of 1875. His term would have expired January, 1876. The vacancy was filled by appointment of the Governor and the appointee duly commissioned.

Held, That the commission of the appointee will run to the end of the term of the sheriff who died, to wit: January, 1876.

DOYLESTOWN, PA., December 24, 1875.

My Dear Sir: Yours of the 21st inst., in relation to the sheriff of McKean county, is received. As I understand the facts, they are as follows: The sheriff's term in that county would have expired on the first Monday in January next, and prior to the November election the sheriff of the county in due form issued and published his election proclamation, and candidates were nominated for the position. Pending the contest, and about three weeks before the election, the sheriff died, leaving a vacancy in the office. Upon the application of citizens of the county, the vacancy was filled by an appointment made by the Governor, and a commission issued to his appointee. The election, however, proceeded and a sheriff was elected on the day of the general election, whose term of office would begin on the first Monday of January next.

The question is, does the term of the Governor's appointee terminate on the first Monday in January, 1876, or on the first Monday of January, 1877?

It is my opinion that his commission will run to the end of the term of the sheriff who died prior to the election. The different constitutional provisions on the subject must be so construed as to give force to them all if possible, and elections by the people to an elective office are and should be favored.

Section 2 of article 14 of the Constitution provides that "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."

By section 8, article 4, the Governor may fill any vacancy in certain offices therein mentioned "in a judicial office, or in any other elective office which he is or may be authorized to fill; if the vacancy shall happen during the session of the Senate, the Governor shall nominate to the Senate, before their final adjournment, a proper person to fill said vacancy; but in any case of vacancy in an elective office a person shall be chosen to said office at the next general election, unless the vacancy shall happen within three calendar months immediately preceding such election, in which case the election for said office shall be held at the second succeeding general election." The only thing in the act of May 15, 1874, if anything of the kind were needed, is an authority to fill vacancies in such offices as by the Constitution the Governor may not be specially authorized to fill. The mode of doing it, and the effect of it when done, must be found in the Constitution.

The election in McKean county was not to fill a vacancy, but to elect a person to fill the office at the expiration of the term in the regular course, according to the Constitution and the laws of the State; that the then incumbent died before the election could not deprive the people of their right to elect the officer of their choice. If he properly qualifies himself he will be entitled to his commission, and to enter upon the duties of his office on the first Monday of January next.

If the vacancy had occurred a year earlier, the Governor's appointee would have held over until the election which would have taken place three months after the vacancy, and in that case the election would have been to fill the vacancy and not to supply the office with an officer at the end of the term, as in the present instance. And the words "election for said office," in the eighth section of the fourth article of the Constitution must be read, or construed, to mean, election to fill said vacancy. This construction will render the different provisions of the Constitution on this subject consistent with each other. Any other construction may make an office perpetually appointive which is declared to be elective. If this appointee should hold over until within three months of the next election, and die or resign, and the Governor should fill the vacancy to run until the election which would take place three months after the vacancy occurred, and again the incumbent should die or resign, creating another vacancy, and so on toties quoties, the people could forever be deprived of their rights to elect their officer.

And it does not change the principle that the incumbent died before the election. It would have created a vacancy if he had died after the election, and it may have been but three days before the expiration of his term, say on the 31st of December; there would have been a vacancy, however short, and the Governor could have filled it. Would the commission of his appointee run until the election of next year, and oust the sheriff-elect?

My understanding is, that whenever the election is held in the regular course, whether to fill a vacancy which shall have occurred three months before, or to fill the office at the expiration of the constitutional term of three years, the choice of the people cannot be defeated by the accident of the death of the then incumbent, or by the wilful trick of a resignation, either of which would create a vacancy, but the person elected at an election under either state of facts would be entitled to his commission and to enter upon the duties of his office on the first Monday in January following such election.

The three months provided for is to give the people who have to select the man to fill the office an opportunity of becoming acquainted with the fact that a person is to be elected, to look among their fellows for a suitable and competent man for the place, and to

give the officers who make proclamation of and hold the elections time to prepare for and perform their several duties. This is accomplished in either case, whether the election is to fill a vacancy at the end of the period of the commission of the appointee, or at the expiration of a regular term; but, while the electors are not to be taken by surprise by an election within three months of a vacancy by being required on so short a notice to fill that vacancy, they are not to be thwarted of the fruits of their ballots by the appointment of a person to the office for a period to run beyond the time to which their selection had chosen a man to perform its duties and receive its emoluments, and for whom they had voted after the due period of three months to give them knowledge that such an office was to be filled, and an opportunity to do it judiciously.

If I have been a little tedious in explaining my opinion, it is because a different view of the matter had been entertained in your department, and because I had a different impression on my first reading of the eighth section of the fourth article in reference to this case.

Very respectfully yours,

GEORGE LEAR,
Attorney General.

MINE INSPECTORS—SALARY AND EXPENSES OF.

The salary and expenses of mine inspectors under the act of March 3, 1870, shall be paid by the State Treasurer upon the warrant of the president judge of the proper district. A payment on any other authority would be without legal authority.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, December 31, 1875.

R. W. MACKAY, *State Treasurer*:

Dear Sir: Yours of the 28th inst., in relation to the claim of Sampson Parton, is received. He is inspector of coal mines and collieries for Schuylkill and other counties, and his salary and expenses of carrying into execution the act of 1870, shall be paid by the State Treasurer out of the Treasury of the Commonwealth, upon the warrant of the president judge of the court of common pleas of Schuylkill county. See section 23d, act of March 3, 1870, P. L., p. 12.

To the bill you refer to me, containing several items, one of which is salary to date, Judge Pershing has attached his warrant, certifying to its correctness, but adding, "I except from this certificate the items for horse hire \$25.00, and part of Rohrheimer clothing bill \$16.50, and refer the question of their allowance to the Department at Harrisburg." There is no Department here which has any jurisdiction of this question. You can pay only upon the warrant of the president

judge of that district, and when his warrant is received the items have been judicially passed upon and must be paid.

But his functions in this behalf are judicial, and can not be delegated to anyone else. A payment on any authority except his warrant would be a mispayment and without legal authority, and a payment upon his warrant for doubtful items would protect you. The excepted items cannot be paid.

Yours truly,

GEORGE LEAR,
Attorney General.

RENEWAL OF CHARTER.

Same notice required as in original application.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG January 13, 1876.

M. S. QUAY, *Secretary of the Commonwealth:*

Dear Sir: The practice of your Department is undoubtedly correct. The renewal of charters, or re-charter, must be obtained in the same manner, and with the same notice as an original charter.

Section 40 of act of 1874 provides for certain things to be done "in addition to the requirements provided" in case of new corporation.

Yours truly,

GEORGE LEAR,
Attorney General.

ESCHEATED ESTATES—AUTHORITY OF AUDITOR GENERAL.

The Auditor General, after the appointment of a deputy to hold inquisition upon an escheated estate, has no control of the proceedings before the inquest. He may advise the deputy, who may adjourn the inquest from time to time in the exercise of a proper discretion.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 25, 1876.

J. P. TEMPLE, *Auditor General:*

Dear Sir: In case of an escheat, and information filed in your office, after the appointment of a deputy to hold the inquisition, you have no control over the proceedings before the inquest. But the deputy must proceed by legal evidence and where a portion of the alleged escheated estate consists of the decedent's interest in a partnership, the amount can be ascertained only by a settlement of the partnership business by the surviving partner. For this purpose your deputy may give time and may adjourn the inquest from time to time for any reasonable period. That time is contemplated by the act of Assembly is shown by the fact that it provides that the proceedings shall not

abate by reason of the death or absence of any juror, provided there be twelve remaining.

But while you may not control the action of your deputy, you may advise. And this case of Myers seems to be a proper case for him, in the exercise of a proper discretion, to afford an opportunity for the surviving partner to settle up the partnership business.

Very respectfully yours,

GEORGE LEAR,
Attorney General.

MERCANTILE APPRAISERS—DUTIES OF—CLASSES OF VENDORS.

The several classes of business shall be ascertained and assessed by the mercantile appraisers according to the amount of business done and sales made by them respectively.

The license fees assessed and collected are in addition to any tax on the profits of business imposed by law upon any class of business.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 1, 1876.

J. F. TEMPLE, *Auditor General*:

Dear Sir: The appraisers of mercantile taxes of the several counties are required to ascertain and assess the following classes of business:

All persons engaged in the selling or vending of goods, wares, merchandise, commodities or effects of whatsoever kind or nature, all stock brokers, bill brokers, exchange brokers, merchandise brokers, real estate brokers, auctioneers, and all manufacturers, venders, agents, or other persons engaged in the manufacture or sale of any nostrums, medical compounds, or patent medicines, whether pills, powders, mixtures, or in any form whatsoever.

These several classes shall be ascertained and assessed by the appraisers of mercantile taxes according to the amount of business done and sales made by them respectively.

If any individual or partnership shall have more than one place of business, he or they shall be required to take out a license for each; and if any individual or partnership be engaged in more than one of the several kinds of brokers named, he or they shall be assessed and pay a license for each.

The several dealers and classes of business above enumerated shall be classified and assessed under the tenth section of the act of May 4, 1841, P. L. 310, and first section of act of April 13, 1866, P. L. 104, except manufacturers and venders of patent medicines, who are classified and assessed under the twenty-fifth section of the act of April 10, 1849, P. L. 575.

In all the classes, except venders of patent medicines, the annual sales or business must exceed one thousand dollars to be liable to

the tax; and manufacturers and venders of patent medicines must make annual sales to the amount of one hundred dollars to be liable. Feme sole traders and single women whose annual sales do not exceed \$2,500 are not liable to be assessed and pay for a license.

Nor is any importer of foreign goods, wares or merchandise, who may vend or dispose of the same in original packages, as imported, liable. Nor is any person liable who may vend or dispose of articles of his own growth, produce or manufacture, except where a manufacturer or mechanic has a store or warehouse apart from his manufactory or workshop for the purpose of vending and disposing of goods, wares and merchandise of his own growth, produce or manufacture, in which case he shall be assessed and pay a license as a dealer.

The license fees assessed and collected in this form are in addition to any tax on the profits or business imposed by law upon any class of business above named.

There are some of these classes in many of the counties which are not assessed and returned, and I send you this abstract with a view to a preparation of instructions to be sent to county commissioners for their appraisers of mercantile taxes. I have endeavored to get them all, as well as exceptions noted.

Very respectfully,
Your ob't servant,

GEORGE LEAR,
Attorney General.

ACCEPTANCE OF CONSTITUTION AND ACT OF 1874.

1. Publication of notice not required.
2. Corporation so accepting, entitled to same privileges as if incorporated originally under said act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 18, 1876.

M. S. QUAY, *Secretary of the Commonwealth.*

Dear Sir: In answer to the communication of H. W. Gimber, Esq. I have to say, that a corporation created by a special act or decree of the court under a general act, prior to the passage of the act of April 29, 1874, "upon accepting the provisions of the Constitution and this act by writing under the seal of said corporation, duly filed in the office of the Secretary of the Commonwealth, shall be entitled to all the privileges, immunities, franchises and powers conferred by this act upon corporations to be created under the same." This applies to such corporations only as existed prior to the act of 1874, however created, which if now created would come under the head of corporations for profit, or the secured class. When this proceed-

ing has taken place their position is precisely the same as if incorporated since, and under, the act of 1874. They can retain no special privileges or immunities except such as could be conferred upon them under the Constitution and that act.

The act requires no notice of this proceeding, and what the act does not require need not be done, and therefore there need be no publication.

When a corporation is thus rehabilitated under the act of 1874, it can increase its stock under the eighteenth and nineteenth sections. The eighteenth section provides for the increase of "the capital stock or indebtedness of any corporation to be created under the provisions of this statute, or accepting its provisions," and the nineteenth section directs the manner of proceeding in the case of "any such corporation desirous of increasing its capital stock or indebtedness." Such corporation can mean no other than such as are referred to in the preceding section, which is such a corporation as is created under the act, or accepting its provisions. The section embraces both.

The proceedings to be had for these purposes can not be made plainer than the language of the act, and its provisions in this respect need not be re-written. Whatever the act directs must be done, but beyond that nothing is required.

Very respectfully,

Your ob'd't servant,

GEORGE LEAR,
Attorney General.

ESCHEATED ESTATES—CONVERSION INTO MONEY AND PAYMENT OF INTO STATE TREASURY.

Escheated estates shall be converted into money and the proceeds of sale shall be payable to the Auditor General and by him into the State Treasury.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 26, 1876.

J. F. TEMPLE, *Auditor General*:

Dear Sir: Where an escheated estate consists of goods and chattels, after inquisition, the escheator general, now the Auditor General, shall issue his writ to the sheriff of the county in which the estate is situated, who shall "seize, attach and secure the goods and chattels so found to be escheated," and shall sell the same after ten days' notice, and pay the money to the Treasurer of the Commonwealth. If the estate be money in the hands of an administrator, as is frequently the case, the acts make no provision how it shall get to the Treasurer, but there is generally no difficulty about such cases. As you have power to issue a writ to sell goods and chattels, it would seem to follow that where the estate is money, the administrator

should pay the amount to you, or to your deputy, to be remitted to you, and that you should pay it to the Treasurer.

But the mode of getting it there is not so important as that the money shall get into the Treasury. Where it is the proceeds of real estate, while the deputy must sell, he must have an acquittance from the Treasurer for the price of the land sold for the purchaser, which implies that the money must be paid to the Treasurer by the deputy who makes sale.

Yours respectfully,

GEORGE LEAR,
Attorney General.

IN RE PAYMENT OF TEN PER CENTUM OF CAPITAL STOCK.

1. The certificate of incorporation must state that ten per centum of the whole capital stock has been paid in cash to the treasurer of the intended corporation.
2. It may all be paid by one ——— stockholder.
3. The object of the act is to have a cash capital as a basis for business.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 26, 1876.

M. S. QUAY, *Secretary of the Commonwealth:*

Dear Sir: The correspondence between you and Cochran & Hay is before me. When I gave my opinion, that ten per centum of the capital stock of a corporation must be paid in cash to the treasurer, and that it must so appear in the certificate, I was not unmindful of the seventeenth section of act of April 29, 1874. That section provides that "every corporation created under the provisions of this act, or accepting its provisions, may take such real and personal estate, mineral rights, patent rights and other property as is necessary for the purpose of its organization and business, and issue stock to the amount of the value thereof in payment thereof, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further call or assessments." This section is permissive, and allows corporations to take property other than money for stock, and the certificate must show how much of it. But the third section is mandatory, and requires what the certificate shall set forth, and, among other things, it "shall also state that ten per centum of the capital stock thereof has been paid in cash to the treasurer of the intended corporation." While other property may be taken for stock, ten per cent. must be paid in cash, and it must be on the whole capital. It may all be paid by one stockholder, or one-tenth paid by each. But the act requires that it shall be paid.

These sections are consistent with each other, and may both stand together and be made operative. Where this can be done, the whole act must stand. The object of the act is, of course, to have a cash

capital as a basis for business, and there is no case in which the wisdom of that provision is more manifest than in a case where the principal portion of the capital stock is based upon the ownership of a patent right.

Very respectfully,
 Your ob'd't servant,
 GEORGE LEAR,
 Attorney General.

SETTLEMENTS OF ACCOUNTS—OPENING OF BY AUDITOR GENERAL.

The law permitting the opening of settlements of accounts does not contemplate the opening of re-settled accounts from time to time without limit.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, May 16, 1876.

J. F. TEMPLE, *Auditor General*:

Dear Sir: Yours of the 13th inst. is received. The law permitting the opening of settlements of accounts does not contemplate the opening of resettled accounts from time to time without limit. In the case of J. J. Roeber, recorder of Schuylkill county, your Department has shown sufficient indulgence, and it ought to end. I advise you against opening again.

Respectfully,
 Your ob'd't servant,
 GEORGE LEAR,
 Attorney General.

IN RE PAYMENT OF TEN PER CENTUM OF CAPITAL STOCK BY A COMPANY TAKING REAL AND PERSONAL ESTATE, &c., AS IS NECESSARY FOR THE PURPOSES OF ITS ORGANIZATION, &c.

1. Ten per centum of the whole amount of capital stock must be paid in cash to the treasurer named.
2. But a literal compliance with the act does not require that each stockholder shall have paid ten per centum on his stock. It is unimportant by whom it is paid.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, June 23, 1876.

M. S. QUAY, *Secretary of the Commonwealth*:

Dear Sir: The act of 29th April, 1874, prescribes the requisites of certificates for corporations, and after a general direction for the form applicable to corporations of the first and second classes, the third section proceeds to provide, that "the certificate for a corporation embraced within the second class named in the foregoing section, shall set forth all that is hereinbefore required to be set forth, and except building and loan associations, shall also state that ten per

centum of the capital stock thereof has been paid in cash to the treasurer of the intended corporation." This is as imperative as the direction for publication of notice of the application, or any other prerequisite to the obtaining of letters patent—without it no charter can be legally obtained, and the omission to state this fact is as fatal to an application as the omission of any other fact required by the act, and can no more be dispensed with than any or all of the others. It is not only required by the act, but there are substantial reasons why it should have been made a precedent condition for the obtaining of a charter. All corporations for profit should have some substantial cash basis, and one which cannot certify the investment of ten per centum in cash as part of its capital should not be given a legal existence to enter upon business for profit, and obtain a credit in the community, with no available means to meet its liabilities. This requisite, therefore, is the dictate of sound policy as well as a mandate of the law.

But a literal compliance with the act does not require that each stockholder shall have paid ten per centum on his shares of stock. It must be paid in cash on the whole capital, and may be paid in equal proportions by each stockholder, or all of it by one or more of them, so that one-tenth is paid to the treasurer, it is unimportant by whom it is paid.

The seventeenth section of the act authorizes any corporation to "take such real and personal estate, mineral rights, patent rights, and other property as is necessary for the purposes of its organization and business, and issue stock to the amount of the value thereof in payment thereof," but it does not expressly include the necessity of paying the ten per centum in cash as directed in the third section. But the section rather implies that cash is to be paid on some of the stock, for it directs that "in the charter, and the certificates and statements to be made by the subscribers and officers of the corporation, such stock shall not be stated or certified as having been issued for cash paid into the company, but shall be stated or certified in this respect according to the fact." If this kind of payment were equivalent to cash, there would be no necessity for stating what was paid in; but as the kind of payment must be stated, it gives additional strength to the position, that one-tenth must be in cash. A stockholder may make his whole payment in the kind of property allowed to be put in under the seventeenth section, and other stockholders pay in cash, and they may be equalized by having preferred and deferred stock as provided for in the section, or each stockholder may pay a certain proportion in cash and the remainder in other property, as they may see proper to arrange it.

But the act nowhere expressly permits all the stock of a corporation to be paid in property other than cash, but it does affirmatively require ten per centum in money.

The provision for the issuing of deferred stock to such stockholders as pay their subscriptions in full in real and personal estate or mineral rights, contemplates, that there is other stock in the corporation paid in for cash. There would be neither sense nor justice in making a distinction in the stock, if it were all paid for in the same kind of property.

Both from the letter of the law, and the reason of it, I adhere to the position, that the certificate must show a cash payment of ten per centum.

Your obedient servant,
GEORGE LEAR,
 Attorney General.

TRANSPORTATION COMPANIES—TAXATION OF.—

Transportation companies are exempt from taxation unless they earn or declare dividends.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, July 13, 1876.

J. F. TEMPLE, *Auditor General*:

Dear Sir: In the matter of the Erie and Western Transportation Company and the International Navigation Company, referred to me, it appears to be clear that they are exempt from taxation unless they earn or declare dividends, and then only in proportion of dividends on their capital stock, and upon net earnings or income only in proportion to the amount carried by them within the State of Pennsylvania. These companies are making no dividends, and if they did, it is alleged they carry no freight within the limits of the State.

The act of 1874 does not repeal the special privileges and exemptions in reference to the Pennsylvania Company, under which the two companies in question were chartered. I have given this question a careful consideration and while I am clear that until they earn profits they are exempt from taxation, and it is doubtful in what proportion they will be liable to pay when their business becomes remunerative, as their carrying business seems to be almost entirely out of the State. But when the time arrives for the consideration of that question we must endeavor to ascertain what amount of their business is done within this Commonwealth.

Very respectfully,
 Your ob'd't servant,
GEORGE LEAR,
 Attorney General.

CORPORATIONS ACCEPTING ACT OF 1874.

Provisions of section 26, act of April 29, 1874, relating to acceptance of act, not applicable to corporations not for profit.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, November 20, 1876.

M. S. QUAY, *Secretary of the Commonwealth:*

Dear Sir: The application of the Women's Christian Association of Williamsport for letters patent and the benefits of the provisions of the act of April 29, 1874, can not be entertained. While the language of the twenty-sixth section of that act is very comprehensive, it can not intend to embrace corporations of the first class, which the Women's Christian Association of Williamsport clearly belongs to. These corporations are entirely within the control and regulation of the courts, and the act expressly provides in section 42 for the amendment of their charters in the same jurisdiction. No record is made nor evidence contained of their existence in your Department.

To hold otherwise would open the door for all corporations of the first class to obtain a corporate existence in the court of common pleas, and immediately transfer themselves into the second class, by an application similar to this, with all the rights, privileges and obligations of a corporation for profit. They have no stock in the proper sense of the term and no capital paid in cash.

The general terms of the twenty-sixth section have misled the applicants, as they well might do, and without considering the incongruity of such a duplex organization, they have asked for that which cannot be granted. All powers which can be granted to a corporation not for profit can be obtained by an application to the court of common pleas, under section 42 as amended by the act of 1876.

The want of a seal would be a fatal technical objection, as the direction is imperative; but that could be remedied by the adoption of a seal. I prefer to rest this upon grounds which will render a renewal of the application useless.

Very respectfully,
Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

NOTARIES PUBLIC—TAXATION OF IN PHILADELPHIA—Act of May 20, 1865.

The act of May 20, 1865, relating to taxation of notaries public in city of Philadelphia requires them to pay to the Commonwealth a tax on their gross receipts. The act of February 20, 1854, and May 4, 1864, do not apply to that city.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 20, 1877.

J. F. TEMPLE, *Auditor General:*

Dear Sir: In reference to the enclosed letter of John Naclow, Esq., who desires to know "what becomes of the act of February 20, 1854,

which says: "The act making notaries public liable to the tax on certain officers by an act approved March 10, 1810, is hereby so construed as to authorize them in making up their accounts of the taxes due the Commonwealth first to deduct the true and legitimate expenses of their several offices," etc. I beg leave to reply, that the said act of May 4, 1864, which I suppose he means, is superseded as to Philadelphia by the act of May 20, 1865. The latter act increases the fees of notaries public for that city, and in lieu of the tax then imposed by law on these officers, each and every notary public shall pay into the treasury of the Commonwealth on or before the 31st day of December in each and every year five per centum on the gross amount of his receipts respectively; and the penalty for a failure is a forfeiture of his commission. This is the law applicable to notaries public on the subject of their fees, as well as their taxes to the Commonwealth, for the city of Philadelphia. It is scarcely necessary to say that the last law where two or more differ on the same subject is the one which prevails, and that it is for that reason that the notaries of Philadelphia must pay a tax on their gross receipts, and not on the amount received, less "the actual expenses of said officer or officers." This makes it unnecessary for practical purposes to determine what are to be deemed the "true and legitimate expenses of their several offices."

There is a vast difference between gross receipts and clear profits, and the notaries public of Philadelphia pay their tax upon the former. The difference between Philadelphia and the other portions of the State is, that in the former the notaries get fifty per cent. more fees, and pay a tax of five per cent. on gross receipts, and elsewhere they get the general rate of fees, and pay fifty per cent. to the Commonwealth after deducting a certain sum and the true legitimate expenses of their offices.

What the true and legitimate expenses of the offices are must be easily ascertainable by each officer. It will include clerk hire, if any, fuel, gas, stationery, etc., and not rent or furniture. But it is my opinion, and I so instruct you, that you should allow no such credit in settling the accounts with the notaries public of Philadelphia.

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

CORPORATIONS—EXCLUSIVE RIGHT.

Waiver of the exclusive right by a company already incorporated does not authorize the incorporation of a second company.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 3, 1877.

M. S. QUAY, *Secretary of the Commonwealth.*

Dear Sir: By the third clause of the thirty-fourth section of the act of the 29th April, 1874, "The right to have and enjoy the franchises and privileges of such incorporation within the district or locality covered by its charter shall be an exclusive one; and no other company shall be incorporated for that purpose until the said corporation shall have from its earnings realized and divided among its stockholders, during five years, a dividend equal to eight per centum upon its capital stock." This refers to water and gas companies. There is a water company in the borough of Susquehanna Depot, possessing the franchises and privileges of furnishing water to that district or locality, that is, to the whole borough. This company has the exclusive right right to furnish water to that locality.

But application has been made for letters patent for a water company for the second ward of that borough. The company already chartered grants permission for another company. But consent can not give jurisdiction. The company can waive its exclusive privileges, but it can not confer power to incorporate a company where the law says it shall not be done. The only power to incorporate such a company is in the act of Assembly. If that does not give it, it does not exist. But the act does not only not give it under such circumstances, but expressly prohibits it. "No other company shall be incorporated" until certain dividends are made, is the language of the act. The consent of the corporation already in existence cannot confer power to do that which the Legislature has prohibited. That power can be given only by the Legislature.

Very respectfully,
Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

CORPORATIONS—PROPERTY TAKEN IN PAYMENT OF STOCK.

A corporation can only take such property, real and personal, as is necessary for the purposes of its organization and business.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 26, 1877.

M. S. QUAY, *Secretary of the Commonwealth.*

Dear Sir: While the act of 29th of April, 1874, in the seventeenth section, permits every corporation created under the provisions of the act, or accepting its provisions, to take such real and personal estate, mineral rights, patent rights, and other property as is necessary for the purposes of its organization and business, and issue stock

to the amount of the value thereof in payment thereof, and bonds are personal property, it does not follow that they can be taken in payment of the stock under this section. It is only such property, real and personal, as is necessary for the purposes of the organization and business of the corporation which can be taken. An iron company can take anything pertaining to the business of such a company. For instance, real estate containing iron ore, or a patent right for smelting the ore. A gas company can take gas pipes, and patent rights for the manufacture of gas. But an iron company cannot take a patent right for the manufacture of gas, nor a gas company a patent for smelting ore. Such companies shall not become speculators in property taken as stock for the purpose of organization.

But in no case can bonds be taken under that section. They are not necessary for the purpose of organization or business. The business of a corporation after its organization may require it to issue bonds to raise money, but in no case can it be necessary to purchase bonds, or to hold them, for the purpose of organizing or commencing business.

And much less has such a corporation the right to take bonds which are on its own property. If real estate can be put in as stock, and the bonds secured by a mortgage upon it to its value, can also be put in that property will be twice in, and the result will be the organization of a corporation with an ostensible capital of twice its real value.

But, without showing what the results would be, it is enough that the act does not authorize it.

Very respectfully,
Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

CORPORATIONS—PLACE OF BUSINESS.

The place of business designated in the certificate for incorporation is the place where the corporate functions are performed, where the stockholders hold their elections. It is immaterial where they operate.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 16, 1877.

M. S. QUAY, *Secretary of the Commonwealth:*

Dear Sir: The certificate of the "Maun Mining Company of North Carolina," which has been submitted to me, is defective because it does not state "the place or places where the business is to be transacted." All that is stated is that "the business of said corporation is to be transacted in Pennsylvania and elsewhere; principal office, Philadelphia, Pa." Pennsylvania and elsewhere is equivalent to saying wherever they please. It might as well have been left blank,

and it seems to have been so stated from a misconception of what is intended by the place where the business is transacted. The meaning of that is, where the corporate functions are performed—where the stockholders hold their elections, and the directors manage and direct the business of the corporation. It is not necessarily where the employes do their work, but the place from which the work is directed, and where the president, secretary and treasurer receive the reports of the results of the work, and pay out the dividends declared by the directors. It must be a point where the Auditor General can find the proper officers to require from them reports, payment of taxes, etc. It is immaterial where they operate.

Very respectfully,
Your obedient servant,

GEORGE LEAR,
Attorney General.

COLLATERAL INHERITANCE TAX—VALUE OF ESTATES SUBJECT THERETO.

It is not the amount of the legacies or shares, but the amount of the estate, which determines liability to collateral inheritance tax. If whole estate exceeds \$250 in value it is subject to this tax.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 24, 1877.

J. F. TEMPLE, *Auditor General*:

Dear Sir: In answer to the enclosed note it is only necessary to say, that it is not the amount of the legacies or shares which determines the liability to collateral tax. It is the amount of estate. If the whole estate exceeds in value \$250, it is unimportant how many shares it is divided into; there is a collateral tax on each if they do not amount to more than a dollar each. This question is free from all difficulty or doubt.

Very respectfully,
Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

REVENUE COMMISSIONERS—POWERS OF—COUNTIES—LIABILITY OF FOR STATE TAXES UNDER ACTS OF 1842 AND 1844.

The Board of Revenue Commissioners has certain semi-judicial functions, and its assignment of quotas of tax to the several counties has the validity of a judicial decree and is unassailable in a collateral proceeding.

The several counties must pay in addition to the quota assigned them an amount equal to the appropriations each year for school purposes, said payment to be enforced by the act of April 29, 1844.

The constitutional provision requiring the Legislature to appropriate at least one million dollars each year for public schools, is only directory. It does not supersede the act of July 27, 1842.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 24, 1877.

J. F. TEMPLE, *Auditor General*, AND HENRY RAWLE, *State Treasurer*:

Gentlemen: Application has been made by several counties for credit settlements under the act of 8th April, 1869, for the years 1875 and 1876 on the grounds that the Board of Revenue Commissioners at the last triennial meeting in adjusting the tax on personal property among the several counties, illegally and arbitrarily increased the amount of taxable property above the amount returned for State taxes by the several county commissioners. But the board adopted the same course which has been pursued since the passage of the act for its organization in 1844, in arriving at and assigning to each county its quota of tax to be collected and paid into the State Treasury under the provisions of that act and its supplements.

The duties of the revenue commissioners are not merely clerical, but they would be if they have no power to go behind the returns from the county commissioners, and the board should be abolished, for the State Treasurer can make a record of the amount of the return, without the intervention of the Board of Revenue Commissioners, and receive the amount of tax which the commissioners of each county may voluntarily choose to fix by their return, and collect and pay to him. The revenues of the State do not depend upon any such precarious tenure. The board has certain semi-judicial functions, and its assignment of their quotas to the several counties has the solemnity and validity of a judicial decree, which is irrevocable by the board itself after its final adjournment, and unassailable from any attack in a collateral proceeding.

And the liability of the counties of the Commonwealth does not end even with the payment of the quota assigned to each by the Board of Revenue Commissioners. They must severally pay from the subjects made taxable for county purposes, or out of the county treasury an amount equal to the appropriations each year for school purposes. The eighth section of the act of July 27, 1842, Purdon, page 1389, remains unrepealed, although it has not been rigidly enforced. It is as follows: "Should any county assess and collect, for State purposes, a less amount than the appropriations made to said county for academies, female seminaries and for common school purposes, the said counties failing to assess and collect the State tax aforesaid, shall make up and pay the said difference out of their county treasury."

For the years 1874, 1875 and 1876 each there has been an appropriation of one million dollars, and for the same years the taxes on personal property collected from the several cities and counties have been, in 1874, the sum of \$545,523.24; 1875, the sum of \$551,339.76, and in 1876 the sum of \$530,808.83, leaving a deficit due the State of

\$1,372,238.17. This is for common school purposes alone, without reference to the local appropriations for academies and female seminaries.

Of this deficit, two of the counties whose applications for credit settlements have been forwarded to me, Berks and Franklin, for the two years in which they aver they have overpaid the Commonwealth, have been paid the sum of \$25,255.82 in the common school appropriations more than they have assessed and collected for State purposes, even including the sums which they allege have been illegally exacted of them. The deficiency for Berks is \$16,786.94, and for Franklin \$8,468.88.

For these deficiencies, as the law requires it, there should be an account settled against them which, whether the credit be allowed or not, the result will be the same. When the accounts shall be so settled, the remedy to enforce payment will be found in section 40 of the act of April 29, 1844. After specifying the duties of the county commissioners in collecting the quota of the tax for the county, and paying it into the State Treasury before the second Tuesday in January, the act provides, that the balance shall be charged against the county, and "shall bear an interest at five per cent. till paid; and no payment shall be made to or on behalf of said county, under the various acts relating to common schools, or any other acts for any other purposes, until the said balance be fully paid and satisfied: Provided, That if the several collectors of said county shall not have collected and paid into the county treasury the amount of State tax due by said county, then and in that case the deficiency shall be paid out of any money in the treasury of said county, or which shall be thereafter first collected and paid into the same, whether on the duplicates of State or county tax." This difference between the State tax and the appropriations for common school purposes is a portion of the debt of each county to the State, or of its quota of State tax, and must be paid, whether collected on the duplicate for State or county tax.

And this equalization of taxation for State purposes with benefits received from the Commonwealth in appropriations is just. The distribution of the school appropriation is made according to the number of taxable inhabitants in each school district, and in that respect it is equal, although it may not be in proportion to the amount of taxable property. For instance, Chester county pays more State tax than the share it receives of the State appropriation, while the average throughout the State is greatly the other way. But one of the objects of the act of 1842 is evidently to compel those counties which are more productive of children than taxable property to contribute their proportions to the State, so that the wealthier communities shall not be compelled to support the common schools of other counties, but

that the State taxes collected within them, after paying their proportions of the school appropriations, shall be used in defraying the current expenses of the Commonwealth. While no county shall receive more than it contributes, there is no limitation upon the amount which it shall pay to the State.

But it has been suggested that because the Constitution directs the appropriation of one million dollars annually for common school purposes, it supersedes the act of 1842. The Constitution, however, does not make the appropriation, but fixes the minimum when made. The adoption of the Constitution did not repeal any law for which it did not provide a substitute.

There is a very common error with regard to the functions of a Constitution. It does not create legislative power, but only limits it. It creates the body which legislates, but, when created, all legislative power is vested in the General Assembly. That body can pass any law which is not prohibited by the Constitution of the State, or of the United States. But while the Constitution can limit, or prohibit, it cannot compel legislation. The Legislature represents the sovereign power of the people, and no department of the government can compel its action.

The direction, therefore, that the General Assembly "shall appropriate at least one million dollars each year" for public schools is only directory. No consequences are provided which shall follow if it be not done, and there is no power in the State to compel its performance. There is no executive power to execute such a provision or compel its execution by the Legislature. There is no judicial power by mandamus or otherwise to compel the Legislature to pass a law making an appropriation, or for any other purpose.

If the Legislature shall fail to make the appropriation, therefore, the public schools can get no money from that source, for the Constitution expressly ordains that "no money shall be paid out of the Treasury, except upon appropriations made by law." The State Treasurer pays the school appropriation, not because the Constitution limits the amount, but because the Legislature makes the appropriation. If no appropriations were made, no State Treasurer would venture to pay the money simply because the Constitution limits the sum to be appropriated.

The question then may be asked, of what value is the constitutional restriction? It might be offensive to answer that question plainly. But it may be said that it is an appeal to the conscience of the Legislature to make such an appropriation. But practically, there is nothing else in it. If that body is silent upon the subject, there can be no money appropriated by the Treasurer for public schools. If they pass an appropriation for a less sum, the Governor cannot increase it. He can veto the bill as unconstitutional, but that would only destroy the appropriation, and not provide a substitute.

The appropriation for common schools is, therefore, an act of the legislative will as it was before the Constitution was adopted limiting the amount. There is no change by reason of that instrument affecting the law as passed in 1842. And it is your duty to settle an account against each county in the State which has received in appropriations "for academies, female seminaries, and for common school purposes," to an amount greater than it has assessed and collected for State purposes from personal property.

The law stands upon the statute books, and because it has not been enforced is only an evidence of the State's indulgences. The courts may abrogate it, but you cannot, and while it remains the law, it should be observed. If some of the counties are made to feel its weight it will be because they have invited attention to it by heeding the instigations of a common barrator, and will only suffer the usual fate of clients who are instigated to litigation by a lawyer who procures business by personal solicitation, and they will find that the only safe counsellor is he whose ability and capacity are sufficient to command business without seeking it.

Heavy taxes are now enforced against corporations and various business interests, partly for the purpose of supporting the common schools, and, in this time of general depression, it is unjust to impose upon them a burden which more properly belongs to the people, who reap the benefit of the school system. Justice to all classes requires this distribution of the burdens of the State; and, as the law favors it, your official duty is not only made plain but pleasant in collecting the revenue from such sources as will do justice to all and maintain the law of the State.

Very respectfully,
Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

PURPOSES OF CORPORATION.

Purposes provided for in different divisions cannot be joined in one charter.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, May 24, 1877.

JOHN B. LINN, *Deputy Secretary of the Commonwealth:*

Dear Sir: The enclosed certificate for the incorporation of the Butchers' Ice and Coal Company is defective. The act of 1874 authorizes the corporations for the several purposes therein named, but as I understand it, there can be no other joined in the same company than is contained in one of the several divisions. The purchase and sale of coal to the public is not enumerated among them, but the supply of ice to the public is. But it is a division of the second class

of corporations of itself, and cannot be joined with any of the others named, and especially with one not designated.

There are other defects in reference to the stock. While the capital is \$50,000, it appears that only \$1,400 has been subscribed.

The act requires the certificate to state that ten per cent. has been paid to the treasurer in cash. This is imperative and cannot be omitted. This certificate states that "ten per centum of the capital stock has been paid in cash or its equivalent." The property put in is all proper enough for the organization and business of the company, and may be accepted as full paid stock, but there must be a cash capital of ten per cent. It need not be paid by those who put in real and personal estate, etc., under the seventeenth section, and may be paid by a single stockholder, but it must be equal to ten per cent. of the whole capital, and must be in cash, and not in cash or its equivalent. "Its equivalent" is a very uncertain expression, and may mean a different thing in the opinion of different parties.

This certificate has too many defects to allow it to pass.

Very respectfully,
Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

REORGANIZATION OF CORPORATIONS BY PURCHASERS OF FRANCHISES AT JUDICIAL SALE—PROCEDURE.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 16, 1877.

Dear Sir: I have been requested to answer the enclosed letter to you. The purchasers of the property rights and franchises of "The People's Gas Light and Fuel Company," can reorganize the company under the same or any other name or they can abandon the franchises and apply for a charter as a new company under the act of 1874. The power to sell the franchises under an execution implies the right of the purchasers to use them.

When reorganized and officers appointed, etc., the fact should be certified to the Governor and new letters patent be issued.

If a new corporation is created under the act of 1874 the property may be put in as full paid stock, but there will have to be ten per cent. on the whole capital paid in cash to the treasurer and the certificate for the incorporation of the new company must show it.

If the organization be under the rights and franchises of the old company this payment of cash need not be paid. The parties can pursue either course. They are not bound to use the purchased franchises if they do not choose to do so. If the organization is

under a special act they may have valuable rights and privileges which they cannot get under the general law.

Yours truly,

GEORGE LEAR,
Attorney General.

BOARD OF PUBLIC CHARITIES—SALARY AND EXPENSES OF THE
GENERAL AGENT AND SECRETARY—Act April 24, 1869.

Where the Legislature fixes a sum certain and directs it to be paid to any one annually the money necessary to pay it is thereby appropriated by law. This applies to salaries and pensions which the State Treasurer can pay without warrant, but does not include traveling expenses.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, July 11, 1877.

HENRY RAWLE, *State Treasurer*:

Dear Sir: At the last session of the Legislature the appropriation for the Board of Public Charities was reported by the committee in the general appropriation bill, and near the close of the session it was stricken out on the ground that it was improperly in that bill. It was not voted down as an improper appropriation, but it was then too late in the session to originate a new bill.

The act of April 24, 1869, creating the Board, provides for a general agent and secretary of the Board, who shall hold his office for three years, and "he shall be paid annually the sum of three thousand dollars and his actual traveling expenses." This is a salary fixed by law, with a direction that he shall have it annually; and the thirteenth section of the third article of the Constitution ordains that "no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment."

If no law can diminish his salary, can an omission to pass an appropriation defeat his right to any part of it? If so, the provision of the Constitution is defeated. It is true that the sixteenth section of the same article of the Constitution directs that "no money shall be paid out of the Treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof." These two sections of the Constitution must be so construed as to give effect to them both. And this I did in my opinion in reference to the payment of pensions to the soldiers of the war of 1812 for which there had been no specific appropriation, and in that case I held that an act providing for the payment of a specific sum annually is a continuing appropriation. It is a sum which does not require the settling of an account. It is ascertained by the terms of the act of Assembly, and it is not necessary that the appropriation for any purpose shall be made every year. If it were necessary, then there will be alternate years when no money can be paid out of the Treasury

when the time arrives that we shall have only biennial sessions of the Legislature. Then the appropriations must necessarily be made for two years. It is within the power of the Legislature to make them for ten years or more.

And when the Legislature fixes a sum certain and directs it to be paid to any one annually, the money necessary to pay it is thereby appropriated by law. And the sixteenth section above quoted refers to such money as must be paid "on warrant drawn by the proper officer." This applies to such moneys as you may pay only on warrant drawn by the Auditor General, where an account is examined and settled by him, and not in cases of salaries and pensions which you pay without such warrant.

It seems clear that you may pay the salary fixed by law to be paid annually, for which no warrant is required, but this does not apply to traveling expenses, in which the items must be shown and the amount approved and warrant drawn by the Auditor General.

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

EXECUTIVE MANSION—EXPENDITURES FOR—DUTY OF AUDITOR GENERAL.

The Auditor General is justified by former practice as well as by a liberal construction of the general appropriation act of 1877 in approving expenditures for fuel and ice consumed in the Executive Mansion and other items of a similar character.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, July 11, 1877.

J. F. TEMPLE, *Auditor General*:

Dear Sir: I have your communication asking my "opinion as to what expenses are chargeable against the State on account of the Executive Mansion, under the provisions of section sixth, general appropriation act of 1877, and particularly whether under said section or any other existing law, the State is liable for fuel consumed in the Executive Mansion, for ice consumed there, for sprinkling the street around the same, and for other expenses of a similar character," and, among the items, flowers for the Executive Mansion.

These several articles are not specifically enumerated in any appropriation, but the Executive Mansion is the property of the State and is one of the public buildings. The furniture, carpets, curtains and all things which pertain to it, were furnished at the expense of and are owned by the Commonwealth.

And this building and its furniture were not purchased and from time to time enlarged, repaired and replenished for the sole purpose

of affording a residence for the Executive of the State. It would not be an act of kindness to him to invite him to dwell in this huge pile of architectural incongruities if a dwelling house were the only purpose contemplated. The Governor is not only the Chief Executive of the Commonwealth, but the host of the people, and the State has undertaken to provide him an abode where he can meet his guests on true republican equality, and where he can dispense a generous hospitality to the citizens of a great State. For this purpose the building was made commodious, and while the architectural unities have not been very well observed in the construction, the good taste of the occupants has added such decorations as have made it attractive to the people and their representatives.

While the people of Pennsylvania are frugal and economical, they are not parsimonious or mean. They will not grudge the public buildings and property of the State what they freely use and enjoy for themselves, and they decorate their dwellings and other buildings and adorn their persons according to their means. They are not content with that austere life which subsists only on that which is absolutely necessary. The man of wealth has his conservatory and the cottager his flower garden, and when space and means are alike limited, the expression of the same sentiment may manifest itself in the cultivation of a single flower; but everywhere, among all classes of people, may be seen the manifestations of a love for the beautiful. And this aesthetic sentiment should be encouraged and cultivated. It is the expression of a divine impulse implanted in the human heart by Him who not only created the earth but adorned it with beauty. And the Great Giver of "every good and perfect gift" could have decorated the earth with its rarity of coloring for no conceivable purpose except to please the eye of man; for "seed time and harvest," fructification and reproduction, could have been accomplished as well by the spores of the cryptogamia as the seeds of the phaenogamous vegetation. But efflorescence was necessary to break the monotony of coloring, add variety and beauty to the variegated landscape, and to lift the untrammelled soul from the created to the Creator.

And the Executive Mansion should have its flowers as well as its other adornments to please the eyes and gratify the tastes of the guests of the Commonwealth. Distinguished strangers are necessarily entertained at this mansion, and the large apartments must be kept warm and embellished for such purpose. The periodical receptions given to the members of the Legislature and others would be less attractive if held in rooms unadorned with tapestry and flowers. A generous and liberal hospitality which a great and wealthy Commonwealth owes to her people would be imperfect without such occasions. And the members of the Legislature have shown

by their appropriations at various times that they appreciate the good taste of the people, who not only approve but demand the beautifying of the residence of the head of the State government. It is the neutral ground where officials and people, without party or other distinctions, meet in social intercourse and cultivate the amenities of life. And they will not say, that the decorations with which they freely adorn their own homes shall be denied to the Executive Mansion. They are as appropriate there as the fountains and flowers to the public grounds.

And being not only appropriate, but, as custom dictates, absolutely required, are all these things to be furnished by the Executive out of his private purse? Was this mansion erected and furnished to be a burden to him? Is it a favor to provide him a residence twice as large as he needs, and entail upon him the expense of heating and making it comfortable at a cost exceeding the rental of a convenient and commodious dwelling for himself and family? A negative answer to these interrogatories will be given by every man in the State possessing any idea of propriety or sense of justice. And the practice has been uniform to provide fuel and the other articles enumerated, which appertain to it as a public building, and above that which would be required as a mere private residence. It is as proper that fuel, ice, etc., should be furnished for that as for the Executive Chamber, or the office of the State Treasurer and Auditor General.

Among the items is that of the sprinkling of the streets in front of the Executive Mansion, which amounts to fifteen dollars, and might be passed under the maxim de minimus; but that is not alone for the comfort of the occupants, to which it undoubtedly contributes, but for the protection of the paint on the building and the curtains, carpets and furniture within it, all of which belong to the State, and this protection from the dust might well be paid for at a heavier cost as a measure of economy.

But admitting the propriety and necessity of the expenditure of the State for these purposes, are the items covered by the appropriation? The language of the sixth section of the appropriation act of 1877, is "for keeping the public grounds in order, and for furnishing, repairs and improvements to the public buildings, the sum of ten thousand dollars, or so much thereof as may be necessary."

There is no question that the Executive Mansion is one of the public buildings, and there is no necessity to specify the appropriation for furnishing it distinct from the other public buildings, although that has been the usual practice. The word "furnishing" is the only one which can cover the doubtful items, and while that is a word generally used in reference to supplying a room or house with furniture, it has a much broader signification. Worcester defines the word furnish as follows: "1. To supply with what is

wanted or necessary; to provide, fit up, equip, to procure. 2. To fit with appendages or with decorations; to decorate. Syn. Furnish a house or room; fit up an apartment; decorate with flowers; supply a want; provide a dinner; equip a regiment; procure necessaries." Furnishing is defined by the same authority, "the act of supplying."

These definitions cover the whole ground from the fuel to the flowers. It is synonymous with supplying. The same authority defines supply, among other things, to mean "to furnish with anything that is wanted; to provide." The intention, therefore, is apparent, even to the literal meaning of the words used. But these appropriations are not always described with that particularity which is desirable, but they are embraced under general terms. It is impossible to particularize every item in such cases in a general appropriation. But it is a rule of construction that where the intention is clear, too minute a stress must not be laid on the strict and precise signification of words; *nam haeret in litera, haeret in cortice*. But it is unnecessary to stick in the bark in this case, for the words are plain enough.

It would be better to appropriate a contingent fund for these purposes, but it has not been the practice. It is impossible to describe every item in such cases in a general appropriation bill. But there may be economy in embracing all the public buildings in one appropriation; for several small appropriations could be passed by the Legislature with more facility than one containing a large sum, and yet the small ones would aggregate much more than the large one. And there will be economy in paying the items referred to out of the appropriation of ten thousand dollars rather than have it expended, as it will be, for other purposes if not so applied, and at the next session of the Legislature the supplies or furnishing of the Executive Mansion will be provided by a special appropriation. The refusal to pay these items out of the present appropriation would undoubtedly result in the expenditure of the ten thousand dollars in some other way, and the payment of the bill now before you in pursuance of a special appropriation.

As the items are properly payable by the State, their payment in accordance with former practice and justified under the general appropriation, I will therefore share with you the responsibility of approving the bill before you.

Very respectfully,

Your ob'd't servant,

GEORGE LEAR,
Attorney General.

TAXATION—ASSIGNEE FOR BENEFIT OF CREDITORS NOT LIABLE TO MERCANTILE TAX.

An assignee for the benefit of creditors disposing of the goods assigned to him only for the purpose of converting them into cash in the execution of his trust, cannot be made liable to a mercantile license fee.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, July 21, 1877.

J. F. TEMPLE, *Auditor General*:

Dear Sir: An assignee for the benefit of creditors, selling the goods of the assignor, cannot be assessed as a vender of merchandise. He can dispose of the goods assigned to him at public or private sale, by retail or in gross, and if he does not replenish his stock, but disposes of the goods assigned to him only for the purpose of converting them into cash in the execution of his trust, he cannot be made liable to a license fee.

Under the facts disclosed by the enclosed affidavit, the party is not liable.

Very respectfully,
Your ob'd't serv't,
GEORGE LEAR,
Attorney General.

CORPORATIONS—REDUCTION OF CAPITAL STOCK.

Effected under the provisions of act of April 29, 1874.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 20, 1877.

M. S. QUAY, *Secretary of the Commonwealth*:

Sir: The twenty-third section of the act of Assembly approved the twenty-ninth day of April, 1874, Pam. Laws 1874, page 831, permits the capital stock of certain corporations, there specified, to be reduced, and directs that the reduction shall be made under the regulations prescribed in the eighteenth, nineteenth, twentieth, twenty-first and twenty-second sections of the same act. The purpose of this provision is to apply to the reduction of the capital stock of corporations the same rules which govern its increase. The reduction can be made only with the consent of the persons or bodies corporate holding the larger amount in value of the stock of the company. This consent is to be obtained at an election to be held by the stockholders in the manner pointed out by the twentieth and twenty-first sections of the act. The election must be held at the chief office or place of business in this Commonwealth. But no election can be had except in pursuance of a resolution of the board of directors calling a meeting of the stockholders for that purpose, and notice of the time and place and object of the meeting must be published once a week for sixty days prior to the meeting in at least one newspaper published in the county, city or borough where the office or

place of business of the company is located. If consent be given to the reduction in the capital stock the company must file in your office, within thirty days after the election or meeting, the papers required by the twenty-second section of the same act. Neglect to file such papers will subject the company to the penalty there mentioned. This is the only manner recognized by law for the reduction of the capital stock of the corporations referred to by the twenty-third section, and any departure from it will make their action illegal and void.

Very respectfully,
 LYMAN D. GILBERT,
 Deputy Attorney General.

REDUCTION OF CAPITAL STOCK BY COMPANIES ORGANIZED PRIOR TO THE PASSAGE OF THE "GENERAL CORPORATION ACT."

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, August 21, 1877.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: Before any corporation can reduce its capital stock under the provisions of the twenty-third section of the act of 29th day of April, 1874, it must accept the provisions of the Constitution and of the act of 29 April, 1874, by writing under the seal of the corporation, duly filed in your office.

Very respectfully,
 LYMAN D. GILBERT,
 Deputy Attorney General.

PURPOSES CANNOT BE JOINED IN THE SAME CHARTER.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, September 8, 1877.

M. S. QUAY, *Secretary of the Commonwealth:*

Dear Sir: I am of opinion that an elevator company and a road company cannot be joined in the same charter. The Parker Elevator Company may be incorporated, but the additional authority to construct a road is more than can be included in the same charter.

Very respectfully,
 Your ob'd't serv't,
 GEORGE LEAR,
 Attorney General.

MINING AND MANUFACTURING COMPANIES—CHARTERS OF—RIGHTS AND PRIVILEGES.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 14, 1877.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: I have carefully examined the application made by the Enterprise Oil and Lard Company for a charter of incorporation and think it ought to be granted. The purposes for which incorporation is asked are mining and manufacturing, and these being within the provisions of the eighteenth clause of section second of the act of Assembly of 29 April, 1874. It is true that there is a considerable enumeration of rights and privileges the company desires to obtain, but they are only such as the act of Assembly would, without any enumeration in the application, grant to companies created for mining and manufacturing purposes.

Very respectfully yours,
LYMAN D. GILBERT,
Deputy Attorney General.

CORPORATIONS—SHARES OF STOCK—PAR VALUE THEREOF.

The act of April 29, 1874, prescribes the maximum amount of the capital stock of a corporation and the par value of the shares of stock.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG October 1, 1877.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: Section eleven of the act of the General Assembly of 29th April, 1874, requires that "the capital stock of every such corporation that has or requires a capital stock, shall consist of not more than one million dollars and shall be divided into shares of not more than one hundred dollars each."

The Enterprise Oil and Land Company proposes to have a capital stock of twenty thousand dollars divided into shares of the par value of two thousand dollars each. This the law will not allow the company to do, and until the par value of the shares of stock is altered in accordance with the above recited provision of the eleventh section of the act of 29th April, 1874, the application of the company for letters patent ought to be refused.

Very truly yours,
LYMAN D. GILBERT,
Deputy Attorney General.

CORPORATIONS—POWER TO REDUCE CAPITAL STOCK—PROCEDURE.

There are no provisions of law whereby the capital stock of a corporation may be reduced except in the case of banks incorporated under the act of May 13, 1876.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, November 22, 1877.

JOHN B. LINN, *Deputy Secretary of the Commonwealth:*

Dear Sir: Yours of the 15th inst., making inquiry as to the power of a corporation to reduce its capital stock, is received. Your inquiry is made in consequence of an application of the Miners' Savings Bank and Trust Company of Scranton for a reduction of its capital stock, and you have very correctly arrived at the conclusion that there is no such power.

There are provisions in several acts of Assembly for increasing the capital stock of corporations, but not any for reducing it, except under the act of May 13, 1876, entitled "An act for the incorporation and regulation of banks of discount and deposit." But the power to reduce the capital stock under this act is confined to banks incorporated under its provisions. Any bank now in existence may come under the provisions of this act by the proper proceedings after notice for three months. The authority for so doing is in the thirty-second section of the act. The section is not very explicit as to the mode of reorganizing under the provisions of the act, but the better way will be to make it an original application, with such an amount of capital as may be desired, and to state in the articles of association and certificate, that the bank proposed to be incorporated is to supersede and be in lieu of the bank to be reorganized under the provisions of the act. This seems to be the proper mode of proceeding, for the articles of association and certificate under the act of 1876 must go into the Auditor General's office, and they can get there properly only in the form of an original application.

Very respectfully,
Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

ACCEPTANCE OF CONSTITUTION.

Corporations, in existence prior to the adoption of the new Constitution, must accept its provisions, before they can avail themselves of any subsequent legislation.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, December 13, 1877.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: Section 2 of article XVI, of the Constitution, prevents the General Assembly from passing any general or special law for the benefit of any corporation, "except upon the condition that such

corporation shall thereafter hold its charter subject to the provisions of this Constitution.”

This section clearly declares that no corporation in existence at the time of the adoption of the Constitution shall obtain increased privileges except it submitted itself to the provisions of the Constitution.

The act entitled “An act to provide for the manner of increasing the capital stock and indebtedness of corporations,” was passed on 18th April, 1874, and is a general law enacted since the adoption of the Constitution. At the time it was passed the Constitution was in full force and effect, except in those instances in which its operation was delayed by sundry clauses in the schedule, and all legislation to be effective must be in harmony with its requirements. One of these requirements is a previous submission to its provisions before any corporation can avail itself of the benefits of any general law passed since 1 January, 1874. It therefore follows that you have no right to entertain any papers submitted by the Hazleton Gas Company under the provisions of the act of 18 April, 1874, for an increase of capital stock, until the company has first accepted the provisions of the new Constitution, and any increase of stock made by the company under that act without such previous acceptance will be illegal and void.

Very respectfully yours,

LYMAN D. GILBERT,
Deputy Attorney General.

BROKERS—TAXATION OF—Acts of May 15, 1850; May 16, 1861; May 1, 1868. The acts of 1841, May, 1850, and May, 1861, relating to the taxation of brokers, are not repealed by the act of May 1, 1868, and therefore all brokers are taxed upon their profits or net earnings at the rate of three per cent.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, December 31, 1877.

J. F. TEMPLE, *Auditor General*:

Dear Sir: Your communication, enclosing letters from several persons making inquiries whether they are liable to taxation as real estate brokers under the sixth section of the act of 1868, is received. While these parties are all liable to taxation under other laws, and are required to make reports to you annually, I do not think that this particular class of brokers is liable under the section above referred to. The prior legislation on the subject is not repealed, and this act with the others must be so construed that they will all stand if possible. The act of 1868 provides, that “every private banker and broker, and every unincorporated banking and savings institution and express company, and all corporations incorporated by or doing business in this Commonwealth, except those liable to a tax on tonnage under the provisions of this act, and foreign insurance companies licensed in pursuance of the several acts in

relation thereto, except banks and savings institutions incorporated by this State, shall, annually, upon the first day of November of each year, make report to the Auditor General, under oath or affirmation, setting forth the entire amount of net earnings or income received by said individuals, company or corporations, from all sources during the preceding year; and upon such net earnings or income the said individuals, company, or corporation, as the case may be, shall pay to the treasurer for the use of the State within sixty days thereafter, three per centum upon such annual net earnings or income, in addition to the taxes imposed by the preceding section of this act."

This act, in the sixteenth section, repeals several acts and parts of acts specifically, describing the several acts and sections of acts by their titles, dates and numbers and sections, and the necessary conclusion is that only such laws as are thus described are repealed. And the acts of 1841, 1850 and 1861 relating to brokers are not among those acts and sections of acts so repealed by the act of 1868. If they remain in force, as appears by the omission to repeal them, it necessarily follows that it was not the intention of the Legislature by the sixth section of the act of 1868 to provide a new method or rate of taxation for the various classes of brokers named in the prior acts of Assembly.

The act of May 15, 1850, section seventh, provides as follows: "All stock brokers, bill brokers, exchange brokers, merchandise brokers and real estate brokers in each and every city and county of this Commonwealth shall be required to pay annually to the use of the Commonwealth, for their respective commissions or licenses, granted in pursuance of the several acts of Assembly now in force relating to the same, upon their annual receipts and commissions, discounts, abatements, allowances or other similar means in the transaction of their business, three per cent."

And by the eighth section of the same act, it is made the duty of the appraisers of mercantile taxes "to ascertain and assess the several brokers aforesaid according to the amount of business done by them respectively." Upon the business thus ascertained the tax was assessed under that act until 1861.

By the act of May 16, 1861, it is provided that "every stock broker, bill broker, exchange broker, real estate broker and private banker in this Commonwealth shall, on or before the first Monday of December next, and on or before the same day in each year thereafter make a written return, under oath or affirmation, to the Auditor General of this Commonwealth, in which return he shall exhibit and set forth the full amount of his receipts from commissions, discounts, abatements, allowances and all other profits arising from his business during the year ending with the thirtieth day of No-

vement preceding the date of such annual return, and shall forthwith pay into the State Treasury three per centum upon the aggregate amount contained in such return for the use of the Commonwealth."

The second section of this act requires that the same classes of brokers shall within sixty days after they commence business "make a report to the Auditor General in writing, and under oath or affirmation, setting forth the name of the person so employed, if an individual, or, if a partnership, the names of all the individuals composing the same, and the name of the firm, the location or place where such business is transacted, and the amount of capital invested therein, if any."

The third section is as follows:

"Any stock broker, bill broker, exchange broker, real estate broker or private banker in this Commonwealth who shall neglect or refuse to make the return and report required by the first and second sections of this act, shall, for every such neglect or refusal be subject to a penalty of one thousand dollars, which penalty shall be collected on an account settled by the accountant officers, as taxes on bank dividends are now settled and collected, and shall not be relieved from paying the amount which he is liable to pay to the Commonwealth under the provisions of the first section of this act, on account of his having been required and compelled to pay the said penalty."

The fourth section requires the payment of a license as heretofore, in addition to the amounts which they shall be required to pay under the provisions of this act.

These several acts remain on the statute books unrepealed, and they must be so construed as to make a harmonious system for the taxation of brokers. This can be done only by treating the expression "every private banker and broker" as a designation of a class in which the two words banker and broker mean the same thing, as distinguished from other banking institutions mentioned in the act. A private banker and broker is a person doing a mixed business, and denominated indifferently banker or broker; and in many parts of the State the name of banker is applied to a person receiving deposits, discounting commercial paper, purchasing bills, etc., while in other localities he is called a broker, and in some communities he is by different persons and often by the same person indifferently styled either banker or broker. And as the act of 1868 failed to name among the several acts repealed by express designation the acts above referred to, taxing brokers, there can be no other construction placed upon the words "every private banker or broker" than that they mean a banker, sometimes called a broker, who does a kind of banking business, under one or the other title, and in some cases both.

The brokers, therefore, are all taxed, and the tax is upon their profits, or net earnings, and at three per cent. in addition to their license fee. The stock brokers, bill brokers, exchange brokers and real estate brokers are taxable under the act of 1861, except such bill brokers and exchange brokers as are receiving deposits and discounting paper, in which case they are taxable under the act of 1868. But in either case they must make returns of their business to the Auditor General and pay a tax of three per cent. on their profits, net earnings or income.

Merchandise brokers must pay a tax at the same rate on the same profits or income, the amount of which must be ascertained by the appraisers of mercantile taxes.

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

CORPORATIONS—FORMATION OF—DESIGNATION OF PURPOSE.

The different classes of business as set forth in the second class of corporations cannot be joined in the same corporation except so far as they are designated to be joined under the several divisions.

There is no power to create corporations for any purposes except those enumerated in the act and its supplements.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 14, 1878.

M. S. QUAY, *Secretary of the Commonwealth:*

Dear Sir: From the provisions of the several sections of the act of March 22, 1877, entitled "A supplement to an act, entitled 'An act providing for the election of aldermen and justices of the peace,' passed the twenty-first day of June, eighteen hundred and thirty-nine, fixing the time for the expiration of their offices," it is evident that it applies only to those whose terms or commissions expire on or before the first Monday of May next ensuing the election on the third Tuesday of February of each year, and that those whose commissions expire after the first Monday of May, and before the next February election, come under the act to which this is a supplement, and the successors of the first class (whose commissions expire on or before the first Monday of May) must be commissioned for five years from that date, and the successors of those whose commissions expire after the first Monday of May, and before the following February election, must be commissioned for five years from the expiration of the commissions of their predecessors. The terms of the latter are extended by the act until the first Monday of May after the expiration of their commissions at the end of five years, but it is doubtful whether the Constitution does not limit them

to five years. But that can be remedied by an appointment by the Governor to fill the vacancy until the first Monday of May following.

If this course be pursued under the act, at the end of five years every alderman and justice of the peace in the Commonwealth will have a commission from the first Monday of May for five years, and his successor will be elected on the third Tuesday of February next preceding the first Monday of May when it will expire.

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

PURPOSES CANNOT BE JOINED—CORPORATIONS CANNOT BE FORMED FOR ANY PURPOSE NOT DESIGNATED IN THE ACT.

1. The different classes of business as set forth in the second class of corporations cannot be joined in the same corporation, except so far as they are designated to be joined under the several divisions.

2. There is no power to create corporations for any purposes except those enumerated in the act and its supplements.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 14, 1878.

M. S. QUAY, *Secretary of the Commonwealth:*

Dear Sir: The enclosed communication of M. W. Weigley, Esq., which has been referred to me, proposes a corporation embracing powers which the law does not authorize. The corporation act provides for the incorporation of companies for particular purposes, and the act designates what each one may be created for. There is no power to create corporations for any purposes except those enumerated in the act and its supplements, and no two of them can be combined in the same company or corporation.

A company may be incorporated for "creating, purchasing, holding and selling of patent rights for inventions and designs, with the right to issue license for the same, and receive pay therefor," and that is all which can be done under that corporate power, and all which can be included in one corporation. Building railways cannot be joined in the same charter, or contracting for their construction, even if such powers can be given by another charter, which is more than doubtful. A manufacturing company may be incorporated and possibly may embrace what is in the second clause of the proposed charter, but it will be time enough to decide that when it comes in that form. It is sufficient to say here, that the two or more things contemplated in the proposed charter cannot be joined in the application. Creating, purchasing, holding and selling patent rights, etc., cannot be joined with anything else. The different classes of business as set forth in the second class of corporations cannot be joined

in the same corporation except so far as they are designated to be joined under the several divisions, and no corporation can be formed for a business not named or described in some one of the divisions.

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

ASSOCIATE JUDGES—COMPENSATION OF—Act of 1873 (P. L. 12).

The proper basis upon which to estimate the compensation of associate judges is the time of their attendance at court.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 14, 1878.

A. C. NOYES, *State Treasurer*:

Dear Sir: In answer to yours of the 13th inst., I beg leave to say, that the proper basis upon which to estimate the compensation of associate judges is the time of their attendance at court. They are paid under the act of 1873, P. L. page 12, and their compensation, which is in lieu of the salary allowed by law at the passage of the act, is five dollars per day employed in the discharge of official duties, but not to be less than three hundred dollars per annum. In lieu of salary then allowed, of course means in place of similar services then provided for, which, in the act of 1857, was for attendance at court. It does not embrace days in which a bond is approved, recognizance taken, or such official acts as may be done at chambers, but business in which they are engaged in court. If the court in which a judicial proceeding takes place is held at any place other than the court house, be held, where testimony is heard and arguments listened to, it may be regarded as a court, as much as if held in the proper court room. But such acts as you refer to do not constitute days employed under the act. The safe plan is to require a certificate that it was attendance at court.

Respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

EXCLUSIVE RIGHT OF COMPANIES FOR THE MANUFACTURE AND SUPPLY OF GAS.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, July 15, 1878.

THOMAS McCAMANT, *Deputy Secretary of the Commonwealth*:

Dear Sir: Letters patent cannot be issued for "The Consumers'

Mutual Gas Company" for the purposes set forth in the enclosed certificate. The powers to grant such charters have probably been exceeded already under the act of 1874. They have certainly been exhausted for the city of Philadelphia.

Under the third clause of the thirty-fourth section, "the right to have and enjoy the franchises and privileges of such incorporation within the district or locality covered by its charter shall be an exclusive one; and no other company shall be incorporated for that purpose until said corporation shall have from its earnings realized and divided among its stockholders, during five years, a dividend equal to eight per centum per annum upon its capital stock."

It does not appear that this has been done by the other companies in Philadelphia within the district or locality covered by their charters, and this is for the same district or locality.

Yours truly,

GEORGE LEAR,
Attorney General.

JUDGES—SALARIES OF.

The judges of the several districts of the State are entitled to the salaries and emoluments which were allowed them by law on January 1, 1874. The compensation will continue the same until the enactment of a law changing the amount thereof, which law when enacted will apply only to those thereafter appointed or elected.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, July 30, 1878.

WM. P. SCHELL, *Auditor General*:

Dear Sir: Yours of the 7th of June was duly received, in which, after reciting the several constitutional provisions and acts of Assembly bearing upon the subject of judicial salaries, you conclude as follows: "The several Legislatures which have been in session since the adoption of the Constitution of 1874, have failed to comply with the mandatory requirement in regard to fixing the compensation of the judges.

"The appropriation act of 1873 having fixed the salaries of the judges of the district court and of the common pleas of the city of Philadelphia at five thousand dollars each per annum, and the Constitution having prohibited any increase or reduction of the compensation of the judges, and the Legislature having failed to fix the salaries as required by the Constitution, the question arises what is the salary of the last mentioned judges? Is it five thousand dollars as fixed by that act, and the two thousand dollars added to their salary by the city of Philadelphia, which is prohibited by section 18 of article 5 of the Constitution? You will please give me your opinion of the law in the premises."

In the first place permit me to say, that you are mistaken in supposing that the act of 1873 has fixed the salaries of the judges of Philadelphia "at five thousand dollars each per annum." The general appropriation act of that year for the payment of the salaries of the judges of the district court and court of common pleas of Philadelphia, appropriates "the sum of fifty thousand dollars, or five thousand dollars to each judge for the present year." It is simply an appropriation for that year, and not the fixing of annual salary. But the salaries of judges depend more upon what has been paid them in pursuance of annual appropriations than upon any law definitely fixing their respective amounts. In fact, there is no single act of Assembly which fixes an amount of salary for a judge which by its terms has a continuing operation, but the amount to be paid is contained in annual appropriations, fixing the amount for the current year, which, fortunately for the judges, under the present, as well as the last Constitution, cannot be diminished after their election or appointment. Their salaries must be found in these acts for annual appropriations, or else they have no salaries and could get no pay. If it were not for the constitutional restrictions which fasten upon and hold a salary at the amount which was paid by law when the judge was appointed or elected, there would at this time be no fixed salaries for the judges of the State, and if there were not a constitutional prohibition against it, the annual appropriations might vary in amount from year to year, and the judges would have only the precarious reliance of the varying ideas of economy or capricious whims of different Legislatures to obtain compensation for their services. But whatever the amount and however it may have been fixed and determined by law, at that sum it must remain for each judge as he found it when he was appointed or elected.

By the appropriation act of 1868 the judges of Philadelphia were authorized to receive from the start five thousand dollars each "for the present year," and two thousand dollars from the city of Philadelphia "per annum for the present year and for every year hereafter in addition to the sum hereby appropriated and hereafter to be appropriated as their salaries." And by the appropriation act of 1873, which was the last before the Constitution went into effect, it was provided that the salaries of the judges of the district court and the judges of the court of common pleas of Philadelphia should be "five thousand dollars to each judge for the present year." Under this act and that of 1868 the judges of Philadelphia were each in receipt of a salary of seven thousand dollars per annum on the first of January, 1874, when the present Constitution went into effect, and my predecessor, Hon. Samuel E. Dimmick, in an opinion given by him upon the subject, said: "I assume the judges of the city of Philadelphia were each receiving, when the new Constitution went

into effect, a salary of \$7,000, as fixed by the act of 1868, and which, under the old Constitution, could 'not be diminished during their continuance in office.' If so, I am clearly of the opinion that the Legislature has no power to reduce it. I think the latter clause of section 17 of the schedule protects alike the salary or compensation received by the judges of Philadelphia, whether heretofore paid by the State or the city, and is not to be restricted to that portion of their salary or compensation received exclusively from the State Treasury. It is not who paid it, but the amount paid that is provided for. It was their compensation as judges, paid them by authority of law when the Constitution went into effect that it operates upon, and, under section 18, article V, of the new Constitution, that portion of it which, under the act of 1868, was paid by the city, is hereafter to be paid by the State."

That was the opinion of the Attorney General in February, 1874, and had reference to the judges in commission at the adoption of the Constitution, and since that time the judges of the court of common pleas of Philadelphia have received the sum of seven thousand dollars each from the State as their annual salaries. And without designating the specific sum to be received by each judge, the Legislature has appropriated a sufficient amount each year since the Constitution went into effect for the salaries of judges, to embrace a salary of seven thousand dollars for each of the judges of Philadelphia. And, although the opinion of Mr. Dimmick was applicable only to the judges then in commission, the same amount has been paid annually since, and that practice is the logical sequence of that opinion, which was undoubtedly correct. No law has since that been enacted attempting any change in the amount of judicial salaries.

The constitutional provision to which I have referred and to which you refer in your communication is as follows:

"No law shall extend the term of any public officer or increase or diminish his salary or emoluments after his election or appointment." The salary or emoluments of each judge of the court of common pleas of Philadelphia on the first of January, 1874, when the Constitution went into operation, was seven thousand dollars, and it is a question of no consequence whence those emoluments were derived. If the State prohibited the payment of a portion of them by the city, she assumed the liability of the payment of the whole by the terms of the Constitution which she adopted, that no salary or emoluments should be diminished, and that the judges shall receive "an adequate compensation which shall be fixed by law, and paid by the State. They shall receive no other compensation, fee or perquisites of office for their services from any source." Article fifth, section twenty-eighth. This left the payment of all judicial salaries upon the State, and up to this time they have been paid under the fragmentary legis-

lation contained in the general appropriation act. Every judge in Philadelphia now in commission came into office with the judicial salary "fixed" by such law as we had on the subject, at seven thousand dollars per annum. Every judge appointed to or elected took the place of one who was receiving that sum. Whenever a vacancy has occurred by death or otherwise in Philadelphia the appointee accepted an office in which his immediate predecessor received a salary of seven thousand dollars. It was the salary annexed to the office when he accepted the position, and by the Constitution it cannot be diminished after his appointment. Whenever a judge has been elected in that city, it has been in November under the present Constitution, and whether he has been elected as the successor to himself or to some one else he has been elected to an office which at the time of his election had a salary of seven thousand dollars per annum as the compensation attached to it, and he entered upon his duties on the first Monday of January following, without any change in the law, to perform a service which when he was elected was compensated by that sum. It is the time of his election, and not the time of his entering upon his duties or the commencement of his term which fixes irrevocably, under the Constitution, the amount of his salary or emoluments.

It is true that the "judges shall at stated times receive for their services an adequate compensation which shall be fixed by law and paid by the State," as provided in the Constitution, and when the Legislature shall so fix the adequate compensation, prior to the election of any judge, so that he may enter upon his duties with a knowledge of what he is to receive, without reference to the compensation of his predecessor, he makes a contract with the State to perform the services required by the duties of his office for the compensation which the State has proposed and which he accepts when he assumes the position. But at this time the Legislature has fixed no compensation except that which is contained in general appropriation acts, and the practice under them, and there is no other law to ascertain the salaries of judges; and the constitutional prohibition against increasing or diminishing the salaries or emoluments of public officers after their election or appointment applies to the judges of the court of common pleas who have been elected or appointed since the adoption of the Constitution, as well as to those who were in commission at that time. There has been no change in the law fixing their salaries, and the annual appropriations for the judicial department of the Commonwealth have been for each year of sufficient amount to aggregate all the judicial salaries at the rates which were paid when the Constitution was adopted. This is equivalent to fixing the salaries as they were at that time.

Either this is to be our guide in fixing the amount of judicial sal-

aries or the Legislature has been grossly negligent in the performance of official duties. The members of the Legislature have severally taken the oath to "support, obey and defend the Constitution," and the seventeenth section of the schedule to the Constitution commands that "the General Assembly at the first session after the adoption of this Constitution, shall fix and determine the compensation of the judges of the Supreme Court and of the judges of the several judicial districts of the Commonwealth." It would be ungracious to presume that the members of the General Assembly had disregarded an obligation so solemnly assumed to obey the Constitution, which commanded them at the first session after the adoption of the Constitution to "fix and determine the compensation of the judges" by supposing that they had neglected that duty as they understood it. For not only the first, but five sessions of that body have passed since the adoption of the Constitution, and, if the general appropriation acts have not fixed and determined the compensation of the judges, as commanded by the Constitution, at the sum which they found them receiving, then we will be forced to the unpleasant conclusion that the oath which has been taken by two hundred and fifty-one men to obey the Constitution has been persistently and continually disregarded. But we cannot presume such a disregard of a solemn obligation for, while the appropriation for the law judges of the State in 1873 was two hundred and forty-nine thousand dollars, it was four hundred and seventy-five thousand dollars in 1874, and has been four hundred and fifty thousand dollars each year until the present, which is four hundred and eighty thousand dollars, including the salaries of the associate lay judges of the State. Any of these appropriations will more than cover the amount of the salaries of all the judges as fixed, ascertained and paid prior to the adoption of the Constitution, and which had been so fixed by general appropriation acts, notwithstanding the increased number of judges.

But for the purpose of understanding the meaning of legislation, it is sometimes desirable to find the legislative intention; and it cannot be pretended that the Legislature intended a change in judicial salaries by any operation of the law or Constitution, or by any inadvertance on the part of that body. Salaries for the members and officers of the General Assembly have been fixed since the adoption of the Constitution, and the fee bills of county officers have been revised, as well as the compensation of various minor officers; and it cannot be presumed that Legislatures composed of men so alive to the question of compensation would be unmindful of the salaries of judges of the courts, without whose services in the administration of justice the laws which they enact for the most part would be inoperative and useless. Such a suspicion would do them great injustice, and it adds force to the legal conclusion and logical deduc-

tion that they intended the annual appropriations to be the fixing and determining of the compensation of the judges of the court of common pleas of Philadelphia at the amount which was provided by other appropriation acts prior to the adoption of the present Constitution. From the making of the appropriations and omission to enact a law fixing a continuing salary for each judge, the legislative intention that the salaries as they were shall remain fixed until changed by a positive law is made manifest.

But there is another constitutional provision which prohibits the reduction of judicial salaries. The last sentence of the seventeenth section of the schedule ordains as follows: "Nothing contained in this Constitution shall be held to reduce the compensation now paid to any law judge of the Commonwealth now in commission." The first part of the section directs that the compensation shall be fixed and determined, but it does not say it shall be changed. But such a direction permits a change, which may be an increase or a reduction. If reduced, however, the reduction shall not apply to judges then in commission. But suppose that no change has been made by the Legislature until other judges have been commissioned, who have practically entered into a contract with the State to perform their duties for the compensation which the law and the Constitution direct shall be paid to their predecessors, can it be pretended that such legislation can operate to reduce the salaries or emoluments of such judges then in commission? The whole spirit and language of the Constitution, as well as the debates in the Constitutional Convention, forbid such a conclusion. And if it could not be done by an affirmative enactment, a fortiori it cannot be done by any legal construction of existing laws. This cautionary provision was put into the Constitution to prevent the reduction of judicial salaries as to such judges as were in commission when the Legislature should fix and determine their compensation, and it was a prohibition against a reduction by law, no other reduction being contemplated as possible. But no law has been passed to increase or diminish the salaries, and it can be done only in that way. That power exists in the General Assembly, but when exercised, the law so enacted can apply to such judges as shall be thereafter appointed or elected.

In my opinion, there is no reason to doubt that the judges of Philadelphia and of the other districts of the State are entitled to the salaries and emoluments which were allowed them by law on the first of January, 1874, and that they and their successors in the same offices will have a legal right to be compensated for their services at the same rate until the enactment of a law changing the amount of compensation, which law when enacted will apply only to those thereafter appointed or elected. This is not only according to the law and the Constitution, but it is just, and agrees with the

common law principle, that, in the absence of any stipulation to the contrary, a man continuing in service after the expiration of his first term shall be entitled to receive the same as, and can recover no more than the compensation for which he contracted and served during the first term of his employment.

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

CHARITABLE INSTITUTIONS—APPROPRIATIONS TO—Act May 3, 1878 (P. L. 45).

An appropriation to a charitable institution is a mere gratuity, which can be made or refused at pleasure, or which the State can make upon condition.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 2, 1878.

A. C. NOYES, *State Treasurer*:

Sir: Inquiry having been made of the Attorney General about the effect of section 2 of the act of 3d May, 1878 (P. L. 1878, p. 45), he replied as follows:

An appropriation to a charitable institution is a mere gratuity, which the State can make or refuse at pleasure, or which it can make upon conditions. The condition that no public money shall be paid to the State Hospital for the Insane at Warren until all the officers and employes consent to a reduction in their salaries is one which the Legislature had the right to make, and which the State Treasurer should obey.

Very respectfully,

LYMAN D. GILBERT,
Deputy Attorney General.

CORPORATIONS—REORGANIZATION OF—ACCEPTANCE OF THE CONSTITUTION.

Corporations desiring reorganization must observe the rules laid down in the act of April 8, 1861, and its supplement, approved May 25, 1878.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 22, 1878.

JOHN B. LINN, *Secretary of the Commonwealth*:

Sir: The act of the General Assembly of 25th day of May, 1878, is expressly stated to be "A Supplement to an act, entitled 'An act concerning the sale of railroads, canals, turnpikes, bridges and plank roads,' approved the eight day of April, Anno Domini one thousand eight hundred and sixty-one, extending the provisions of said act to coal, iron, steel, lumber or oil, or mining, manufacturing, transporta-

tion and telegraph companies, in this Commonwealth." It therefore forms part of the act of 8th April, 1861, and in connection with it furnishes the rule that corporations desiring reorganization must observe.

Before any benefit can be obtained from this legislation the corporation must accept, as required by section third, the provisions of article XVI, of the Constitution of this Commonwealth, and file in the office of the Secretary of the Commonwealth a proper certificate of its acceptance. This is a condition precedent to obtaining any privilege or benefit from this act, or the act to which this is supplementary.

After such an acceptance and filing of the certificate of that fact in your office it is the duty of the corporation, under the requirement of section second of the act of 1878 "within one calendar month after its organization to make a certificate thereof," specifying the matters in the section specifically set forth.

Unless all of these requirements of sections second and third are performed, the corporation will fail to obtain the reorganization which it seeks.

Very respectfully,

LYMAN D. GILBERT,
Deputy Attorney General.

ADJUTANT GENERAL—PAYMENT OF FOR ACTUAL SERVICES IN THE FIELD—Act of March 31, 1876.

The Adjutant General in addition to his regular salary is entitled to the pay of an officer equal to those of similar rank, when called into actual service by the Commander-in-Chief.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 24, 1878.

A. C. NOYES, *State Treasurer*:

Dear Sir: On the 14th of July, 1876, I gave an opinion to Hon. J. F. Temple, Auditor General, that the Adjutant General was entitled to pay according to his rank as a military officer, in addition to his salary as Adjutant General, under the act of March 31, 1876, making an appropriation for the payment of the expenses of the riots in Luzerne, Northumberland and Schuylkill counties. The act of February 22, 1878, provides in a similar manner for the payment of officers and men actually engaged in suppressing the riots in Allegheny, Luzerne and other counties in the summer and fall of 1877, and the same rule will apply to all officers under that appropriation. The duties of the Adjutant General for which he receives a salary do not include military services in the field, but when called into actual service by the Commander-in-Chief he is entitled to the pay of an officer equal to those of similar rank, and the appropriation of February

22, 1878, covers his case, as that of March 13, 1876, did in the case of the riots which had then taken place.

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

APPROPRIATIONS—APPROPRIATIONS BY LAW DEFINED—Section 16, article III of the Constitution.

An appropriation made by law may be defined to be a legal direction or authority to pay a sum certain or limited to an amount which it shall not exceed, made by an act of Assembly in a form and for a purpose not prohibited by the Constitution.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 26, 1878.

A. C. NOYES, *State Treasurer*:

Dear Sir: In your communication of the 14th ult., you ask for my opinion on the payment of salaries of certain officers employed by the State, inasmuch as the gross amount appropriated in the general appropriation act of 1878 does not reach a sum sufficient to pay the whole of them. The Constitution directs that "no money shall be paid out of the Treasury except upon appropriations made by law." The only question is, what is an appropriation made by law? It is certainly not necessary that it be an annual appropriation, or else when we have bi-ennial sessions of the Legislature we will have every alternate year without appropriations, and without authority to pay money out of the State Treasury. A legal direction to pay money out of the Treasury from year to year, if the sum be certain, or limited so that it shall not exceed a certain amount is as much an appropriation made by law as if made annually. An appropriation by law may be defined to be a legal direction or authority to pay a sum certain, or limited to an amount which it shall not exceed, made by an act of Assembly in form and for a purpose not prohibited by the Constitution. If a law contain all these elements it is safe to pay money out of the Treasury in pursuance thereof, and if any one is wanting, the authority is not complete. A law passed in a form prohibited by the Constitution is as essentially invalid and void as if passed for a purpose forbidden by that instrument.

If tested by these principles many of the subjects contained in the seventh section of the act of May 22, 1878, will be found without a lawful appropriation, and if the payments of some of the salaries and expenses embraced in that section depended on that act alone for authority to pay them, they could not be paid. The general appropriation act cannot include everything in it. Its scope is limited by the Constitution, but you can never get the Legislature to

comprehend that there is a Constitution when the members make up their minds to do a thing in a particular way. The Constitution ordains that "the general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the Commonwealth, interest on the public debt and for public schools; all other appropriations shall be made by separate bills, each embracing but one subject."

The title to the act of May 22, 1878, is faultless. It embraces only the subjects specified in the above section of the Constitution as being permitted in the general appropriation bill. But how many other things are embraced in the act itself? How many of the officers and clerks covered by the seventh section do not belong to the executive, legislative or judicial departments? All who do not belong to some one of these departments cannot have their salaries provided for in the general appropriation act, for not being an appropriation in the form required by the Constitution, the act to that extent is void.

But are the officers and clerks designated by a reference to the act of 1874, which fixes their salaries, to be without pay? Certainly not, but they do not get it by virtue of this appropriation. But they get their pay by virtue of the acts fixing their salaries, which contain the legal direction and authority to pay them certain specified sums periodically, and when the services are rendered for the Commonwealth, in pursuance of the law fixing the amount of their compensation, she becomes their debtor in the several amounts to which she has agreed and promised to pay. The annual or periodical salary is a continuing appropriation of the several sums which the law directs shall be paid. And this applies to all officers having fixed salaries, such as mine inspectors, harbor master, Insurance Commissioner and others, and to all pensions and periodical payments and allowances where the amounts are fixed or limited by law.

This is the only reasonable construction which can be given to the Constitution in this particular, and I have no doubt it is correct; and I give it the more readily because justice is done to the employes of the State, and no injustice or injury to the Commonwealth. It enables you to keep your accounts with every department, and to ascertain when all liabilities are fully discharged up to the limits of the law.

There are some pretended appropriations which amount to nothing, both because they are not in the proper act and because they fix no sum. Examples of the kind may be found in the fifteenth and sixteenth sections of the general appropriation act of May 22, 1878. They are appropriations of "such sum as shall be found due therefor." That is no appropriation. There is no sum fixed or limited. Payments under such an appropriation can be extended to any indefinite amount. A sum should be stated, followed by the usual form "or so much thereof as may be necessary." When that is done, you can

open an account with each department, or classes of employes, crediting each with the sum so appropriated, and charging from time to time the amount paid on account thereof. If such an appropriation is not exhausted the balance is carried into the Treasury and the account closed at the expiration of the time limited. This can be done as well where salaries are fixed in any department, crediting the department with the gross amount for the purpose, and charging against that sum the payments made on account. Where the salaries are fixed the credit and debit will balance at the end of the year. Where it is a contingent fund for a department there will, I presume, in most cases, be a balance to carry into the current account of the Treasury. But the form of keeping your accounts is a matter for you, although the plan indicated is directed by the fourth section of the act of May 4, 1874, so far as the salaries, etc., in that act are to be accounted for.

It would be more satisfactory to have appropriations made in a proper form. But it will never be done, for you can never get the Legislature to see the necessity for it. There is a necessity for a general appropriation bill, for there are many things provided for in it which have no fixed sum in any other law. The ordinary expenses of the legislative and judicial departments are not fixed by any law, and a gross amount necessary to cover them must be appropriated, and that is usually attended to. For the most part, the executive department has fixed salaries and limited contingent funds, which can be paid as continuing appropriations. But this department, which "consists of the Governor, Lieutenant Governor, Secretary of the Commonwealth, Attorney General, Auditor General, State Treasurer, Secretary of Internal Affairs and Superintendent of Public Instruction," is provided for in the general appropriation act of this year. But the Adjutant General, State Librarian and assistant, Superintendent of Public Printing and Binding, Superintendent of Public Buildings and Grounds, Insurance Commissioner, harbor master, port warden and others connected with them, do not belong to either department for which the general appropriation act can appropriate money for the ordinary expenses of, and they and all others similarly situated must depend upon the laws which give them fixed salaries. They must be paid, and the amount to which they are entitled is made certain, and the laws fixing their salaries virtually appropriates the required amount to pay them. A separate act for each, from session to session of the Legislature, repeating that they should have their salaries paid out of any moneys in the Treasury could not make the amount more certain, nor in any manner more effectually protect the interests of the Commonwealth.

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

APPROPRIATIONS TO STATE INSTITUTIONS—PAYMENT OF CONDITIONED ON A REDUCTION OF SALARIES OF EMPLOYEES.

When definite contracts have been made by the Commonwealth with officers and employes of State institutions, in the payment of appropriations made by the Legislature on condition that the salaries of such officers shall be reduced, such condition can be enforced only with reference to future contracts and cannot impair existing ones.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, October 14, 1878.

A. C. NOYES, *State Treasurer*:

Dear Sir: In the payment of appropriations made to State institutions on the condition that the salaries of all officers and employes engaged in said institutions shall be reduced ten and fifteen per cent., according to the amounts of the salaries, you can enforce the condition only in reference to future contracts with such officers and employes. Apart from the fact that the Legislature so understood it, which is clearly set forth in the letter of Henry M. Long, chairman of Committee on Appropriations, the law governing a contract between parties would forbid any construction which would impair the obligation of the contracts between the State and the officers of these institutions. It is a well understood rule that it requires two to make a bargain, and when the bargain has been made, it requires the same number to abrogate it. This is a plain rule, and would be sufficient without invoking the provision of the Constitution which forbids that the salary of a public officer shall be increased or diminished after his election or appointment.

Whenever contracts have been made for a definite period at a stated salary, the State cannot arbitrarily withdraw from her part of the obligation, but in making new contracts for services for the future, commencing after the expiration of the present terms of employment, the reduction in the salaries required by the appropriations can be enforced, and the contracts must be made accordingly. The evidence, therefore, which you will require before paying the appropriation to the Western State Penitentiary, and other appropriations made on similar conditions, will be that the requisite reductions have been made to take effect after the expiration of existing contracts, or terms of employment of the officers and employes now in service.

This evidence may be by an affidavit of one or more of the inspectors or other officers or managers, or resolution of the board, or in such manner as you may consider satisfactory:

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

REQUISITION FOR FUGITIVE CRIMINAL—LEGAL POINTS INVOLVED
IN APPLICATION THEREFOR.

Requisitions are usually based on affidavits or bills of indictment found true.

The question of guilt or innocence, or the severity of the sentence imposed by the court, not questions for consideration by the Chief Executive.

An illegal arrest in one state does not render void trial and conviction in the state where crime was committed.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 17, 1879.

JOHN F. HARTRANFT, *Governor*:

Dear Sir: I have given careful consideration to the legal points pressed in the arguments for the revocation of the warrant for the arrest of E. Gregg on a requisition from the Governor of West Virginia, and I am unable to see any legal reasons to recall what has been done.

Such requisitions are usually based on affidavits or bills of indictment found true. It is objected in this case, that it is based upon a conviction, but the greater always includes the less, and the record in this case shows a bill of indictment not only found true, but that the fugitive was twice convicted upon it. It is none the less an indictment because the case was prosecuted to conviction, and the fugitive sentenced in pursuance thereof.

The question of guilt or innocence is not a question for consideration in such a proceeding. That has been passed upon by a jury in a court of competent jurisdiction, and cannot properly be considered on this application. That is never considered on a requisition before conviction, and in fact where the proceeding is based upon affidavit, or bill found, the prisoner is always presumed by law innocent until a jury pronounce him guilty. In this case the presumption is removed by the conviction, and there is no power in this State to review the propriety of the conviction or the legality of the sentence.

The sentence was one of extreme severity, but was warranted by the laws of the state where the trial and conviction took place and where the crime was committed. Any appeal for mercy on that ground must be made to the Executive of that state; and while it seems a proper subject for his consideration, and one which the humanity of the age ought to induce him to consider favorably, it is entirely with him in the discharge of his official duties.

It is claimed that Gregg was a citizen of Pennsylvania when he was originally arrested, and that he was arrested without legal warrant, and taken to another state by violence. Upon these questions the facts are disputed, and the weight of the evidence submitted seems to be that he was a citizen of West Virginia.

But admitting all that is alleged in behalf of the prisoner in this respect, the fact stands that he was tried in the state where the crime was committed. Whatever state he was a citizen of, he was

arrested in Pennsylvania and taken to West Virginia, where the crime was committed; and the parties who arrested him had no legal authority which justified them in his arrest in this State. But that does not make his trial void. He was in the state and the county having jurisdiction when he was tried. It is possible he could have been discharged on habeas corpus at the time. He certainly could have been in this State if he had invoked that remedy. But he did not, and may not have had the opportunity. He had his remedy against the parties who unlawfully abducted him for trespass, assault and battery, and perhaps other offenses; but when he was in West Virginia the court had jurisdiction of his person as it already had of the crime. But if his manner of arrest failed to give jurisdiction of his person, the question can be considered only by the courts of that State. The fact that he was irregularly and illegally taken from a state before he was tried is not a reason why he should not be legally taken there now or that he should be illegally protected within this State.

The above are the principal reasons pressed in the argument, in which I can see no justification for the action asked. The minor points are of still less weight.

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

AUDITOR GENERAL—AUTHORITY OF IN PUBLICATION OF MERCANTILE APPRAISERS' LISTS—Act of May 5, 1876.

The Auditor General has authority and discretion under the act of May 5, 1876, to curtail any bills paid by county treasurers for publishing mercantile appraisers' lists.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, January 20, 1879.

WM. P. SCHELL, *Auditor General*:

Dear Sir: Yours of the 16th inst., asking my opinion whether the Auditor General has any authority or discretion under the act of May 5, 1876, to curtail any bills which have been paid by county treasurers, when they appear to be excessive, is received. The act referred to is to regulate "the compensation of newspapers for publishing mercantile appraisers' lists." It gives the basis for calculating the rate of compensation, and requires certain data to be returned to the Auditor General. If the bills are in excess of the amounts justified by the basis established by the act, or if the lists have been published in more papers than the law authorizes, I have no doubt of your authority to reduce the bills to the legal standard. If you had no discretion or authority in the premises there would be no reason for filing with

you "a certified bill from each of the newspapers in which said lists have been published, to which shall be attached a copy of the advertising rates of such paper." The object of that can only be to verify the correctness of the bills, and if they are excessive, to curtail them.

Very respectfully,

Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

PENSIONS—Acts of 1866, 1868 and 1878.

The act of May 24, 1878, did not revive the act of March 24, 1868, but only provides for the payment of gratuities and annuities to soldiers and their widows for one year commencing June 1, 1878.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 28, 1879.

WM. P. SCHELL, *Auditor General*:

Dear Sir: Your communication in reference to the pensions of soldiers of the war of 1812, is received. The act of March 24, 1868, revived the act of 1866 with a proviso that "said gratuity and annuity shall cease so soon as provision shall be made by Congress for said soldiers and their widows, and thereafter no pension shall be paid under this act." Congress made that provision by an act approved March 9, 1878, which went into operation at that date. Immediately after the passage of that act I gave an opinion to the State Treasurer that the soldiers of the war of 1812 and their widows were entitled to their pensions for the fraction of the half year from January 1 to March 9, 1878, and that payments under the act of 1868 must then cease.

But on the 24th of May, 1878, the Legislature passed an act making an appropriation for the payment of gratuities and annuities to the soldiers of the war of 1812, or their widows, "for the year commencing on the first day of June, Anno Domini one thousand eight hundred and seventy-eight." This act does not revive the act of 1868, but only provides by this appropriation for the payment of gratuities and annuities to soldiers and their widows for one year, commencing on the first of June, 1878. It provides that those whose claims have been allowed may be paid without new proof, and that those who have not had their pensions allowed and who shall be adjudged by the Auditor General to be entitled to the gratuity "during the period covered by this act," shall be paid as in said act directed.

The period covered by the act is from the first day of June, 1878, to the first day of June, 1879. If no other appropriation be made, that will be the end of it. There can be no pension paid for the period from March 9 to June 1, 1878. That is not provided for, and the provision made for the payment under the acts of 1866 and 1868 ceased

on the 9th of March, and under the act of 1878, the provisions for payment did not commence until the first of June.

Very respectfully,
Your ob'd't serv't,

GEORGE LEAR,
Attorney General.

IN RE PAYMENT OF BONUS BY CORPORATIONS BEING RE-CHARTERED.

A corporation whose charter is about to expire by its own limitation, desiring to be re-chartered, must pay bonus.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 4, 1879.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: In reply to your inquiry, I beg leave to say that when the charter of a corporation is about to expire by its own limitation, and the corporation seeks to be re-chartered under the provisions of section 40 of the act of 29th April, 1874, it must pay to the Commonwealth the tax imposed in the forty-fourth section of that act.

Very respectfully,

HENRY W. PALMER,
Attorney General.

DISCRETIONARY POWER OF THE GOVERNOR IN REFUSING APPLICATIONS FOR LETTERS PATENT UNDER THE ACT OF 1874.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 2, 1879.

HENRY M. HOYT, *Governor:*

Dear Sir: In the matter of the application of rival gas companies for letters patent for the city of Bradford, in the county of McKean, which was argued before Your Excellency, the Secretary of State and the Attorney General, I have the honor to say that under the special facts of the case, in my opinion, you will be justified in refusing a charter to either claimant. From the resolution passed by the city council, a certified copy of which has been furnished, it appears that strong objections are made on sanitary grounds.

As the grant of privileges to any company that will enable them to disturb the streets at this time and further, that in pursuance of a contract between the authorities and individuals the city is now being satisfactorily and sufficiently supplied with gas. The thirty-fourth section of the act of 1874 provides that no company incorporated under the provisions of this act to construct gas or water works within the limits of any municipality when gas or water

works shall have been constructed by said municipality shall do so without the lawful consent of the corporate authorities thereof. While the works in the city of Bradford were not constructed by the municipality, yet under the contract the city has a substantial vested and valuable interest in them, extending for thirty years, which ought not to be disturbed unnecessarily, and construing the law according to its spirit and meaning, viz., that when a town is already satisfactorily supplied with gas under corporate management that no company chartered under the act of 1874 shall construct works without the consent of the authorities, the city might well refuse permission to allow the erection of other works. Without such consent, which from the tenor of the resolutions of the city council, evidently cannot be obtained, a charter would be of no use except as an instrument of strife and litigation.

The objection of the authorities that the health of the city may be endangered by the extensive excavation necessary for laying down pipes may or may not be real, but of that they being on the ground and familiar with local conditions are necessarily the best judges, and taking the fact as established it undoubtedly presents a consideration for delay not to be overlooked. Whether a chartered company would have excessive rights in the city limits of such a nature as to prevent those who have expended large sums of money under their contract with the city from deriving further benefits from the same is a question not free from difficulty, and as the city as represented by her authorities are well satisfied with existing conditions, the Governor may well refuse to charter a new company on the ground that the "purposes of the act" are to allow charters for localities where gas and water are not well supplied or when if supplied by the municipal authorities or under their sanction they are willing to allow competition. By the third section of the act the Governor is to examine the application and if he find it within the purpose of the act endorse his approval and inferentially if not within the purpose of the act to refuse his approval. Holding the "purposes of the act" to be as above stated this case would seem to come within the range of application which may be refused by the Governor.

Very respectfully,

Your ob't servt,

HENRY W. PALMER,
Attorney General.

CORPORATIONS—TAXATION OF—Act of April 24, 1874.

The act of April 24, 1874, applies to all corporations and expressly repeals all inconsistent acts, whether general or special, exempting corporations from taxation.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, May 15, 1879.

WM. P. SCHELL, *Auditor General*;

Dear Sir: In answer to yours of this date relating to the liability of the Continental Improvement Company to taxation, I have the honor to say that in my opinion the act of 4th April, 1872, under which the company claims exemption, was repealed by the act of 24 April, 1874, and the second section of article IX of the Constitution of 1874, which expressly makes void all laws exempting property from taxation, except that enumerated in the first section. The act of 1874 covers all corporations and is also an express repeal of inconsistent acts which covers special acts exempting corporations from taxation. While the act of 1872 was in force, the company could not be properly taxed.

Very respectfully,
Your ob't servant,
HENRY W. PALMER,
Attorney General.

CORPORATIONS—TAXATION OF—DISSOLUTION—LIQUIDATION.

A corporation having gone into liquidation, its property having been converted into money and its assets distributed under direction of its officers, is liable to the same tax on capital stock during the process of liquidation and prior to formal dissolution as if dissolved under the act of 1856.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 26, 1879.

WM. P. SCHELL, *Auditor General*;

Sir: Upon the 24th day of November, 1877, an account was settled against the Union Railroad and Transportation Company for tax upon its capital stock measured by dividends which were paid its stockholders at various times between the 10th day of July, 1873, and 12th day of July, 1876. Upon the 8th day of May, 1879, another account was settled against said company for tax upon its capital stock measured by dividends made on the 18th day of December, 1878. Before this latter settlement was made it was ascertained that the dividend of this last date included all the property owned, and that no dividend had been declared between the 12th day of July 1876, and the 18th day of December, 1878.

The settlement thus made was placed in the hands of the Attorney General for collection; notice of this amount was sent the company on the 8th day of May, 1879, and an assurance was given that upon payment of the sum thus found due and of the commission imposed by the act of 7th April, 1870, the Commonwealth would be satisfied, and would offer no opposition to the application made by

the company to the court of common pleas No. 1, of Allegheny county for a decree of dissolution.

This proposition has been accepted by the company, and the amount of the settlement has already been paid into the treasury of the State. But a question was suggested by myself which I at once communicated to you, in regard to the liability of the company for taxation upon an appraisement of its capital stock, for the two years ending the first Monday of November of 1877, and 1878, during which the company declared no dividends. To obtain time for the consideration of this question, I caused objections to be filed in the court No. 1, of Allegheny county, to the dissolution of said company, notwithstanding its entire compliance with the terms offered it in my letter of the — day of —, 1879, and no action was then taken by the court, but proceedings were suspended to await the action of the Commonwealth. The question which I have thus stated has been attentively examined, and I have the honor to submit the following opinion:

The settlement made in 1877 against this company became the object of legislative inquiry, and the following facts were thus disclosed:

“The company had sold out its property and business July 1, 1873, and had immediately gone into liquidation, but had not made application to court for a formal dissolution of its charter. Its capital stock had all been surrendered and cancelled, and the former shareholders had received certificates showing their shares to have been surrendered and entitling them to receive a pro rata division of the remaining property and assets of the company, as the same may be from time to time, distributed and paid over under the authority of the board of directors, said payment to be in liquidation of the company’s affairs.” (Legislative Documents, 1878, Vol. VI, p. 3.)

The intention of the company to close its business is proven by the voluntary sale of all rolling stock and other property, by the cancellation of its entire capital stock and by the continued distribution of its money and valuable securities among its stockholders. Since the report of the legislative committee in 1878 above referred to the company has carried to completion the same course it was then pursuing.

It cannot be doubted that it was within the power of this Company in July, 1873, to have applied to the court of the proper county under the provisions of the act of Assembly of 9 April, 1856, (P. Laws, p. 293), for a decree of dissolution, and for the court in the exercise of its discretion to have granted it and when granted taxation would not have extended beyond its date. When the decree had been entered the distribution of the property of the company would have been made under the direction of the court as in the case of the accounts of trustees and assignees.

If this course had been followed, this company might have been dissolved in 1873, and would not have been liable to taxation upon its capital stock for any period of time subsequent to the decree of dissolution, although it would have remained liable to taxation in respect to profits made, even if not declared as dividends, before that date. The commonwealth would then have looked for the payment of her taxes to the fund in court.

But this plan was not adopted. The directors of the company continued in office for the purpose of paying its debts and collecting and converting its securities. From time to time they made distributions of money and securities to those entitled to receive them, in the same manner as they would have been made under the direction of the court of common pleas. The property of the company has now been entirely divided and an application has been presented to the court for a decree of dissolution.

Does this method of liquidation which the company followed render it liable to any taxation to which it would not have been subject if it had, in 1873, applied to the court to be dissolved under the provisions of the act of 1856? In my judgment, it does not. The measure of indebtedness is the same in each instance, and both methods reach precisely the same result.

The object each has in view is to pay corporate debts, divide corporate profits, and end the corporate existence. The Commonwealth receives the same amount of money in each instance, and no doubt at about the same period of time. In the first instance dissolution precedes the disposition and division of corporate property, in the other instance it follows it. The money result is unchanged and so long as there is no exercise of corporate franchise the Commonwealth is certainly not injured. Perhaps it is benefited by having the affairs of the company closed by its officers, rather than by auditors acting under the direction of a court. In point of fact, this method of payment of the claims of the Commonwealth is now required by the — section of the tax act of 7th June, 1879, which requires a certificate of the Auditor General, State Treasurer and Attorney General to be filed in court showing a payment of all State indebtedness to be filed in court before any decree of dissolution can be granted any corporation.

If this view of the law needed further assistance it could be found in the fact, established as already shown by the legislative inquiry, that the company converted its capital stock in 1873, and returned it, in its proper proportions, to its shareholders. The Commonwealth assented to that distribution, as shown by the settlement of 1877. No objection was made to it by the Legislature, which fully understood it, and it should, in my judgment, remain unquestioned and undisturbed.

The company having then no capital stock, there is nothing upon

which the tax can vest, and there is therefore no liability to taxation during the years ending the first Mondays of November, of 1877 and 1878.

I am therefore of opinion, that the company should be allowed to obtain a decree of dissolution upon the terms contained in my letter of the 8th day of May, 1879.

Very respectfully,
 LYMAN D. GILBERT,
 Deputy Attorney General.

TELEGRAPH COMPANIES.

Certificates of organization of telegraph companies must name each county in which the company proposes to carry on business.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, June 26, 1879.

M. S. QUAY, *Secretary of the Commonwealth*:

Sir: The application for the incorporation of the American Union Telegraph Company is defective in that it does not state, as required by paragraphs first and second of section 3 of the act of Assembly of 1 May, 1876, in what counties of this State and in what other states it is proposed to carry on business.

Very respectfully,
 LYMAN D. GILBERT,
 Deputy Attorney General.

DRUGGISTS—LIABILITY OF TO MERCANTILE TAX.

Druggists are liable to a license as vendors of patent medicines.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, Oct. 10, 1879.

WM. P. SCHELL, *Auditor General*:

Sir: In reply to your inquiry I beg leave to say that in the case of Commonwealth of Pennsylvania v. D. W. Gross & Son, No. 840, of August term, 1875, of Dauphin common pleas, Judge Pearson decided that druggists were liable to a license tax as vendors of patent medicines.

The case was not taken to the Supreme Court because the defendants acquiesced in the decision.

This Department holds the same view of the law as that announced by Judge Pearson, and will take measures to obtain the opinion of the Supreme Court upon the question.

In the meantime notice ought to be given to all representing the interests of the Commonwealth that no decision, given against the right of the State to collect this license for the sale of patent medi-

cines will be accepted by the Commonwealth as correct and conclusive.

Very respectfully,
 LYMAN D. GILBERT,
 Deputy Attorney General.

COURTS—POWERS OF—COMPULSORY PROCESS.

No authority is vested in the courts to issue writs of mandamus or other compulsory process to individuals not acting in an official capacity.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, Oct. 30, 1879.

WM. P. SCHELL, *Auditor General*:

Dear Sir: In answer to your inquiry as to the power of the Auditor General to compel persons with whom the State Treasurer has deposited public funds to make report to him as required by the act of 12th February, 1876, P. L. 3, I have the honor to say that in my opinion no authority is vested in the courts to issue writs of mandamus or other compulsory process to individuals not acting in an official capacity.

The act of 14 June, 1836, confers power on the several courts of common pleas "to issue writs of mandamus to all officers and magistrates elected or appointed in or for the respective county, or in or for any township, district or place within such county, and to all corporations, being or having their chief place of business within such county."

By the 3d section of the 5th article of the Constitution the jurisdiction of the Supreme Court is limited, and may issue the writ of mandamus only to courts of inferior jurisdiction. No other authority exists for issuing this writ.

Persons with whom public money is deposited by the Treasurer are in duty bound to make monthly reports to the Auditor General in accordance with the requirements of the law, but if they fail the law provides no remedy by mandamus, they being clothed with no official function.

Very respectfully,
 Your ob't servant,
 HENRY W. PALMER,
 Attorney General.

CORPORATIONS—APPLICATION FOR LETTERS PATENT—DISABILITY OF A MINOR.

A minor cannot become a director or incorporator of a company, and when such minor is one of five persons who signed application for letters patent such application does not conform to the requirements of law.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, Nov. 6, 1879.

HENRY M. HOYT, *Governor*:

Sir: The Attorney General, by letter of 4th November, directs me to say to your Excellency that he has carefully considered the two applications made to yourself for the issuing of letters patent for the creation of a gas company at Duke Centre, in McKean county, and is of the opinion that the application of Carter, Kemper and others ought to receive your approval for these reasons:

1. The authorized body of a borough or municipal corporation has authority to make a contract, authorizing the laying of pipes in the streets for the purpose of furnishing the town with gas light.

1. Dillon on municipal corporations, 466 and authorities there cited.

2. That the borough of Duke Centre made a contract for such purpose with Carter, Kemper and others, and if there was any informality in the contract they exhibited at the hearing before your Excellency, it was removed and cured by the ratification made by the borough authorities, on the 27th day of October, 1879, a certified copy of which is now on file with the papers in this case.

1. Dillon on municipal corporations, 479, and authorities there cited.

3. That a minor, like a femme covert, or a person non compos mentis, cannot be a director or even a corporator of a company created under the act of 29th day of April, 1874, because of the liability attaching in certain instances to all directors of such corporations. The application made for letters patent by Cochran and others is signed by five persons, the lowest number recognized by law in the formation of this kind of corporation, and one being a minor, it is defective and fails to conform to the requirements of the law.

Very respectfully,

LYMAN D. GILBERT,
Deputy Attorney General.

REQUISITION FOR FUGITIVE CRIMINAL—CHARGED WITH BIGAMY.

An indictment for bigamy will not lie in Pennsylvania the second marriage having been solemnized in another state. The defendant having cohabited with the second wife in this State he is guilty of adultery and should not be surrendered pending prosecution.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, December 4, 1879.

HENRY M. HOYT, *Governor*:

Dear Sir: In the matter of the requisition by the Governor of New York for William H. Redheffer, charged with the crime of bigamy in that state, I am of opinion that an indictment will not lie

against him in Pennsylvania for that offense, the second marriage having been solemnized in another state. "The offense consists in going through the ceremony of marriage and appearing to contract a legal and binding union at a time when the defendant had a living wife." "That single fact constitutes the crime." *Reg v. Barron*, 1 Cox's Criminal Cases, 34. Bigamy is not permissible as an offense against this State unless the second marriage took place within the territorial limits of this State. *Parker Criminal Reports*, 195. *People v. Mosher*.

The indictment for bigamy is always under one practice found within the jurisdiction where the second marriage took place. That the venue must be so laid is elementary law. *Wharton*, section 2627, *Gise v. Com'th*, 31 P. F. Smith 431. "Our statute provides for the punishment of a person who shall have two wives or two husbands at one and the same time," which literally construed might seem to warrant an indictment if a man should be found in the State under such circumstances, but this language is the substantial definition of bigamy and the Constitution has been uniform from 1705 to the present that the offense provided against is bigamy.

The fact is asserted that Redheffer lived and cohabited with the prosecutrix in Philadelphia. If true, he is guilty of the offense of adultery against our law, for which he is liable to indictment and punishment because against public morals and decency and pending the prosecution. And further, that both the prosecutrix and defendant are residents of this State and that the real offense against public morals and decency was committed here when the parties lived and cohabited as man and wife, rather than in New York, where they went to have the brief ceremony performed and where technically a crime was committed. Such actions are made punishable because against public morals and decency and logically ought to be punished in the place where the public morals have suffered and where the example of punishment will have a corrective effect. No citizen of New York has suffered in person, property or morals by reason of this alleged crime, only the dignity of the state has been offended by a violation of her law in a manner of which she probably would never have been conscious unless informed by the prosecutrix, who, for purposes best known to herself, leaves her state in order to draw the defendant within a foreign jurisdiction, when adequate and ample penalties are provided by law at home for the real substantial offense.

If from the facts in possession of the Executive in addition to the fair influence to be drawn from the circumstances there is reasonable ground to believe that this citizen of Pennsylvania has indicted another citizen in New York for private purposes other than the vindication of the law, this requisition may well be refused for the present.

and until the prosecutrix makes some effort to bring the offender to justice here.

Very respectfully,
 Your ob't servant,
 HENRY W. PALMER,
 Attorney General.

EXECUTIVE MANSION—REPAIRS OF—PAYMENT.

Expenses for necessary repairs and furniture provided for the Executive Mansion and incurred on the requisition of the Governor should be allowed by the Auditor General the same as though said mansion was attached to the Executive chamber and offices.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, Feb. 3, 1880.

AMOS C. NOYES, *State Treasurer, and*
 WM. P. SCHELL, *Auditor General:*

Gentlemen: Referring to your favor of January 10th, inquiring "whether the Executive mansion is to be deemed a part of the Executive department and whether the commissioners have the same authority to grant a requisition properly made by the head of the Executive Department for repairs and furniture for the Executive mansion as they have in the case of similar articles for the rooms occupied by the Executive in the Executive building on the Hill," I have the honor to say that I am of opinion that by the provisions of the act of 12 June, 1879, when any repairs shall be required for the Executive Department the same shall be provided by the board of commissioners on requisition of the head of that Department, viz: the Governor. The Executive mansion is the property of the State, furnished for the accommodation of the Governor in the transaction of his official duties, public and private, and under his control for the use of such citizens as may have occasion to visit him there. The accident of its location at a place other than that occupied by the Executive chamber is immaterial in determining whether it is to be regarded as a part of the Executive Department. The Legislature considered such a building necessary for the proper accommodation of the chief officer of the State and accordingly provided it. Being subject to decay and deterioration like other public property, the house and furniture must necessarily require repairs and renewal from time to time. I can see no reason why expenses for such necessary repairs should not be incurred on the requisition of the Governor under supervision of the commissioners the same as though it was attached to and a part of the Executive chamber and the accompanying offices.

Very respectfully,
 Your ob't servant,
 HENRY W. PALMER,
 Attorney General.

BANKERS AND BROKERS—TAXATION OF.

No member of firm of bankers or brokers can charge for his services as clerk and deduct same from the net income of the business. All partners stand equal in respect to value of their respective services so far as the tax for net income is concerned.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 6, 1880.

WM. P. SCHELL, *Auditor General*:

Sir: In reply to your inquiry of yesterday I have the honor to submit the following opinion:

1. The business of a banker or broker is, in my judgment, to be transacted like any other business, in which the time, skill and attention of those engaged in it are to be given to its transaction. No member of a firm engaged in such business can charge for his services as a clerk, and deduct such sum from the net income of the business so as to reduce the amount upon which the Commonwealth lays a tax.

If one partner or member of a firm devotes more time to its business than the other partners or members, or brings to its transaction a greater degree of skill, the greater value of his services can be properly reimbursed by giving him a larger share of the profits arising from the business.

But as between the firm and the Commonwealth he stands in respect to the value of his services upon an equality with all the other partners or members of the firm.

2. No broker, except those known as "stock broker, bill broker, exchange broker, real estate broker and private banker," is liable to the three per cent. income tax in addition to his license fee.

Very respectfully,

LYMAN D. GILBERT,
Deputy Attorney General.

MINE INSPECTORS—SALARY AND EXPENSES OF.

The salary of the Mine Inspector shall be paid by the Commonwealth. Legal expenses, expenses for horse hire and similar purposes are not chargeable upon the State but must be defrayed by the Inspector.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 19, 1880.

WM. P. SCHELL, *Auditor General*:

Sir: The decision reached by yourself on the subject of the payments to be made by the Commonwealth to mine inspectors is, in my judgment, in entire conformity with law.

The act of 12 April, 1869, (Pamphlet Laws, 1869, page 852), provides for the appointment, in its 13th section, of a mine inspector for the county of Schuylkill, at an annual salary of \$3,000.00.

The 16th section of that act directs that "the inspector shall be provided with an assistant, who shall act as clerk, whom he may appoint, whose salary shall be \$1,000.00."

The 19th section of that act provides that "the salary of said inspector and his assistants, and the expenses of carrying into execution the provisions of this act, shall be paid by the State Treasurer." The words "and the expenses of carrying into execution the provisions of this act" would seem to indicate that the Commonwealth had undertaken to pay more than the salaries of the inspector and his assistant, but the same section concludes as follows: "Provided, that not more than \$4,000.00 in any one year shall be paid therefor." Remembering that the salary of the inspector is \$3,000.00, and that of his assistant whom he is required to employ is \$1,000.00, it becomes clear that the Commonwealth intended to pay nothing more than the salaries of these officials. The act of 3 March, 1870, (Pamphlet Laws, 1870, page 12, section 23), contains substantially the same provision; but in no event do the words "expenses of carrying into execution the provisions of this act," enable the Commonwealth to pay the personal expenses of the inspector or his assistant for discharging the duties of their appointment, and, therefore, I coincide with you in the opinion that legal expenses and the expenditures for horse hire and similar purposes, must be defrayed by the inspector out of his salary, and are not an additional charge upon the Commonwealth.

Very respectfully,

LYMAN D. GILBERT,
Deputy Attorney General.

DISEASED CATTLE—PAYMENT FOR WHEN KILLED UNDER QUARANTINE LAWS.

While not required to do so, it is precedent for the Commonwealth to pay the value of cattle slaughtered under the quarantine laws, particularly if it is more economical for the State.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 21, 1880.

WM. P. SCHELL, *Auditor General*:

Sir: Some time ago I gave an opinion to the effect that the Commonwealth was not required to pay any sum whatever to the owners of such cattle as the State, under the quarantine laws, required to have slaughtered. This opinion is the law, both in the judgment of myself and of the Attorney General. But it is now represented to me by Thomas J. Edge, Esq., special agent appointed by his Excellency, the Governor, under the act of May 1st, 1879, "to prevent the spread of contagious pleuro-pneumonia," that it will be cheaper for the Commonwealth to pay the value of the cattle destroyed under the direction of himself than to employ agents to discover the dis-

eased animals and take them out of the custody of their owners. If, upon examination, you are satisfied that such is the fact, and that it will be more economical for the State to make such payment directly to the owners, than to employ detectives to hunt the diseased animals, it will be prudent, in my judgment, for you to continue, as you have done heretofore, to pay the value of the slaughtered animals.

Very respectfully,

LYMAN D. GILBERT,
Deputy Attorney General.

SECRETARY OF THE COMMONWEALTH—DISCRETION OF IN ADVERTISING SCHEDULES OF SUPPLIES—Act of March 16, 1874 (P. L. 45).

Under the act referred to, the number of newspapers, and the places of publication, in which the Secretary of the Commonwealth shall advertise and invite proposals for contracts to furnish supplies for the State government, is within his discretion.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 23, 1880.

WM. P. SCHELL, *Auditor General*:

Sir: In reply to your inquiry, I have the honor to submit the following opinion:

The act of 6th May, 1874, (P. L. 1874, 309), provided that "no advertisement shall be published by any officer of this Commonwealth which is not duly authorized by law, nor in more papers than so authorized."

Section 1st of act of 16 March, 1874, (P. L. 1874, p. 45), directs:

"That the Secretary of the Commonwealth shall on the first Monday in June next, and annually thereafter by advertisements in two newspapers in Harrisburg, Philadelphia and Pittsburgh, and any other place deemed proper by the officers authorized to advertise," "invite proposals for contracts to furnish stationery, paper and fuel for the several departments of the State government, and for the annual distribution of the laws."

By the order of the proper officers advertisements were inserted in more than two newspapers in Pittsburgh and Harrisburg and a claim is now made for their payment.

The object of the act of 16 March, 1874, was, in part at least, to give public notice of certain wants of the various State Departments and to secure public competition in filling them. For that reason it was made the duty of certain officers to advertise in two papers in each of these cities, and they were given discretion to make further advertisement if they deemed it wise to do so.

The fact that some cities were designated did not confine the advertising to those places; nor was it the intention of the law that

because two papers are mentioned in each of these cities, that the State should pay for advertising in only six newspapers. The number of newspapers in which the publication should be made was expressly left to the discretion of the proper officers.

If they, in its exercise, deemed it best to withhold advertisements from papers published elsewhere than in the cities named in the statute, and in lieu thereof to increase the number of those made within those cities, the outlay of public money would not, in my judgment, exceed that which the law permitted.

The bills, I understand, are for advertisements actually inserted at the order of officers charged with the duty of giving public notice, and under all the circumstances of the case, it seems to me proper that they should be paid.

Very respectfully,

LYMAN D. GILBERT,
Deputy Attorney General.

CORPORATIONS—DIRECTORS NEED NOT BE STOCKHOLDERS.

There is nothing in the law requiring directors of a corporation to be either subscribers to the certificate of incorporation or stockholders.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, Oct. 11, 1880.

J. R. McAFEE, *Deputy Secretary of the Commonwealth:*

Sir: In reply to your inquiry, I have the honor to submit the following opinion:

The general corporation act of 1874 contains no language which requires directors to be either subscribers to the certificate for incorporation, or stockholders, and there is nothing in the law regulating the duties of directors which exacts of them this qualification. They are chosen by the stockholders, or originally by the corporators, but there is no direction that they shall be taken from the corporators, or the stockholders.

We could not insist, therefore, in superadding a qualification of this kind unless there is some warrant for it in the law which underlies all corporate organization.

But an examination shows that the principles governing corporations and the relations of their directors to their stockholders do not require directors to be even stockholders, in the absence of express statutory direction.

In *Densmore Oil Co. vs. Densmore*, 14 P. F. Smith, 43, the court decided that under the act of 18 July, 1863, the corporators need not have an interest in the corporation, or be stockholders.

The law in this respect is different to-day, but the change was made by direct legislation.

In the case of *State vs. McDaniel*, 22 Ohio, 354, the Supreme Court of Ohio decided that directors need not be stockholders.

To the same effect is the English decision, Chancery Division, 1876, in re *British Provident Life, etc., Association*, L. R. 5, Ch. Div. 306.

I am, therefore, of opinion that the management of corporate business can be lawfully placed in the hands of directors who are neither corporators nor subscribers to the corporate stock.

Very respectfully,

LYMAN D. GILBERT,
Deputy Attorney General.

AUDITOR GENERAL AND STATE TREASURER—DUTIES IN REFERENCE TO THE PREPARATION AND PUBLICATION OF MONTHLY STATEMENTS.

Under the act of May 9, 1874 (P. L. 126), after a detailed monthly statement of the condition of the treasury is prepared and verified by the oath of the State Treasurer, it is transmitted to the Auditor General, whose duty it is to make a record of the statement and have it correctly published for general information.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, Aug. 11, 1881.

JOHN A. LEMON, *Auditor General*:

Sir: In reply to your inquiry, I have the honor to submit the following opinion:

The eighth section of the act of the General Assembly of 9th May, 1874 (Pamp. Laws 1874, page 126), makes it the duty of the State Treasurer on the first business day of each month to render a statement of account to the Auditor General giving in detail the different sums which go to make up the grand total of the amounts on that day in the State Treasury, exclusive of moneys appropriated to the sinking fund, this statement shall include the names of banks, corporations, firms or individuals with whom the public funds are deposited, with the various amounts of such deposits, the securities held by the State for the safe keeping of the same, and the rate of interest received by the State on such deposits.

This statement shall be verified by the oath or affirmation of the State Treasurer and recorded in a book kept for that purpose in the Auditor General's office and shall be open for the inspection of the Governor, heads of Departments, members of the Legislature or any citizen of the State desiring to inspect the same, and shall be correctly published in two newspapers at Harrisburg for general information. The duty of the State Treasurer ends, in my judgment, so far as it is imposed upon him by this section, when he renders, in the manner above mentioned, his statements to your department.

It is then your duty to discharge the other duties enjoined by that section. You must make the record of the statement as it is in your

office. The record is to be kept for inspection and your duty does not end until each statement is correctly published in the papers of the city. You are answerable for the correctness of the publication because you have in your keeping the statement with which you can compare the published statements. Any other view of your duty would, in my opinion, defeat the purpose of this section. Your department is made a check upon the State Treasury and when the statements are made to yourself they become a record against the State Treasurer and pass entirely from his control and it becomes your duty then to give them publicity not merely by exhibiting them as recorded in your office, but also by publication in the statutory manner, and you are as much responsible for the accuracy of this publication as you are for the accuracy with which they are recorded in your department.

(Signed)

Very respectfully,

LYMAN D. GILBERT,
Deputy Attorney General.

TERRITORY TO BE DESIGNATED IN CERTIFICATES OF ORGANIZATION BY GAS AND WATER COMPANIES.

1. Boundaries should not be specified.
2. To what distance the permission to supply persons residing on adjacent territory extends, is purely a question for the courts.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 29, 1882.

M. S. QUAY, *Secretary of the Commonwealth:*

Sir: The act of 29 April, 1874, known as the General Corporation Act, authorizes the incorporation, inter alia, of water companies and of companies for the "manufacture and supply of gas or the supply of light or heat to the public by any other means."

The form of the certificate upon which the Executive is called upon to pass is prescribed by the act, but there is no requirement that it shall specify the boundaries within which the corporate functions of the prospective company are to be exercised. The only requirement as to location is that the place or places where its business is to be transacted shall be designated. The requirement that the purpose for which it is formed shall be set forth, is answered in the case of a water company by saying—it is "for the supply of water to the public"—in the case of a light or heat company, it is "for the manufacture and supply of gas or the supply of light or heat to the public."

Under the provisions of this act, neither the certificates of incorporation, and which becomes the charter, or the letters patent, need contain a description by miles and bounds of territory within which

the corporation may exercise its franchises. By the first and second clauses of the 31st section, water and gas companies are given the right to supply the borough, town, city or district where it may be located, and such persons, partnerships and corporations residing therein or adjacent thereto as may desire the same. To what distance the permission to supply persons residing on adjacent territory would extend, is purely a question for the courts, as is also the question of the exclusive rights that may be obtained by gas and water companies under this act, by clause 3, of section 34, which provides that "the right to have and enjoy the franchises and privileges of such incorporation within the district or locality covered by its charter shall be an exclusive one." As we have seen, the act does not require a designation of boundaries in the certificate, and, therefore, the Executive cannot be called upon to decide whether too much or too little is included in a particular certificate, or whether applications conflict with each other. Neither is it necessary to undertake a solution of the troublesome question of the meaning of the word district, or of how much territory a single corporation may cover to the exclusion of all others of like character.

I am of opinion that nothing ought to appear in the certificate of incorporation that the essential requisites designated in the third section of the act of Assembly, and that the Executive is bound to do nothing more than pass upon the formality of the papers. By this interpretation of the act, all questions of conflicting privileges must be remitted to the tribunals provided with the machinery for proper adjustment of questions of law and fact.

I am, therefore, of opinion that the certificate now under consideration, viz: that of the Anthracite Water Company, should be amended in accordance with the views above stated, by stating its purpose to be to supply water for the public at the borough of _____, or township of _____, and to persons, partnerships and associations residing therein and adjacent thereto as may desire the same.

Yours respectfully,

HENRY W. PALMER,
Attorney General.

REORGANIZATION OF A CORPORATION BY PURCHASERS AT JUDICIAL SALE.

Liens of Commonwealth for unpaid bonus discharged by judicial sale.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 26, 1883.

W. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: In the matter of the application of the Continental In-

surance, Trust and Safe Deposit Company for letters patent under the purchase at judicial sale of the franchises of the Central Insurance, Trust and Safe Deposit Company, and the liability of such company for the balance of bonus not collected from the original company, I beg to say that in my opinion the purchaser of the franchises in question took them without any liability for the balance of bonus referred to. If the Commonwealth had any lien upon the franchises for such bonus it was discharged by the judicial sale, which in this case was at the suit of the Commonwealth herself.

The act of 25th May, 1878, clearly vests in the purchasers, on compliance with its provisions in respect to reorganization "all the rights, powers, immunities, privileges and franchises" of the original corporation, subject only to such restrictions as are imposed by its charter. "Such restrictions," I think, refer to restrictions of chartered privileges and do not include unpaid bonus or taxes.

I am of opinion, therefore, that this corporation is entitled to file its certificate of reorganization without the payment of the balance of bonus chargeable to the original corporation.

Very respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

REQUISITION FOR FUGITIVE.

The Executive has the right to revoke warrant of extradition so long as the prisoner is within this Commonwealth, and should do so when a criminal action is pending against the fugitive in this State.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 9, 1883.

In the matter of John B. Dennis, an alleged fugitive from the state of Missouri.

It is admitted that John B. Dennis, the fugitive, is charged in the county of Lancaster, in this State by competent evidence with the grave crime of forgery committed in that jurisdiction and it is established to my satisfaction that before any requisition was received at the Executive Department complaints were made and warrants issued in Lancaster containing these charges against Dennis. I am also satisfied by the affidavits of reputable citizens, as well as by the application of the district attorney of the county that the charges were made and are being pursued in good faith.

If these facts had been known to the Executive a warrant of extradition, it is believed, would not have been issued, but as the right of the Executive to revoke such process at any time while the prisoner is within the Commonwealth can no longer be doubted, I advise the Executive, inasmuch as the vindication of the justice of our own State is his first duty and the enforcement of the constitutional

obligation when called for by a demanding state must always be subject to the paramount claim of the State where the fugitive is found, to recall and suspend the operation of the warrant of extradition till the criminal action or actions pending against Dennis in Lancaster county are finally disposed of. No injustice can arise from this course, inasmuch as the properly certified copy of the charges made by the State of Missouri, as well as of the order now made, can be filed with the sheriff or jailor of the county as detainers, and thus prevent any proceedings looking to the discharge of the prisoner without notice to those representing the requisition. Of course, the well known prosecuting officer of the county will see that under all the circumstances of this case the right of a State of the Union to the possession of a fugitive from her jurisdiction is not unduly delayed.

LEWIS C. CASSIDY,
Attorney General.

WAIVER OF NOTICE IN THE MATTER OF THE INCREASE OF CAPITAL STOCK.

The sixty days' notice, by advertisement, required by the seventh section of the sixteenth article of the Constitution of 1873, and the act of April 18, 1874, can be waived by the unanimous consent of all the stockholders.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 15, 1883.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: The inclosed certificate of the increase of the capital stock of the Bellefonte and Buffalo Run R. R. Co. having been returned by your Department because it did not appear that the increase had been made in accordance with the act of 18th April, 1874, has been submitted to the Attorney General with request to communicate with you in the premises.

The certificate does not show upon its face under what act the increase has been made, but presuming that it was intended to be under the act of 1874 the only question to be determined is whether the sixty days' notice required by that act can be waived by the unanimous action of all the stockholders. The act of 1874 was passed to give effect to the 7th section of the XVI article of the Constitution of 1873, which provides that "the stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without consent of the persons holding the larger amount in value of the stock first obtained at a meeting to be held after sixty days' notice given in pursuance of law." The act of 18th April, 1874, sec. 2, requires that "notice of the time, place and object of said meeting shall be published once a week for sixty days

prior to such meeting, in at least one newspaper published, etc." Can this notice be waived by consent of all the stockholders?

It will be observed that the constitutional requirement was manifestly intended to prevent an increase of stock without "the consent of the persons holding the larger amount in value of the stock." Whilst the act of 1874 seems to be mandatory in respect to notice, yet, if construed in the light of the constitutional provision, its evident purpose was to give notice to the stockholders, so that any one desiring to object might have an opportunity of doing so. If, however, all consented to the increase, there can be no reason for the notice.

I beg, therefore, to say that after a very careful consideration, I am of the opinion that the preliminary sixty days notice can be waived by the unanimous consent of all the stockholders and that such consent may be evidenced by their signatures to the proceedings as in this instance. The certificate forwarded to your office is a substantial compliance with the laws and may, therefore, be properly filed in your Department.

I may add that there are a number of precedents for this course, notably in the case of the Snow Shoe Coal Co. and others, whose certificates of increase are on file in your office.

Respectfully,
ROBT. SNODGRASS,
Deputy Attorney General.

CORPORATIONS—PLACE OF BUSINESS.

Certainty required in application for charter.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 20, 1883.

W. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: I have examined the certificate of incorporation of the "Jarilla Copper Company" and am of the opinion that it should not be incorporated in its present form.

I do not think that clause 7 of sec. 39, act 29th April, 1874, was intended to cover such a roving commission as is here applied for. Besides, this clause must be construed in connection with section 3 which requires "the place or places where its business is to be transacted," to be distinctly set forth, "generally throughout the United States and especially in the territory of New Mexico," does not set forth any place or places with sufficient certainty to answer the requirements of the 3d section.

It should be amended at least by striking out the words "generally throughout the United States and especially," so as to read "the

business of said corporation shall be transacted in the territory of New Mexico, etc.”

Very respectfully,
 ROBT. SNODGRASS,
 Deputy Attorney General.

STATE DEPARTMENT—FEES FOR FILING EVIDENCE OF INDEBTEDNESS.

Same fee as is charged for filing evidence of increase or decrease of capital stock.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, April 13, 1883.

W. S. STENGER, *Secretary of the Commonwealth*;

Dear Sir: I have considered the matter of fee due your office for filing evidence of indebtedness of the West Pittsburgh Gas Company and recording the same, and am of the opinion that the fee is properly chargeable.

The act of 28th March, 1873, (P. L. 53), is undoubtedly but a supplement to the act of 27th April, 1871, and left that act untouched except as to the fees especially named. After the passage of the act of 1873 the fee for filing and recording evidence of increase of capital stock was \$25, and an “equivalent fee for any like services” was allowed by the last clause.

The proceedings, as you will observe, for an increase of indebtedness under the act of 29th April, 1874, are precisely the same as for an increase of capital stock and the services of the Secretary of the Commonwealth in filing and recording are in all respects the same. Hence the same fee is chargeable although the services are not specially designated.

Very respectfully,
 ROBT. SNODGRASS,
 Deputy Attorney General.

DIRECTORS—FEME COVERT.

1. When three directors only are named in the certificate the treasurer cannot be one of the three.
2. A feme covert cannot be one of the five subscribers.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, April 24, 1883.

W. S. STENGER, *Secretary of the Commonwealth*;

Dear Sir: By direction of the Attorney General I have considered the questions submitted by you in the matter of the application of The Potter County Gas Company for letters patent.

I do not deem it necessary at this time to decide the questions suggested inasmuch as the certificate of incorporation is upon its face fatally defective in the two following particulars:

1. The act of 29 April, 1874, requires that the number of directors shall not be less than three, one of whom shall be chosen president. It also provides for a treasurer who, in my opinion, cannot at the same time be a director. You will observe that in this particular case there are three directors named one of whom is also treasurer, thus forming a board to be composed of the president, treasurer and one director. This I do not think should be allowed.

2. The certificate is acknowledged and the affidavit signed and sworn to by Lottie H. Carter, who, I am reliably informed, is the wife of V. Perry Carter, one of the incorporators, as well as a director and treasurer.

This of itself is enough to condemn the certificate, and I think, therefore, that letters patent should not be granted.

Very respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

CORPORATIONS—DISSOLUTION OF BY GOVERNOR'S PROCLAMATION
—Act of April 24, 1874.

Corporations whose charters have been declared forfeited by the Governor under the provisions of section 3 of the act of April 24, 1874, should be treated by the Auditor General as dissolved as of the date of the Governor's proclamation with same effect as if dissolved upon a quo warranto. Taxes accruing prior to such dissolution are collectible by the Commonwealth.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 20, 1883.

JOHN A. LEMON, *Auditor General*:

Dear Sir: I am in receipt of your communication of the 25th ult., inquiring substantially whether it is the duty of your Department to receive and file reports of corporations whose charters have been declared forfeited by the Governor under the provisions of the 3d section of the act of April 24, 1874.

In reply, I beg to say that in my opinion such organizations should be treated by your Department as dissolved as of the date of the Governor's proclamation with the same effect as if the dissolution had been accomplished by proceedings by quo warranto. Such dissolution, however, I do not think, destroyed the right of the Commonwealth to collect any taxes which had previously accrued. In this view the reports of the officers of such corporations made under the revenue act of June 7, 1879, may be received and considered by you for the purpose of ascertaining if any taxes were due at the time of dissolution and of settling accounts against them to that

date. Indeed, I think you are fully authorized to call upon the late officers of such corporations for such reports if you have reason to believe that any taxes are due and can be collected.

I am of the opinion, therefore, that the reports in question may be received and filed in your Department for the purpose indicated, and in order that there may be no recognition of the corporate existence of such organizations, the endorsement of filing should be expressly limited to that purpose.

Very respectfully,
ROBT. SNODGRASS,
Deputy Attorney General.

ELECTRIC LIGHT COMPANIES.

The exclusive privileges conferred by clause 3, section 34, act of 1874, does not apply to companies formed for the purpose of supplying light and heat by means of electricity.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 15, 1883.

W. S. STENGER, *Secretary Commonwealth:*

Dear Sir: By direction of the Attorney General I have the honor to acknowledge the receipt of your communication of the 31st ult., submitting for his opinion the following question:

“Does clause 3, section 34, corporation act of 1874, give to a corporation formed for the purpose of furnishing light and heat to the public by means of electricity an exclusive right within the district or locality covered by its charter?”

The authority for the creation of corporations for the purpose of furnishing light and heat to the public by means of electricity, if it exists at all, is found in the XI division of corporations of the second class as contained in the second section of the act of 1874. No reference is there made to electricity as a source for “the supply of light and heat,” but as that element is now a well known source of light it is assumed to be included in the general terms “light or heat by any other means,” and hence has been construed to authorize the incorporation of electric light companies.

The same general language is contained in the 34th section wherein three distinct classes of corporations are designated, (1) for the supply of water to the public; (2) for the manufacture and supply of gas; (3) for the supply of light or heat by any other means.

Clause 1 of this section provides “where any such company shall be incorporated as a gas company or company for the supply of heat or light to the public, it shall have authority * * * * *
* * * * * to make, erect and maintain the necessary buildings, machinery and apparatus for manufacturing gas, heat or light

from coal or other material and distributing the same, with the right to enter upon any public street, lane, alley or highway for the purpose of laying down pipes, altering, inspecting and repairing the same."

In reading this clause, it will be observed that it confers upon the corporations named authority to enter upon public streets, alleys, etc., for the purpose of laying down pipes, altering, inspecting and repairing the same. It does not authorize such entry for the purpose of erecting poles, stringing wires, or constructing any of the fixtures necessary for the operation of an electric light company. Indeed, it is manifest that the Legislature, in conferring the powers and privileges described, could have had in mind such corporations only as were created to supply and distribute light or heat by means of pipes laid down in public streets, alleys and highways.

Under all proper rules of construction nothing can be taken in favor of the corporation except by express grant or necessary implication, and since the Legislature has used language which, if it does not exclude electric light companies from the operation of this clause, at least does not include them, we are bound to conclude that such corporations are not invested with the powers and privileges here conferred.

Turning now to clause 3, as to the construction of which you have specially inquired, we find it enacted that "the right to have and enjoy the franchises and privileges of such incorporation within the district or locality covered by its charter shall be an exclusive one, * * * * provided that the said corporations shall at all times furnish pure gas and water."

The term "such incorporation," I think, clearly refers to those whose powers and privileges were designated in the preceding clauses, 1 and 2. If, however, as we have already seen, an electric light company is not included in the several classes of corporations thus described, it follows that such a corporation is not included amongst those whose franchises and privileges are exclusive.

This conclusion, I think, would necessarily follow independent of the proviso, which seems to qualify the preceding language and limit it to corporations for the supply of gas and water. In any event an exclusive privilege can only be conferred by express grant and if any uncertainty or ambiguity exists, it must operate against the corporation.

As was said by Chief Justice Black in *Commonwealth v. Erie and North East R. R. Co.*, 3 Casey, 351, "if you assert that a corporation has certain privileges show us the words of the Legislature conferring them. Failing in this you must give up your claim, for nothing else can possibly avail you. A doubtful charter does not exist, because whatever is doubtful is decisively certain against the corporation."

Whilst this language is applicable to the construction of all charter contracts, it is especially so where exclusive privileges are claimed or asserted. In the present case I am of the opinion that there can be no doubt as to the construction of the act in question, but even if there were a doubt, it must be resolved against the corporation claiming the exclusive privilege.

The conclusion which I have thus reached, that electric light companies can claim no exclusive privileges under clause 3, section 34, act of 1874, will do no injustice to those corporations, since, if I am in error their respective rights can be readily settled by proper proceeding in the courts, to which tribunals they should be remanded to settle any conflicts in this regard and which may arise between them.

Very respectfully yours,

ROBT. SNODGRASS,
Deputy Attorney General.

THE ACT OF JUNE 13, 1883, KNOWN AS THE "CORPORATION AMENDMENT ACT," CONSTRUED.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 28, 1883.

W. S. STENGER, *Secretary of the Commonwealth*:

Dear Sir: In the matter of the application of the Pennsylvania Telephone Company for an amendment to its charter, I beg leave to submit the following opinion:

The question involved is one of considerable importance. In its relation to the Pennsylvania Telephone Company it requires us to determine whether an extension of its territorial limits to counties not named in its original charter is an improvement, amendment or alteration within the meaning of the act of June 13, 1883.

This corporation claims to hold its charter under the supplementary act of May 1, 1876, which extended the corporation act of 1874 to the erection of corporations "for the transaction of any business in which electricity over or through wires may be applied to any useful purpose."

By the third section of the act of 1876 referred to, the charter of such corporations must state:

First. In what counties in this State it is proposed to carry on business.

Second. In what other states it is proposed to carry on business.

The purpose of these requirements was manifestly to fix the territorial limits within which the corporation might exercise its franchises. Accordingly, this corporation described its objects to be "the erection, construction, purchasing, leasing, maintaining and operating of telephone lines and exchanges in and through the counties of

Lancaster, York, Adams, Dauphin, Cumberland, Franklin, Fulton and Perry, in the State of Pennsylvania, with the right to make the connections for the purpose of telephonic communications with other similar lines in other counties of said State as well as in other states."

It thus declared its territorial limits to be the counties named and its right to construct, operate, purchase or lease telephonic lines within those counties became the subject matter of its contract with the State. It now seeks to extend its limits by adding the counties of Lebanon, Berks, Schuylkill, Carbon, Lehigh, Monroe and Northampton under, as it is claimed, the provisions of the act of June 13, 1883.

The question, therefore, to be determined is whether the addition of these counties to its territorial limits is "an improvement, amendment or alteration" of its charter within the meaning of that act.

In the first place, it is to be observed that all charters of private corporations are to be strictly construed and that the corporation can take nothing by its grant except what is given in express terms or by necessary implication. The act does not, in express terms, authorize the enlargement of the territorial limits of corporations named, and hence, if such enlargement or extension is warranted at all, it must be because it is necessarily implied in the word "improvement, amendment or alteration."

Our inquiry is consequently narrowed to the ascertainment of the meaning of these words as applied to the construction of the charter of this corporation.

Now, it is a well-settled rule of construction that the words of a statute, unless there be some all prevailing reason to the contrary, are to be taken in their natural and ordinary signification. An improvement is defined to be the act of improving or bettering something already existing. When we speak of improving a farm or a house, we do not mean an increase of the acreage of the farm or the construction of an addition to the house. We mean simply the betterment of the farm already defined as to boundaries or of the house already erected. So also, when we speak of the improvement of a charter we obviously mean the improving or bettering of the charter already granted, and if the operations of such charter are confined to prescribed limits, we mean its improvement within those limits. Hence, we think that the addition of territory to a limited charter is not an improvement within the meaning of this act.

Is it an amendment? To amend a thing, as defined by Webster, is to change it in any way for the better, to remove what is erroneous, superfluous, faulty and the like; to supply deficiencies, to substitute something else in place of what is removed. The word is synonymous with to amend, correct, reform, rectify. An amendment, therefore, is a change or alteration for the better, a correction of faults or errors, an improvement, a reformation, an emendation.

It necessarily implies something upon which the correction, alteration, improvement or reformation can operate, something to be reformed, corrected, rectified, altered or improved. In other words, that which is proposed as an amendment must be germane or relate to the thing to be amended. In respect to the amendment of a charter of incorporation, the amendment must relate to the charter as originally granted and if it does not correct, improve, reform, rectify or alter something in the original charter, it is not properly speaking an amendment to that charter.

In the present case it is not proposed to correct or reform anything in the original charter, but simply to enlarge or extend its territorial limits. Is such an extension an amendment within the meaning of the word? Does it relate to anything in the original charter? Is it germane to or in accord with the purposes of the charter? Neither of these inquiries is, I think, free from doubt, and if not the doubt must be resolved against the corporation. Hence, I am led to the conclusion, after a very careful consideration, that the proposed extension of this charter to new territory is not an amendment within the fair meaning of the act of 1883. Of course, this conclusion relates only to the case in hand. Whether it would also apply to a corporation whose territorial limits are not prescribed in its charter, I do not pretend to decide. I am only construing the act in its relation to charters which are thus prescribed, the extension of which into new territory, by general amendment, ought not to be allowed except under clear warrant of law.

I do not deem it necessary to consider particularly whether the proposed amendment is an alteration, within the meaning of the act, since it will scarcely be claimed that it falls within that designation alone. It does not pretend to alter in any proper sense any article or condition in the original charter, and if not it cannot be said to be such an alteration as is contemplated by the act.

Moreover, I think a careful examination of the whole act will show that this is the proper construction. It requires the "improvement, amendment or alteration" to be "in accord with the purposes of the charter," and "does not permit any change in the objects and purposes" of the corporation, and unless it is clear that the proposed amendment is in accord with the purposes of the original charter, and does not operate in any manner to change the objects and purposes of the corporation, we are bound to reject it.

Upon the whole, therefore, I am of the opinion that the proposed amendment to the charter of the Pennsylvania Telephone Company is not an improvement, amendment or alteration, within the meaning of the act of June 13, 1883, and, consequently, should not be approved or recorded in your department.

Very respectfully,

LEWIS C. CASSIDY,
Attorney General.

CORPORATIONS TAKING PROPERTY NECESSARY FOR THEIR ORGANIZATION AND BUSINESS.

1. Can only take such property to the value of ninety per cent. of their capital stock.
2. Cannot create a fixed indebtedness by the terms of their charter.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 30, 1884.

W. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: I have carefully considered the matters suggested by the application of the Hempfield Coal Company for letters patent, and do not think they should be granted upon the charter presented for two reasons:

1. Because it practically authorizes the issuance of full paid stock to an amount exceeding the entire capital.
2. Because it provides for the creation of a debt in a manner not authorized by law.

The authority for issuing full paid stock in payment of "such real and personal estate, mineral rights, patent rights and other property as is necessary for the purposes of the organization and business" of an intended corporation is found in the seventeenth section of the Corporation Act of 1874, as amended by the act of April 17, 1876. Construed in harmony with the requirement that ten per centum of the capital stock must be paid in cash to the treasurer of the proposed company before letters patent can issue, this section has always been held to limit the issuance of full paid stock to ninety per centum of the capital.

Indeed, this is a necessary implication from the language of the act itself, since the authority to issue full paid stock "to the amount of the value" of the property taken "in payment thereof," is necessarily exhausted when the limit of capital is reached. But if this is true, the converse must also be true, for it would be absurd to speak of limiting the issue of full paid stock by the value of the property taken without also limiting the value of the property by the amount of stock applicable to the payment thereof.

It must also be remembered that the statute makes no other provision for the payment of property taken for the purposes of organization. The corporation can take nothing by inference in this regard, and it follows, therefore, that it can take by its charter for the purposes of organization such property only as it can pay for in the manner provided by the statute.

Further illustrations of the necessity of this ruling might be given, but enough has been said to indicate our opinion that this intended corporation, for the purposes of organization, can acquire title to such property only as it can, under the law, pay for in full paid stock. The value of the lands proposed to be taken must, therefore, either be reduced to \$225,000 or the capital stock must be increased so that

ninety per centum will equal the valuation of \$295,000 put upon the property, the title to which it is proposed to acquire.

The second objection to this charter is even more serious than the first. A careful examination of the corporation statutes will fail to disclose any authority for this method of creating fixed corporation indebtedness. The Constitution, as well as the act of 1874, points out the only method by which such a debt can lawfully be created. Here there is no pretence of a compliance with any of the provisions of either the Constitution or the act of 1874 in that regard. Indeed, there could not be any such compliance. As yet there is no corporation, there is no board of directors and there are no stockholders. The corporation is simply in process of organization, and until it is fully formed and letters patent issued it is incapable of doing the acts and things required as conditions precedent to the legitimate creation of fixed indebtedness.

I have not overlooked the fact that both the Constitution and the act of 1874 seem to refer only to an increase of indebtedness, in the provisions to which I have alluded. I am unwilling, however, to give these statutory provisions such a narrow construction as would limit their operation to a technical increase of indebtedness. I think they were intended to include the creation of any fixed indebtedness, whether it be original or an increase. If a technical increase only is meant, then the statute may be entirely nullified by the creation of an original indebtedness large enough to avoid the necessity of any subsequent increase.

Upon this subject, however, I need not say any more. I am clearly of the opinion that the method here attempted for the creation of a corporation debt is without warrant of law, and even if approved by the Executive Department and letters patent issued, such action would confer no validity upon the mortgage and bonds, which the board of directors are required to execute and issue. In its present form, therefore, I do not think this charter should be approved or letters patent issued.

Very respectfully,
ROBERT SNODGRASS,
Deputy Attorney General.

RAILWAY POLICE—APPOINTMENT OF.

The act of February 27, 1865, authorizing the appointment of railway police does not apply to railroads in process of construction where the route has been located and work commenced but no tracks laid.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 7, 1884.

W. S. STENGER, *Secretary of the Commonwealth.*

Dear Sir: On behalf of the Attorney General, who is absent from

the city, I beg to acknowledge the receipt of your communication of this date, inquiring "whether or not the act of 27th February, 1865, P. L. 225, authorizing the appointment of 'railway police' applies to railroads in process of construction," where the route has been located and work commenced but no tracks laid.

In view of the urgency of your inquiry, I have, in the absence of the Attorney General, carefully examined and considered the question submitted, and am of the opinion that the act of 1865 does not contemplate the appointment of "railway police" under the circumstances stated.

A brief reference to the act will, I think, make this plain. By the first section the right to apply for the appointment of such police is limited to corporations "owning or using" railroads in this State.

By the third section, the policemen so to be appointed must qualify before the recorder of some county "through which the railroad * * * shall be located," and must record their commissions "in every county through or into which the railroad for which they are appointed may run." Upon qualifying in this manner they shall possess and exercise all the powers of policemen "in the several counties in which they shall be authorized to act as aforesaid," in respect to the commission of offences "upon and along said railroads."

The use of the word "railroad" in all of these instances is clearly in the sense of an operated road. Especially is this so with regard to the first section, since it is impossible to conceive of a corporation "owning or using a railroad" which has no existence except in the survey or location of its route.

Upon the whole, therefore, I am of opinion, as already indicated, that this act of 1865 does not warrant the appointment of "railway police" in the case to which your communication refers and that, if necessary, resort must be had to the authorities of Franklin county for the preservation of the peace at the localities named.

Very respectfully,

ROBERT SNODGRASS,
Deputy Attorney General.

EXTENSION OF THE TERRITORIAL LIMITS OF A WATER COMPANY UNDER THE "CORPORATION AMENDMENT ACT OF 1833."

1. The territorial limits may be extended.
2. Such extension, however, to be reasonable under the circumstances of each individual case.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 21, 1884.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: By direction of the Attorney General, I have carefully considered the proposed amendment to the charter of "the Sayre

Water Company," and am of the opinion that it is within the provisions of the corporation amendment act of 1883 for reasons which are fully set forth in the following opinion.

This corporation was originally chartered as a water company under the corporation act of 1874 for the purpose of "supplying water to the public of the villages of Sayre, Athens and vicinity in the township of Athens, Bradford county." The village of Athens has since become a borough and it is now proposed to amend the clause of the charter quoted so as to read as follows: "Said corporation is formed for the purpose of supplying water to the public of the borough of Athens, the village of Sayre and vicinity, in the township of Athens, Bradford county, Pennsylvania, including that portion of said township lying between the Susquehanna river and the Chemung river, and the line between New York and Pennsylvania, excepting the borough of South Waverly."

The question suggested by this application, as I understand it, is whether the proposed amendment is within the provisions of the act of 1883.

The purpose of the amendment is manifestly either to define more clearly the territorial limits within which the corporation may exercise its franchise or to extend such limits beyond that which would fairly be indicated by the word "vicinity." In either case, it is practically an extension, since the word "vicinity" would scarcely be construed to cover so much territory as is included within the boundaries specified in the amendment. Assuming then that the proposed amendment involves an extension of the territorial limits of this corporation rather than a definition of the word "vicinity," we are to inquire whether a water company can thus extend its charter, and if so to what extent.

In view of the exclusive privileges conferred upon this class of corporations, I concede that such an extension ought not to be allowed unless under legislative authority expressly granted or resulting from a necessary implication. Now, it will be observed, that the act in question contains no such express authority, and if it rested alone upon the interpretation of the words "improve, alter or amend," I should have no hesitation in recommending a disallowance of the amendment. We find, however, in the third section, this proviso: "That nothing herein contained shall authorize the amendment, alteration, improvement or extension of the charter of any gas or water company so as to interfere with or cover territory previously occupied by any other gas or water company." What are we to understand by this language? How shall we interpret it? Clearly, it must be construed, if possible, in harmony with the body of the act, and if not irreconcilably repugnant, due effect must be given it. As an index to the legislative intention it is unmistakable, at least so far as it re-

lates to gas and water companies, and if it means anything it must mean that such corporations may amend their charters by extension so as not "to interfere with or cover territory previously occupied by any other gas or water company."

Realizing the importance of opening the door to this character of amendments, I have looked in vain for some other consistent interpretation of this language and finding none, I have been unable to reach any other conclusion than that already indicated, namely, that this corporation has the right to extend its territorial limits by an amendment under the act of 1883.

If I am correct in this conclusion, it only remains to determine to what extent this right may be exercised. To concede a right of unlimited extension would be an unwise as well as a dangerous concession. Hence, I think that such an extension as may be reasonable under the circumstances of each individual case is all that was intended by the Legislature or that can properly be allowed. What might be reasonable in one case might be quite unreasonable in another. Hence, I would establish no fixed rule in this respect, but would leave each case to depend upon its particular circumstances as they may arise.

In the case in hand, I have gone to considerable trouble to locate, as nearly as possible, the proposed extension. It covers, in connection with the original charter, altogether about one-eighth of the township of Athens, extending north and south about five miles and east and west about four miles, including the borough of Athens and village of Sayre, and excluding the borough of South Waverly. The borough of Athens lies about two and a half miles south of the New York State line and covers, at the point of its location, all the territory lying between the Susquehanna and Chemung rivers. The village of Sayre lies about a mile and a half north of Athens, while the borough of South Waverly is situated in the extreme north west corner of the territory described. A reference to any good map of Bradford county twenty-fifth day after the election to issue commissions to such persons as appeared to be duly elected.

It thus appears that the proposed extension, although seeming by its description to include a wide area, in fact covers only a comparatively small extent of territory. Indeed, I am not sure that it would not be covered by a reasonable interpretation of the word "vicinity" in its relation to the original charter. However that may be, I am at least clear that, considered as an extension, it is not unreasonable in the limits which are fixed, especially as there are no other villages or towns within those limits which are likely to induce the formation of other water companies.

Nor do I think that it is objectionable because the territory is particularly described. This, I think, ought to be required in every such extension, as a criterion to its reasonableness. An extension in any

case without fixed limits or boundaries would be seriously objectionable.

Upon the whole, therefore, considering this application without reference to any other case, but upon its own merits alone, I think the proposed amendment is within the purview of the act of 1883 and ought, therefore, to be allowed.

Very respectfully,
 ROBERT SNODGRASS,
 Deputy Attorney General.

PUBLIC OFFICERS—ALDERMEN AND JUSTICES OF THE PEACE—ACCEPTANCE OF OFFICE.

Every person elected to either of said offices must file his acceptance with the prothonotary of the proper county within thirty days after the election, otherwise, he shall be held to have declined said office.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, April 17, 1884.

WM. S. STENGER, *Secretary of the Commonwealth.*

Dear Sir: On behalf of the Attorney General. I have the honor to acknowledge the receipt of your communication of the 16th inst., submitting for his opinion the following question, viz:

“Within what time must every person elected to the office of alderman or justice of the peace file an acceptance of said office with the prothonotary of the proper county?”

In reply, I beg leave to submit the following opinion:

By the act of June 21, 1839, the election officers conducting elections for aldermen and justices of the peace were required to make duplicate returns of such elections, one of which was to be immediately transmitted to the Governor by the proper constable, and the other to be filed in the prothonotary's office of the proper county, and a certified copy forthwith sent to the Secretary of the Commonwealth; upon the receipt of these returns the Governor was required on the twenty-fifth day after the election to issue commissions to such persons as appeared to be duly elected.

Thus the law stood until the act of April 13, 1859, which repealed that portion of the act of 1839 requiring constables to send copies of the election returns to the Governor, and in lieu thereof required the person elected, within thirty days after his election, to give notice of his acceptance of the office to the prothonotary of the proper county, whose duty it thereupon became to inform the Secretary of the Commonwealth of such acceptance.

Then came the act of March 22, 1877. It did not, however, as I read it, make any change with respect to the time within which the person elected was required to give notice of his acceptance of the office

to the prothonotary. It simply prescribed the matters which his notice of acceptance should contain.

In other words, it provided substantially a form of notice with which any person elected to the office of alderman or justice of the peace must comply but it left untouched the other requirement with respect to the time within which the notice of acceptance was to be given.

I am therefore clearly of the opinion that every person elected to either of said offices must file his acceptance with the prothonotary of the proper county within thirty days after the election. Otherwise he shall be held to have declined said office.

Respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

PUBLIC OFFICERS—COMMISSION OF JUSTICE OF THE PEACE FOR A
NEW WARD IN BOROUGH OF POTTSTOWN.

An office cannot in any case be created by implication, and if a borough or any of its legally constituted wards is entitled to an additional justice, it must be under some express enactment, and in the absence of such authority the presumption is that it does not exist.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 10, 1884.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: On behalf of the Attorney General, I beg leave to acknowledge the receipt of your communication of the 3d inst, with inclosures, requesting an opinion "whether a commission as justice of the peace should issue to Jonathan M. Neiman for the Third ward of the borough of Pottstown, Montgomery county."

The title of Mr. Neiman to the office to which he claims to have been elected will depend upon the construction of the several special acts of Assembly in relation to the borough of Pottstown, as modified by the general laws in respect to the election of justices of the peace.

Under the special acts of 1847, 1848 and 1871, the borough of Pottstown constituted three wards, each of which by express legislative authority was entitled to elect one justice of the peace. In this respect these acts are unquestionably modified or repealed if you choose the act of 1839 so far as it would otherwise have related to the borough of Pottstown.

So long, therefore, as this division in respect to wards, remains unchanged the number of justices of the peace was absolutely fixed and limited to one for each ward. Upon the division, however, of the middle ward thus constituted into the Second and Third wards under the provisions of the acts of 1874, 1877 and 1878, it is claimed that the

number of justices of peace was ipso facto, increased to four, to correspond with the number of wards. The precise grounds of this claim do not appear in the papers submitted, but I assume that it is based upon the supposed force of the act of 1871.

Now it is proper to observe that borough charters are not contracts in the sense that they cannot be altered or amended by the Legislature at pleasure.

Since the adoption of the Constitution of 1873 all amendments of borough charters must be effected by general laws. The act of 1874, and the supplements of 1877 and 1878 were passed under this constitutional requirement. They are applicable to all borough charters and necessarily altered all special charters, with which they are in conflict.

Reading the charter of the borough of Pottstown in connection with the general statutes, I am unable to find any express authority for an increase of the number of justices of peace. I take it that an office cannot in any case be created by implication and if this borough or any of its legally constituted wards is entitled to an additional justice it must be under some express enactment and in the absence of such authority the presumption is that it does not exist.

Independently of this I think the act of 1878 clearly implies that a division such as this does not of itself increase the number of justices of the peace. Whilst providing for the election of members of councils from each ward, it classes justices of the peace with those offices who are to be elected "by the concurrent votes of each ward," and thus necessarily forces the conclusion that no increase by wards was intended.

It is not a question of the repeal of the act of 1839 by the act of 1851, as suggested by the counsel for Mr. Neiman. It is simply an inquiry whether there is any express legislative authority for the election of an additional justice of the peace for this borough and after a careful consideration of the whole question and an examination of all the acts of Assembly bearing upon it, I am of the opinion that there is not, or at least that there is sufficient doubt to justify you in refusing the commission applied for.

Respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

FOREIGN INSURANCE COMPANIES—STATEMENTS OF.

Foreign insurance companies are not required to file statements with the Secretary of the Commonwealth under the act of April 22, 1874, such companies being under the sole control of the Insurance Department.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 23, 1884.

W. S. STENGER, *Secretary of the Commonwealth*:

Dear Sir: On behalf of the Attorney General, I beg to acknowledge the receipt of your communication of the 13th inst., submitting for his opinion the following questions:

1. "Does the act of April 22, 1874, require foreign corporations to file in this office a statement for each agent appointed and office established in this State?"
2. "Does said act include foreign insurance companies or are they under the sole control of the Insurance Department?"
3. "If insurance companies are included in the provisions of the act of April 22, 1874, has subsequent legislation repealed said act as to them?"

Your first inquiry relates to the scope and purpose of the act of 1874. I think it was intended, in a general way, to prohibit foreign corporations from transacting business in the Commonwealth without first establishing an office or "known place of business," and appointing a proper agent upon whom legal process might be served. The purpose, in any given case, is consequently answered when an agent has been appointed and an office located in the manner prescribed by the act.

There is nothing, however, which requires the corporation after it has complied with the act to file in your office an additional statement upon the appointment of each additional agent. I take it that when the corporation has qualified itself to transact business within the Commonwealth it may lawfully extend its operations through new or additional agencies without any violation of the act. Indeed, the act as a whole seems to indicate very clearly that all its requirements are conditions precedent to the legal transaction of business, and if so, it of course follows that a "statement for each agent appointed or office established" is not required, but that when it has filed the statement prescribed by the second section of the act it may transact business by as many agents as it pleases, without being subject to the penalties provided by the third section.

Again, I do not think that this act necessarily includes foreign insurance companies. Whilst it is general in its terms, upon the ordinary rules of construction it could not be held to include those corporations for the licensing and regulation of which a special method has previously been provided by the Legislature. By the act of April 4, 1873, establishing the Insurance Department, it is made the duty of the Insurance Commissioner "to see that all the laws of this State respecting insurance companies and the agents thereof are

faithfully executed." Foreign insurance companies are especially under his control and not only are they prohibited from doing business without his certificate of compliance with the insurance laws, but he is fully authorized either to temporarily suspend the entire business of such corporations or revoke their certificates altogether whenever in his judgment the interests of the people so require.

It is clear, then, that foreign insurance companies cannot lawfully transact any business within the State without first complying with the act of 1873.

Whatever legal business status they may acquire within the State is therefore by virtue of that act. A compliance with the act of 1874 would neither authorize the transaction of any insurance business here nor would it add anything to the authority conferred by the act of 1873, or the supplement of 1876.

Hence, I conclude that foreign insurance companies, so far as their authority to do business within the State is concerned, are under the sole control of the Insurance Department, to which they are responsible and under the operation of which alone they can acquire any authority to transact insurance business within this State.

This conclusion renders it unnecessary to answer specifically your third inquiry. If such corporations are not included within the provisions of the act of 22 April, 1874, it is not material to inquire whether it has been repealed as to them or not.

Very respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

PUBLIC OFFICERS—COMMISSION OF ALDERMAN PENDING AN ELECTION CONTEST.

The right of Chief Executive to commission is not taken away pending a contest which has been removed to Supreme Court by writ of certiorari, yet its effect is to prevent the applicant from exercising any authority under the commission.

OFFICE OF THE ATTORNEY GENERAL.

W. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: On behalf of the Attorney General, I have the honor to acknowledge the receipt of your communication of the 3d inst., with inclosures, requesting his opinion whether or not the Governor should issue a commission to Wesley Johnson as alderman of the Fourth ward of the city of Wilkes-Barre, pending a contest which has been removed to the Supreme Court by a writ of certiorari.

By reference to the papers submitted with your inquiry, I find that the contest in the court below has been terminated by quashing the petition of the contestants, although it does not appear upon what grounds that action was based. The effect of the certiorari, however, was to remove the record of the case to the Supreme Court and as

it was the appropriate writ for that purpose, it is entitled to all proper respect at the hands of the Executive.

That it did not take from him the power to issue a commission is the doctrine of all the cases. See:

Carpenter's Appeal, II Weekly Notes of Cases. 162.

Luzerne County v. Trimmer, IX idem. 376.

Ewing v. Thompson, 7 Wright. 372.

In the last case Justice Strong said: "But, while we do not hold that the certiorari served on the court took away from the Executive the power to issue the commission to the defendant after the decree correcting the election returns, a power which the decree unimpeached gave him, we do hold that the service of the writ affects the defendant. He was a party to the contest in the quarter sessions, not in name, but in substantial truth. It was his right which was in controversy, and his were the fruits of the decree. Upon him, therefore, the certiorari may operate. When it was served, and the record was removed he had not begun to execute the duties of the office or to act under the decree of his commission. His title to his commission is not taken away, but his right to proceed under it is suspended until the final decision under the revisory writ."

Justice Woodward, in a concurring opinion in the same case went farther, and said: "But if the Governor was informed of the writ of certiorari, had he a right to disregard it? My firm conviction is, that he had not, that he was just as much bound to respect it as any other citizen of the Commonwealth."

It seems, therefore, that although the certiorari does not operate to take away from the Governor the power to issue a commission in the present case, yet its effect is to prevent the applicant from exercising any authority under it, even if issued, until the final decision of the Supreme Court. In this aspect of the case, the commission would be of no use to Mr. Johnson, and if so, it would be a work of supererrogation on the part of the Governor to issue it.

Under all the circumstances of the case I conclude, therefore, that the commission applied for should not be issued, although I have no question as to the power of the Governor to do so, if it would avail to supply the vacancy now existing in the office in question.

Very respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

PUBLIC OFFICES—VACANCIES—WHEN FILLED.

An associate judge of Warren county having resigned to take effect August 4, 1884: Held, That under section 25, article 5, of the Constitution, the vacancy cannot be filled at the succeeding general election on November 4, 1884, but must be filled at the general election of 1885.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 4, 1884.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: On behalf of the Attorney General, I have carefully examined and considered the matter of the commissioning of Rufus P. King to be associate judge of Warren county, vice Hon. George Bates, resigned, and am of the opinion that the commission to be issued should run until the first Monday of January, 1886. The resignation of Judge Bates by its terms was intended to take effect on the 4th day of August ultimo although it was not received and filed in your office until the 7th of that month.

The first general election thereafter will take place on the 4th day of November next. Under these facts, a possible question might arise as to the date on which the resignation actually became operative, but in this inquiry it is not material, whether it took effect on the 4th or the 7th of August, since in either case, as we understand the constitutional provision relative to filling judicial vacancies by appointment, the result will be the same.

Section 25 of article 5 of the Constitution provides that "any vacancy happening by death, resignation or otherwise, in any court of record, shall be filled by appointment by the Governor, to continue till the first Monday of January next succeeding the first general election which shall occur three or more months after the happening of such vacancy."

Here it is obvious that if the first general election occurs within three months after the happening of the vacancy, it cannot be filled at that election.

In the present case, assuming that the office became vacant on the 4th of August, the requisite three months will not have fully expired until the 5th of November. The use of the word "after" clearly implies that in computing the time, the day upon which the vacancy happens must be excluded, and if so, the earliest day upon which an election could be constitutionally held for the office in question would be the 5th of November.

That this is the correct construction of this clause becomes apparent by comparing it with the 8th section of article IV. There it is provided that vacancies in elective offices shall be filled "at the next general election, unless the vacancy shall happen within three calendar months immediately preceding such election, in which case the election for said office shall be held at the second succeeding general election."

If the case in hand came within the operation of this clause, there could be no room for doubt as to when the election should be held, because it could not be pretended that the vacancy had not happened "within three months immediately preceding" the first general elec-

tion. It cannot be doubted, however, that these provisions were intended to be harmonious, and to provide a uniform system in respect to all appointments by the Governor to fill vacancies in elective officers, whether arising under the IV or V article of the Constitution.

The only difference is in the form of expression, the constructive result being the same in both cases, so that, whether as in the one case, the vacancy happened "within three months immediately preceding" the election, or, as in the other case, the election occurs within three months after the vacancy happens, the time for holding the election is the same in both. Any other construction would lead to very great confusion.

Without, therefore, disposing of the question suggested as to the date when the resignation of Judge Bates became operative, I am clearly of the opinion that, in any event, the appointment of his successor will continue, under the Constitution, until the first Monday of January, 1886, and that no election can be held to fill the office until the general election of 1885.

Respectfully,
 ROBT. SNODGRASS,
 Deputy Attorney General.

EXTENSION OR RENEWAL OF THE CHARTER OF A CORPORATION FORMED UNDER THE JOINT TENANCY ACT OF APRIL 21, 1854.

Such charter should be extended under the general corporation act of 1874.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, September 13, 1884.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: By direction of the Attorney General I have carefully considered the question involved in the application of the Warrior Run Mining Company to file a certificate extending its charter under the provisions of the act of March 27, 1865, (P. L. 34), and beg to submit the following opinion:

This corporation was chartered on the 29th of December, 1864, under the joint tenancy act of April 21, 1854, which limited its corporate life to the period of twenty years. The certificate to extend its charter for a further term of twenty years has been drawn under the provisions of the 7th section of the supplementary act of 1865.

The act of 1854, together with all its supplements, was expressly repealed by the general corporation act of April 29, 1874, which provides for re-chartering corporations of the class to which this one belongs.

It is claimed, however, that this corporation is not subject to the provisions of the act of 1874, because the act of 1865, having be-

come a part of its charter, it could not be repealed as to it without impairing the obligation of its charter contract and that it is consequently entitled to renew its charter under the act of 1865, notwithstanding the repealing act of 1874.

Without reference to any question involving the power of the Legislature to repeal the act of 1865, in its relation to all charters granted under the act of 1854, it seems to me that there is one element in this particular case which is decisive of the matter in hand. It will be observed that this corporation obtained its letters patent on the 29th day of December, 1864, three months before the passage of the act of 1865. Hence, although this act on its passage did become part of the corporation's charter, it was subject to repeal at any time. It was not based upon any new or additional consideration and was consequently a mere gratuity which could be withdrawn at the pleasure of the Legislature. This is the settled doctrine in Pennsylvania, see *Johnson v. Crow*, 6 Norris 184, *Tucker v. Ferguson*, 22 Wallace, 154.

The case of the Nescopee Coal Company, in which a reduction of capital stock was permitted under the act of April 10, 1862, (P. L. 403), is not in point. There the act under which the right to reduce was exercised, was passed before the charter of the corporation was granted; here the act in question became a law after the letters patent were issued.

Besides, there is a material difference between the exercise of a substantial right as a part of the charter, and a renewal or extension of the charter itself.

It is unnecessary, however, to discuss this question, since, as I have already intimated, this corporation is subject to the provisions of the act of 1874, without reference to its effect upon other corporations of the same class, and therefore cannot legally extend or renew its charter under any other authority.

Respectfully,
ROBT. SNODGRASS,
Deputy Attorney General.

See opinion of Dec. 3, 1884.

COLLATERAL INHERITANCE TAX—REFUNDING OF BY THE STATE TREASURER—Act of June 12, 1878 (P. L. 206).

By the act of 1878 the State Treasurer is authorized to refund collateral inheritance tax erroneously paid on satisfactory proof of such erroneous payment. He is the sole judge of the merits of each case and his power should be liberally exercised when mistake has been honestly made.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 24, 1884.

WM. LIVSEY, *State Treasurer*:

Dear Sir: I have considered the application of John Willamen, executor of Gideon Hans, deceased, under act of June 12, 1878, (P. L. 206), to refund collateral inheritance tax, alleged to have been erroneously paid, and am of opinion that, if you are satisfied that a mistake has been honestly made, there can be no objection to refunding the amount claimed.

Prior to the passage of the act of 1878, there was no remedy, in cases of erroneous appraisement or payment of collateral inheritance tax after the expiration of the time allowed for an appeal, except by resort to the Legislature.

To meet this difficulty and afford a more convenient remedy, the State Treasurer is authorized by this act to refund tax erroneously paid, "on satisfactory proof rendered to him by the register of wills of such erroneous payment." Under this authority the State Treasurer becomes the sole judge of the merits of each case as it comes before him, and in all cases where there appears to have been an honest mistake, I think his power in this regard should be liberally exercised.

In the present case there is no doubt but that the appraisement of November 1, 1874, was erroneous. The life estate of the widow should have been deducted, under the act of April, 1849, and the remainder only have been appraised. The tax, however, is charged upon an appraisement of the whole estate without reference to the life estate of the widow, and is to that extent too high.

What value would have been given to the life interest on November 1, 1874, we have no means of ascertaining, but it is fair to assume that it would not have been less than that indicated by the six per cent. interest charged upon the appraised value of the taxable estate. Under the Carlisle Tables, estimating the expectation of life of the widow to have been ten years (the time during which she actually survived), the appraised value of the taxable estate in remainder would have been about \$4,100. This would yield a tax of \$205, which with interest for ten years at six per cent. per annum would amount to \$328.00, and indicates about the amount of tax to which the Commonwealth is actually entitled.

It is clear then that if the appraisement had been legally made the Commonwealth would at least not have realized more tax than it is now proposed to concede in this application, and I think that the amount claimed should, therefore, be refunded if you are satisfied "by satisfactory proof" that a mistake has been honestly made and that the failure to appeal from the appraisement is attributable

to no fault of the collateral devisees on whose behalf this application is made.

Respectfully,
 ROBT. SNODGRASS,
 Deputy Attorney General.

EXTENSION OR RENEWAL OF THE CHARTER OF A CORPORATION FORMED UNDER THE JOINT TENANCY ACT OF APRIL 21, 1854.

Question re-considered, and company allowed to extend its charter under act of March 27, 1865.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, December 3, 1884.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: By direction of the Attorney General, I have reconsidered the matter of the extension of the charter of the Warrior Run Mining Company, under act of 27th March, 1865, (P. L. 34), and whilst I see no reason for changing the views expressed in my communication of Sept. 13, as to the general principle involved, yet in the light of the facts subsequently laid before you by counsel, I am of the opinion that the certificate of extension in this particular case, ought to be filed in your office for the reasons indicated below.

The grounds upon which the right to extend the charter of this company is claimed, are as follows:

First. Because, although chartered Dec. 29, 1864, the corporation did not acquire its leasehold estate until July 21, 1865.

Second. Because it has negotiated loans based upon the adoption of the act of 27th March, 1865.

Third. Because it has increased its capital stock under the provisions of that act.

In considering these positions I do not deem it necessary to refer particularly to the legal questions raised and discussed by counsel in their brief, since, as I understand it, the right to the extension of this charter must depend upon the single question, whether under the facts submitted, there is involved such a consideration as will render the act of 1865 impealable as to this corporation.

In developing this inquiry, I beg to say in the first place, that I do not see much force in either the first or second propositions submitted. The charter of the company was in the first instance, based upon the joint ownership of a lease to Abel Barker and others, and the corporation having obtained the charter upon that ownership, it will scarcely be permitted now to say that it did not then own the lease, for the purpose of avoiding the effect of subsequent legislation which would otherwise be applicable to it. If the reliance was upon this fact alone, I should have no hesitation in saying that it was insufficient to raise the consideration sought for.

Nor do I consider the suggestion that loans, subsequently authorized, were based upon the adoption of the act of March 27, 1865, of much importance.

There were two supplements of March 27, 1865, to the joint tenancy act of 1854, but to which one this suggestion applies does not appear. It cannot, however, apply to the one under which the extension of this charter is claimed, since that act contains no provision or authority whatever in respect to loans.

The reference is no doubt to the act printed on page 37, P. L. 1865, which has no connection with that appearing on page 34, and consequently can have no bearing upon the question in hand, because it treats of an entirely different subject and may stand independently of the other act.

The third point, however, is more important. The act in question provides for an increase of capital upon the acquisition by the company of "other real or personal estate than is subscribed in the original certificate." Such acquisitions it appears, were made by this company on November 20, 1865, and the capital stock was accordingly increased from \$70,000 to \$120,000, upon which increase one-half of one per cent. of bonus was paid to the Commonwealth. This increase of capital under authority of the act of 1865, under which the right to extend its charter is also claimed, together with the payment of the bonus of one-half of one per cent. due thereon, constitutes, I think, a sufficient new or additional consideration to take it out of the rule laid down in *Johnson v. Crow*, and if so, the corporation is entitled to exercise whatever rights it acquired under that act.

This conclusion, it will be observed, is based upon the theory of a sufficient consideration moving to the Commonwealth under the particular facts presented and does not in any way conflict with the views expressed in the opinion of September 13. Upon the face of the papers as then presented, I was and am still clearly of the opinion that any extension or renewal of charter must be under the act of 1874, but in the light of the facts now before me, as well as to avoid the possibility of injustice to this corporation, I think the certificate of extension which appears to be in proper form, should be filed in your office.

Respectfully,
ROBT. SNODGRASS,
Deputy Attorney General.

BOARD OF MINE INSPECTORS—SALARIES AND EXPENSES OF EXAMINATIONS BY—Act of March 3, 1870 (P. L. 1).

The Commonwealth is liable for the salaries of mine inspectors appointed under the act of 1870, and for all expenses of carrying the act into execution except the per diem pay of the examiners, which the several counties pay. The State Treasurer is the proper judge of the propriety of such expenses.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 6, 1885.

WM. LIVSEY, *State Treasurer*:

Dear Sir: On behalf of the Attorney General, I have the honor to acknowledge the receipt of your communication of the 1st instant, submitting for his opinion a bill of expenses of the Board of Examiners of Mine Inspectors for the counties of Schuylkill, Columbia, Northumberland and Dauphin, as to whether the State is liable for said expenses, and if so, whether the 23d section of the act of 1870 is a sufficient appropriation for that purpose.

As I read the act of March 3, 1870 (P. L. 1), the State is liable for the salaries of inspectors appointed under it and "all expenses of carrying it into execution," except the per diem pay of the examiners which is to be paid by the counties. It seems plain, then, that if the items appearing on the bill submitted, are proper subjects of expense "in carrying into execution this act," they are properly payable by the State. The first branch of your inquiry, therefore, resolves itself into a question as to the propriety of these expenses, and of this you are necessarily the proper judge, with authority to make such examination as may be necessary to satisfy you on that point.

Assuming that these expenses are proper, I am also clearly of the opinion that the 23d section of the act of 1870 is a sufficient appropriation to justify their payment. The direction to pay and the manner of payment are so explicit as necessarily to imply an appropriation so far as required for the purposes of the act. Even if the act of 1870 was doubtful in this regard, that of 12th of April, 1869, section 10, (P. L. 856), would furnish abundant authority, as not only are the directions to pay and the manner of payment expressly provided, but the amount itself is designated, thus supplying every possible requisite of a lawful appropriation.

Very respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

CORPORATIONS—CHANGE OF NAME.

In corporations of the second class a change of name can only be effected under the act of April 20, 1869.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, November 2, 1885.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: I have considered the application of the "Martin Color and Chemical Company" for a change of name to "The Riverside Oil Company" under the corporation amendment act of 1883, and am of the opinion that such change cannot properly be made under that act.

The right to make the contemplated change of name rests on the theory that the corporation amendment act of 1883 repealed, by implication, the act of April 20, 1869, in respect to corporations of the second class created under the provisions of the act of April 29, 1874.

A reference to the act of 1869, however, will, I think, show that such cannot have been the purpose of the Legislature. It will be observed that no proceeding for a change of corporate name can be entertained under that act, until proof shall have been produced in court that notice of such application has been given to the Auditor General, and after a final decree has been entered a copy of such decree is required to be filed with that officer.

The purpose of these provisions was that the Auditor General, as the accounting officer of the Commonwealth, might be informed at every stage of the proceedings as to the proposed change, so that not only a duplication of name might be avoided but also that he might be enabled to correct his registry to correspond with the decree which might be entered.

Turning now to the act of 1883, it will appear that it contains no such provisions. The "improvement, alteration or amendment" must be recorded in the office of the Secretary of the Commonwealth and also in the office of the recorder of deeds of the proper county, but there is no requirement that it shall be certified to the Auditor General. This, I think, shows clearly that although a change of corporate name is perhaps an amendment or at least an alteration of a charter, it is not such an one as was intended to be within the act of 1883, and if so, the proposed change must be effected under the provisions of the act of 1869.

The case of *in re Fidelity Mutual Aid Association*, 12 W. N. C., 269, is not in conflict with this view. That case arose under the insurance laws, which provide special machinery for the regulation of insurance corporations, under the control of the Insurance Commissioner. He is specially charged with the duty of approving the names of insurance companies and it was in that point of view that Judge Thayer

held that the act of 1876 had repealed the act of 1869 so far as it applied to corporations of that class.

Respectfully,

ROBT SNODGRASS,
Deputy Attorney General.

PIPE LINE COMPANIES.

1. The termini and general route need not be given in the certificate of incorporation.

2. A telegraph line is a necessary incident to a pipe line, and may be authorized in charter.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, December 8, 1885.

W. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: I have considered the question submitted by you in respect to the application of the "South West Pipe Lines" for letters patent and am of the opinion that the act of June 2, 1883, under which this application is made, does not require either the termini or the general route of the proposed lines to be stated, and I would, therefore, answer the 1st and 2d questions in the negative.

As to the third question, I am of the opinion that as a telegraph line or lines is a necessary incident to a pipe line business, there is no impropriety in designating it as one of the "devices and arrangements" authorized, if it is expressly limited to such lines as are necessary to the transaction of the company's business. If the application is changed so as to read: "devices or arrangements (including telegraph lines) as may be necessary for the purpose of storing, transporting, piping and shipping petroleum or other mineral oils, and the transaction of its business," I think it will be unobjectionable.

Respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

NATURAL GAS ACT—ENLARGEMENT OF TERRITORY.

The act of May 29, 1885, which prescribes how the territory of natural gas companies may be enlarged, does not require the publication of a notice of the intention to apply for such enlargement of territory.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 2, 1886.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: On behalf of the Attorney General, I beg to acknowledge the receipt of your communication of the 19th inst., in relation to a certificate of enlargement of territory of the Pennsylvania Gas Company, under the provisions of the fifth section of the act of May 29, 1885.

The certificate presented for deposit in your office seems to be in

strict compliance with the act in question, and if so I do not see that you have any discretion in respect to allowing it to be so "deposited." The act does not require the publication of notice of intention to apply for an enlargement of territory, and although it might have been wise to have required such publication, yet as the Legislature has not seen fit to do so, I do not think the want of it can operate to prevent the certificate from being "deposited" in your office.

As I understand this to be the point of your inquiry, I do not deem it necessary to say more.

Respectfully,

ROB'T SNODGRASS,
Deputy Attorney General.

PROCEEDINGS TO INCREASE THE CAPITAL STOCK OF A RAILROAD CORPORATION.

The act of April 18, 1874, applies to railroad companies as well as to other corporations, and its provisions must be adhered to by the former in increasing their capital stock.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 21, 1886.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: On behalf of the Attorney General, I have carefully considered the question submitted by you in respect to an increase of the capital stock of "the Chartiers Connecting Railroad," and beg leave to reply as follows:

The Chartiers Connecting Railroad was incorporated on November 21, 1881, under the provisions of the act of April 4, 1868 (P. L. 62), and the increase of capital in question purports to have been made under the sixth section of that act. The right of the corporation to increase its capital for the purposes and to the amount authorized by the act is not disputed and the question therefore to be determined is whether the manner of effecting the increase is in conformity with law.

The seventh section of Article XVI of the Constitution, to which this corporation is clearly subject, provides that "the stock and indebtedness of corporations shall not be increased except in pursuance of general law, nor without the consent of the persons holding the large amount in value of the stock, first obtained at a meeting to be held after sixty days' notice given in pursuance of law." The act of April 18, 1874 (P. L. 61), which was passed for the purpose of giving effect to the requirement of the Constitution, provides a method by which an increase of capital or indebtedness may be obtained and clearly applies to railroad as well as to all other classes of corporations having capital stock.

This is so plainly indicated by the language of the seventh section as to preclude any different conclusion, even if the general language in which the act is expressed was not of itself sufficient to include them.

The only possible ground, therefore, upon which the manner of increasing capital adopted in the present case, can be justified, is that the sixth section of the act of 1868 has in some way become a part of the charter contract of this corporation, the obligation of which would be impaired by requiring it to comply with the provisions of the act of 1874. It cannot be questioned that under its charter it has the right to increase its capital stock as provided in the act of 1868, but there is a material difference between the right to so increase and the manner by which that increase shall be effected. Whilst the right may be inviolate, the manner of its exercise may be changed "provided the change involves no impairment of a substantial right" existing under the contract. *Gunn v. Barry*, 15 Wallace, 623.

If the act of 1874, however, applies to railroad corporations as well as to those of other classes, its undoubted effect was to repeal the act of 1868 so far as it provided a method for increasing the capital of such corporations, at least subsequently created. As absolutely repugnant statutes in this regard, they could not be administered together and be at the same time in harmony with the Constitution. But if, in fact, there has been a repeal, this corporation, having been created subsequently, never did and could not acquire any right to increase its capital stock otherwise than under the act of 1874. In other words, it is subject to the law as it existed at the time of its incorporation, and could clearly acquire no "substantial right" under an act which, so far as it relates to this subject at least, had been superseded and repealed before it acquired its corporate existence.

This proposition, it seems to me, is so plain that it is scarcely susceptible of further elaboration and, hence, it follows that a lawful increase of the capital stock of this corporation cannot be effected under the act of 1868, but only under that of 1874, to which, in my opinion, it is clearly subject.

The return submitted does not show a compliance with this statute and consequently should not be filed in your office.

I have considered this matter more at length than was, perhaps, necessary, because it seems to have been assumed that the act of 1874 does not apply to railroad corporations at all, and if this be an error it is important that it should be corrected.

So far as I know, the question has not previously been considered by this Department, and if there are precedents for a practice contrary to that indicated in this opinion, it is the more important that it should be set right before proceeding farther.

Very respectfully,

ROBT SNODGRASS,
Deputy Attorney General.

APPLICATIONS FOR CHARTER—FERRY AND BRIDGE COMPANIES.

The restriction contained in the "corporation act of 1874," which provided that no ferry or bridge should exercise its corporate franchises within a certain distance of any other bridge or ferry in actual use, repealed by the supplement of April 17, 1876.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 4, 1886.

WILLIAM S. STENGER, *Secretary of the Commonwealth*;

Dear Sir: I have considered the application of the York Haven Ferry Company for letters patent and am unable to see any reason why they should not be granted.

The application of this charter is made under the provisions of the seventh section of the act of April 17, 1876, which was an entire recast in the form of an amendment, of section thirty-one of the act of April 29, 1874. It dropped the limiting clause, which prohibited any bridge or ferry company from exercising its corporate franchises "within three thousand feet of any other bridge or ferry in actual use," and thus made the granting of such charters practically unrestricted save only as provided in the eighth section that the right and power to erect and maintain the ferry to be established "shall be subject to the right of prior occupants."

The intention of the Legislature thus to remove the restriction as to distance between incorporated ferries, is so plain on a comparison of the thirty-first and thirty-second sections of the act of April 29, 1874, with the seventh and eighth sections of the amendments of April 17, 1876, as to leave no room for doubt that such restriction has been entirely abrogated and that ferry companies may now be incorporated without regard to their distance from other ferries.

Of course, if a prior ferry, with exclusive privilege, is then in existence, by legislative grant, the new ferry company cannot exercise its franchise, except subject to the prior right, but that is a question which can arise only when the new company attempts to exercise its corporate franchise and come in conflict with adverse rights under the prior grant.

I need not say more since if the restriction as to distance in the act of 1874 is no longer operative, it follows that there can be no valid objection to granting this charter at least on the ground that its ferry is to be established within three thousand feet of some other ferry on the same stream.

Very respectfully,
ROB'T SNODGRASS,
Deputy Attorney General.

PUBLIC OFFICERS—NOTARIES PUBLIC—COMMISSIONS OF.

Appointments are not completed by a nomination to and confirmation by the Senate. Until the Governor executes the commission the appointment is not made.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 19, 1886.

W. S. STENGER, *Secretary of the Commonwealth*:

Dear Sir: On behalf of the Attorney General, I have the honor to acknowledge the receipt of your communication of the 3d inst., inquiring as to whether a commission as notary public, issued on June 19, 1885, to J. D. Emery, of Mercer county, for a term of three years, was properly so issued, or whether said commission ought not to have been issued for a term of four years instead of three.

The facts which have given rise to this inquiry, I understand to be as follows:

On June 9, 1885, Mr. Emery was nominated by the Governor, under section 8 of Article IV of the Constitution, to be a notary public for a term of three years. On June 10 his nomination was confirmed by the Senate and on June 19 he was commissioned for a term of three years, as provided by the act of April 14, 1840 (P. L. 334). On June 11 the first section of the act of 1840 was amended so as to provide "that the terms of all notaries public hereafter appointed shall be for four years" (P. L. 1885, p. 108). Under these circumstances for what term should Mr. Emery have been commissioned?

The eighth section of Article IV of the Constitution provides that the Governor "shall nominate and by and with the advice and consent of two-thirds of all the members of the Senate, appoint, etc."

Under this power, the nomination and its appointment are two distinct and separate executive acts, one preceding and the other succeeding the advice and consent or, as it is commonly called, "the confirmation," by the Senate.

The question, therefore, depends upon which executive act is to be considered the statutory appointment? If the nomination, followed by the confirmation, constitutes the appointment, Mr. Emery's commission was properly issued for a term of three years, but if it is to date from the commission then, having been appointed after the passage of the act of June 11, he is entitled to a commission for four years.

It is true, as said in *Marbury v. Madison*, 1 Cranch, 154, "the acts of appointing to office and commissioning the person appointed, can scarcely be considered as one and the same," but it is equally true that the appointment is not complete until the commission has been actually signed. Even after confirmation by the Senate, the Governor may refuse to commission, and in that case there would clearly be no appointment, either in the constitutional or statutory sense. In *Lane v. Commonwealth*, 7 Out., 485, Chief Justice Mercur said: "Before he (the Governor) completes the appointment the Senate shall

consent to his appointing the person he has named. It may prevent an appointment by the Governor, but it cannot appoint. It may either consent or dissent. That is the extent of its power. There its action ends. It cannot suggest the name of another. If it dissent, the Governor cannot appoint the person named. If it consent, he may or may not, at his option, make the appointment. * * * Until the Governor executes the commission the appointment is not made." This language is in entire harmony with the recognized interpretation of the corresponding clause of the Constitution of the United States and seems to settle the question. (See Paschal's Annotated Constitution, pp. 174, 175 and 176, where all the authorities are collected.)

It follows, therefore, that the commission to Mr. Emery has been improperly issued. It ought to have been for a term of four years instead of three.

Respectfully,

ROB'T SNODGRASS,
Deputy Attorney General.

APPLICATIONS FOR CHARTERS—REQUIREMENTS OF—RAILROAD TERMINI.

The act of April 4, 1868, and supplements, do not authorize the incorporation of a company for private purposes.

The articles of association must designate termini such as cities, towns or villages, which shall indicate a public use or character.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 12, 1886.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: I have examined the articles of association of the "Pittsburgh Transfer Railroad Company" under the act of April 4, 1868, and its supplements, and am of the opinion that the contemplated corporation is not fairly within the provisions of these acts.

In the Edgewood Railroad Company's appeal, 29 P. F. Smith 269, Justice Woodward, speaking of the act of 1868, and its supplements, said:

"The object for which the act of 1868 was passed is unmistakable. It was to vest voluntary associations of individuals under definite, uniform and general rules, powers which had primarily been given only by special act of incorporation.

It applied to railroad companies in the sense in which the term had always been used. * * * The act of 28th of April, 1871, was a supplement to the act of 1868, simply reducing the number of corporators to three in the case of a road not exceeding five miles in length. These corporators, however, were still to constitute a rail-

way company, subject to the terms of the original act and to those of the act of 1849. Provision for so short a road could only have been made in order to secure some general public good. * * * It was passed to provide for the convenience and necessities of masses of men, and not to promote private fortunes or develop private property. The Commonwealth transfers to her citizens her power of eminent domain only when some existing public need is to be supplied, or some present public advantage is to be gained."

The import of this language is plainly that, where the proposed railroad is to subserve private purposes and not to supply an "existing public need," it is not within the provisions of the act of 1868.

In the case in hand the railroad to be constructed is to extend "from on or near the premises of Jones and Laughlin, in the Twenty-fourth ward, Pittsburgh, to or near the premises of Atterbury and Company, in the Thirtieth ward, Pittsburgh, along and over Wharton, South Twenty-third, Mary and Breed streets, and other streets and alleys in the said city of Pittsburgh."

Upon its face the purpose seems to be to connect two manufacturing establishments, both of which lie within the limits of the city of Pittsburgh. If such a railroad were in fact constructed it is difficult to see what "existing public need" it could supply or how it could be operated except for private purposes. Aside, therefore, from the fact that it lies wholly within the city of Pittsburgh and is to be constructed entirely upon her public streets and alleys, I do not think that the contemplated railroad is so plainly "for public use" as to bring it within the provisions of the act of 1868.

There is, however, another objection. The act of 1868 requires "the places from and to which the road is to be constructed, maintained and operated," to be stated in the articles of association. That is, every railroad within the act of 1868 must have such termini as will indicate its public character. As I read the act, I do not understand a street corner, a particular building or manufacturing establishment to be a place within its meaning. The word "place," I think, rather means the designation of some location, as a city, town or village, which will suggest the public use for which the railroad is to be constructed.

A railroad to be constructed and operated from the house of B to the house of C would imply a private rather than a public use and hence the Legislature very properly required the articles of association to designate such places as termini, as would indicate the public character of the contemplated improvement.

This the present application does not do, since, as already said, the designation of two manufacturing establishments as termini, indicates a private rather than a public use, and renders it objectionable for want of proper termini within the meaning of the act of 1868.

The conclusion which I have thus reached will not affect the right of the incorporators to obtain the transportation privileges covered by their application. Whilst the contemplated road, in my opinion, is not within the provisions of the act of 1868, the lateral railroad statutes are ample to enable them to secure "every necessary facility" for operating their manufactories and transporting their products, and to these statutes they should resort for such rights and privileges as they seek to obtain through this charter.

Respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

NATURAL GAS COMPANIES—EMINENT DOMAIN—TERRITORY.

The act of May 29, 1885, confers upon natural gas companies the right of eminent domain. The territory embraced in its charter must be limited to this State.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 13, 1886.

WM. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: I have examined the certificate for the incorporation of the "United Natural Gas Company," and am of the opinion that it ought not to be approved in its present form.

It purports to invest the intended corporation with all the powers of a natural gas company under the provisions of the act of May 29, 1885, in a number of counties in the State of Pennsylvania, as well as in the counties of Cattaraugus, Allegheny and Erie, in the State of New York. It further proposes to confer upon the corporation named the power of eminent domain, with the right to lay and construct pipe lines for the purpose of supplying natural gas to consumers in the city of Buffalo and in Olean, Bolivar and Richburg and other towns and villages in said state. In short, it is an application for the grant of corporate franchises, involving upon its face the exercise of the right of eminent domain, with other purely local privileges, within the limits of a foreign jurisdiction. Ought such a charter to be approved?

In disposing of this question, it is unnecessary to enter upon any extended examination of the right of a Pennsylvania corporation to exercise its franchises in another state. It is sufficient for our purpose to say that such right, if it exists at all, must arise either from the doctrine of inter-state comity, or from an express grant by the state within whose jurisdiction it seeks to go. It necessarily cannot result from anything contained in its original grant.

Hence, while the State of Pennsylvania may permit her corporations to transact their corporate business beyond the limits of the State, it would be, not only a work of supererrogation, but of doubtful

propriety as well, to undertake to include in her grant rights which could not be exercised except by the express authority of her sister state. Especially would this be so in the case of a corporation created under the natural gas act of 1885, which not only confers the right of eminent domain, but includes many other privileges not exercisable at all except by express grant.

The inclusion of such a grant of extra territorial franchises in a charter would, therefore, to say the least, be objectionable as surplusage. It would also be irrelevant and would, for that reason, violate the rule laid down by Attorney General Dimmick that a certificate of incorporation ought not to be approved when "it contains unnecessary or irrelevant matter." For a still stronger reason, it ought not to receive executive sanction where the matter is not only surplusage but undertakes to confer privileges which, when conferred, would be without force or validity in the state where they are intended to be exercised.

Without adding more, therefore, I am of the opinion that this application ought to be reformed so as to exclude all matter relating to or purporting to confer franchises to be exercised within the State of New York. In all other respects it is in conformity with the law, and when reformed as suggested it can properly be approved.

Very respectfully,

ROB'T SNODGRASS,
Deputy Attorney General.

ELECTRIC LIGHT COMPANIES.

1. Charter of a company incorporated for the purpose of supplying light by electricity may be amended by adding to its purpose the right to supply heat and power by means of electricity and steam generated in their lighting plant.

2. Such right incidental.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, July 22, 1886.

W. S. STENGER, *Secretary of the Commonwealth:*

Dear Sir: I have considered the application of the Wilkes-Barre Electric Light Company to amend its charter, under the corporation amendment act of 1883, by adding to the clause declaring its purposes the words "and supplying heat and power by means of electricity and steam generated in their lighting plant."

The only question involved in this application, as I understand it, is whether the proposed amendment is "in accord with the purposes of the original charter." If so, it should be approved, without reference to any alleged exclusive right claimed by any other corporation. It is not a question of exclusive right, but whether the amendment is germane to the charter already granted.

Corporations of the second class embraced in the XI sub-division of the second section of the act of 1874 have authority to exercise all

the powers and privileges fairly within the range of their purposes or incidental thereto. That is to say, a corporation chartered "for the manufacture and supply of gas," primarily for illuminating purposes, might as an incident to such purpose supply gas for heating or any other use to which it could be successfully applied. So a corporation chartered "to supply light by means of electricity" might, as an incident to its purposes, supply heat by the same means, and might also utilize its surplus electricity or its surplus steam generated in its plant for supplying power.

It could do this with as much propriety as a gas company could sell its residuals or a water company supply power by means of water motors.

In this view of the case, I am of the opinion that the proposed amendment does not involve any new power or authority, but simply declares what I understand to be merely incidental to the powers already granted, and as such is "in accord with the purposes of the charter," and should be approved by the Governor.

It is proper to add that the rights and privileges of the Wilkes-Barre Heat, Light and Motor Company will not and cannot be affected in any way by this amendment.

It must stand upon its own charter, but it is a fallacy to suppose that because it has, in defining its purpose, used in its certificate of incorporation the exact language of sub-division XI it thereby acquired greater rights and more extensive powers than another corporation chartered under the same clause, which has declared its purposes substantially although not exactly in the language of the statute.

Very respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

CORPORATIONS—INCREASE OF CAPITAL STOCK.

The Bank of America having voluntarily surrendered its right to increase its capital under the terms of its special charter is entitled to avail itself of all the privileges of the act of April 18, 1874, and hence could legally increase its capital stock to the limit fixed by its charter.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 17, 1886.

W. S. STENGER, *Secretary of the Commonwealth*:

Dear Sir: I have carefully considered the matter of the increase of the capital stock of the Bank of America, and beg to submit my conclusions as follows:

The Bank of America was incorporated by a special act of Assembly of April 27, 1870 (P. L. 1871, p. 1532). Its capital stock was fixed at

\$500,000, with the privilege of increasing by a vote of the directors to \$2,000,000. Of its original capital \$225,650 was actually paid in, and upon this basis it transacted business until June 3, 1881, when, under the provisions of the act of June 11, 1879 (P. L. 133), it decreased its capital stock to \$25,000. A proper return of this decrease was duly filed in the office of the Secretary of the Commonwealth, and all the provisions of that act seem to have been complied with, so that I am of the opinion that such decrease was lawfully made and that the capital stock of this corporation at the time of the present increase was, therefore, \$25,000. It is proper also to add that at or about the same time the provisions of the new Constitution were also formally accepted.

By the present application it is proposed to increase the capital from \$25,000 to \$250,000.

Can this be done, and if so under what statute must the increase be effected? The charter of this bank was not originally subject to the new Constitution. Its formal acceptance, together with its availing itself of the benefits of the act of 1879, clearly brought it under the provisions of that instrument, as well as under all laws passed in pursuance thereof. Its right, therefore, to increase, by a vote of the directors, fell with this action and it could thereafter only increase, if at all, subject to the provisions of the seventh section of article XVI of the Constitution, which seems to be broad enough to cover all classes of corporations.

Now, it is plain that the act of April 18, 1874 (P. L. 61), was passed to give effect to this clause of the Constitution.

It includes by its very terms all corporations "except railroad, canal, turnpike, bridge or cemetery companies and companies incorporated for literary, charitable or religious purposes," and must, therefore, on very familiar principles of construction, be held to include banks as well as other corporations. Having excluded by name certain classes of corporations, it necessarily included all classes not so excluded.

I am of the opinion, therefore, that this bank, having voluntarily surrendered its right to increase its capital under the terms of its special charter, is entitled to avail itself of the privileges conferred by this act, and if so it could legally increase its capital under the provisions to the limit fixed by its charter, such limit not having been changed or in any way affected by its own act or by any subsequent legislation.

It follows then that if the act of 1874 has been substantially complied with, the return of increase ought to be filed and recorded in your office.

I have looked at this return with a good deal of care and whilst I do not think that it is so artistically drawn as it might have been, yet it

exhibits a substantial compliance with the terms of the act and can therefore be properly filed in your office.

Very respectfully,

ROBT. SNODGRASS,
Deputy Attorney General.

The provisions of section 12, article V, of the Constitution, are a continuing mandate, enjoining upon the Legislature the duty of establishing from time to time in the city of Philadelphia, for each thirty thousand inhabitants, one court of record for police and civil causes.

A bill enacted pursuant to this requirement is not required to be published under the provisions of article III, section 8.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 31, 1887.

JAMES A. BEAVER, *Governor*:

Dear Sir: House bill No. 1, known as the "Additional Magistrates' Bill," now before you for action, having been referred to me by you for an opinion as to the requirements of the Constitution in the matter, I have the honor to submit the following as the result of my examination of the subject:

The constitutional question turns wholly upon the point as to whether the provisions of section 12, article V, of the Constitution are a continuing mandate. The injunction upon the law-making power is imperative, that "in Philadelphia there shall be established, for each 30,000 inhabitants, one court, not of record, of police and civil causes," etc. Whatever the extent of the command, there is no discretion in the performance of the duty enjoined. This is conceded on all hands.

But it has been suggested that although mandatory, it was intended for but one occasion following upon the adoption of the Constitution, and the power having been once exercised, any further operation of the section forever ceased. This I cannot subscribe to. Had it been intended merely to provide for a fixed and permanent number of such courts, it would have been easy to have said so. The convention which framed the Constitution was composed of some of the ablest lawyers and ex-judges in the State, who fully understood the force and meaning of the words; and had they intended to fix the number of such magistrates once for all, they well knew how to do it. It was just as practicable and convenient for them, as for an ordinary legislative body, having first determined that the number should be permanently fixed according to a certain ratio of the population, to have ascertained that population from the decennial census, or other proper sources, and then having agreed upon the proportion which might seem to be reasonable, to have themselves made the necessary simple mathematical calculation and to have inserted in the section the

number thus determined. This would have been the natural and rational way of securing the result aimed at. If their purpose was to take the ratio of one in 30,000, as a mere means of calculation in determining the number, without reference to the future growth of the city, why not make the calculation themselves, and embody the resulting quotient in the section, instead of delegating the duty of going through a mere arithmetical process to accomplish the same end? Why so much circumlocution and indirection, when the object could have been easily and satisfactorily accomplished by direct and appropriate language in the section itself? In ordaining the number of the judges of the Supreme Court, and the membership of the Senate and the House of Representatives, where the purpose was to fix an unvarying number, this was done. The exigencies of the Commonwealth were duly considered, and the permanent number was fixed in plain, direct and imperative expressions.

I take it that having adopted a ratio, and with reference to a great and growing city, the convention, and the people who afterwards ratified their work, naturally meant to say that every 30,000 inhabitants, in their judgment, required a court of this character, and every 30,000 should have it as such number should be reached. There could be no other reason than this for using a ratio in the connection in which we find it, instead of a fixed number. They certainly at least intended to say that this was a fair estimate in fixing the number under the first legislation on this subject. If true that one magistrate was deemed to be reasonably required for each 30,000 people at the time of the adoption of the instrument, or of its enforcement by the Legislature, then, as the city grew, every other and additional 30,000 would also seem to reasonably require a magistrate. It is not a question as to whether this was good judgment, or a desirable basis, but whether such was the thought in the minds of the framers of the section. The words "shall be established," etc., are future and unlimited as to point of time. The section does not employ the words "there shall be established at the adoption of the Constitution," or "by the first Legislature after its adoption," or "for each 30,000 of the population as it shall be in 1874," or "1875," or any other equivalent expressions limiting to one occasion or time; but generally "there shall be established," and "for each 30,000 inhabitants" in the city of Philadelphia. In other words, for every 30,000 inhabitants, whenever their existence is properly demonstrated to the legislative mind (and of that fact the recital in the act is presumptively the finding) there shall be a magistrate.

Let us suppose, as might easily be the case, that the city of Philadelphia were in a few years to double the population as ascertained in 1875, and that no further legislative action had been taken to increase the number of magistrates beyond the twenty-four called for

in the act of 1875. The refusal of the Legislature to increase the number would certainly be to refuse to establish for each 30,000 inhabitants in the city of Philadelphia one magistrate's court. In a word, the Legislature disobeys the mandate that there shall be established one such court for each 30,000 and leaves the city but one for each 60,000. Or, to put it in another way, for each of the additional twenty-four thirty thousands of the people, there is no magistrate's court whatever established.

If the view be correct, that the Legislature was enjoined under the section in question only to fix a definite number at the time of its first legislative action on the subject, and that then the purpose of the section were finally executed, the power to increase the number of magistrates, whatever might be the expansion of the city and its necessities, is forever gone unless resuscitated by a constitutional amendment. It will not do to say that the Legislature, under the general provisions of the judiciary article, may establish in their discretion further magistrates' courts to meet such necessity. Section 12, in the absence of any controlling words, is intended to completely cover and regulate the case of Philadelphia. If the magistrates were intended thereby to be limited to a fixed and definite number, and the provision is mandatory, then there can be no power to legislate beyond that number at the pleasure or discretion of the Legislature.

But if such discretion, as claimed, elsewhere exists, and the Legislature may increase at its will, then in 1875 they could have fixed any number of magistrates, and according to any proportion of the population. The right to exercise this discretion would exist at the time of the first enactment, as well as at any subsequent time. What then becomes of the mandate in the 12th section, and of what value would it be as a limitation? To recognize such discretionary power would clearly be to nullify and render superfluous the mandate of the 12th section. The express provisions of the section certainly exclude any implication that elsewhere a different and contradictory principle in the establishment of these courts exists.

It will thus be seen that any other view than that the section under consideration is a continuing mandate, would deprive the city of Philadelphia of any increase in the number of its magistrates, whatever might be the increase of its population, and however pressing might be its necessities. This certainly could not have been the intention of the people in adopting this section as a part of the Constitution.

As to the publication of notice of an intention to apply for this bill, I am of the opinion that no previous notice or advertisement was required, if section 12 be mandatory as above stated. The provisions of section 8, of Article III, are intended to apply to such local or special bills as are still allowed to be enacted, for which application may be made where parties or localities are interested; and as to

which the Legislature may exercise a proper legislative discretion. This is apparent from the language of the section, to wit: "No local or special bill shall be passed unless notice of the intention to apply therefore shall have been published in the locality, etc. * * * * the evidence of such notice having been published shall be exhibited in the General Assembly before such act shall be passed." The peremptory command in the Constitution to enforce any of its provisions by law, whether they relate to a particular locality or subject, does not depend upon an application, and it is not a matter of discretion. The Legislature must itself of its own motion act in the first instance without any application to it by the locality or persons affected. To hold otherwise would be to make a peremptory constitutional command depend for its execution upon the will of such locality or persons. The power of the Legislature to act and the performance of plain constitutional duty could thus be defeated or obstructed by failure to make application and advertise. It follows that the language of section eight plainly cannot apply to the compulsory legislation contemplated by section twelve.

Under the foregoing views it was the duty of the Legislature to obey the constitutional mandate. The failure of former Legislatures to obey this or any other constitutional requirement is no argument or precedent for a refusal to act by any subsequent Legislature. Whether the magistrates are needed, or the provision for their increase is a wise one, cannot now be the question. The people in the exercise of a rare and exceptional act of sovereignty saw fit to put off the old and adopt a new Constitution containing this behest. Believing, as I do, that success of the constitutional government depends upon a strict adherence to the fundamental law, I do not think considerations of expediency or convenience should be allowed to destroy or change its meaning as it is written. The sober second thought of the people will always approve this principle, for its rigid enforcement is the best guaranty of their safety.

Very respectfully,

Your obedient servant,

W. S. KIRKPATRICK,
Attorney General.

The change of the name of a corporation is an amendment or alteration of its charter, within the corporation amendment act of 1883.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 31, 1887.

CHARLES W. STONE, *Secretary of the Commonwealth:*

Dear Sir: The Excelsior Oil Company is a corporation created and existing under the "Corporation Act of 1874" and its supplements.

Its certificate is presented, by which it is sought to change the name of the said corporation to Keystone Oil Company, and the question is whether the "Corporation Amendment Act of 1883" applies and authorizes a change of name.

Section three of the "Corporation Act of 1874" provides that the charter shall specify in seven distinct paragraphs, numbered from one to seven inclusive, as many distinct things; the first of which is the name of the corporation.

The "Corporation Amendment Act of 1883" authorizes the improvement, amendment or alteration of such a charter. The name of the corporation is a necessary part of its charter, without which it can no more exist than it can exist without officers, corporate succession, or any other property essential to its nature. The name is an indispensable part of the constitution of every corporation, the knot of its combination, as it has been called; without which it cannot perform its corporate functions. This name is conferred by the charter, and cannot be changed without an alteration of the charter, and I am of opinion that a general power to alter or amend a charter is a power to alter or amend any part of the charter and necessarily includes the power to alter the name, which is a part of the charter.—In re Fidelity Mutual Aid Association, 12 Weekly Notes of Cases, page 269.

Respectfully yours,
 W. S. KIRKPATRICK,
 Attorney General.

The fees of officers for taking up cattle running at large, under the act of 12th April, 1866, are payable by the owners of the cattle, and their liability is enforceable by way of lien on the cattle.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, May 2, 1887.

JAMES A. BEAVER, *Governor*:

Sir: I have the honor to acknowledge the receipt of the letter of the 20th ultimo, of Thomas J. Edge, special agent, reporting the existence of contagious pleuro-pneumonia in Lancaster county, referred by you to this office with the request that that portion of the act of April 12, 1866 (P. L. 101), which refers to the pay of the officer named, be construed for the purpose of ascertaining the source from which such pay should be had.

By the act referred to the constables of townships where any contagious disease prevails are authorized and required to take up and confine any cattle running at large until called for and until all costs are paid, and such officers are entitled to receive one dollar for each head of cattle so taken up.

By the legislative direction of confinement of the cattle until costs are paid, I think it appears that it was the intention of the Legislature that the costs should be paid by the owners, and that their liability in this respect should be enforced by way of lien on the cattle.

Respectfully submitted.

W. S. KIRKPATRICK,
Attorney General.

The publication in two newspapers in each county, required by article XVIII of the Constitution to be made, of notice of a proposed amendment to the Constitution, should be in newspapers printed in the English language, if such are published in the county.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 2, 1887.

CHARLES W. STONE, *Secretary of the Commonwealth.*

Dear Sir: In response to your telegram addressed to me here, requesting an opinion as to the legality of publication of the proposed constitutional amendment in other than English newspapers, I have the honor to submit the following:

Article XVIII of the Constitution, after prescribing the method of originating an amendment or amendments to the Constitution by introduction thereof in the Senate or House and agreement thereto by a majority of the members elected to each House, entry on their journals; etc., provides that "the Secretary of the Commonwealth shall cause the same to be published three months before the next general election in at least two newspapers in every county in which such newspapers shall be published." Said article then provides for a subsequent publication in the manner aforesaid, in the event that such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House of the General Assembly chosen after the first publication.

As the English language is the ordinary language of the Commonwealth and the general medium of communication among its people, the presumption is that the notice contemplated by Article XVIII shall be in that language. This is the language in which all the operations of government are carried on and recorded, laws published and promulgated, and judicial proceedings conducted. In the absence of any expression to the contrary, the article in question can only mean that, in harmony with the general practice and policy of the State, the several steps in the important matter of amending the fundamental law shall be conducted in the English language. Particularly is this true of the matter of the publication of the proposed amendment, a provision designed to bring such proposition to the knowledge of a people generally recognized as an English-speaking

people. It does not affect this view that in certain localities a different language or languages may be spoken. Had such fact been deemed important in the minds of those who framed and adopted the Constitution, it is fair to assume that provision would have been expressly made with reference thereto.

The Supreme Court of this State has, on two occasions at least, decided that where a statute provides for notice in a newspaper, it always means an English newspaper unless some other is expressly mentioned. *Tyler v. Bowen*, 1, Pittsburgh, 225; *Road in Upper Hanover Twp.*, 8 Wright, 277.

The principles of these cases are applicable to the constitutional provision now under consideration. I am, therefore, of the opinion that the proposed amendments must be published in two English newspapers in each county, if there be so many in such county, and that a publication in a newspaper or newspapers printed in any other language is not a compliance with the requirements of said Article XVIII of the Constitution.

Respectfully yours,

W. S. KIRKPATRICK,
Attorney General.

Under section 11, act May 24, 1871, it is the duty of the sheriff to abate arrangements constructed in the rivers of the State of walls of stone in the shape of the letter Y at or in the mouth of which nets are placed so as to catch everything that passes down.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 7, 1887.

To the Pennsylvania Commissioners of Fisheries:

In response to the request of Mr. W. L. Powell, one of the Fish Commissioners of Pennsylvania, on behalf of the Commission, for an opinion as to the duties of the sheriff under section 11, act of May, 1871, in the case of the arrangements for catching fish, described in Mr. Powell's communication of August 31st last, I beg leave to state that my conclusion is that the device therein described is such as the sheriff is authorized to abate.

The contrivance in question you describe to be walls of stone in the shape of a letter Y, constructed in the Susquehanna and other rivers, at or in the mouth of which nets are placed so as to catch everything that passes down. You do not specify the kind of nets used, but whatever their nature, the contrivance has that permanency and adaptability to a destructive purpose which only needs the placing of a net in the aperture or narrow passage-way to produce the same mischievous results which follow from the other devices, to wit: fish baskets, etc., mentioned in the act.

I am clearly of the opinion that the structures in question are subject to be abated by the sheriff in the manner pointed out by the act of 24th May, 1871, section 11.

Very respectfully yours,

W. S. KIRKPATRICK,
Attorney General.

Personal property, including mortgages held by resident trustees for non-resident cestui que trustent is liable to taxation for State purposes, and return thereof should be made.

Mortgages on property outside of the State, and stocks and bonds issued by corporations of other states, owned by persons residing within this State, whether natural persons or corporations, or whether held by the beneficial owner or as trustees for others, are liable to taxation for State purposes.

Where any resident trustee fails to make a full and complete return of all trust property liable to taxation, the remedy provided by law is for the assessor to make out, from the best means he may be able to obtain, a statement of such property as is liable to taxation, and make return thereof.

In case of a total failure to make return of taxable property by a resident trustee, the provision of the act of 1885 requiring a return to be made for such defaulting taxable by the assessor, and an addition of fifty per centum to the valuation so made and returned, will apply.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, October 25, 1887.

A. WILSON NORRIS, *Auditor General*:

Dear Sir: In your communication of 19th inst., you request an opinion upon certain questions which I quote from that communication, and answer as follows:

"1. Is personal property held by resident trustee for a non-resident cestui que trust liable to taxation under the act of 1846, or any other act, and should the same be included in the return required by law to be made?"

I am of the opinion that under the law of this Commonwealth such personal property, including mortgages held by resident trustees, is liable to taxation.

Granting that in view of recent decisions, such mortgages, etc., when held by a domestic corporation, may not be taxable under the act of 1885, they certainly are taxable under the act of 1846, and all taxable personal property, including such mortgages, should be included in the return required by law to be made. Whether such property be taxable under the act of 1885, or under prior statutes, the return prescribed by the act of 1885 should include all mortgages and other personal property so held. The language of section 6, of the act of 30th June, 1885, P. L. 196, "and the several assessors shall furnish the same," (blanks in the form prescribed by the Auditor General) "to each taxable person, upon which blank, the taxable person

shall make return of the aggregate amount of all matters owned by him made taxable by this act as well as of all other personal property taxable for State purposes." This language, as well as the context, plainly requires a return to be so made of all personal property, whether taxable under the act of 1885 or under the act of 1846.

The resident trustee, whether such trustee be a corporation or natural person, must therefore make return of all mortgages and other personal property taxable for State purposes and held in trust for non-resident as well as resident cestui que trustent. Even if the act of 1885, in the matter of the return, were held not applicable to the case of a corporation trustee, yet a return must still be made, because under the act of 1846, sections 3 and 4, P. L. 486, a statement in writing of such property is required to be made by the president, etc., of such corporation.

"2. Are mortgages on property outside the State and stocks and bonds issued by corporations of other States liable to taxation, and to be included in such return?"

Such mortgages, bonds and stocks in my opinion, are liable to taxation in this State if owned or held by persons residing within this State, whether such persons be natural persons or corporations, and whether such residents hold such property as the beneficial owners thereof or as trustees for others. In case such property be held by a resident in trust, it is equally within the taxing power, whether the cestui que trustent be residents or non-residents. I am further of the opinion that all such property must be returned by every such taxable person. The situs of personal property of this character the same being choses in action, or in nature thereof, and intangible, for the purposes of taxation, is the domicile of the owner: *McKean v. Northampton County*, 12 Wright, 519; *Short's Estate*, 4 H. 63.

"3. In case of the failure of any trustee resident within this State to make a full and complete return of all trust property liable to taxation, or of any omission of any taxable property, what remedy is provided by law?"

In case of failure or neglect to include in a return made, any items of property taxable as above mentioned, the remedy seems to be for the assessor to make out from the best means he may be able to obtain, a statement or statements of such property so liable to taxation, and return the same to the county commissioners or board of revision of taxes as the case may be. From these statements the said county commissioners, or in the case of the city of Philadelphia, the board of revision of taxes, shall assess and tax the said property at the rates specified by law in the case of such kinds of property.

In the case of a total failure to make a return of taxable property as required by law, the provision of the 9th section of the act of 1885, requiring a return to be made for such defaulting taxable by the as-

essor and the addition of fifty per centum to the valuation so made and returned, in my judgment, would apply.

I would suggest that in the return or statement to be made by the taxable, such return be required to specify inter alia the amount of the mortgages, bonds, stock, etc., held in trust for residents, and the amount of such property held in trust for non-residents separately. This would meet the difficulty which no doubt arises in many instances from the failure to include the amount of the mortgages, etc., held in trust for non-residents on the assumed ground that the same are not taxable property, and the assessor would be enabled to ascertain whether the amount of such property was actually included in the return or not.

Very respectfully yours,

W. S. KIRKPATRICK,
Attorney General.

The law does not authorize the granting of a charter to a proposed corporation where the purposes set forth in the certificate are those of "maintaining a hotel and market house."

The general policy of the law contemplates the organization of corporations devoted to a single purpose.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 13, 1888.

CHARLES W. STONE, *Secretary of the Commonwealth.*

My Dear Sir: I have the honor to acknowledge receipt of your favor of the 12th inst., submitting for my examination the application of the Hay and Straw Market Company of Philadelphia for letters patent, with request for my opinion whether a charter can properly be granted to said company upon their certificate and for the purpose therein set forth.

The said purpose is stated as follows: "The said corporation is formed for the purpose of establishing and maintaining a hotel and market house to be used for the buying and selling of hay, straw and other farm products."

Incorporation of this company is sought under the corporation act of 1874, clause XIII, of section 2: "The establishment and maintenance of an hotel or boarding house, opera and market house, or either," as amended by the act of 1876, clause XIII of section 2: "The establishment and maintenance of an hotel and drove yard or boarding house, opera and market house, livery or boarding stable, or either," and construed by the language of section 10 of said act of 1876, amending the thirty-sixth section of the act of 1874, as follows:

"Section 36. Companies incorporated under the provisions of this

act, or similar companies already incorporated and accepting the same, for holding, leasing and selling real estate or for the establishment and maintenance of a hotel or boarding house, or opera or market house, hotel and drove yard, or both, any or either, shall have the right and power to take," etc.

The general policy of the law contemplates the organization of corporations devoted to a single purpose, and clear warrant in express terms should be found for the incorporation of companies having dual or incongruous purposes. It is not profitable to discuss or criticise the language of the clauses of the acts of Assembly in question and above quoted. The maintenance of an hotel and market house are not thereby clearly or expressly stated to be the objects for which a single incorporation may be created.

I am therefore of the opinion that the law does not authorize the granting of the charter in question.

Very truly yours,

W. S. KIRKPATRICK,
Attorney General.

Teachers are entitled to compensation for attendance at institutes in addition to their regular wages according to their per diem pay for actual teaching, not in excess of two dollars a day. The time of attendance cannot be reported and credited as part of the twenty days actual teaching required to constitute a school month, but is in addition thereto.

Teachers in attendance who are, at the time of holding the institute, engaged in teaching in the county, and also those who have been elected or employed to teach in the public schools of the county for the current annual term prior to the date of institute, but whose schools are opened subsequently, are to be reported by the superintendent and credited as legal members of the institute, and are entitled to compensation for attending the same.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 22, 1888.

JAMES A. BEAVER, *Governor*:

Sir: I have the honor to acknowledge receipt of your communication of the 14th inst., requesting construction of the act of Assembly, approved the 13th day of April, 1887 (P. L. 20), entitled "An act authorizing and requiring boards of school directors and controllers to pay the teachers employed in the public schools of the several districts for attendance upon the sessions of the annual county institute in their respective counties."

The practical construction of this act of Assembly, as made by the Department of Public Instruction, is, that teachers are entitled to compensation for institute attendance in addition to their regular wages, according to their per diem pay for actual teaching, but compensation as authorized by the act of Assembly cannot lawfully ex-

ceed two dollars a day, which is the maximum allowance provided by the act.

The time of attendance cannot be reported and credited as part of the twenty days actual teaching required to constitute a school month, but is in addition thereto.

Teachers in attendance who are at the time of holding the institute, engaged in teaching in the county, and also those who have been elected or employed to teach in the public schools of the county for the current annual term, prior to the date of institute, but whose schools are opened subsequently, are to be reported by the superintendent, and are credited as legal members of the institute, and are entitled to compensation for attending the same.

In my opinion this construction accords with the true intent of the act of Assembly in question.

Very respectfully,

W. S. KIRKPATRICK,
Attorney General.

Where a foreign insurance company has complied with the statutory requirements preliminary to the granting of a license, it is the duty of the Insurance Commissioner to grant such license, notwithstanding such company may be authorized under its charter to transact various kinds of business, and no statute of this State authorizes the creation of an insurance company for the purpose of transacting more than one kind of business.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, April 6, 1888.

J. M. FORSTER, *Insurance Commissioner of Pennsylvania*:

Sir: In a recent communication to me you state that "the Fidelity and Casualty Company is a corporation of the State of New York, authorized by its charter 'to make insurance upon the health of individuals and against personal injury, disablement or death resulting from traveling or general accident by land or water; and guaranteeing the fidelity of persons holding offices of public and private trust; and upon the lives of horses, cattle and other live stock; and also against loss, damage or liability arising from any unknown or contingent event whatever which may be the subject of legal insurance, except the perils and risks included with the department of fire, marine and life insurance.' * * *

"This company has complied with the laws of this State since 1876, and has been licensed generally to do business here during each year. Its existing license expires March 31. It takes four kinds of risks, viz: Fidelity risks, accident risks, plate glass risks and steam-boiler risks. The company is entirely solvent, has a capital stock of \$250,000 unimpaired, and so far as I am advised, has fulfilled all of its contracts."

And in said communication you request my opinion upon the following points:

"1. Whether in view of section 1, act 1st May, 1876, providing for the incorporation and regulation of insurance companies, etc., restricting a company to any one of the purposes therein enumerated, the Insurance Commissioner is warranted in licensing a company of another State to combine and transact in this State various kinds of insurance business, for which combined purposes no domestic company can be created?

"2. Whether having the power to license this company to transact several kinds of insurance business it is proper and expedient to do so in view of the history and record of this corporation?"

Your questions have relation to the licensing of the Fidelity and Casualty Company, a corporation of the State of New York. This corporation, I understand, was created prior to the passage of the act of 1st May, 1876. Your power to license corporations of other States to do business in this State seems to be derived from the following provisions of the act of April 4, 1873, and the supplement thereto of May 1, 1876, to wit:

"It shall be the duty of the Insurance Commissioner, first, to see that all laws of this State respecting insurance companies and the agents thereof are faithfully executed, and for this purpose he is hereby invested with all the powers conferred by law upon the Auditor General in relation to the licensing of agents of foreign insurance companies," etc. Sec. 5, act April 4, 1873.

"It shall be unlawful for any person, company or corporation to negotiate or solicit within this State any contract of insurance, or to effect an insurance or insurances, etc., * * * * without complying fully with the provisions of this act." Sec. 9, Id.

"No person shall act as agent or solicitor in this State of any insurance company of another State or foreign government in any manner whatever, relating to risks, until the provisions of this act have been complied with on the part of the company or association, and there has been granted to said company or association by said Commissioner a certificate of authority showing that the company or association is authorized to transact business in this State * * * and the Commissioner shall not have power to grant a renewal of the certificate of said company or association until the tax aforesaid is paid into the State Treasury." Sec. 10, Id.

"Companies to which certificates of authority are issued, as provided in the preceding section, shall from time to time certify to the Commissioner the names of the agents appointed by them to solicit risks in this State," etc. Sec. 11, Id.

"That the certificates issued for the present year to insurance companies of other States and governments, shall continue good until the

31st day of March, A. D. 1877, unless sooner revoked by the Insurance Commissioner, and thereafter certificates shall be issued for the year beginning the 1st day of April and expiring on the 31st day of March succeeding." Section 41, act of May 1, 1876.

By a reference to the laws existing prior to the passage of the act of April 4, 1873, it will be found that, after providing for the filing by foreign insurance companies of a statement setting forth certain particulars, with a written application for a license to transact business in this State, signed by the agent appointed by such company, etc., "The Auditor General shall, if he is satisfied that the said company or association is possessed of the assets stated, and that they are of the value represented in the statement, grant to such company a license to transact such business in this Commonwealth by their said agent," etc. Section 6, act of April 11, 1868.

By section 12 of the act of May 1, 1873, as amended by act of June 23, 1885, it is provided that foreign insurance companies shall transmit certain statements containing particulars set forth in blanks prescribed by the Commissioners, and that "the Insurance Commissioner may require at any time statements from any company doing business in the State, or from any of its officers or agents, on such points as he deems necessary and proper to elicit a full exhibit of its business," etc., the statements to be verified as therein provided, and further providing that no business shall be done by such company having neglected to file the statement required of it within the time and manner prescribed. And by section 13 of the same act, as amended by the act of June 20, 1883, it is provided that no insurance company in this State, or its agents, shall do business in this State until it has filed with the Insurance Commissioner of this State a written stipulation, duly authenticated by the company agreeing for service of legal process, and for submission to the jurisdiction of the State and its courts, as therein more fully provided.

In section 53, act of May 1, 1876, there are some provisions with reference to the valuation of policies of foreign insurance companies applying for license, and some retaliatory provisions with regard to fees charged for such licenses, not necessary to be here quoted at length.

The only other restriction upon his general authority to grant licenses to all insurance companies of other States, so far as I have been able to discover, saving, of course, the restrictions implied in the several sections prescribing compliance with its provisions requiring statements, exhibits, certificates, etc., and satisfactory evidence as to assets, etc., is the retaliatory provision in the proviso of the first section of the act of June 5, 1887, which is as follows: "Provided, That any State refusing admission to any company or association, chartered and doing business as an assessment company under

the laws of the Commonwealth and the Insurance Department, is authorized to prohibit all assessment accident companies from such State doing business in the State of Pennsylvania." There seems to be no other retaliatory or reciprocity legislation.

The provisions of section 1 of the act of May 1st, 1876, have relation solely to the incorporation of insurance companies under the authority of this State, and the implied restriction therein operates to forbid the incorporation of a domestic insurance company to do more than any one of the species of insurance business described in the several clauses of the section. There is no express provision in any of the statutes now in force, which forbids the transaction of business within this State by a foreign insurance company authorized by the State of its creation, to do more than one kind of insurance business. The law providing for the issuing of a license or certificate of authority upon compliance with the provisions of the act," could not have reference to this first section of the act of May, 1876, which provides for the creation of domestic corporations only as already stated. It can have reference only to such provisions as are prescribed for purposes of protection to our people in the way of certificates, statements, and such other preliminary requirements and evidence as could be appropriately demanded of such foreign insurance companies. It certainly does not follow that because the act of May, 1876, prohibits the creation of domestic insurance companies, with power to do more than one kind of insurance business, that a foreign insurance company, duly created with such powers, must denude itself of all beyond one kind of insurance business when it enters this State. While a foreign corporation, strictly speaking, has no legal existence outside of the limits of the sovereignty which has created it, by the comity of States it is permitted to enter their limits to transact its business as a corporation. It comes into the State in contemplation of law in its entirety, bringing with it its constitution and personality. Subject to the provisions for licensing the same, they are expressly permitted by our statutes to transact their business as corporations within the limits of this State. When they have complied with the proper preliminary requirements they are thus introduced into the State without modification, change or diminution of their powers, except so far as there may be some provision of law applicable to all persons which expressly or by necessary implication restricts or forbids the doing of certain acts.

I am of the opinion that it is the duty of the Insurance Commissioner to license this corporation upon its complying with the preliminaries prescribed by the laws, and upon being satisfied as to such matters of which statement or evidence is required to be furnished. There is no provision in any of the acts regulating this subject which allows the Insurance Commissioner to admit a for-

foreign corporation for limited purposes, or to do one of several kinds of business which it may be authorized by its charter to do.

The several sections providing for or relating to the authorization of insurance companies of other States to do business here, provide that they shall be permitted to transact business upon complying with provisions of the act, etc. This must naturally mean transact all their business, at least all their business of an insurance character, the proper business for which the company was organized. The fact that there were in existence at the time corporations, both foreign and domestic, authorized to transact more than one kind of business, must have been present in the mind of the law-making power, and had it been intended to limit the transaction of business to one kind simply, it would have been easy to have provided, and to have used the appropriate language to clearly indicate such intention.

Reference has been made to a statute of the State of New York, enacted on the 26th day of April, 1887, which prohibits the doing in that State of more than one of the several kinds of insurance mentioned therein by insurance companies of other States, and it is suggested that, in view of this legislation, it is the duty of the Insurance Commissioner of this State to adopt a retaliatory rule of a similar character, as to insurance companies of the State of New York, in granting licenses to do business in this State.

In view of the provisions of the insurance laws of this State, some of which have been quoted, it will be seen that the Insurance Commissioner is required to issue license to do business to corporations of other States, upon their complying with certain specified prerequisites and conditions. I do not think that he has a discretion in the matter beyond an ascertainment of a proper compliance with the conditions provided by our statutes relating to the authorization of such foreign companies to business in this State. It is the province of the State to regulate and control this matter of the admission of foreign corporations into the State. They may adopt retaliatory provisions. That is an exercise of sovereignty. The Legislature of this State has impliedly manifested its purpose not to adopt retaliatory legislation beyond the provisions of the 53d section of the act of May, 1876, and the provisions already quoted from the act of June 5, 1887, which has reference only to assessment accident companies. The fact that they have confined the rule of retaliation to these two subjects, necessarily implies that the State does not pursue a policy of retaliation beyond such provisions.

The Insurance Commissioner certainly has no discretion or power to adopt such retaliatory measures. However strongly the fact of this recent law of the State of New York may appeal to our next Legislature to adopt similar legislation for this State, it can furnish no grant of power to the Commissioner to anticipate such legislation by laying down any such rule or restriction in granting licenses to do business in this State.

I am clearly of the opinion that, if you are satisfied that the Fidelity and Casualty Insurance Company, the matter of whose license is now under consideration, has complied with the statutory requirements preliminary to the granting of such license already pointed out, it is your duty to grant such license to said company to transact its business in this State. You certainly could not limit it to one kind of business. If you find that it fails to comply with the provisions of our statutes, it must be excluded altogether. If it does comply with such provisions, it must be admitted without any change or diminution of its powers and corporate character.

If I were in doubt upon this matter, I would feel it my duty to resolve that doubt in favor of the granting of the license in the present case, for the reason that the company in question has, since 1876, annually received a license to do business in this State, and no doubt, upon the faith thereof, has transacted and established a business in its several lines, formed connections, and incurred responsibilities which might be seriously impaired by a sudden change of attitude toward it, and the denial of further privileges or rights within the State. It is true that, being a foreign corporation, it has no such vested rights as would be protected from control, restriction or prohibition by any legislation that this State might see fit to enact. But unless it clearly appears that the Legislature intended to exclude this corporation, the law should not now, by any strained construction, be so applied as to deny rights which have so long been conceded by the proper legal authority without objection.

As to your second inquiry, to wit: "Whether, having power to license this company to transact several kinds of insurance business, it is proper and expedient to do so in view of the history and record of this corporation?" I need only say it is a matter that involves no question of law, and therefore any opinion that I might express would have no value, even if the licensing of this company were a matter of pure discretion with you.

I am of the opinion that if you find that the corporation in question has complied with all the requirements of the law, which are made conditions of licensing, the question of expediency and propriety is not involved, and that it would be your duty to issue the license. If, however, you should still consider that there is further inquiry justified beyond an examination into the matter of a full compliance with the provisions of the law expressly made as conditions of doing business in Pennsylvania, the solution of the second question proposed is with you and not with me.

Very respectfully yours,

W. S. KIRKPATRICK,
Attorney General.

A certificate of re-organization by purchasers at judicial sale must be filed by the Secretary of the Commonwealth if in proper form and containing the essential recitals. The duties of the Secretary are simply ministerial, and he cannot refuse to file such certificate because the old name has been adopted by the new corporation.

Query, If the right to the old name is not one of the rights which passes with the purchase.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 13, 1888.

CHARLES W. STONE, *Secretary of the Commonwealth*:

Dear Sir: In response to your communication of the 31st ult., transmitting to me certificate of reorganization by the purchasers at judicial sale of the Prince's Metallic Paint Company, with a protest against the filing of the same, and requesting my official opinion upon the following question to wit: "Has the Secretary of the Commonwealth any discretion as to the filing of the certificate of reorganization by the purchasers at judicial sale of the franchises of a corporation which is in proper and legal form, or has he any power to require the purchasers to select a name other than the name of the old corporation whose franchises have been sold, on the ground that the retention of such a name would lead to confusion and prejudice the rights and interests of other parties?" I beg leave to submit the following as the result of my examination of the subject:

The protest appears to have been filed by the Prince Manufacturing Company, and A. C. Prince and David Prince, who allege certain matters which, if true, might be ground for equitable relief against the use of the proposed corporate name by parties presenting the certificate of reorganization now under consideration. The certificate of reorganization is presented as a compliance with the provisions of the act of April 8, A. D. 1861, and more particularly the supplement thereto of 25th May, 1878, (P. L. 145, 146), the amendatory act of 31st May, 1887 (P. L. 278), extending said supplement so as to embrace sales made under a power in a mortgage or deed of trust.

By the said supplement it is provided, in section 1 thereof, that whenever the property and franchises of any manufacturing company "shall be sold and conveyed under and by virtue of any process or decree of any court of this State * * * the person or persons for or on whose account such * * * property and franchises * * * of any * * * manufacturing * * * company * * * may be purchased, shall be and they are hereby constituted a body politic and corporate, and shall be vested with all the right, title, interest, property, possession, claim and demand in law and equity of, in and to such * * * property or franchises * * * with the appurtenances and with all the rights, powers, privileges, immunities and franchises of the corporation as whose the same may have been so sold

* * * and the person for or on whose account any such
 * * * property and franchises * * * may have
 been purchased shall meet within thirty days after the conveyance
 thereof shall be delivered, public notice of the time and place of
 such meeting having been at least once a week for two weeks in at
 least one newspaper published in the city or county in which such
 sale may have been held, and organize said new corporation by elect-
 ing a president and board of six directors to continue in office, etc.,
 and shall adopt a corporate name and common seal, determine the
 amount of the capital stock thereof, not exceeding the amount author-
 ized in the original charter, and shall have power and authority to
 make and issue certificates therefor," etc.

Section 2. "That it shall be the duty of such new corporation,
 within one calendar month after its organization, to make a certificate
 thereof under its common seal, attested by the signature of its pres-
 ident, specifying the date of such organization, the name so adopted,
 the amount of capital stock, and the names of its president and direc-
 tors, and transmit the said certificate to the Secretary of State at Har-
 risburg, to be filed in his office, and there remain of record, and a cer-
 tified copy of such certificate so filed shall be evidence of the cor-
 porate existence of said new corporation."

Upon an examination of the certificate presented in the present
 case it will be seen that upon its face it sets forth a compliance with
 all the prerequisites provided in the foregoing quoted provisions of
 the act of 1878. In other words, it is a certificate of the organization
 of such new corporation under the provisions of the said act, under
 the common seal thereof, attested by the signature of its president,
 setting forth the date of such organization, the name so adopted, the
 amount of capital stock, and the names of its president and directors.
 Said certificate is directed to you as the Secretary of the Common-
 wealth and has been duly transmitted to you as such official to be filed
 in your office.

It will be noticed by the provisions of said supplement, that no
 action on your part or of the Governor is required, involving any con-
 sideration or approval of the paper submitted, or the granting of any
 letters patent. There exists in the purchaser or purchasers, by virtue
 of the judicial sale under the provisions of the said acts, a right to all
 the property and franchises of the former corporation, and the power
 to become, ipso facto, a new corporation upon the performance, by
 such purchasers themselves, of certain preliminaries and conditions
 precedent. The moment the purchaser or purchasers perform the
 acts required and involved in a reorganization, and a paper purport-
 ing to be a duly certified recital of the performance of such acts is
 transmitted and filed, the new corporation springs into existence,
 without the sanction or approval of any official,

It has been decided by the Supreme Court of this State in *Commonwealth v. Atlantic and Great Western Railway Company*, 3 P. F. Smith, 1, a case arising under the act of March 24, 1865, providing for the consolidation of railroad companies, that the filing in the office of the Secretary of the Commonwealth of the certificate of such consolidation constitutes the one company, thus created, a legal corporation in Pennsylvania.

In the case of the *Pittsburgh, Cincinnati and St. Louis R. R. Co. v. Fierst*, 15 Norris, 148, it was held that under the provisions of the act of 8th April, 1861, which, for the purposes of the present discussion, are applicable to the case in hand, that "the purchaser, being authorized to organize a new company, and proceeding to perform that duty according to the requirements of the act, brings into existence a new corporate body, which succeeds to the corporate franchises formerly owned by the company, whose property has been sold and held after the sale by the purchaser, and that the corporation there in question was a lawfully constituted corporation, vested with all the corporate rights and franchises of the old company, which had been sold out under a judicial sale, from and after the date of the filing of the certificate or articles in the office of the Secretary of the Commonwealth.

And in the case of *Commonwealth v. Atlantic and Great Western Railway Company*, *supra*, it is suggested by the Court that upon the deposit with the Secretary of State of the articles of consolidation, provided for in the railroad consolidation act, that it became then and there the duty of the Secretary of the Commonwealth to file the same of record, and if any endorsement of the date of filing with the Secretary should be necessary, a mandamus would lie to command him to add the appropriate date, and to perform further necessary acts in the premises.

From the language of the acts relating to the reorganization of corporations by purchasers at judicial sales, and in the light of the authorities just referred to, I am of the opinion that the Secretary of the Commonwealth has no discretion as to the filing of the certificate of reorganization by such purchasers at judicial sale, if they are in proper and legal form and set forth the essential recitals required by the provisions of said acts. His functions in the premises are simply ministerial.

Among other matters which the purchasers at such judicial sale are required to do as proper to a reorganization, is to adopt a corporate name. With the adoption of such name or its approval, the Secretary of the Commonwealth has nothing to do. He has simply to inspect the paper to ascertain whether, among other things it recites, that a name has been adopted. The privilege of adopting a particular name belongs to the purchasers under the provisions of the act. It has

been decided by the late Attorney General Lear of this Commonwealth (*Meredith's & Tate's Formation and Regulation of Corporations in Pennsylvania*, p. 127) that the purchasers of the property rights and franchises of the corporation at judicial sale can reorganize the company under the same or any other name. There is nothing in the act which requires the incorporators to adopt a name different from that of the company whose franchises they purchase, and it may be a question as to whether the right to adopt the old name is not one of the proper rights and franchises which may be regarded as entering into and passing with the purchase. At any rate, there is no limitation placed upon the right of the purchasers to adopt the old name or any other name, except perhaps such as might be the basis of a proceeding in court to restrain the use of a name which has in it the elements of a trade mark, or which would interfere with the vested rights and business of some other corporation or establishment doing business under a similar name.

Inasmuch, however, as your functions in this matter are simply ministerial, considerations of this character cannot be regarded by you, and the matters set forth in the protest, whatever might be their value in a proceeding in a court of equity to enjoin against the use of such corporate name, can have no pertinency in the present inquiry, because, as already stated, there is no power or discretion reposed in you to consider the merits of such objection or to refuse to receive the paper presented and make the endorsements thereon which may be legally necessary to complete the record of the reception and filing of the paper in your office.

I do not wish to be understood as expressing any opinion upon the right of the parties protesting to appeal to the proper court for protection against the adoption or use of a corporate name, which might infringe upon the rights of another corporation, partnership or individual, doing business under such name or using such name as a trade mark.

I find, in a somewhat cursory examination of the authorities, that such jurisdiction on the part of courts of equity has been entertained where proper equitable grounds are disclosed. I need not refer to the cases, nor express any conclusion of my own on the subject. I merely allude to the same to indicate that no action of yours in the present matter involves the consideration and adjudication of such claims or rights, and that any invasion thereof, if remediable at all, is properly referable to another jurisdiction.

Respectfully yours,

W. S. KIRKPATRICK,
Attorney General.

Under the power conferred upon the State Board of Health, they would have the power, in order to prevent the spread of contagion, to remove an infected person against his will to a proper place for treatment and isolation, and may make such regulations as will maintain and enforce quarantine as long as there is danger of a spread of epidemic disease.

If vaccination is a precaution reasonably necessary to limit the spread of contagion in the public schools, and the presence of an unvaccinated pupil endangers the general safety, then it would be proper by regulation, during the time of the prevalence of such disease, to exclude such pupil from contact with the other attendants upon the school.

The power to prescribe compulsory vaccination is a matter which would seem to require additional legislation.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, May 2, 1888.

BENJAMIN LEE, M. D., *Secretary Board of Health, 1532 Pine street, Philadelphia, Pa.:*

Dear Sir: I beg leave to acknowledge the receipt of your communication of the 17th ult. The pressure of matters necessitating my absence from the capital during the greater part of the time since receiving your letter has prevented earlier attention thereto.

In response to the same I have the honor to submit the following opinion, which substantially answers the several questions proposed without the repetition involved in an attempt to answer each question separately.

By the act of 29th January, 1818, (P. L. 28), and acts supplementary thereto, relating to the same subject, the board of health of the city of Philadelphia was established with certain powers and duties with regard to the prevention of pestilential and contagious diseases, etc.

By the act of 1st June, 1885, article 3 (P. L. 42), said act being entitled "An act to provide for the better government of cities of the first class in this Commonwealth," it is provided inter alia, that in cities of the first class, "the board of health shall continue with the powers and duties now vested in it by law, but the members thereof shall be five in number, to be nominated by the mayor," etc., and then follow certain provisions as to appointment, confirmation, length of term of office and constitution of said board. The powers and duties vested in the board of health, under and by virtue of the provisions of the act of 29th January, 1818, and the supplementary legislation relating to this subject, are thus continued in the board of health in cities of the first class, Philadelphia being the only city in the Commonwealth included in said class.

By section 18 of the act of 29th January, 1818, the board of health has power, within the city of Philadelphia and certain districts and townships therein named, since consolidated with the said city, to take orders for preventing the spread of contagion by forbidding and preventing communication with an infected house or family, and

“shall exercise all such other powers as the circumstances of the case shall require, and as shall in their judgment be most conducive to the public good with the least private injury.”

By section 22 of the same act, provision is made for a municipal hospital, and it is further therein provided that all persons other than those on board ship or vessel, and liable to be sent to lazaretto, residing within the city of Philadelphia and certain districts and townships since consolidated with the said city, “who shall be afflicted with any pestilential or contagious disease (measles excepted), may, upon the advice and order of the port physician or any other physician or person authorized by the board of health to grant such order, be removed by the health officers, or such assistants as he shall for that purpose employ, to the said hospital or to such other place as the physician or the board of health shall approve, if the person afflicted with any contagious or pestilential disease cannot be properly and efficiently attended to at home,” etc.

By the twenty-third section of the said act, power is given to the said board of health, in case of appearance of contagious disease in said localities, to adopt, without delay, such prompt measures as will effectually prevent all communication between the part or parts infected, and any other part of the city, district or townships, and all judges, justices, etc., and citizens are hereby authorized, empowered, enjoined and required to assist the said board and their officers in carrying into effect their rules and regulations touching the stoppage of intercourse, or the removal of the infected when they cannot be properly attended to at home, as the board shall order and publish.

The language of the foregoing sections, as well as the general scope and purposes of the acts relating to this subject, in my opinion, clearly embrace and imply the power in the board of health of a city of the first class, and the proper health officer under the direction, to remove a person infected with small-pox to the hospital without his consent, or if a minor, the consent of his parents or guardians.

The authority conferred upon the board of health to “exercise such powers as the circumstances of the case shall require, and as shall in their judgment be most conducive to the public good with the least private injury,” is contained in the same section which provides for taking orders for preventing the spreading of contagion by preventing communication with an infected house or family, and is clearly intended with reference to such prevention of the spread of contagion. This would clearly seem to include and imply the power to remove an infected person to such place as is appropriate, against his will, in order to protect the health and lives of the community, and as one of the appropriate and effective measures which the circumstances

might reasonably require. This is a part of the police power which is delegated to these officers, and is necessarily involved in their appointment and constitution. It is a familiar principle that the right of the individual citizen must be subordinated to the general welfare and protection of the community. The right to remove and separate from contact with other people, a person infected with a contagious disease is so well settled that it is unnecessary to quote authorities in support thereof.

I think that, under the powers conferred upon the State Board of Health, they also would have the power to make such regulations as will tend to limit the progress of epidemic diseases, and to enforce the same, which would include, as a usual and proper method of preventing the spread of contagion, the power to remove an infected person, in order to secure the public safety, to a proper place for treatment and isolation, even against his will. They may make such regulations as will maintain and enforce quarantine as long as there is danger of a spread of epidemic disease, and as incidental thereto, they may, by themselves and their agents, as depositories of this branch of the police power, enforce such regulations as shall secure the separation of infected persons or infected localities from contact and communication with the community at large.

Where a city or municipality, through its board of health, is exercising efficiently its undoubted powers in this regard, perhaps no action is necessary on the part of the State Board of Health beyond that of an advisory character. Where these obvious duties are neglected by the local boards of health, and they are unwilling to act or to co-operate with the State Board of Health, then it would be proper and incumbent upon the State Board to take the appropriate measures, and to exercise their undoubted power in preventing the spread of contagious disease. These extraordinary powers ought not to be exercised except under conditions properly ascertained to exist, necessitating their exercise in the interest of public safety, and should continue only during the prevalence of contagious disorder, or as long as there is reasonable likelihood of danger of spreading therefrom.

With regard to the last question contained in the postscript to your letter, to wit: "Under the last clause of section 5 has not the State Board authority to authorize school boards throughout the State, whether in cities or in the country, to forbid the attendance of any unvaccinated pupil upon the schools as an emergency measure to limit the progress of an incipient epidemic, if not as a permanent regulation?" I beg leave to say that the proper answer thereto depends upon a scientific and professional inquiry which, I think, your Board is authorized and fully competent to make and determine. If vaccination is a precaution reasonably necessary to limit the spread and

progress of contagion in the public schools, and the presence of an unvaccinated pupil endangers the general safety or is a condition likely to directly result in the propagation and spread of disease among pupils generally, then it would be proper by regulation, during the time of the prevalence of such disease, or in view of its threatened approach, to exclude such pupil from contact with the other attendants upon the school. The mere fact that vaccination is a necessary precaution to protect the individual scholar from the disease would not justify the exclusion of such scholar from the schools. The power to prescribe compulsory vaccination is a matter which perhaps would require additional legislation, but even if it existed in your Board, or in any other public officials having in charge the public health and safety, it would be enforceable directly against all persons by proper regulation or ordinance, and not indirectly by forbidding unvaccinated school pupils from attendance upon the public schools, whether by your own immediate action or through the instrumentality and intervention of boards of control.

Very respectfully yours,

W. S. KIRKPATRICK,
Attorney General.

The power to authorize and decree a change of name of a corporation of the second class does not now exist in the courts of common pleas; such change of name must be made under the provisions of the corporation amendment act of 1883.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 7, 1888.

CHARLES W. STONE, *Secretary of the Commonwealth:*

Dear Sir: I beg leave to acknowledge the receipt of your communication of the 1st instant, submitted to me for my consideration and opinion, the following question: "Whether since the passage of the Corporation Amendment Act of 1883 * * * * the power still remains in the courts of common pleas of the several counties to authorize and decree the change of name of a corporation of the second class; or, whether the said Corporation Amendment Act supplies and hence inferentially repeals so much of previous legislation as confers this power upon the courts in relation to such corporations of the second class."

In an opinion rendered to your department March 31, 1887, in re Excelsior Oil Company, application to amend charter under Corporation Amendment Act of 1883, by changing name (Meredith & Tate's Supplement to Formation and Regulation of Corporations in Pennsylvania, page 98), it was held by this department that the "Corporation Amendment Act of 1883" in authorizing the improvement,

amendment or alteration of a charter of a corporation created and existing under the Corporation Act of 1874 and its supplements, necessarily included therein the power to alter the name of a corporation. The name is conferred by the charter of the corporation and is an indispensable part of its constitution and necessary to the performance of its corporate functions. By section 3, of the Corporation Act of 1874, it is provided that the charter shall specify in seven distinct paragraphs, numbered from one to seven inclusively, as many distinct things, the first of which is the name of the corporation. The general power to alter or amend a charter conferred by the act of 1883 is a power to alter or amend any part of such charter, and as the name of the corporation is made a distinct part of its charter by the provisions of the Corporation Act of 1874, and such name is essential, the changing of the name of a corporation is intended to be provided for and regulated by the Corporation Amendment Act of 1883.

The said act of 1883 was passed for the purpose of supplying an omission in the act of 1874 with reference to the amendment and alteration of charters of corporations of the second class, and to provide for a method of amendment and alteration of such charters in harmony with the provisions of said original act in the creation and formation of such corporations. The amendment to charters of the first class was therein already provided for and was to be made by the same authority and in the same manner, as nearly as possible, as in the case of the original grant of such charter. In supplying the omission with regard to the amendments of charters of corporations of the second class, in the act of 1874 enumerated, the act of 1883 was evidently intended to follow the same plan and to make up a complete and harmonious system of law, providing for the creation, amendment, improvement and regulation of corporations. The power to change the name of a corporation being, therefore, fully provided for in the act of 1883, and such amendment to the charter being therein made subject to the supervision of the same official by whom the original charter was approved, based upon the same kind of certificate, and recorded in the same way, the said act was evidently passed to supersede all former legislation relating to this subject. The act of April 20, 1869, giving to the courts of common pleas power to change the name, style and title of any corporation within their respective counties, is included in the acts which may be regarded as supplied by the Corporation Amendment Act of 1883. The latter act is not consistent with the provisions of the act of 1869. If the act of 1869 is still in force there would be two different and inconsistent methods of securing the change of name of a corporation. In the case of the latter act the proper certificate is required to be produced to the Governor of the Commonwealth, is subject to his ap-

proval, and must be recorded in the office of the Secretary of the Commonwealth, where all the proceedings connected with original incorporation are also recorded; and thus the entire history of the corporation is preserved in one office and rendered easily accessible. Under the earlier act the proceedings would be before a tribunal which has no connection with the Governor or with the office of the Secretary of the Commonwealth. There is no provision in any act of Assembly, so far as I have been able to discover, by which any record or minute is required to be made in the office of the Secretary of the Commonwealth of any change of name made by a court under the authority of the act of 1869. A certified copy of the decree of the court might be filed in the office, but the filing of such certificate would have no legal sanction and would be merely a voluntary and unofficial act on the part of the Secretary of the Commonwealth. No such filing being required, its omission could have no effect on the validity of the action of the court, if the act of 1869 is still in force. It may, therefore, be considered that the Legislature in passing the act of 1883, which undoubtedly embraces the power to change the name of a corporation, intended thereby to remedy the confusion and uncertainties arising from this state of things, and to supply the provisions of the act of 1869, as well as all other inconsistent legislation relating to the amendment of charters of corporations of this class.

A subsequent affirmative statute is a repeal by implication of a former one concerning the same matter, if it introduces a new rule upon the subject and be evidently intended as a substitute for the former law: *Johnson's Estate*, 33 Penna. State, 511; *Gwinner v. Delaware and Gap Railroad Co.*, 55 Penna. State, 126.

A subsequent general statute fully covering the cases provided for by a former one, repeals it by implication: *Commonwealth v. Adams Express Co.*, 37 Legal Intelligencer, 405; *Mechanicsburg Building and Loan Association v. Minnich*, 1st Kulp, 513; *Rambo v. County Commissioners*, 1st Chester Co. Reports, 414.

I am of the opinion, therefore, that there does not now exist the power in the courts of common pleas in the several counties to authorize and decree a change of name of a corporation of the second class; and that such change of name must be made under the provisions of the Corporation Amendment Act of 1883.

Very respectfully yours,

W. S. KIRKPATRICK,
Attorney General.

A deed conveying land for a State hospital should be made to the Commonwealth in perpetuity and should recite that it is given pursuant to the provisions of the act of Assembly under which it is to be erected.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, December 19, 1888.

JAMES E. RODERICK, *Chairman of Commissioners of State Hospital of the Middle Coal Field of Pennsylvania:*

Dear Sir: I have the honor to acknowledge yours of the fifteenth instant, in which you inquire in whose name must the deed of land for the Hazleton Hospital be drawn.

I reply that in my opinion the deed should be taken in the name of the Commonwealth in perpetuity, and should recite that it is given pursuant to the provisions of the act of Assembly 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," approved June 14, 1887.

Respectfully yours,
JOHN F. SANDERSON,
Deputy Attorney General.

Street railways do not come within the meaning of the word "railroad," as used in the act 27th February, 1865.

There is no authority conferred upon the Governor to commission policemen for street railways.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 19, 1889.

JAMES A. BEAVER, *Governor:*

Dear Sir: The application of the Wilkes-Barre and Suburban Street Railway Company for the appointment of three policemen, having been submitted to me, with a request for an opinion as to whether street railways comes within the meaning of the word "railroad," as used in the act of 27th February, 1865 (P. L. 225), I beg leave to say that after a careful examination of the said act, I am of the opinion that a street railway is not contemplated by the said act, and that there is no authority conferred therein upon the Governor to commission said persons named, or any other persons designated by said corporation to act as policemen for the said street railway company.

Very respectfully,
Your obedient servant,
W. S. KIRKPATRICK,
Attorney General.

A certificate of incorporation of an intended corporation stating the purpose to be "the digging and mining for minerals," or "the excavation and production of minerals," is too general and indefinite. The policy of the corporation act is to require a specific statement of the purposes of a corporation.

A certificate should be confined to such statements only as are prescribed by the act as prerequisites to the granting of a charter.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 10, 1889.

CHARLES W. STONE, *Secretary of the Commonwealth:*

Dear Sir: In a recent communication you submit the applications of the Conewago Oil and Gas Company, of the Glenwood Coal Company, and of the Sewickley Gas Coal Company, and ask my opinion whether said applications are in due and legal form, and whether, upon such applications, in their present form, letters patent should issue. You call attention to the manner in which the purpose of the several proposed corporations is stated in the application, and ask, "can a mining company be incorporated for the general purpose of digging and mining for 'minerals' without more definite specification, and can such company combine the digging and mining for minerals with the drilling and boring for oil and gas?"

I will take up the several applications consecutively:

1. The Conewago Oil and Gas Company. The purpose stated in the application of said company is "drilling, boring, digging and mining minerals, oils and gas, and preparing, transporting and selling the same." In my opinion this statement, so far as it uses the term "minerals," is too general and indefinite. I do not think that letters patent should issue upon said application without modification, at least to the extent of striking out the general and comprehensive expression "minerals." As the purpose stated in the application now stands, it is, in effect, a wandering commission to the corporation to adapt itself to almost any character, and to prosecute various and different kinds of mining operations, shifting at its pleasure from one kind of business to another, whether it be the mining and production of coal, iron, copper, oil or other mineral products requiring different processes, appliances and methods.

2. The Glenwood Coal Company. The purpose stated in the application of this company is "mining coal and the manufacture of coke, the excavation and production of minerals, and the sale of the same in crude or manufactured form," etc. This statement is open to the same objection as in the case of the Conewago Oil and Gas Company. The application should either state that the excavation and production of minerals shall be limited to such as are incidentally developed and produced in the prosecution of the main purpose for which the company is proposed to be organized, or it should be stricken out altogether as too general and extensive.

3. The Sewickley Coal Gas Company. The purpose stated in this

application is "mining of coal and manufacturing of coke, excavation and production of minerals and the sale of said coal and coke and minerals in crude or manufactured forms, with power to acquire, hold, mortgage and dispose of, in fee simple or less estate, lands or mineral rights not exceeding five thousand acres at any one time, and their appurtenances in Westmoreland county in Pennsylvania, and to do all or any other acts or things lawful or necessary in the prosecution of said business."

By striking out the expression "excavation and production of minerals," or, if the purpose be to cover such developments as may incidentally occur in the prosecution of the main purpose, by qualifying the expressions so as to meet such possible contingency, and that only, the purpose in the said application, so amended, would be rendered unobjectionable. Perhaps the better way to cure the difficulty would be by simply striking out the words "excavation and production of minerals." The phrase is too general and not in harmony with what seems to be the object sought in the corporation act, and its supplements in requiring a statement of purpose in the certificate.

The policy of the corporation acts is to require a specific statement of the purposes of a corporation. This is for purposes of identification and strict ascertainment of corporate franchises by accurately defined boundaries. If, in the subsequent prosecution of the proper work of the corporation, there is incidentally discovered and produced other minerals, there would be no difficulty in amending the charter so as to cover any profitable production and disposition of any such other minerals under the broad and liberal power of amendment conferred by the corporation act and its supplements, provided, of course, such amendment be confined to a purpose germane to the main and proper purpose for which the corporation was originally incorporated, and naturally connected therewith and incidental thereto. Indeed, I am strongly inclined to the opinion that in such case an amendment would not be necessary and that there is implied in the organization and incorporation of a mining company for the purpose of mining and producing any particular kind of minerals, the power to produce and make available such other minerals as may be discovered and developed in the course of the prosecution of the principal work of the corporation. A corporation would not be bound to allow valuable material, which might be brought to the surface in a mining operation, to go to waste or remain undisposed of. At any rate, the power of amendment, as already suggested, would easily cover the production and profitable disposal of such material, if incidental or reasonably germane to the main purpose. If the other original purpose should fail through the absence of the minerals specifically described in the original certificate at the place of the operations of such company, and some new and different minerals

should be developed, all difficulty would be obviated and the case provided for by surrendering the old charter and applying for a new charter under the provisions of the act of 1874 and its supplements, for the purpose of prosecuting the work of mining and developing the new and different minerals so discovered.

These suggestions apply to all three cases. It has been decided by this department more than once that different classes of business, as set forth in the second class of corporations under the act of 1874 and the amendment of 1876, cannot be joined in the same charter, except so far as they are designated to be joined under the several divisions. The law contemplates the organization of corporations devoted to a single purpose, and incorporation of companies for dual or incongruous purposes should not be allowed unless there is a clear warrant in express language found in the acts of assembly conferring the power and granting corporate franchises. Any general expression, which may embrace many different purposes or kinds of business, is still more obnoxious to this principle.

You also call my attention, in the last mentioned case, to the following statement contained in the application, to wit: "That it is the purpose of the said corporation to take coal and other lands and mineral rights, situate in the said county of Westmoreland, in payment on capital stock, and to issue stock to the amount of the whole or a portion of the value thereof to said stockholders in payment therefor, and the stock to be so issued shall be taken, when issued, to the full paid stock," and request an opinion as to the propriety of such statement.

This statement seems to have been made with some reference to the provisions of the seventeenth section of the act of 1874, as amended by the act of 1876. I will call your attention to the language of the said seventeenth section:

"Every corporation created under the provisions of this act, or accepting its provisions, may take such real and personal estate, mineral rights, patent rights, and other property as is necessary for the purposes of its organization and business, and issue stock to the amount of the value thereof in payment thereof, and the stock so issued shall be declared and taken to be full paid stock, and not liable to any further calls or assessments, and in the charter and the certificates and statements to be made by the subscribers and officers of the corporation, such stock shall not be stated or certified as having been issued for cash paid into the company, but shall be stated and certified in this respect according to the fact. * * * Every such corporation may provide for the issue of deferred stock in payment for such real or personal estate or mineral rights, and if so provided, it shall be expressly stated in the charter filed, or in the certificate to be made and recorded, or in the acceptance of

this statute to be filed by any corporation accepting its provisions, with the amount of such deferred stock, and the consideration of the same, and the terms upon which the same shall be issued," etc.

This language contemplates the actual taking of real and personal estate, etc., and the issue of stock to the amount of the value thereof in payment thereof, and a proper statement in the charter and certificates and statements to be made by the subscribers and officers of the corporation. There is no requirement of a statement of a future purpose generally to issue stock and take in payment thereof land and other property. It only contemplates a statement therein of the actual issue of stock in consideration of such land or other property, and then it should be stated definitely so as to convey information as to the amount of stock, kind of property taken, and the value thereof.

In the case of the issue of deferred stock, the same particularity would be required in the charter or in the proper certificate to be made and recorded. The statement of a future purpose is not required, and would not obviate the necessity of the filing of a proper statement in the form required by the seventeenth section, whenever such stock may, in point of fact, be issued for such consideration.

According to a ruling of one of my predecessors in this Department, the duty of the Governor in examining certificates is merely to see that they conform to the conditions upon which corporate franchises are granted. It was further therein aptly suggested that a certificate ought not to set forth more than is necessary to enable him to discharge that duty, and that an application was irregular and ought not to be approved which contained irrelevant matter, and the Governor ought not to be called upon to sanction or disapprove transactions indicated by such recital (*Meredith & Tate's Corporations*, p. 116). Without determining how far the opinion referred to, so far as it applied to the particular case then in hand, is in harmony with recent views, the principle thus generally stated is certainly to be commended. I think that the certificate would be proper and free from difficulty if the purpose stated were amended, as already suggested, and this last statement as to the purpose of said corporation to take coal and other lands, etc., in payment on stock, stricken out.

It may be true that the recital above objected to would not invalidate the charter, and the same might be regarded as mere surplusage, yet it is desirable to secure exact compliance with the requirements of the corporation act in the framing of the certificate upon which the letters patent are to issue, and to preserve simplicity of statement uncomplicated with recitals, which, if encouraged or permitted, might be productive of difficulty and doubt in passing upon the sufficiency and regularity of the application. For that reason, if for

no other, I would advise that the certificate be required to be confined to such statements only as are prescribed by the act as the prerequisite to the granting of a charter, and that all other matter, whatever may be the purpose sought to be subserved thereby, be required to be stricken out or omitted.

Very respectfully,

W. S. KIRKPATRICK,
Attorney General.

Where a justice of the peace-elect has notified the prothonotary of his acceptance of the office, within thirty days after his election, and because of failure to pay the fee demanded by the prothonotary, such prothonotary has refused to notify the Secretary of the Commonwealth, of the acceptance by the justice of the peace-elect, such refusal cannot prejudice the rights of the justice-elect.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 14, 1889.

CHARLES W. STONE, *Secretary of the Commonwealth:*

Dear Sir: In a recent communication you desire to be informed whether the prothonotaries of the several counties of the Commonwealth are entitled to demand of a justice of the peace-elect a fee before filing his acceptance of said office, and whether, by failure to pay said fee, and the consequent omission of the prothonotary to certify his election, a justice of the peace forfeits his right to a commission.

In reply to your inquiry I beg leave to say that by the first section of the act of April 13, 1859, (P. L. 592), it is provided that every person "elected to the office of justice of the peace or alderman shall, within thirty days after his election, if he intends to accept said office, give notice thereof in writing to the prothonotary of the common pleas of the proper county, who shall immediately inform the Secretary of the Commonwealth of said acceptance; and no commission shall issue until the Secretary of the Commonwealth has received the notice aforesaid."

In examining the acts of Assembly fixing the fees to be received by the several prothonotaries of the courts of common pleas, I find no provision for a fee to be paid to the prothonotary for the service contemplated in the act just quoted.

I am of the opinion that no fee is demandable by the prothonotary of a justice-elect, as a condition of performing the duty cast upon him by the act of 1859, and that he would not be justified in refusing to perform the same until a fee is paid. Even if the prothonotary were entitled to charge a fee for receiving or filing the notice, or for transmitting information thereof to the Secretary of the Commonwealth, his refusal to communicate the fact of such notice, whether

because non-payment of a fee or for any other cause, could not, under the terms of the act, prejudice the right of the justice-elect to receive his commission, if in fact he duly notified the prothonotary of his acceptance within the statutory time.

It will be noticed that the condition prescribed by the act is that the justice shall, within thirty days after his election, give notice of his acceptance to the prothonotary. His having given notice is a compliance with the requirements of the act so far as he is concerned, and no subsequent delay of the prothonotary in communicating the fact to the State Department could prevent the final issuing of the commission.

In the case of L. A. Shippey, to which you refer, under the facts as you relate them in your communication, I am of the opinion that having, within the thirty days prescribed by the statute, notified the prothonotary of his acceptance of the office of justice of the peace, in Exeter township, Luzerne county, to which he was elected in February last, he is to be regarded as having fully complied with all that was required of him by said statute, and that the delay of the prothonotary in transmitting the information to you, whatever might have been the occasion of such delay, notwithstanding more than thirty days from the election had elapsed before such information was received, would not debar the said justice from now receiving his commission.

Very respectfully yours,

W. S. KIRKPATRICK,
Attorney General.

The constitutional provision "Whenever a vacancy shall occur in either House, the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term" is mandatory, and the Speaker of the House of Representatives in case of a vacancy occurring, should issue the proper writ of election notwithstanding there may not be another regular session of the Legislature during the term for which the original incumbent was elected.

The acceptance of a federal office and the assumption of the duties thereof by a member of the House of Representatives, operate to create a vacancy, and the Speaker, upon being satisfied on due inquiry and reliable information as to the existence of such disqualifying condition, would be justified in assuming the fact of a vacancy and in issuing a writ to fill the same by an election.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 24, 1889.

HENRY K. BOYER, *Speaker of the House of Representatives:*

Dear Sir: I have been absent upon an extended tour through New England and upon my return have just found your letter of the 8th inst. awaiting me. Therein you state that Dr. Brown, a member of the House from Adams county, has died; that Mr. Weaver has re-

signed as a member from Jefferson county, and that certain other members have accepted official positions under the collector of internal revenue, and the collector of the port at Philadelphia, and you desire to be informed as to the requirements of the Constitution in the premises.

I will answer your inquiries in the order in which they are submitted:

1. "Is the constitutional provision, 'Whenever a vacancy shall occur in either House, the presiding officer thereof shall issue a writ of election to fill such vacancy for the remainder of the term' mandatory? Have I any discretion in the matter?"

I am of the opinion that the provision quoted is mandatory and that it is your duty to issue the proper writ of election to fill the vacancy whenever such vacancy shall have occurred. That there may not be another regular session of the Legislature during the term of a member does not, in my judgment, affect, in any respect, the constitutional obligation. The full constitutional term of a member is two years, and there is all through such term the liability to active service upon a proper emergency and call. There being now, however, no call for a special session pending the writ in the several cases you mention should issue to elect at the next general election. I assume that you are familiar with the constitutional and statutory provisions on this subject, and therefore do not deem it necessary to quote or cite them.

To your second question, to wit:

2. "In those cases in which positions have been accepted under government officials, as to which I have only the knowledge other citizens have, but no resignations have been sent in, am I to consider vacancies to exist, by reason of the provision of the Constitution providing that 'no member of Congress or other person holding any office under the United States or this Commonwealth, shall be a member of either House during his continuance in office,' and am I to issue writs to fill them?"

I beg leave to say that the acceptance of a federal office, and the assumption of the duties thereof, by a member of the House, operate to create a vacancy by force of the constitutional provision quoted in your question—Article II, section six, Constitution of Pennsylvania. I do not think you would be justified in acting in such case upon mere rumor, but if, upon due inquiry and reliable information received from the proper source, you should be satisfied as to the existence of the disqualifying condition, you would be justified in assuming the fact of a vacancy, and in issuing a writ to fill the same by an election. I do not think you would be bound to await a formal resignation, or a final adjudication by the House itself of the ineligibility of such member to further sit.

I regret that my absence prevented my giving your communication earlier attention, and I trust that you have not been inconvenienced by the unavoidable delay.

Very truly yours,
W. S. KIRKPATRICK,
Attorney General.

No purely mutual foreign fire and marine insurance company is entitled to a license to do business in this State.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, November 1, 1889.

J. M. FORSTER, *Insurance Commissioner*:

Dear Sir: I have the honor to acknowledge your communication of the 28th ult., wherein you submit the question whether a solvent mutual fire and marine insurance company of another State is entitled to a license to do business in Pennsylvania.

The fortieth section of the act of May 1, 1876, (P. L. 53), provides:

“That no fire, marine, or fire and marine insurance company, incorporated by any other state or government, shall be authorized to transact business in this State, unless it has a capital stock paid in and safely invested of at least two hundred thousand dollars, which has not been impaired to a greater extent than that permitted to insurance companies of this State under the act to which this is a supplement, or having a capital stock of less than two hundred thousand dollars and not less than one hundred thousand, has a surplus on hand making the aggregate of its assets safely invested at least two hundred thousand dollars over and above all liabilities: Provided, That this section shall not apply to companies of other states now authorized to do business in this Commonwealth, until five years from and after the approval of this act, so long as said companies continue solvent and comply with existing laws: Provided, That any company with a capital paid in exceeding two hundred thousand dollars may be admitted so long as its unimpaired capital does not fall below said amount.”

In my opinion the purpose of this section is to exclude from the State all purely mutual foreign fire and marine insurance companies, and to define the grade of solvency to be possessed by stock companies. The opening sentence of the section is so distinct in terms as, in my mind, to leave no ground upon which to base any exception other than that contemplated by the qualification which the statute itself makes of the general language used, and that qualification, employing as it does the terms “capital stock paid in” and “capital

stock," and "surplus on hand," can, it seems to me, be construed to apply to no other kind of company than one possessing a capital stock in the ordinary sense, that is to say, a stock company.

Very respectfully,

JOHN F. SANDERSON,
Deputy Attorney General.

Where the office of clerk of the orphans' court, etc., becomes vacant by death, resignation or from any other cause, the principal deputy, upon giving bond as required by law, is authorized to perform all the proper duties of the office as fully as his principal, if living, could and is obliged to do, until the office is filled by the appointment of a successor to fill the vacancy, and is entitled to receive for his own use the fees accruing for services rendered by him while filling the vacancy.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 18, 1890.

JAMES A. BEAVER, *Governor*:

Sir: I have the honor to acknowledge your communication of 17th inst., wherein you state the following case:

"Winfield H. Hewitt, clerk of the orphans' court, of the court of oyer and terminer and the court of quarter sessions of Erie county, died on the 21st of November, 1889; Henry L. Rea, Esq., had, on the first of the preceding October, been appointed his principal deputy under the provisions of the act approved February 12, 1874, and on the 21st of November the said Rea gave bonds, as required by the provisions of the act, conditioned for the faithful performance of the duties of the said several offices, which said bonds were presented to me and approved on the 23d day of November, 1889, and on the same day duly filed in the office of the Secretary of the Commonwealth."

In connection therewith you submit the following questions:

1. Under this state of facts and until the vacancy existing in the said several offices shall be filled by formal appointment, to what extent is the said Rea authorized to perform the duties of the several offices hereinbefore mentioned?

2. In what respects, if any, are his official powers and responsibilities less than or different from those of the duly elected or appointed clerk of the said several courts?

3. Is or is not the said principal deputy entitled to receive as his own the fees accruing for services rendered by him during the time the vacancy in said offices continues to exist?

In answer to said inquiries I beg leave to say that I am quite clear that the said principal deputy clerk is authorized by the said act of 12th February, 1874, to perform all the proper duties of the several offices of clerk of the orphans' court, clerk of the court of oyer and terminer and the court of quarter sessions of said Erie county, as fully

as his principal, if living, could and was obliged by law to perform the same, until said offices shall be filled by the appointment and qualification of a successor to fill the vacancy. The official powers and responsibilities of such principal deputy, cast upon him by law, upon the death of his principal, are in no respect less than or different from those of a duly elected or appointed clerk of the said several courts. The said principal deputy, so acting in the case of death or resignation or the vacation of said office by his principal from any other recognized cause, is entitled to receive for his own use and benefit the fees accruing for services rendered by him as long as the vacancy, so caused by death or otherwise, remains unfilled by a successor regularly appointed or elected as provided by law.

Very respectfully,

Your obedient servant,

W. S. KIRKPATRICK,

Attorney General.

The State Board of Commissioners of Public Charities has the authority, at its discretion, to make transfer of all indigent insane from the State hospitals or asylums to the poor houses, almshouses or prisons of the several counties chargeable for their maintenance, without obtaining the consent of the court by whom such insane patients may have been committed.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, March 1, 1890.

THOMAS W. BARLOW, ESQ., *Secretary of the State Committee on Lunacy, No. 1420 Chestnut street, Philadelphia, Pa.:*

Dear Sir: In a recent communication from you on behalf of the Board of Public Charities, you direct my attention to the act of May 8, 1883, section seven (P. L. 22), the rule adopted by the said board under the authority thereof as to transfer of custody of insane patients, and the more recent act of May 21, 1889, section three (P. L. 258), and submit the following question: "Whether the board, under the authority of this act (May 21, 1889), may transfer from the state hospitals to county poorhouses insane patients who have been committed to the state hospitals by an order of court without the consent of the court by whom such insane patients were committed?"

You expressly state that the inquiry does not refer to the criminal insane committed to state asylums by the courts. Confining my answer, therefore, strictly to the limits thus submitted, I am of the opinion that the authority is conferred by law upon the board of Commissioners of Public Charities, at its discretion, to make transfer of all indigent insane from the state hospitals or asylums to the poorhouses, almshouses or prisons of the several counties chargeable for their maintenance without obtaining the consent of the court by whom such insane patients may have been committed.

I, of course, here narrow the expression "indigent insane" so as not to include any who might come under the head of the criminal insane, leaving the question as to the authority of the board over their case to be decided when it arises.

Very respectfully yours,
W. S. KIRKPATRICK,
Attorney General.

Municipalities throughout the State have the power to establish boards of health by ordinance, but the powers of the municipal authorities could not be delegated to such boards.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 27, 1890.

BENJAMIN LEE, M. D., *Secretary State Board of Health, 1532 Pine street, Philadelphia, Pa.:*

Dear Sir: In a recent communication you submit a printed circular letter, signed by yourself as secretary and executive officer of the Board of Health, and addressed to certain municipalities in this State, and request my views as to the position taken therein. This circular, after directing attention of the municipal authorities to the sources of the powers and duties of boroughs, recommends the formation of local boards of health, suggesting the plan set forth in the recent municipal act for the government of cities of the third class as a model or basis of organization of such boards.

I think there can be no doubt as to the power of such municipalities to establish by ordinance boards of health, but the powers of such boards would be very limited, and their duties would necessarily be of an advisory character. The service of its members would be purely voluntary and without compensation, but, even under such limitations, they, no doubt, would prove very useful. They could exercise supervision over the public health and sanitary condition of the municipality, and would be quite likely to make recommendations in the way of municipal action that would be desirable and exceedingly beneficial. I do not think that the State Board of Health can give any authority to the borough authorities to constitute such a board which they do not possess by virtue of the law under which the borough may be incorporated, or of the provisions of its special charter, if to such it owes its existence and constitution.

I am also quite clear that such board would have no power of its own to enforce any regulations which it might assume to make by any of the usual sanctions by which municipal legislation is rendered effective. The local legislature of such municipality is competent, under the usual grant of power, to make such regulations as may be necessary for the health and cleanliness of the borough, and to pass

such ordinances as may be necessary to enforce them, and, of course, may prescribe appropriate penalties to secure their observance. I am strongly of the opinion, however, that the municipal authorities cannot delegate any of their powers in this behalf to any subordinate body created by themselves without express warrant therefor in the charter of such borough or in the law under which it may have been erected.

Respectfully yours,
W. S. KIRKPATRICK,
Attorney General.

There is no law requiring or authorizing the Governor to appoint a commission to inquire into the mental condition of a person who is under sentence of death.

There is nothing in the law to prevent the Governor from obtaining the assistance of persons properly qualified in making an examination of the mental condition of one who is under sentence of death.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 27, 1890.

JAMES A. BEAVER, *Governor*:

Sir: Certain affidavits relating to the case of Peter Baranski, now under sentence of death in Schuylkill county, stating, inter alia, that the belief of said affiants is that an inquiry into the mental condition of said Baranski by a commission of lunacy is advisable and necessary, having been submitted to me for an opinion as to whether the laws of this Commonwealth will authorize your excellency to appoint such commission, I beg leave to say that, after a careful examination of the statutes of this Commonwealth, I find no law requiring or authorizing you to appoint such commission.

Whether the act, entitled "An act to provide for the custody of insane persons charged with and acquitted or convicted of crime," approved 14th May, 1874, wherein the courts are authorized to appoint such commissions in certain cases, is applicable or not to the case of Baranski, cannot be material to the question as to whether you are obliged by any law to appoint the commission asked for. I believe it has heretofore been the practice of the executive occasionally to request the services of gentlemen competent to make an inquiry of the kind suggested, in investigating the question of the mental competency of persons under condemnation of death. There is nothing in the law which would prevent your excellency from obtaining the assistance of persons, qualified by study and experience, in such cases, in determining whether Baranski is a proper subject for respite, or, in case where a death warrant has not been signed, to determine whether such warrant should issue. There would be no duty incumbent upon such persons to act, and if they did so, it would be a purely voluntary matter on their part.

There is no provision of law for the payment of their expenses, and no fund upon which such expenses would be a proper charge, unless, in the exercise of your control over the contingent fund of the Executive Department you should see fit to direct the payment of such expenses therefrom. I am informed that such has been the practice where the advice and assistance of such persons has been requested.

Very respectfully,

W. S. KIRKPATRICK,
Attorney General.

BOARD OF PORT WARDENS OF THE CITY OF PHILADELPHIA—
POWER TO MAKE REGULATIONS—Act of March 29, 1803.

The Board of Port Wardens of the city of Philadelphia may ordain reasonable and proper regulations providing for the convenience and safety of those having business on board vessels lying alongside the piers and wharves of the city. Such regulations must be within the scope of the authority confided to the board by the law creating it.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, May 20, 1891.

W. F. HARRITY, *Harrisburg, Pa.*:

Dear Sir: Replying to the letter of L. D. Barret, of the city of Philadelphia, addressed to Robert S. Patterson, asking whether the following regulation, to wit:

“All seagoing steamships, ships, barks, brigs, schooners and barges are required to have and maintain a proper, safe and convenient ladder, gang plank or side steps for the use of people having business on board during the discharging, loading or repairing of such vessel while lying at any pier in this port,” is within the power of the Board of Port Wardens of the city of Philadelphia to establish, I would say:

Section 4 of the act approved March 29, 1803, provides:

“That there shall be a meeting of the said wardens on the first Monday in every month, and at such other times as the master warden may appoint; and the said wardens, three of whom shall be a quorum when met, shall have full power and authority under the limitations hereinafter prescribed, to grant license to persons to act as pilots in the bar and river Delaware, and to make rules for their government while employed in that service, to decide all differences which may arise between masters, owners and consignees of ships or vessels and pilots, except in cases hereinafter excepted, to direct the mooring of ships and vessels in the harbor, and the order in which they shall lay, load or unload at the wharves, and to make, ordain and publish, such rules and regulations, and with such penalties for the breach thereof in respect of the matters aforesaid, as they shall deem fitting and proper: Provided, That such rules and regulations shall not be contrary to the constitution and laws of the United States, or of this Commonwealth: Provided also, That if any person whomsoever shall conceive himself aggrieved, by any decision or penalty made, given or imposed by the said wardens, such

person may, except in cases hereinafter excepted, within six days, appeal therefrom to the court of common pleas of the county of Philadelphia, and on such appeal the like security shall be entered, and the like proceedings had, as in the case of an appeal from the judgment of a justice of the peace, for a debt or demand not exceeding ten pounds."

Unquestionably under this section of the act the board of port wardens would have the power to ordain and establish any proper and reasonable regulation within the scope and purview of the section quoted, and not in conflict with the Constitution and laws of the United States and this Commonwealth. The regulation proposed seems to be a reasonable and proper one, providing it does for the convenience and safety of those having business which calls them on board vessels lying alongside of piers of the city. The scope of the regulation would perhaps be widened by adding the words "or wharf" after the word "pier." The penalty proposed by the regulation is simply an assertion of the legal consequence of a want of proper care on the part of the master or owner of a vessel, and in lieu thereof I would suggest such money fine as the board may deem right and appropriate. Under the provisions of the sixteenth section of the act, it would become the duty of the harbor master to carry this regulation into effect.

Very truly yours,

W. U. HENSEL,
Attorney General.

CHARTER—Acts of 1874 and 1876.

An application for a charter for "the mining for and manufacturing of oil and gas" is too general and indefinite a statement of purpose and ought not to be granted.

Under clause XVIII of the second class of corporations specified in the corporation acts of 1874 and 1876, pursuits that are nearly allied and closely kindred and cognate may be combined.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, May 20, 1891.

WILLIAM F. HARRITY, *Secretary of the Commonwealth:*

Sir: In answer to your letter of May 14, 1891, inquiring whether the application of the Newton Hamilton Oil and Gas Company for a charter for "the mining for and manufacturing of oil and gas" is lawful, I have to say that in my opinion a charter for such general and indefinite purposes ought not to be granted.

Under the Constitution of Pennsylvania and the legislation passed to enforce and make effective that instrument, and especially the acts providing for the incorporation and regulation of corporations, it is clear that the legislative intention was to distinctly define the object and purposes for which a charter shall issue. The construction of the

tax laws and other considerations strengthen the idea that there should be a singleness of purpose expressed in the application for a grant of letters patent. This I find to have been the tendency of all the rulings of this Department and the practice of the Department of State since 1874. I have no disposition to depart therefrom.

A charter for the "mining for and manufacturing of oil and gas" might be held to comprehend mining for oil, mining for gas, manufacturing oil and manufacturing gas or any of them. The manufacture and supply of gas is provided for in the eleventh clause of the second class of corporations in the acts of 1874 and 1876. The carrying on of any mechanical, mining, quarrying or manufacturing business is comprehended under the eighteenth clause of the same class. The incorporation of natural gas companies is provided for by the act of May 29, 1885. It will thus be seen that the purposes as set forth in the application of the Newton Hamilton Oil and Gas Company might be held to combine the provisions of two clauses of section second of the act of 1876, and also the provisions of the act of May 29, 1885. No such uncertainty should pertain to the application for a charter. I venture to suggest that the application should be restricted to purposes set forth distinctly in one clause of the incorporation act classification.

Answering at the same time your inquiries as to whether or not all of the different pursuits, viz: "Any mechanical, mining, quarrying or manufacturing business," set forth in Clause XVIII of the second class of the acts of 1874 and 1876 can be combined in the same statement of purpose, or which of the said pursuits, if any, may be so combined, I have to say:

I hold that all of the different pursuits therein set forth may not be combined in the same statement of purpose; that is to say, it is not within the intention of the act that a charter should be granted to a corporation generally to carry on "mechanical, mining, quarrying and manufacturing business" so as to combine the great number and variety of purposes which a combination of these pursuits would include. I do not hold that no two of the said kinds of business may be so combined. On the other hand, I am of the opinion that certain of these pursuits may, under certain circumstances, be so nearly allied, so closely kindred and cognate, that two of them may be combined. For instance, under the act of March 29, 1860 (P. L. 343), companies may be organized for mining, manufacturing and refining carbon oil. Reference to the various acts of assembly referred to in the eighteenth clause will show what combinations have been expressly permitted.

It is impossible to lay down a general rule to govern every case which may arise; and the better way, in my judgment, is to determine each case as it arises upon the general principles which I have endeavored to set forth.

Very truly yours,

W. U. HENSEL,
Attorney General.

TREASURER OF THE CITY AND COUNTY OF PHILADELPHIA—Acts of May 27, 1841; April 15, 1834; February 2, 1854.

A vacancy having occurred in the office of treasurer of the city of Philadelphia, the right to appoint was claimed by the board of commissioners of the city and county of Philadelphia, by the city councils of Philadelphia and by the Governor: Held, That the right to fill said vacancy was vested in the Governor.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, May 25, 1891.

ROBERT E. PATTISON, *Governor*:

Sir: In the matter of the election of a county treasurer in Philadelphia, vice John Bardsley, resigned.

It is contended that the right of election is vested:

1. In the board of commissioners of the city and county of Philadelphia.
2. In the city councils of Philadelphia.
3. In the Governor of Pennsylvania by and with the advice and consent of the Senate, if in session, and by his appointment and commission if the Senate is not in session.

I.

The claim of the right of the county commissioners to elect a treasurer is based entirely on the act of May 27, 1841. Under the act of April 15, 1834 (P. L. 542), the county commissioners had the power of appointment, and of filling vacancies, and the county treasurer, upon being appointed, gave a bond to the county to the satisfaction of the commissioners, and gave a bond to the State to the satisfaction of the judges of the quarter sessions.

The act of May 27, 1841 (P. L. 400) provided that county treasurer should be elected by the qualified voters in all the counties, and provided that in case of vacancy by resignation, etc., "it shall be lawful for the county commissioners to appoint a suitable person to fill said office until the expiration of the term for which such county treasurer shall have been elected."

Section six of the same act provided that in case the commissioners believe the county treasurer was embezzling, wasting, using or improperly managing the public moneys committed to his charge, it might be lawful for them to petition the court of quarter sessions, and for said court to make removal or require additional security.

It is admitted by those who contend for the election of councils that this act was entirely superseded by the act of February 2, 1854, known as the consolidation act of the city of Philadelphia, and that if no power exists in councils to fill the vacancy, then certainly none exists in the commissioners.

II.

The said consolidation act, merging all the districts of Philadelphia

county with the then city, and making the city co-extensive with the county, provided for biennial elections of city treasurer by the people. The tenth section of said act, relating to the city treasurer, provides for the bond to be given to the city, and declares that "any vacancy in said office (that is, in the office of city treasurer) shall be filled by the city councils by viva voce vote in joint session."

The eleventh section of the said act provides for the election of a receiver of taxes, and makes it lawful for the select and common councils to relieve the treasurer of the county of Philadelphia from the performance of any duties now imposed by law upon the city treasurer.

Section forty-sixth of the consolidation act provides, generally, that in the event of any elective office of said city becoming vacant, the vacancy should be filled by a joint vote of the city councils until the next city election.

Section 41 of the consolidation act is as follows:

"The county of Philadelphia shall continue to be one of the counties of this Commonwealth, and all county officers, not superseded by this act, shall continue in office and continue to be elected and voted for, at the places of election provided for by this act, as in other respects now provided by law, and be denominated officers of the county of Philadelphia; and all courts shall continue therein to exercise the jurisdictions and powers now conferred upon them by the Constitution and laws of this Commonwealth; and the councils of said city, and the officers thereof, shall exercise all the powers and authorities of the superseded county commissioners and county board, and commissioners of sinking fund, and of other officers not inconsistent with this act, in such way and manner as by this act is, or by the city councils may be established."

Thus the law stood up to the time of the adoption of the new constitution.

III.

If no office, therefore, existed except that of city treasurer of Philadelphia—a municipal office to be filled by a municipal election, there might be some substance in the contention that a vacancy in this office should be filled by city councils to hold until the next city election, provided it did not occur within thirty days of the happening of the vacancy.

But a very important change has been wrought by the emphatic language of the Constitution, the acts of 1874 and 1876 and the effect and meaning given to them by the decisions of the lower and the higher courts in the case of *Commonwealth v. Taggart*.

Article XIV, section 1, of the Constitution of 1874, declares "county officers shall consist of sheriffs, coroners, prothonotaries, registers of wills, recorders of deeds, commissioners, treasurers," etc.

Article XIV, section 2, of the Constitution of 1874, says: "County officers shall be elected * * * All vacancies not other-

wise provided for shall be filled in such manner as may be provided by law.”

The act of assembly, approved May 15, 1874 (P. L. 205), declares that, in case of a “vacancy happening by death, resignation or otherwise, in any office created by the Constitution or laws of this Commonwealth, and where provision is not already made by said Constitution and laws to fill such vacancy, it shall be the duty of the Governor to appoint a suitable person to fill such office, who shall be confirmed by the Senate, if in session, and who shall continue therein and discharge the duties thereof till the first Monday of January next succeeding the first general election, which shall occur three or more months after the happening of such vacancy.”

Section 5, Article XIV of the Constitution of 1874 says: “The compensation of county officers shall be regulated by law, etc. * * * In counties containing over one hundred and fifty thousand inhabitants all county officers shall be paid by salary,” etc.

The act of assembly approved March 31, 1876 (P. L. 718), to carry into effect the above section of the Constitution, declares that “in all cases where a city containing over three hundred thousand inhabitants is co-extensive in boundaries with the county, all the officers known therein as city treasurer, city comptroller, city commissioners, shall be severally regarded as county officers,” etc.

It may be noted here, in passing, that under existing laws the county treasurer of Philadelphia or city treasurer—if it pleases anyone to so denominate that officer—is, and has for many years, been elected at the fall election, when comptrollers, commissioners, sheriffs, recorders and other county officers are elected, and not at the spring or municipal election when city officers are elected. The contention that a vacancy in the office of city treasurer shall be filled by city councils carries with it the assumption or conclusion that the city treasurer is the office created by the act of 1854, whereas, in fact, it is an office created by the Constitution of 1874 and the act of 1876, and under the act of May 15, 1874, a vacancy occurring in such an office shall be filled by the Governor’s appointment. That act explicitly says that the Governor shall appoint to fill a vacancy in any office created by the Constitution or laws of this Commonwealth, where the said Constitution and the said laws make no provision to fill such vacancy. It is not contended that the Constitution which creates the office of county treasurer in Philadelphia and the act of 1876 which reaffirms that the office known as city treasurer is that of county treasurer, provide how any vacancy occurring in them shall be filled.

Fortunately, however, any doubts which might have existed before on this subject are set at rest and determined by the decision of the court of common pleas of Philadelphia, affirmed by the Supreme Court in the case of *Taggart v. Commonwealth*, 102 Pa. St. 354.

In the opinion of the court below Judge Ludlow says:

"Passing now to the consideration of the main question, we remark that it must be remembered that the county of Philadelphia is an integral portion of the State and must remain so. The city of Philadelphia, it is true, exists, and is co-extensive with the county itself, but its charter may be modified or repealed at the will of the legislative department of the government, and it differs from the county in that, while the whole Commonwealth must be subdivided into counties, a city may or may not exist or be created, according to circumstances.

"With this distinction kept constantly in view, we approach the consideration of constitutional questions.

"The framers of the present Constitution evidently intended to devise a system which should bear equally upon every citizen and all interests of the Commonwealth. This intent is manifest from one end of the Constitution to the other; not only was special legislation to be abolished, but the whole machinery of the government was intended to move uniformly and harmoniously.

"To execute the functions of government certain offices were established, some related to the whole Commonwealth, such as those embraced within the executive, judicial and legislative branches of the government, others to counties only, such as county officers; and it is especially to be noted that while those officers are recognized and named, the offices themselves are not left to legislative caprice or dependent upon popular will.

"They are imbedded in the organic law, and cannot be changed without an amendment of the Constitution.

"If it became imperative to make a 'county officer' a constitutional one, and that each political subdivision of the State should be furnished with certain officials, holding by virtue of an exalted title, then every officer named in article XIV, section one, was specified for a well-defined purpose, and to preserve a government uniform in all its parts, and of universal application throughout the Commonwealth. To strike down one or more of these officers, or to say that any one has only a nominal or figurative existence, is to mar, if not to destroy, the symmetrical proportions of the whole fabric."

If, then, this office, by whatever name it may be called, in which a vacancy now exists, is of this exalted character, if it has its origin in the fundamental law, by what analogy can the contention be supported that the right of filling it has been vested in the directors of the corporation of the city of Philadelphia? Upon what principle can the councils of that city be held to be invested with such a power? To concede this would be to utterly overthrow the reasoning of the Supreme Court in the Taggart case. It would make the creature superior to the creator; it would make the county of Philadelphia to be swallowed up in the city, and would invest the treasurer of a mere municipal corporation with greater dignity and larger powers than the treas-

urer of an integral, fundamental, organic division of the Commonwealth.

In the Taggart case Judge Ludlow clearly points out how the misapprehension arises in the minds of those who now contend for the application of the act of 1854 to a vacancy in an office created by the Constitution of 1874 and the act of 1876. He says:

“The confusion arises from confounding the city with the county and by attempting to adjust to pre-existing legislation present constitutional provisions and laws.”

That is to say, any attempt to determine how a vacancy, under a later law, shall be filled by referring it to an act superseded by that law, is certain to produce confusion.

What he says in this same connection about the city comptroller being vested with the duties of a county auditor, superadded to which were certain duties cast upon him as a city comptroller, is entirely true of the office of treasurer. The new city treasurer was vested with some of the powers which belonged to the county treasurer, and had superadded to them certain duties cast upon him as city treasurer. “He never ceased to be clothed with whatever power might be necessary to enable him to perform any duties which might appertain to the office of county treasurer.” In the framing of the constitutional article relating to county officers, “treasurer” was inserted with “the full knowledge of the convention of the existing condition of affairs in the county of Philadelphia.”

“If we now accept this fundamental legislation, (that is to say, the legislation which creates the office of county treasurer in Philadelphia superseding all former definitions of that office) instead of attempting to reconcile it with previous special legislation in force in this county (that is, instead of undertaking to apply the superseded act of 1854, which had reference only to city treasurer) we solve the difficulty, harmonize the system and protect the financial interests of a city, which is subordinate to a county, by establishing an office incapable of destruction by simple legislation.”

Judge Ludlow then goes on to argue that this view is sustained by legislation, and by contemporaneous exposition, referring to the act of March 31, 1876. He dwells at length and forcibly upon the fact that whereas a city comptroller—and the same is true of a city treasurer—was formerly elected at the spring elections, since the new offices have been created and the old superseded, they have been elected at the general fall elections. He proceeds to show what an incongruity would arise by giving effect to section 46 of the consolidation act, and declares that it was not the intention of the framers of the Constitution or of the Legislature that, by the adaptation of old legislation to a new condition of things, the people should be deprived of the right to elect the most important fiscal officer of the city for more than a year, because the officer elected by councils may continue

in office until his successor is qualified. Certainly, if the construction of those who contend for an election by councils be correct, then, in the event of a treasurer dying in the first month of his office, councils would have the power to fill his place for the whole of his unexpired term.

In the opinion of the Supreme Court in *Taggart v. Commonwealth*, 102 Pa. St. 363, Chief Justice Mercur, affirming the opinion of Judge Ludlow, goes even further than the lower court in declaring that the act of 1854 does not govern, and declares, in effect, first, that the Constitution itself created the office of county treasurer in Philadelphia; and, secondly, that if there was any room for doubt as to this, the legislative power expressly given by the Constitution to create it as a new office, was exercised in the act of March 31, 1876. It recognized, he said, in effect, that, whereas an officer known as city treasurer, had heretofore performed in Philadelphia the duties of a county treasurer, any such officer thereafter elected was to be regarded and designated as a county officer, and in law and fact was a county officer. Moreover, it is true of the act of 1876 with relation to the treasurership, as it was declared true of it with relation to the comptrollership, that it fixed his salary, and without it no provision was made for his payment.

It certainly follows, therefore, as logically and conclusively from the decision in this case, that the councils were not authorized to appoint a treasurer, as that in the former case they were not authorized to appoint a comptroller. It is indeed a flimsy contention that the constitutional provision conferring upon the Governor the right of appointment relates only to cases where no provision by law is made, when it so manifestly appears that no provision whatever appears for the office created by the Constitution and the law of 1876. The provision made by the law of 1854 is made only for the office created by that law, which is a wholly different one from that erected by the Constitution. I, therefore, conclude that the right to fill the vacancy is in the Governor.

W. U. HENSEL,
Attorney General.

(Affirmed by Supreme Court in *Com. ex rel. Hensel v. Oellers*, 140 Pa. St. 45.)

GEOLOGICAL SURVEY PUBLICATIONS—Act of May 14, 1874.

The Legislature only has authority to dispose of the copyright of the Geological Survey publications or to release anyone from liability on account of its infringement.

The Board of Survey is responsible for the care and condition of the plates and cuts which have been paid for by the State.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, May 28, 1891.

WILLIAM A. INGHAM, ESQ., *Secretary, 907 Walnut street, Philadelphia, Pa.:*

Dear Sir: I am in receipt of your letter of May 22, inquiring "Who has the authority to give a release as to claims for infringement of the copyright of the Geological Survey publications?" Second, Who has authority to loan the plates and cuts used in printing illustrations which, you say, have been paid for by the State, are in the custody of the State Printer, and are now corroding in the cellar of the State Printing Office?

1. In answer to your first question I have to say that the Legislature, by the terms of the act of May 14, 1874, directed that the publications of the board should be copyrighted by your board in the name of the State. It would require the assent of the same authority, in my judgment, to dispose of that copyright or to release anyone from liability on account of its infringement.

2. The board of survey is responsible for the care and condition of the plates and cuts which have been paid for by the State, and I know of no authority, less than that of the Legislature itself, which could assent to your disposing of them to the disadvantage of the Commonwealth.

I do not wish to be understood as indicating that the consequences of your assenting to any temporary use of them for public information which would not involve their destruction or deterioration, would be more serious than those of the neglect which permits them to corrode in the cellar of the State Printer's building.

Very truly yours,

W. U. HENSEL,
Attorney General.

COMMITTEE ON LUNACY—RULE 32 OF RULES AND REGULATIONS
CONSTRUED.

Leave of absence cannot be granted a patient for a longer period than thirty days. Such patient must then return to the hospital and report, if able, for personal examination before renewal of leave.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, June 9, 1891.

HENRY M. WETHERILL, M. D., *Secretary Committee on Lunacy,
Board of Public Charities:*

Dear Sir: Your letter of June 6, inquiring as to the meaning of

section 32 of the rules and regulations of the Committee on Lunacy has been received.

A strict interpretation of this rule undoubtedly means that a leave of absence under it cannot be granted for a longer period than thirty days, and at the end of that period the patient is expected to return and report to the hospital. This rule does not authorize a renewal of the leave of absence by the chief medical officer, from time to time, unless he sees the patient. It contemplates a return to the hospital before a second leave is granted, unless the patient is unable to return.

Very respectfully yours,

JAS. A. STRANAHAN,
Deputy Attorney General.

COUNTY AGRICULTURAL SOCIETIES—REPRESENTATION IN STATE BOARD—Act of May 4, 1876.

The representative of an agricultural society is the representative of the county in which such society is located, and is entitled to membership in the State Board of Agriculture.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 22, 1891.

THOMAS J. EDGE, ESQ., *Secretary Board of Agriculture:*

Dear Sir: Your letters of June 17 and 22, 1891, have been received.

In reply to your request would say that the certificate of election by a county agricultural organization under section 1 of the act of May 8, 1876, which has been properly signed by the officers of the society on the blank prepared by the board for that purpose, and regular in all respects, should be respected by the board and the member so certified should be entitled to membership. I am of the opinion that, under section 1 of the act of May 8, 1876, the person selected by the county agricultural society, is entitled to representation. The person so selected is a representative of the society and not a representative of the county under the act, and being a representative of the society in the county would, of course, by virtue of the certificate of the society, be held to represent the county in which the society is located. Under the circumstances you state in your letter, I believe, that the person holding this certificate was entitled to representation on the board.

Yours truly,

W. U. HENSEL,
Attorney General.

PENAL INSTITUTIONS—ACT OF MAY 20, 1891—EIGHT HOURS WORK.

It was not the intention of the Legislature to prescribe an inflexible rule not subject to the conditions and necessities of management of the penal institutions of the State by which eight successive hours work only should be the test by which infraction of the act of May 20, 1891 (P. L. 100), should be measured.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, June 22, 1891.

EDWARD S. WRIGHT, ESQ., *Warden of Western Penitentiary, Pittsburg, Pa.:*

Dear Sir: Replying to your communication of the 9th inst., addressed to Hon. W. F. Harrity, Secretary of the Commonwealth, and referred to this Department for answer, I have to say:

Section 1 of the act "making eight hours as a day's labor in penal institutions under control of the State" provides "that from and after the passage of this act eight hours out of the twenty-four of each day shall make and constitute a day's labor and services in the penitentiaries and reformatory institutions which shall receive support from appropriation made by the General Assembly of this Commonwealth and by taxes levied and paid by the several counties thereof in whole or in part."

It can hardly be supposed that the Legislature intended to prescribe an inflexible rule not subject to the conditions and necessities of management of the penal institutions of the State, by which eight successive hours work only should be the test by which infractions of the statute should be measure. Indeed, a large measure of discretion must, from the necessities of the case, be left to the controlling officers of such institutions. The limit of eight hours in one day ought to be observed in all cases prescribed by the statute, but I can see nothing objectionable in a method under which eight hours shall be observed as the maximum limit of any one day's work, extending through a prescribed period, thus establishing an equitable adjustment of time.

I am of opinion that the deputy warden is not an "employee" included within the prohibition of the act of May 20, 1891.

Very truly yours,

W. U. HENSEL,
Attorney General.

WARRANTS—RIGHT OF COMMONWEALTH TO GRANT NEW WARRANT WHERE ORIGINAL WARRANTEE HAS BEEN GUILTY OF LACHES.

A descriptive warrant may lawfully issue covering a prior warrant granted to one who negligently has failed to do his duty.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, June 24, 1891.

ISAAC B. BROWN, *Deputy Secretary of Internal Affairs:*

Dear Sir: I have your communication of the 12th inst., transmitting an inquiry from the Board of Property in reference to the application

of John Locke for a warrant for two hundred acres of unimproved land, situated in Armagh township, Mifflin county. It appears from the application for a warrant that the land applied for was the same for which a warrant was granted to one John Treaster on the 19th of September, 1882, upon which there had been no return of survey, but for which the purchase money has been paid by the warrantee referred to. The application of Locke is dated the 26th of November, 1890. The question to be considered is whether the Commonwealth, having received the purchase money for a tract of land, and for which a warrant had been granted, could again grant a warrant and receive the purchase money for the same tract, the original warrantee having abandoned the same?

It is a principle often announced in the decisions of the Supreme Court, and may be considered as the settled law of the Commonwealth, that he who obtains a warrant for the purpose of locating land thereunder, must follow up the requisites necessary to put the title out of the Commonwealth with due diligence, and it is the duty of the holder of a warrant, descriptive or indescriptive, to have his warrant with survey returned to the office of the Secretary of Internal Affairs within a reasonable time. This is essential in order that the Commonwealth may have precise knowledge of the land that has been actually appropriated to it, and be paid for any surplus that has been surveyed into it. *McGowan v. Ahl*, 53 Pa. St. 84. The survey must be returned within a period that has been fixed, not to exceed seven years. *Chambers v. Mifflin*, 1 Penna. R. 78; *Star v. Bradford*, 2 id. 384; *Stranch v. Shoemaker*, 1 W. and S. 166; *Wilhelm v. Shoop*, 6 Barr. 21. In *McGowan v. Ahl*, supra, Chief Justice Woodward says:

“By taking the warrant, a duty to the Commonwealth is assumed which can be discharged only by making a survey and return within reasonable time, and if it be not performed within the period that limits the Commonwealth’s indulgence, the right is postponed to any intervening right that has been duly pursued.”

The doctrine established by the courts in considering the question of the relation that a warrantee bears to the Commonwealth is, that whilst a duty is imposed upon a warrantee to proceed expeditiously and within a reasonable time to have a survey made and his rights definitely ascertained and fixed by patent, any indulgence shown by the Commonwealth is a matter of grace as against one who is careless and negligent of his rights. The question before us is not one of adverse claimants to the same parcel of land under conflicting warrants, but one which involves the right of the Commonwealth to grant a descriptive warrant covering a prior warrant granted to one who negligently has failed to do his duty. The payment of the purchase money cannot affect the status of the Commonwealth where the warrantee has been wilfully negligent and guilty of laches as appears in this case. It is to the interest of the Commonwealth that her lands

be settled upon and improved and to assist in so doing the law should have regard for the diligent and not the slothful.

I am, therefore, of opinion that a warrant may lawfully issue to the applicant, John Locke, for the land described in the application.

Very truly yours,

W. U. HENSEL,
Attorney General.

FACTORY INSPECTOR—WARRANTS OF CANNOT BE QUESTIONED COLLATERALLY.

W. was appointed Factory Inspector by the Governor; his nomination was rejected by the Senate; he was then reappointed after the adjournment of the Senate. Held, That W's appointment was valid and the State Treasurer was justified and authorized in recognizing him and his warrants as those of a de facto and de jure officer.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, July 30, 1891.

HENRY K. BOYER, *State Treasurer*:

Dear Sir: I am in receipt of your favor of July 29, inquiring whether you are authorized and justified in paying the salaries and expenses of the Factory Inspector and his appointees, and suggesting that the validity of such payments might be questioned because, you say, Robert Watchorn, the present Factory Inspector, was "appointed by the Governor during the session of the Senate and rejected by that body, and again appointed after its adjournment."

In reply I beg leave to say that, in my opinion, the appointment of Robert Watchorn as Factory Inspector by Governor Pattison, was a valid appointment; that he holds and exercises said office rightfully; that his official acts are valid and binding, and certainly that the validity of his appointment cannot be questioned collaterally by you, and that you are justified and authorized in recognizing him and his warrants as those of a de facto and a de jure officer.

Very truly yours,

W. U. HENSEL,
Attorney General.

ACADEMY OF NATURAL SCIENCES OF PHILADELPHIA—ACT OF JUNE 12, 1891—PROTEST OF GEOLOGICAL SURVEY COMMISSION.

It is the right and duty of the Auditor General to require an itemized statement of quarterly expenses from the managers and directors of an institution receiving an appropriation of money from the State and to satisfy himself that such money is applied to the purposes defined in the act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 28, 1891.

THOMAS McCAMANT, *Auditor General*:

Dear Sir: I am in receipt of your letter of August 27, inquiring what

powers, if any, you have in regard to withholding from the Academy of Natural Sciences of Philadelphia the appropriation made to it by the act of June 16, 1891 (P. L. 322), in view of the representations and protests made by the Geological Commission that "they are afraid they will get no room for the purposes of a library, and that the appropriation will be all expended for general building purposes," and the further claim "that they were instrumental in having the appropriation passed."

In reply I beg to say that the act referred to contains no recognition whatever of the Geological Survey Commission, and confers upon that body no power to interfere with the payment of this appropriation to the beneficiary named in the act. It is your right and your duty to insist upon the directors and managers of the Academy of Natural Sciences making to you quarterly an itemized statement of the cost of their building, and you have a right to satisfy yourself that the sum of money appropriated by the said act is applied to the purposes of the appropriation defined in the law. Beyond that you have no power, at the instance of any person or committee, to withhold the quarterly instalments, if the treasurer shall have sufficient money in the treasury to pay them.

Very truly yours,

W. U. HENSEL,
Attorney General.

EXECUTIVE SESSION OF THE SENATE—CONSTITUTIONAL LAW—Section 12, article IV, of the Constitution—Act of July 7, 1885—Section 4, article VI, of the Constitution.

No previous specific appropriation of money by the General Assembly is necessary to warrant the State Treasurer in paying upon warrants drawn by the proper officers in pursuance of law the compensation of members, officers and employes of the Senate convened in extraordinary session, as fixed by the act of July 7, 1885 (P. L. 264).

Such necessary and essential expenses of its session as those incurred for the proper official report of its proceedings, and for the execution of such processes as may be served by its officers to secure the attendance of witnesses and the production of testimony for the purposes of the inquiry for which it is assembled, and for the pay of such witnesses attending its sessions as may be necessary to the purposes of the inquiry before the Senate, can be legally paid without a previous specific appropriation of a particular amount of money for that purpose.

The constitutional provisions which make it the duty of the Executive to summon the Senate into executive session, and of the Senate to give consideration to such matters as he shall present to it, and the law providing for the compensation of members, officers and employes attending such a session, carry with them the implied power of the Senate to order and the State Treasurer to pay the necessary expenses of such a proceeding, and these provisions of the Constitution and of the laws are in themselves such an "appropriation" as is con-

templated in the 16th section of the 3d article of the Constitution, which ordains that "No money shall be paid out of the treasury except upon appropriations made by law on the warrant drawn by the proper officer in pursuance thereof."

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, October 15, 1891.

J. P. S. GOBIN, *President pro tem. of the Senate*:

Sir: I am in receipt of your communication of October 14, 1891, in which you inform me that the Senate of Pennsylvania in extraordinary session, convened by His Excellency, the Governor of the Commonwealth, to make diligent inquiry into the alleged misconduct in office of certain officials, has instructed you to request that I, as the Attorney General of the Commonwealth, attend upon and assist the Senate in the conduct of its investigations.

In response, I beg leave to say that I am willing to attend upon and to assist the Senate in the conduct of its investigations at such time, in such manner and for such purposes as the Senate may indicate that its inquiry is being conducted, provided that such assistance be not invoked as is inconsistent with my relations to the Executive of the Commonwealth as his legal and constitutional adviser.

I have also just received at this writing (2.30 p. m.), certified to me by the chief clerk of the Senate, a copy of a resolution "that the Senate request the Attorney General to give his opinion in writing as to whether or not the State Treasurer can legally pay the expenses of this special session of the Senate under existing law."

I am not aware of any constitutional provision or act of the General Assembly, which makes the Attorney General the proper legal adviser of either branch of the General Assembly, and I know of no precedent for either branch of the General Assembly calling upon him for advice or for him undertaking directly to advise the Legislature. In view of the fact, however, that the present session has been convened for executive business, and of the further fact that you have invited me to assist the Senate in the conduct of its investigation, I have referred your request to the Executive, and at his suggestion I transmit to you my opinion upon the subject-matter of your inquiry, without, however, seeking or desiring to establish a precedent which would seem to require the Attorney General to give, or either branch of the General Assembly, to act upon, an official opinion upon matters pertaining to the action of either branch of the General Assembly.

In reply to this inquiry, therefore, I have to say that the present session of the Senate is convened in accordance with the powers of the Executive, under section 12, article IV of the Constitution, "to convene the Senate in extraordinary session, by proclamation, for the transaction of executive business," and that the business for which it has been assembled is such as is contemplated by section 4, article VI of the Constitution, wherein it is provided that "All officers elected by

the people, except Governor, Lieutenant Governor, members of the General Assembly and judges of the courts of record learned in the law, shall be removed by the Governor for reasonable cause, after due notice and full hearing, on the address of two-thirds of the Senate." The message of the Executive to the Senate informs that body that it has been convened in order to give it an opportunity to take appropriate action under its constitutional powers "with relation to the alleged misconduct of the heads of two departments of the State Government, as well as of other elective officers."

The act of July 7, 1885 (P. L. 264), provides, in section 1, that the compensation of members of the General Assembly shall be five hundred dollars and mileage to and from their homes at the rate of twenty cents per mile, to be computed by the ordinary mail route between their homes and the capital of the State, for each special or extraordinary session. The same act of the General Assembly, in section 3, provides for the compensation of the officers and employes of the Legislature as follows:

"The chief clerks shall each receive twenty-five hundred (\$2,500) dollars, for the years in which regular biennial sessions are held, and one thousand (\$1,000) dollars for the years in which no regular biennial sessions are held. In case special or extraordinary sessions are held during the years in which the regular biennial sessions are not held, the chief clerks shall each receive an additional salary of ten dollars per diem during such session: Provided, That the sum received by each of the chief clerks in no year shall exceed the sum of twenty-five hundred (\$2,500) dollars. The librarian of the Senate, two thousand dollars per annum. The resident clerk of the House of Representatives, two thousand dollars for the years in which regular biennial sessions are held, and one thousand five hundred dollars for the years in which no regular biennial sessions are held, and in case the special or extraordinary sessions are held in the years in which no regular or biennial sessions are held, an additional salary of eight dollars per day: Provided, the sum received by the resident clerk in no year shall exceed the sum of two thousand dollars. The reading and journal clerks each, eighteen hundred dollars for the year in which regular biennial sessions are held, and ten dollars per day for special or extraordinary sessions: Provided, Such special or extraordinary are held in years which no regular biennial sessions are held: And provided further, That the per diem for each session shall, in no case, exceed the sum of eighteen hundred dollars. The message clerks shall each receive eight dollars per diem for each regular biennial, special or extraordinary session. The transcribing clerks, sergeants-at-arms and assistants, speakers' clerks and postmasters shall each receive seven dollars per diem for each regular biennial, special or extraordinary session. The doorkeepers and assistants, messengers and assistants, the assistant postmasters, superintendents of folding rooms and assistants, the engineers, firemen, janitors, pasters and folders shall each receive six dollars per diem for each regular biennial, special or extraordinary session; the watchmen shall each receive three dollars

per day during the year, and the chaplain three dollars and the pages two dollars per day for each regular biennial, special or extraordinary session; each of these officers and employes shall be entitled to mileage at the rate of ten cents per mile to and from their homes, to be computed by the ordinary mail route between their homes and the State Capitol: Provided further, That each of the officers and employes of the Senate and House of Representatives shall, in person, perform the work and duties pertaining to their respective positions, except in case of sickness and upon leave of absence granted by the Senate or House of Representatives."

The sections of the Constitution which I have quoted provide for an extraordinary session of the Senate, and the act of assembly which I have cited fixes the amount of the pay of its members, officers and employes. I am of the opinion that no previous specific appropriation of money by the General Assembly is necessary to warrant the State Treasurer in paying, upon warrants drawn by the proper officers, in pursuance of this law, the compensation of members, officers and employes of the Senate convened in extraordinary session, as fixed by the act of July 7, 1885, and if such warrants shall be presented to the State Treasurer, and my opinion is solicited by him, I will advise him to pay them.

What other "expenses of this special session of the Senate," may be contemplated by the resolution of inquiry referred to me, I am not informed. If, however, the Senate desires to know whether, in my judgment, such necessary and essential expenses of its sessions as those incurred for the proper official report of its proceedings, and for the execution of such processes as may be served by its officers to secure the attendance of witnesses and the production of testimony for the purposes of the inquiry for which it is assembled, and for the pay of such witnesses attending its sessions as may be necessary to the purposes of this inquiry, can be legally paid without a previous specific appropriation of a particular amount of money for that purpose, I have to say that I am of the opinion that they can be so legally paid, and if warrants drawn by the proper officers for such purposes shall be presented to the State Treasurer, and he shall solicit my advice with regard to the payment of the same, I will advise him they should be paid.

I am of the opinion that the constitutional provisions which make it the duty of the Executive to summon the Senate into executive session, and of the Senate to give consideration to such matters as he shall present to it, and the law providing for the compensation of members, officers and employes attending such a session, carry with them the implied power of the Senate to order, and of the State Treasurer to pay, the necessary expenses of such a proceeding, and that these provisions of the Constitution and of the laws are, in themselves, such an "appropriation" as is contemplated in the sixteenth section of the third article of the Constitution, which ordains that

"no money shall be paid out of the treasury except upon appropriations made by law on the warrant drawn by the proper officer in pursuance thereof." Time out of mind it has been the recognized law and practice in this Commonwealth that, under certain circumstances money may be drawn out of the State Treasury for established purposes distinctly recognized by law, on the warrant drawn by the proper officer in pursuance thereof.

In an opinion by one of the most learned of my distinguished predecessors, the late Hon. George Lear, then Attorney General, to the members of the State Military Board, dated September 8, 1887, he said:

"But what is an appropriation? It neither creates money nor places it in the treasury. It does not even specify the sum to be paid to each man in a case like the present, but it specifically appropriates a gross sum, or so much thereof as may be necessary, to pay the expense of suppressing the tumults and riots. It can only limit the amount which shall be taken from any money in the treasury not otherwise appropriated." "The money so appropriated is not set aside from other moneys in the treasury, but is left with the general deposit, to be drawn upon until the proper amount shall be paid, but a general direction in the law to pay a certain sum annually as a salary, or a sum ascertainable by law for an emergency, is a continuing appropriation from time to time made by law, and is not within the prohibition of the Constitution." "And it is almost impossible to conduct the government without such power, and it will be still more difficult when, under the Constitution, we have biennial sessions of the Legislature. Then, of course, there will be appropriations for current expenses, salaries, etc., to continue for two years, and if it can be done for two it can be done for ten or more years, or it may be perpetual. An appropriation made by law is such a direction to pay money by legislative authority as will inform the proper officer of the amount he shall pay, or upon what basis he shall ascertain it, with a direction, when so ascertained to pay it. It is a legal direction to take a certain sum, or a sum legally ascertainable, from the treasury, and it is as much an appropriation, whether it is directed to be taken but once or periodically or upon a contingency, which may or may not happen, or upon the amount being ascertained by an officer designated. The amount is appropriated when the law directs it to be paid, and the manner of ascertaining it is complied with, and the constitutional requirement is then fulfilled. The object of the section in the Constitution is to prohibit the State Treasurer from paying money out of the treasury for any sum which has not been designated by legislative enactment, or positively ascertained or so fixed by authority of law that it cannot be exceeded. It is a prohibition against the exercise of the power by the accounting officer of the Commonwealth to ascertain the amount of and pay a claim made by anyone upon a quantum meruit, where the law has not previously authorized the services to be rendered or fixed the sum to be paid for them."

I concur in this view of the constitutional prohibition against the payment of moneys out of the State Treasury except upon appropria-

tion, and with due warrant of law. The present session of the Senate being provided for, and contemplated by the Constitution, and being such an emergency as is likely to arise, I am of the opinion that the constitutional provision for its convocation is a legal appropriation of the necessary expenses for the transaction of its business, and that the law which authorizes the services to be rendered is a proper warrant for the State Treasurer to pay such expenses, when their amount has been duly fixed, and the warrants for the same shall have been drawn by the proper officer.

Quoting further from the opinion of Attorney General Lear above referred to:

“The constitutional prohibition means only that no money shall be paid out of the treasury except by legal direction, or the authority of an act of assembly, and it is an infraction of the Constitution for the State Treasurer, in the mere exercise of its discretion, to determine that a claim is meritorious, and pay money out of the treasury with or without a warrant, unless the law directs the payment on a warrant by the proper officer upon a basis which the law prescribes.”

The Senate having been convened by legal direction, if the amount of its expenses for the purposes for which it has been convened shall be designated by the proper officer, and a warrant for the same drawn upon the State Treasurer, I will advise him to pay it.

Very respectfully,

W. U. HENSEL,
Attorney General.

STATE BOARD OF HEALTH—POWER OF TO ABATE NUISANCES—Act of June 3, 1865.

The State Board of Health under its powers can order the abatement of a nuisance generally or couple with such order an expression of its judgment as to the proper method of abating the same.

The act of Assembly creating the State Board of Health should be liberally construed. The Board has the right and it is indeed its duty to bring to its aid such special skill and knowledge as in its judgment may be requisite and may expend therefor not more than two thousand dollars in any one year.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, October 22, 1891.

BENJAMIN LEE, M. D., *Secretary of State Board of Health, 1532 Pine street, Philadelphia, Pa.:*

Dear Sir: I am in receipt of your letter of October 19, inquiring of me as to the rights and duty of the State or Municipal Board of Health to provide a remedy for a nuisance. In reply I beg leave to say:

1. As to the right of a municipal board of health to abate a nuisance, or the rights of such a board generally, it is not within the duties and functions of this department to give you an official opinion. Such

boards are created by municipal ordinance, and their powers vary according to the terms of such ordinance. The solicitors of the various cities and boroughs which have enacted such ordinances and created such boards are the proper legal advisers of their respective boards upon this subject.

2. As to the powers of the State Board of Health "to order the abatement of a nuisance, irrespective of any method of abating the same," I have to say that the State Board, under its powers, can order the abatement of a nuisance generally, or couple with such order an expression of its judgment as to the proper method of abating the same. The State Board of Health may or may not provide a remedy for a nuisance.

The authority of the State Board of Health to abate nuisances is derived from section 6 of the act of June 3, 1885, which provides:

"In cities, boroughs, districts and places having no local board of health, or in case the sanitary laws or regulations in places where boards of health or health officers exist, should be inoperative, the State Board of Health shall have power and authority to order nuisances, or the cause of any special disease or mortality to be abated and removed, and to enforce quarantine regulations as said board shall direct.

"Any person who shall fail to obey or violate such order shall, on conviction, be sentenced to pay a fine of not more than one hundred dollars at the discretion of the court."

Under this section of the act the board is vested with full and ample power "to order nuisances or the cause of any special disease or mortality to be abated and removed."

Whilst this section, standing alone, is but a naked grant of authority from the Legislature, yet the entire scope and purport of the act is remedial in its nature, and it should be liberally construed. The title of the act is "To establish a State Board of Health for the better protection of life and health, and to prevent the spread of contagious and infectious diseases in this Commonwealth;" and section 9 provides that "said board may, from time to time, engage suitable persons to render sanitary advice or to make or supervise practical and scientific investigations and examinations requiring expert skill and to prepare plans and reports relating thereto."

The board is, of course, the judge as to whether the abatement of a nuisance ordered by it is such a complete and perfect one as the protection of life and health demand. It has all the right and it is indeed its duty, as contemplated by the law of its creation, to bring to its aid such special skill and knowledge as in its judgment may be requisite, and may expend therefor not more than \$2,000 in any one year.

It is, therefore, not beyond the power of the board—and circumstances may arise under which it becomes a duty—not only to order the abatement of a nuisance but to prescribe the method by which it should be accomplished.

In case of the violation of such an order, or a refusal on the part of the persons maintaining the nuisance to obey it, the board has the same rights as any private individual or public officer to have the parties complained of indicted for maintaining a nuisance, or it can proceed under that provision of the act regulating its duties, which makes the violation of such an order an offense punishable with a fine.

Very truly yours,

W. U. HENSEL,
Attorney General.

COMMITTEE ON LUNACY OF BOARD OF PUBLIC CHARITIES—Act of May 8, 1883.

Voluntary patients may be admitted to State insane asylums without certificate signed by two physicians.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, December 30, 1891.

THOMAS G. MORTON, M. D., *Chairman*; THOMAS W. BARLOW, ESQ.,
of the Committee on Lunacy:

Gentlemen: Replying to Mr. Barlow's letter of December 28, and to Dr. Morton's communication of December 29—the two being substantially to the same effect—I have to say that, in my opinion, sections 18 and 34 of the act of 1883 (P. L. 25), are to be read together, and both can consistently stand. Section 18 is intended for the protection of persons who may be consigned to or detained in places for the restraint of the insane, either against or without the exercise of their own will. Section 34 provided for, and is intended to cover, a different class of persons, viz: Such as are not insane and who "voluntarily" place themselves in places provided for the treatment and cure of mental maladies. The humane policy of the law and its beneficent results are, I judge from the terms of Dr. Morton's letter, manifest to your committee, and no private or public wrong can result from a continuance of the past practice of admitting such persons without the examination provided in section 18.

I advise, therefore, that persons who voluntarily place themselves in institutions within the range of your supervision, in the manner and for the period prescribed in section 34, and for the purpose expressed in the communication of Dr. Morton, be received as heretofore, without requiring the certificate referred to in section 18.

Very truly yours,

W. U. HENSEL,
Attorney General.

CONTINENTAL INSURANCE COMPANY OF NEW YORK—PERPETUAL CONTRACTS OF INSURANCE.

The charter of a foreign insurance company, licensed to do business in Pennsylvania, expires A. D. 1912. Held, That such company cannot make perpetual contracts of insurance in this State.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 8, 1892.

GEORGE B. LUPER, *Insurance Commissioner*;

Dear Sir: Your letter of December 28, 1891, stating that the Continental Insurance Company of New York is licensed to do business in this State under the act of 4th April, 1873, and asking whether, under its charter and the above cited act, it has the right to make perpetual contracts of insurance in this State, was duly received. To-day there has also been received from you a certified copy of its charter.

Under the act of 4th April, 1873, it is the practice in your department for a foreign insurance company seeking to do business in this State, among other requirements, to file in your office a certified copy of its charter. This, we understand, has been done. By this copy of the charter, submitted with your letter, on page 24, section 27, it is stated as follows: "The term of existence of this company, fixed by the seventh section of its charter at 'thirty years' duration, is extended for the further term or additional period of thirty years." The date at which this extension was made, as shown on the same page, was the 14th day of December, 1882. Thus, by the terms of the charter of this company, on file in your office, it expires on the 14th day of December, 1912, and it is fair to presume that it has no right, under the laws of the State of New York, that chartered it, to grant policies beyond its own legal life. This company obtains the right to do business in the State of Pennsylvania by virtue of its charter granted to it by the State of New York, and by terms of its charter, its legal existence being only thirty years from the 14th day of December, 1882, it is our opinion that it could not issue policies in the State of Pennsylvania beyond its legal life in the State of New York, that granted its charter. Were it to do this, there would be the strange anomaly, after the expiration of its charter of policies in force or purporting to be in force in the State of Pennsylvania, when the company granting the policy was out of existence, its charter having expired.

It is, therefore, the opinion of this office that the Continental Insurance Company of New York, whose charter expires December 14, 1912, cannot make perpetual contracts of insurance in the State of Pennsylvania, and can make contracts for a period no longer or greater than that of its own life, as set forth in its charter.

Very truly yours,

JAMES A. STRANAHAN,
Deputy Attorney General.

INSURANCE—RIGHT OF TRAVELERS' INSURANCE COMPANY TO
TRANSACTION EMPLOYERS' LIABILITY BUSINESS IN THIS STATE.

The Travelers' Insurance Company is licensed to do business in Pennsylvania "according to the terms of its charter and in conformity to the laws of said State:" Held, That employers' liability insurance being accident insurance, is within the powers contained in the charter of the company, and it would, therefore, have the right to transact business in this State.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, February 24, 1892.

GEORGE B. LUPER, *Insurance Commissioner*:

Dear Sir: Your letter dated February 24, 1892, asking whether the charter of the Travelers' Insurance Company of Connecticut gives this company the right to transact an employers' liability business in this State, has been received.

Section 1st of the amended charter of this company is as follows: "That the Travelers' Insurance Company be and the same are hereby authorized and empowered to insure persons against, and to make all and every insurance connected with accidental loss of life, or personal injury sustained by accident, of every description, on such terms and conditions, etc."

Under the act of April 4, 1873, this company is authorized by the Insurance Department to do business in Pennsylvania according to the terms of its charter. Under the rulings of the insurance commissioner or insurance department of the State of Connecticut, this company is authorized to transact an employers' liability insurance in that state. This class of insurance is held to be accident insurance and it undoubtedly is such. It would, therefore, come under the powers contained in the charter of this company, and it would have the right to transact this business in this State.

Very truly yours,
JAS. A. STRANAHAN,
Deputy Attorney General.

CORONER—NOTORIOUSLY ABSCONDING—VACANCY—APPOINTMENT
—Acts of March 24, 1846, and May 15, 1874.

When satisfied that a coroner has notoriously absconded from the county in which he was elected to office, the Governor has power to fill the vacancy by appointment, under the acts of March 24, 1846 (P. L. 165), and May 15, 1874 (P. L. 205).

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 2, 1892.

ROBERT E. PATTISON, *Governor*:

Sir: I beg to acknowledge the transmission to me, with the letter of Mr. Tate, dated March 1, of the papers in the case of the coroner of Erie county, with the inquiry whether, under the circumstances, you

are authorized to make an appointment to fill the place of an absconding county coroner.

It seems, from the papers submitted, that the coroner of Erie county is an absconder. J. Ross Thompson, a prominent and well-known member of the bar, writes that he has run away. Joseph P. O'Brien, city solicitor, says "a vacancy has been occasioned by the departure of the person elected to fill that office." The newspaper clippings inclosed indicate that he has absconded, and intimate that he has eloped. The letter of Mr. Tate refers to the fact that the president judge represents that there is now a vacancy in the office, and further states that "there is no doubt that the coroner has absconded."

Section 1 of the act of March 24, 1846 (P. L. 165), provides for the existing condition of affairs in Erie county in these terms: "Be it enacted, etc., That whenever any sheriff or coroner of any of the counties of this Commonwealth shall notoriously abscond from the county, or the city and county, for which he was elected sheriff or coroner, and thereby fails to perform the duties enjoined upon him by law, the office of such sheriff or coroner so notoriously absconding, shall be deemed and held vacant to all intents and purposes."

The act of May 15, 1874 (P. L. 205), provides that, in case of a vacancy happening by death, resignation or otherwise, in any office created by the Constitution or laws of this Commonwealth, and where provision is not already made by said Constitution and laws, to fill said vacancy, it shall be the duty of the Governor to appoint a suitable person to fill such office, etc.

I am, therefore, of the opinion that, if you are satisfied, as a matter of fact, that the coroner of Erie county has notoriously absconded from the said county, there is a vacancy in his office, which you are authorized to fill, by appointing a suitable person, who shall continue in the said office and discharge the duties thereof until the first Monday of January, 1893.

Very truly yours,

W. U. HENSEL,
Attorney General.

COLLATERAL INHERITANCE—ACT OF JUNE 12, 1878—ERRONEOUS APPRAISEMENT.

The word "erroneously" as used in the act of June 12, 1878, means an error in fact arising from ignorance or mistake, and not an error of law. The State Treasurer is not constituted an appellate jurisdiction to revise an error of judgment on the part of the appraiser. No appeal having been taken from the appraisal made it becomes conclusive.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 11, 1892.

HENRY K. BOYER, *State Treasurer*;

Dear Sir: I beg to acknowledge your reference to me of the communications in the matter of the claim of the executors of the estate

of Frank M. Etting, deceased, to have refunded to them, under the provisions of the act of June 12, 1878, \$162.50 which, it is claimed, was erroneously paid to the Commonwealth, in which matter you desire to be advised of your official duty.

An examination of the papers filed in this case does not disclose such "erroneous payment" as is contemplated by the act of 1878. It seems that, on June 2, 1891, the real estate which was the subject of collateral inheritance tax, was duly appraised at \$32,000, and after the deduction of the life estate and the apportionment of the decedent's interest, and the subtraction therefrom of the amount of a mortgage, \$3,250 of the same was appraised for collateral inheritance. No appeal was made from this appraisement, as is provided by the act of May 6, 1887, section 12, and it, therefore, became absolute. Because the executors failed to sell the property subsequently for more than \$22,300, and because the same has been assessed for municipal taxation at \$25,000, it is now claimed that the payment of the tax, according to the appraisement was erroneous and the amount of the same should be refunded.

In an opinion by my learned predecessor, Hon. W. S. Kirkpatrick, dated May 2, 1887, he held that the word "erroneously" in the act of June 12, 1878, must be given its ordinary legal meaning and applied to error in fact arising from ignorance or mistake, and that an error of law was not within its provisions. The Legislature having provided, in the act of 1887, for an appeal from the register's appraisement of the value of real estate for collateral inheritance tax, it cannot be assumed that it was ever contemplated the State Treasurer should be constituted an appellate jurisdiction on this subject, or that he should be empowered to revise an error of judgment on the part of the appraiser, nor that interested parties should be permitted to take the chances of property being appraised too low, and secure a rebate from the Commonwealth if it happens to have been appraised higher than its market price.

In a long line of decisions (*Commonwealth v. Reitzel*, 9 Watts & Sergeant, 112; *Hutchinson v. Commonwealth*, 6 Barr, 127), it has been well settled that where a method of taxation is established, and an appeal therefrom provided for, by declining to appeal, the party concedes the correctness of the settlement and it becomes conclusive. It has never been contended that if an estate should finally realize more than the register's appraisement the Commonwealth could claim collateral inheritance tax on the increase; on the contrary, in *Commonwealth v. Freedley's Executors*, 21 Pa. 36, Judge Woodward held that "as the State would not submit to a reassessment for the purpose of diminishing her tax in the event of a subsequent depreciation, she is not entitled to a reassessment for the purpose of increasing it by reason of an advance in the market value of the estate after an assessment by officers of her own appointment with the right of appeal." This was affirmed in *Stinger v. Commonwealth*, 26 Penna. 425.

No error, therefore, appears in the Etting case, unless there was an error of judgment on the part of the appraiser selected by the register, and the parties having taken no appeal from that appraisement, it is to be assumed they were satisfied with it at the time. If the property had appreciated in value, the Commonwealth could have made no claim. The fact that it depreciated gives the estate no exemption.

Very truly yours,

W. U. HENSEL,
Attorney General.

MUTUAL INSURANCE COMPANIES—Acts of April 16, 1891, and May 11, 1881.
Mutual insurance companies are not required by the act of 1881 to print copies of the application, constitution or by-laws in the policy of insurance. The omission to do so affects only its admissibility as evidence. There is nothing in the act to prevent their so doing and it might be a wise precaution to print the same in the policy.

OFFICE OF THE ATTORNEY GENERAL.

HARRISBURG, April 19, 1892.

GEORGE B. LUPER, *Insurance Commissioner*:

Dear Sir: Your letter dated March 17, 1892, asking whether mutual insurance companies have the right, under paragraph three of the second section of the act of 16th April, 1891, to print on the standard policy, under the head of "provisions required by law to be stated in this policy" the application, constitution and by-laws, as required by the act of 11th May, 1881, has been received.

In reply I would say:

1. Under the first section of the act of April 16, 1891, it is to be considered that all legal requirements of a contract or policy of fire insurance for general use will be printed in the standard form of policy furnished by the Insurance Commissioner.

2. The second section of said act provides for the insertion of written forms of description relating to the property covered by the policy, and such other conditions as may be agreed upon between the parties.

3. The third section provides for the use of special forms with the approval of the Insurance Commissioner, if the same are not included in the standard form mentioned in the first section. This may refer to any special provision mentioned in the charter and required to be issued, that such is the nature of the policy, under what act, or the law of what state issued, with any other agreements or conditions required by the law of its creation, and these are to be printed apart from the other provisions under the head of "provisions required by law to be stated in this policy."

But I do not understand that this third section would require the printing of the constitution or the by-laws of the company, nor even such laws as the act of 1881, you refer to. The act of 1881 imposes

certain conditions that do not in any way affect the policy between the insurer and the insured only as to the effect of the policy in the admissibility of certain evidence. The company is not compelled, nor even required by the act of 1881 to attach copies of the application, constitution or by-laws to the policy, but if it does not do it, certain consequences follow. They have the right to do this if they want to, but the law does not require it.

In further answer to your inquiry as to their right to print the application, constitution and by-laws under the head of "provisions required by law to be stated in this policy," I would say that there is nothing in this act to prevent them, if they choose to do so, and as they deem it necessary, it might be a wise precaution, in printing this upon their policy. Apart from what is included in the standard form, there seems to be no provision of this act that would prevent them from doing it.

Very truly yours,
JAS. A. STRANAHAN,
Deputy Attorney General.

INSURANCE—MUTUAL COMPANIES—NO RIGHT TO ISSUE ENDOWMENT POLICIES—Acts of May 1, 1876, and June 5, 1885.

Mutual assessment life insurance companies have not the right to issue endowment or semi-endowment policies under the act of May 1, 1876 (P. L. 53), and its supplement, the act of June 5, 1885 (P. L. 39).

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 19, 1892.

GEORGE B. LUPER, *Insurance Commissioner*.

Dear Sir: Your letter of December 2, 1891, asking whether mutual assessment life insurance companies, incorporated under the act of 1876 and its supplement of 1885, have the right to issue endowment or semi-endowment policies, has been received.

By endowment or semi-endowment policies we understand you to mean policies that require the payment to the holders after a certain number of years, though the holders may be in full life. The acts of 1876 and 1885, in their provisions for losses and assessments for the same upon their members, affect only losses occurring by death, and do not include, in their provisions for assessments, the payment of anything like endowment or semi-endowment policies to persons who may be in full life. It is the opinion of this office, therefore, that mutual assessment life insurance companies have not the right to issue endowment or semi-endowment policies under the act of 1876 and its supplement of 1885.

Very truly yours,
JAS. A. STRANAHAN,
Deputy Attorney General.

JOINT RESOLUTION OF MAY 23, 1891—ACT OF MAY 7, 1889—DUTY OF AUDITOR GENERAL AND STATE TREASURER TO NOTIFY BOROUGH, COUNTY OR STATE OFFICERS TO MAKE RETURNS.

It is the right and duty of the Auditor General and State Treasurer to notify all borough, city, county or State officers authorized to collect or receive taxes or license fees for the Commonwealth to make return of the same on the first of every month, and upon failure of any officer to account, to notify the Attorney General of such failure.

When county or city officers refuse or neglect to make the quarterly returns and payments provided by the act of May 7, 1889 (P. L. 114), for thirty days after the quarterly periods fixed for such returns, viz., the first Mondays of January, April, July and October, they have incurred the penalties of said act, and such accounts should be certified to the Attorney General for collection.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, May 6, 1892.

D. McM. GREGG, *Auditor General*; J. W. MORRISON, *State Treasurer*,
Harrisburg, Pa.:

Gentlemen: In reply to your verbal inquiry at this Department for a construction of joint resolution No. 32 of May 23, 1891 (P. L. page 413), and the act of May 7, 1889 (P. L. page 114), I have to say:

1. In my opinion, it is the right and duty of your departments to notify all borough, city, county or state officers, authorized to collect or receive taxes or license fees for the Commonwealth, to make return of the same on the first of every month, and within ten days thereafter to pay the amount mentioned in said return into the State Treasury, and upon the failure of any official to account as aforesaid, to notify the Attorney General of such failure. What action may be taken by this Department upon such notification, or what may be the liability of the defaulting officers under the joint resolution of May 23, 1891, it is not necessary now to decide.

2. The act of May 7, 1889, providing for quarterly returns, makes it the duty of each and every county and city officer to render to the Auditor General and State Treasurer, under oath or affirmation, quarterly returns of all moneys received for the use of the Commonwealth, designating under proper heads the sources from which said moneys were received and to pay the said moneys into the State Treasury. I am advised that by your immediate predecessors' blanks for quarterly returns conforming to the requirements of this act, have been supplied to the county and city officers, subject to its provisions, with copies of the law printed upon the same. This act provides appropriate penalties for the refusal or neglect of officers to make the returns or payments required by it. The State Treasurer and Auditor General, or either of them, or any agent appointed by them, or either of them, are authorized to examine the books and accounts of any county or city officer who shall refuse or neglect to make the required returns, and to settle, upon the information thus obtained, accounts against such officers, and to add thereto a penalty, not to exceed fifty per cent., to pro-

vide for any losses which may result to the Commonwealth from the neglect or refusal of the officers to furnish such returns. I am, therefore, of the opinion, and I advise and instruct you, that if any county or city officer in the Commonwealth refuse or neglect to make the returns and payments herein provided for, for thirty days after the quarterly periods fixed for such returns, namely, the first Mondays of January, April, July and October, they have incurred the penalty of the forfeiture of their fees and commissions and of a ten per cent. addition to the amount of the tax found due; and you are authorized and empowered, in the manner indicated in the third section of said act, to examine their books and accounts and to settle an account against them upon the information thus obtained, together with a penalty not to exceed fifty per cent.; and if the amount thus settled shall not be paid into the State Treasury within fifteen days from the date thereof, the same shall be placed with this Department for collection, as provided in the fourth section of said act. Or, if you shall deem it conducive to the public interests to proceed immediately upon said account against the sureties of the said officer, you should so instruct the Attorney General, who will proceed in accordance with such direction received from you, or from either of you.

Very respectfully,

W. U. HENSEL,
Attorney General.

BANKING DEPARTMENT—POWER OF SUPERINTENDENT OF BANKING TO WITHHOLD REPORTS OF BANKING INSTITUTIONS.

It is within the discretion of the Superintendent of Banking to determine to what extent reports made to this department shall be disclosed, and he must take the responsibility of determining in each case as it arises whether or not and to what extent he will make public his official information.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 2, 1892.

CHAS. H. KRUMBHAAR, *Superintendent of Banking, Harrisburg, Pa.:*

Dear Sir: I am in receipt of your favor of the 22d ultimo transmitting certain correspondence between your department and Mr. G. Morgan Eldridge and involving the inquiry, whether you are obliged to furnish to any and all persons applying for the same copies of the reports of banking institutions made to your department "whether the persons so applying are interested in the institution making the report in any manner or not;" and whether you are obliged to submit the reports so received to such persons for their examination and to enable them to make copies of the same.

In reply I have to say that you are not obliged to submit all the reports received from banking institutions under your supervision to all persons who may desire to examine and copy the same; nor are you

obliged to furnish copies of such reports on demand to all persons asking for them. Your department was established and organized for the protection of the public, not to annoy, harrass or destroy the institutions placed under its control; nor to unnecessarily impair confidence and credit, which might so readily be affected by the improper use of information communicated to you.

The very nature of your duties requires that you should often exact information of a character and in detail, not necessary or even proper for the general public information. It is within your own discretion to what extent this shall be disclosed, and you must take the responsibility of determining in each case as it arises whether or not, and to what extent, you will make public your official information. Of course, you are at all times responsible for the willful abuse of this power.

The statute creating your department prescribes that you shall direct in what form the reports of the condition of the institutions under your control shall be published in the newspapers; and I am of the opinion that you may and must determine in each case in what form and to what extent these reports shall be submitted to the inquirers at your department, judging the circumstances of each particular case and estimating as well as you can the motives of the inquiry. Parties to litigation who may feel aggrieved by any refusal on your part to furnish them with desired information, may invoke the subpoena of the court of proper jurisdiction, and citizens who have a legal right to information which you may withhold can apply for a mandamus.

In advising you, I do not wish to be understood as insisting that you must withhold all information except that which is contained in the report of the banking institutions published in the newspapers; but I repeat that you are to be governed by sound discretion as to what is and what is not proper to be furnished to the public.

In the particular case referred to me, even if I should be willing to substitute my discretion for yours, which I am not, I have no means of judging from the correspondence before me as to the propriety of granting the special request made by your correspondent. I do not, however, agree with his position, that the department of banking is established for the information and advantage of litigants with the companies under its supervision and control.

I deem it only fair that you should communicate to Mr. Eldridge the fact that you have directed the attention of this department to the apparent impairment of the Investment Company of Philadelphia, and that proper legal proceedings in such cases made and provided are about to be undertaken on behalf of the Commonwealth.

Very respectfully yours,

W. U. HENSEL,
Attorney General.

RECORDER OF CITY OF ALTOONA—Act of March 24, 1877.

The act of March 24, 1877 (P. L. 47), which creates the office of recorder in cities whose population does not exceed thirty thousand and is not less than eighteen thousand five hundred having been declared unconstitutional by the Supreme Court, the Executive is not authorized to commission anyone for said office.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 8, 1892.

WILLIAM F. HARRITY, *Secretary of the Commonwealth*:

Dear Sir: Referring to the hearing had before you in the case of the application for a commission to issue to the recorder-elect of the city of Altoona, and to your verbal request that I communicate to you my opinion upon the subject of such hearing, I beg to say that, in my opinion, no such commission should issue.

While it is true, as was argued before you, under authority of *Ewing v. Thompson*, 43 Penna., 375, and *Marbury v. Madison*, 1 Cranch, 137, that where an appointment to an office is made by the electors, it is the duty of the Chief Executive to commission the person whom they have designated according to the forms of law, that principle and the cases which have been cited do not rule the matter in controversy. No such office as that of recorder of the city of Altoona exists under the laws of this Commonwealth. It is admitted that the only authority for the office is to be found in the act of March 24, 1877 (P. L. 47), which creates the office of recorder in cities whose population does not exceed 30,000 and is not less than 8,500, which accept the provisions of the act. Section 14 of the said act provides that the act "shall only apply to cities whose population does not exceed 30,000 and is not less than 8,500." The city of Altoona, according to the last federal census, has a population of 30,337.

In the case of *Commonwealth v. J. B. Denworth*, 145 Penna., 172, it was held that the act in question was unconstitutional. This was the case of a recorder elected in and for the city of Williamsport under color of the act of 1877. Upon a quo warranto the court below rendered against him judgment of ouster. This judgment was affirmed by the Supreme Court in an opinion in which it was said that the statute in question was in palpable conflict with the Constitution. It is, therefore, null and void.

It is unquestionably the right and duty of the Executive, before issuing a commission, even to one whom the electors may appoint, to refer to the statutes to know whether any such office is created and the selection of its incumbent left to their appointment. It is likewise his right and duty to inquire and to ascertain whether or not such statute has been repealed. It is none the less his right and duty to inquire whether or not it has been declared unconstitutional, null and void by the Supreme Court. In the present case it has been so declared. The only law which provides for a recorder in the city of

Altoona has been declared to be no law. It is wiped off the statute. No authority for the office exists. No power is vested in the electors to appoint anyone to it. The Executive is not authorized, therefore, to commission anyone whom they may designate.

Very respectfully,

W. U. HENSEL,
Attorney General.

HUNTINGDON REFORMATORY—TRANSFER OF PRISONERS TO PENITENTIARIES—EXPIRATION OF SENTENCE—Acts of April 28, 1887, and May 1, 1861.

Prisoners transferred from the reformatory to the State penitentiary are under the control of the managers of the former institution, and if required must be returned to the reformatory before being discharged.

For convenience sake, if the maximum sentence of the prisoner shall expire while he is confined in the prison, such prisoner might be discharged without return to the reformatory and without further order from the board of managers.

Commutation of sentence as provided by the act of May 1, 1861 (P. L. 462), does not apply to prisoners transferred "temporarily" to the State prison.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 12, 1892.

T. B. PATTON, *General Superintendent Industrial Reformatory, Huntingdon, Pa.:*

Dear Sir: I am in receipt of your communication of September 10, 1892, calling my attention to sections 6 and 10, of the act of 1887, in relation to the imprisonment, government and release of convicts in your institution, and particularly desiring to be advised as to whether the commutation act of May 1, 1861, applies to inmates of your institution, transferred to the penitentiaries of the State, and as to whether or not prisoners, so transferred, should be discharged from the penitentiary without an order from the officers of your institution.

In reply to your inquiries, I beg to say:

1. Section 5, of the act of 1887, provides that persons sentenced to imprisonment in your institution "shall be imprisoned according to this act and not otherwise." Section 10, which provides for transfer "temporarily" to the State prison of certain inmates of your institution, also provides that you may at any time require the return to the reformatory of any person who may have been so transferred. I am of the opinion, therefore, that prisoners of this class are under the control of the managers of your institution, and that if you so require it they must be returned to the reformatory before being discharged, subject at all times to the right of the prisoner himself, at the end of the term for which he was sentenced, to be discharged upon a habeas corpus from whatever institution he may find himself confined in.

For convenience sake, therefore, I suggest and advise that, in making

such transfers, you direct the warden of the penitentiary, to which your prisoner may be transferred, that, if the maximum sentence of the prisoner shall expire while he is confined in the prison, he shall be discharged without return to your institution and without further order from your board of managers. This would be ample authority for the warden to so discharge him, and should, in my judgment, always accompany his commitment.

2. The act of May 1, 1861 (P. L. 462), relative to prison discipline, relates only to the several penitentiaries and prisons in this Commonwealth, and to criminals confined in and sentenced to them, and the commutation therein provided does not, in my opinion, apply to prisoners transferred "temporarily" by your board of managers. As I have already quoted from section 5, persons committed to your institution shall be imprisoned according to the act providing for its regulation "and not otherwise." The term of their imprisonment "shall be terminated by the board of managers of the reformatory as authorized by this act," and the only limit put upon their discretion is that the term of imprisonment "shall not exceed the maximum term provided by law for the crime for which the prisoner was convicted and sentenced."

Very truly yours,

W. U. HENSEL,
Attorney General.

FOREIGN CORPORATIONS—CORPORATION ACT OF 1874—REQUISITES OF CERTIFICATE—Act of June 9, 1881.

A foreign corporation desiring to do business in Pennsylvania is not required to give notice by advertisement, nor must the certificate aver that ten per centum of the capital stock has been paid in cash to the treasurer of the intended corporation.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 17, 1892.

WILLIAM F. HARRITY, *Secretary of the Commonwealth:*

Dear Sir: Your letter dated July 26, 1892, in reference to the application for a charter from the Sherman Manufacturing Company, was duly received. You asked to be advised:

1. Whether or not a foreign corporation which desires to become a corporation of Pennsylvania, under the act of June 9, 1891, must give notice by advertisement in two newspapers of general circulation, printed in the proper county, for three weeks, of the intended application.

2. Whether the certificate must aver that ten per centum of the capital stock has been paid in cash, and otherwise comply with the requirements of the act of April 29, 1874, which are necessary to enable a Pennsylvania company to procure an original charter.

A brief reference to these acts will aid materially in answering these questions. The act of April 29, 1874 (P. L. 73), is entitled "An act to provide for the incorporation and regulation of certain corporations." By the first section of this act it is provided that corporations may be formed in the manner provided therein, and, when so formed, shall have certain powers. Under section three of this act, the contents of the certificate are set forth, how notice is to be given, and that ten per centum of the capital stock has been paid in cash to the treasurer of the intended corporation.

The act of June 9, 1881, (P. L., p. 89), is entitled "An act to authorize foreign corporations to become corporations of Pennsylvania, and to prescribe the mode for their so doing." This act deals with foreign corporations doing business in this State. It recognizes them as corporations already in existence. Section one of this act prescribes the contents of the certificate to be approved and recorded. It is unnecessary to mention them here. The ninth requirement of this certificate has special reference to its financial condition, and how its capital stock has been paid; and, further, that the certificate shall be accompanied by a certificate, under the seal of the corporation, showing the consent of a majority in interest of such corporation to the application for a charter, etc.' This act shows a system in itself. The intention of the Legislature in passing it can best be understood by what it says and means. The language of it is plain. The act requires no notice such as is required by the act of 1874, and I see no reason for such notice. Instead of this, the consent of a majority in interest of the corporation to the application seems to be required. Neither does the act require ten per cent. of the capital stock to be paid to the treasurer. Were this intended it would have been mentioned in the ninth requirement of the certificate. Instead of this, the financial condition of the corporation is required. The requirements of this act are too plain to be misunderstood, and I therefore advise you that said corporation is not required to give the notice, nor is the certificate required to set forth that ten per centum of the capital stock has been paid to the treasurer, as required by the act of 1874.

Yours respectfully,

JAS. A. STRANAHAN,
Deputy Attorney General.

COLLATERAL INHERITANCE—NATURAL CHILD, LEGITIMATION OF
BY SUBSEQUENT MARRIAGE—Act of May 14, 1857.

An estate descended to a natural child who became legitimated by the subsequent marriage of the parents is not subject to collateral inheritance tax.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, October 29, 1892.

D. McM. GREGG, *Auditor General, Harrisburg, Pa.:*

Dear Sir: I am in receipt of your communication of October 20, en-

closing to me the letter of Samuel P. Conner, register of Allegheny county, asking for instructions in the matter of collateral inheritance tax assessed on the inheritance of Mrs. O. P. Miller, in the estate of Sarah J. Sinclair, in which it is suggested that an appeal should be taken from the judgment of the lower court, holding that the inheritance is not liable. It seems that Mrs. Miller is the natural child of decedent and her husband, but born before their marriage and legitimated by that ceremony. I am of the opinion that, under the terms of the act of May 14, 1857, such child becomes entitled to all the rights and privileges which would have pertained to it had it been born during wedlock, and among these is exemption from the collateral inheritance tax. But if the register and his counsel are willing to have this precise question tested by an appeal to the Supreme Court, without expense to the Commonwealth, unless a reversal is secured, I have no objection to them undertaking it and will be glad to co-operate with them in the case, although I will not anticipate a favorable outcome.

Very truly yours,

W. U. HENSEL,
Attorney General.

RESIDENT CLERK OF HOUSE OF REPRESENTATIVES PERFORMING
DUTIES OF CHIEF CLERK—AUTHORIZED TO DRAW WARRANTS—Act of
June 9, 1891.

The office of Chief Clerk of the House of Representatives being vacant and the Resident Clerk being in Harrisburg and performing the duties of Chief Clerk, for all necessary expenses to the amount of \$600, appropriated for the recess of 1892, the Auditor General would be authorized to draw a warrant in favor of the Resident Clerk.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, November 28, 1892.

D. McM. GREGG, *Auditor General*:

Dear Sir: Your letter of November 25, 1892, stating that there is appropriated by the ninth section of the act of June 9, 1891 (general appropriation act, P. L. 273), "for the necessary expenses in the office of the Chief Clerk of the Senate and House of Representatives, during the recess of 1891, each the sum of \$600, or so much thereof as may be necessary, to be settled by the Auditor General, in the usual manner, and like sums for the year 1892," has been received. It also appears from your communication, and from the letters of Hon. C. C. Thompson, Speaker of the House of Representatives, and Charles E. Voorhees, Esq., Resident Clerk, that the office of Chief Clerk of the House of Representatives became vacant, by the resignation of the Hon. John W. Morrison, April 13, 1892, and such vacancy still exists; and further, that said Charles E. Voorhees, Resident Clerk of the House of Representatives, has been acting as Chief Clerk since the

resignation of Hon. John W. Morrison. You ask whether, under the circumstances, you would be authorized to draw a warrant in favor of the Resident Clerk for the \$600 appropriated for the necessary expenses in the office of the Chief Clerk of the House of Representatives for the recess of 1892.

The office of Chief Clerk being vacant by the resignation of the Hon. John W. Morrison, and the Resident Clerk being in Harrisburg and performing the duties of Chief Clerk, and it being necessary to place the House of Representatives in proper condition for its assemblage in January next, it is the opinion of this office that, under such circumstances, a liberal construction should be given to the above act, and that for all necessary expenses to the amount of \$600, appropriated for the recess of 1892, we advise you that you would be authorized to draw a warrant in favor of the Resident Clerk for the \$600 so appropriated, or so much thereof as may be necessary, for the purposes mentioned in said act.

Herewith please find the enclosures requested to be returned with this reply.

Very truly yours,

JAS. A. STRANAHAN,
Deputy Attorney General.

CRIMINAL LAW—REQUISITION ON THE GOVERNOR OF ANOTHER STATE—LIBEL—OFFENSE COMMITTED IN ANOTHER STATE.

Where it appears on a petition to the Governor of this Commonwealth for a requisition on the Governor of another state, to surrender a defendant charged with the crime of libel committed in this State, that the offense was committed in another state, of which the defendants were residents at the time of the commission of the alleged offense, the requisition should be refused.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 13, 1893.

ROBT. E. PATTISON, *Governor*:

Sir: In the matter of the petition of Peter V. Rovninek, of the city of Pittsburgh, Allegheny county, for a requisition on the Governor of New York to surrender John Spevak, George Grunic and John E. Schwartz, otherwise Markovits, charged with the crime of libel committed in the county of Allegheny and State of Pennsylvania, upon careful examination, I would say: That the offense charged in this petition, as well as in the information and indictment accompanying it, was committed in the city and State of New York, and the paper in which the alleged libellous matter was published was also published in the state of New York, and that the defendants named in said information and indictment, at the time of the commission of the alleged offense, were citizens of the State of New York, and residents therein,

and at the time of the commission of the alleged offense were not in the State of Pennsylvania.

The offense with which these defendants are charged is renditionable, but the papers show that, when the offense was committed, the defendants were not in the State of Pennsylvania. They therefore cannot be held to be fugitives from justice. And further, they were not in this, the demanding State, when the offense was committed. I might further say that the offense of libel is undoubtedly actionable in the state of New York, and therefore New York would have concurrent jurisdiction with this State so far as this offense is concerned.

I therefore advise you, under all the facts and circumstances in this case, and the law governing it, that it is not a proper case for surrender, and a requisition should not issue.

Respectfully,

JAS. A. STRANAHAN,
Deputy Attorney General.

FEES OF COUNTY OFFICERS—ACCOUNTS WITH COMMONWEALTH—AUDITOR GENERAL—Acts March 10, 1810, April 2, 1868, June 23, 1885, and May 23, 1887.

The fees of the several officers enumerated in the acts of March 10, 1810, April 2, 1868, June 23, 1885, and May 23, 1887, are to be accounted for by said officers as fees or moneys received for the use of the Commonwealth, and are to be returned by them to the Auditor General in quarterly reports, as required by the act of May 7, 1889.

PAYMENT OF SUCH FEES INTO STATE TREASURY—WHEN TO BE REQUIRED—Acts of April 2, 1868, and May 7, 1889.

The Auditor General may properly suspend the requirement of the act of May 7, 1889, requiring that moneys thus reported shall be paid into the State Treasury within thirty days after the same shall have become due, in view of the fact that the act of April 2, 1868, provides that an auditor is required to ascertain the amount received in any one year by the officer designated, one-half of which, after certain deductions, shall be paid into the State Treasury.

ACCOUNTS WITH COMMONWEALTH—DAILY ACCOUNTS REQUIRED TO BE KEPT—Acts of March 10, 1810, and April 2, 1868.

Section 8 of the act of April 2, 1868, does not repeal the act of March 10, 1810, so far as the latter requires that certain officers therein mentioned shall be required to keep their accounts.

The Auditor General should require each county officer in the Commonwealth to keep a daily account of all moneys and fees received by them in their respective offices.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, April 15, 1893.

D. McM. GREGG, *Auditor General*:

Sir: Your letter of April 3, 1893, desiring to be advised upon the following questions, has been received:

1. Are the fees referred to in the act of March 10, 1810, P. L. 80 (5 Smith's Laws, 105), and in the act of April 2, 1868, P. L. 11, and the

fees connected with marriage licenses, as provided in the acts of June 23, 1885, P. L. 146, and of May 23, 1887, P. L. 172, which are to be received by the several officers enumerated, to be accounted for by them as fees or moneys "received for the use of the Commonwealth," and to be returned by them in quarterly reports to be rendered the Auditor General and State Treasurer, under the act of May 7, 1889?

2. If such be the case, has this department authority to suspend the requirement of the act of May 7, 1889, that moneys thus reported shall be paid into the State Treasury within thirty days after the same shall have become due, in view of the fact that the act of April 2, 1868, provides that an auditor is required to ascertain the amount received in any one year by the officer designated, one-half of which, after certain deductions, shall be paid into the State Treasury?

3. Does section 8 of the act of April 2, 1868, repeal the act of March 10, 1810, P. L. 80, so far as the latter requires that certain officers therein mentioned shall be required to keep, or cause to be kept, a fair and correct account of all fees received for services performed by them, or any person employed by them in their respective offices?

In answer to your first inquiry I would say that all fees received by the several officers enumerated in these acts are to be accounted for by them as fees or moneys received for the use of the Commonwealth, and are to be returned by them in quarterly reports, as required by the act of May 7, 1889.

In reply to your second question, it is my opinion that the act of 1846, which provides for a special auditor to be appointed by the court to examine the accounts of county officers and make report to the Auditor General, is in aid of the act of 1810, in order that the Commonwealth may have a correct report of the receipts of these several offices; and the auditor, in the language of Judge McPherson, in *Com. v. Conway* (preceding case), "is little more than an agent of the Auditor General for the specified purpose of discovering and reporting the facts respecting the fees of (certain) officers and the tax on judicial proceedings." Section 1 of the act of May 7, 1889, P. L. 114, requires each county officer to make a quarterly return under oath of all moneys received for the use of the Commonwealth, designating under proper heads the sources from which said moneys were received, and to pay the said moneys into the State Treasury. It is a little difficult to reconcile the provisions of this first section with the act of April 2, 1868, which requires the money to be paid at the end of the year, as it might be difficult to determine the actual cost and expenses to be deducted therefrom until the end of the year, as provided in the act of 1868. I would therefore say that you could reasonably suspend the requirement of the act of May 7, 1889, so far as the payment of the moneys is concerned, as the main object of this act would be subserved by the correct rendition by these several officers of the moneys or fees collected by them each quarter.

In reply to your third inquiry I would say that section 8 of the act of April 2, 1868, does not repeal the act of March 10, 1810, so far as the latter requires that certain officers therein mentioned shall be required to keep their accounts. The language of section 1 of that act is as follows:

“That the prothonotaries, clerks of the Supreme Court, of the courts of nisi prius, of the courts of common pleas, of the courts of oyer and terminer and general jail delivery, of the courts of quarter sessions of the peace, of the orphans’ courts, the registers of wills and the recorder of deeds in this Commonwealth, shall, from and after the first day of October next, keep or cause to be kept, a fair and accurate account of all the fees received for services performed by them or any person employed by them in their respective offices.”

Section 1 of the act of May 7, 1889, provides that, “on the first Monday of July next, and quarterly thereafter, it shall be the duty of each county and city officer to render to the Auditor General and State Treasurer, under oath or affirmation, quarterly returns of all moneys received for the use of the Commonwealth, designating under proper heads the sources from which said moneys were received, and to pay the said moneys into the State Treasury.”

These two acts are perfectly consistent with each other, and are part of the general system of the Commonwealth to obtain from its county officers a correct account of moneys and fees received by them. These moneys and fees are for the use of the Commonwealth, and it is only after the entire amount is ascertained that the expenses, etc., are deducted therefrom, and the balance divided between the Commonwealth and the officer. There is nothing unreasonable in either of these acts. In order to make a correct quarterly return under the act of May 7, 1889, it is certainly necessary that all the requirements of the act of 1810 be complied with, even if the act of 1810 were repealed by the act of 1889. How could any county officer, under section 1 of the act of 1889, render a correct and true account unless he kept an accurate account of all the fees received for services by him or any person employed by him in his office? This is a very reasonable requirement, and no county officer in the Commonwealth should object to it. It would also aid the auditor appointed by the court to settle the account of the county officers each year. Moreover, it would aid any officer appointed by the Auditor General to examine the accounts of any county officer, in order to settle any dispute that might arise between the accounts of the county officer and the settlement made by the Auditor General. All county officers in the State should be required to keep a correct account of all fees and moneys received by them in their respective offices for the use of the Commonwealth for the inspection of the accounting officers of the Commonwealth.

I would take it as the main object of your inquiry that you are seeking from the county officers of the State a correct quarterly return of

all moneys and fees received by them in order that you can intelligently, at the end of the year, from the reports of the auditors appointed by the courts, make a proper settlement between these county officers and the Commonwealth. This being the object, I would advise you that you require each county officer in the Commonwealth to keep a daily account of all moneys and fees received by them in their respective offices.

Respectfully,

JAS. A. STRANAHAN,
Deputy Attorney General.

SPEAKERS OF SENATE AND HOUSE—EXTRA COMPENSATION OF—Act of April 17, 1843, P. L. 326; May 11, 1874, P. L. 129, and June 7, 1885, P. L. 265.

Since the passage of the act of 1874 there has not been and there is now no provision of law by which the Speakers of the two houses are entitled to any extra compensation.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, May 18, 1893.

JOHN W. MORRISON, *State Treasurer*:

Sir: I am in receipt of your communication of May 16th, inquiring whether the act of April 17, 1843 (P. L. 326), and the act of May 11, 1874 (P. L. 129), in so far as they entitled the Speaker of the Senate and the Speaker of the House of Representatives to one dollar per diem extra pay, have been repealed by the act of June 7, 1885 (P. L. 265), which contains no reference to the extra compensation.

In reply I have to say that the act of 1843 which in section 10, provided that the per diem pay of the members for any session of the Legislature which should continue over one hundred days should be \$1.50 per day for the number of days that the Legislature continued in session beyond that time, also provided that the Speakers of the Senate and the House of Representatives respectively "shall receive the sum of one dollar per day for every day they should attend to their respective duties, in addition to the pay allowed them as members of the Legislature."

The act of 1874, which fixed the compensation of members of the General Assembly at \$1,000 for each regular and each adjourned annual session, not exceeding one hundred days, and ten dollars per diem for the time necessarily spent after the expiration of the one hundred days, not to exceed fifty days at any one session, and which also defined the officers of the Legislature and the employes thereof and fix their compensation, did not fix any extra compensation for the Speakers of the two houses. On the contrary, in section 5 it expressly provided that no greater or other compensation or allowance should be voted by either house to any officer excepting fireman and engineer. That act was made effective on December 1, 1874, and all laws or parts

of laws inconsistent therewith were repealed. The extra compensation for the Speakers provided by the act of 1843 was therefore repealed, unless it was preserved by the clause in the sixth section of the act of 1874, to which you refer and according to which the members of the General Assembly, serving during the session of 1874, were to be paid for their services therein the sum of \$1,500, with allowances and mileage "and the extra allowance for the Speakers of the two houses." But the extra allowance which I have quoted was only for their services during the session of 1874. It had no reference whatever to subsequent services, which, by the previous sections of the bill, were fixed at \$1,000 for each regular session and ten dollars per diem for the time spent after its expiration.

I am therefore of the opinion, and advise and instruct you that since the act of 1874 there has been and there is now no provision of law by which the Speakers of the two houses are entitled to any extra compensation.

Very truly yours,

W. U. HENSEL,
Attorney General.

HOSPITAL IN NEW CASTLE, LAWRENCE COUNTY—APPROPRIATION FOR—LAPSE—Act of June 3, 1887.

The act of June 3, 1887 (P. L. 324), appropriated \$10,000 toward the erection and furnishing of a hospital building in New Castle upon certain conditions. The conditions remained uncomplied with for six years. Held, That the appropriation had lapsed.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, May 23, 1893.

JOHN W. MORRISON, *State Treasurer*:

Dear Sir: I hereby acknowledge your communication of May 22d, enclosing a letter addressed to you by Dr. Silas Stevenson, and inquiring whether the appropriation made by the act of June 3, 1887, for the purpose of assisting in the erection and furnishing of a hospital in New Castle, Lawrence county, is still available, and if not, why not?

The act of June 3, 1887 (P. L. 324), appropriated \$10,000 toward the erection and furnishing of a hospital building in New Castle, provided that an amount of money equal to the sum thereby appropriated had been subscribed and paid toward the furnishing and maintenance of the said hospital, or that the management of the same had acquired real estate worth that amount. Under that act, approved nearly six years ago, you advise me that no certificate has been filed in accordance with the proviso. This alone would make the appropriation unavailable at present and prevent you from paying out any of the moneys appropriated by said act.

I am further of the opinion, however, that at this time, for other rea-

sons, this appropriation is not available and has lapsed. My learned predecessor, in an opinion dated April 17, 1889, referring to appropriations for hospitals, said: "The acts of Assembly contemplate prompt and diligent action on the part of the commissions in selecting a site and erecting the hospitals;" and further intimated that unreasonable delay in commencing or prosecuting such work might render the State appropriations unavailable. (Report of the Attorney General for 1889-90, page LIII). In an opinion to the Auditor General, dated May 16, 1892, it was held by this department that "acts to Assembly making appropriations for the erection of buildings contemplate prompt and diligent action on the part of those entrusted with the expenditure of the appropriation," and "such appropriations should not be held to be valid for an indefinite period. In this case, no work having been begun within nearly three years after the passage of the act, and nearly two years after the end of the period for which the appropriation was made, it was held that the appropriation had lapsed."

In accordance with that opinion, I now advise and instruct you that, if no work has yet begun upon the erection and furnishing of the hospital for which the appropriation of 1887 was made, and no certificate in accordance with its proviso has been filed with you, the appropriation has lapsed, and you have no authority to pay the same or any part of the same to any person, trustees, managers or corporation applying for it.

I am confirmed in this view of the question by the fact that, in the session of 1891, the General Assembly passed another bill (P. L. 335), making an appropriation to a hospital in the city of New Castle, with a proviso almost identical with that of the act of 1887. It is not to be presumed that the Legislature, in making this appropriation, considered the other to be effective.

Very truly yours,

W. U. HENSEL,
Attorney General.

SUPERINTENDENT OF SCHOOLS—PROFESSIONAL CERTIFICATE—QUALIFICATIONS.

The Superintendent of Public Instruction cannot legally withhold the commission of a duly elected superintendent of schools who holds a professional certificate, because certain branches taught in the schools of the borough for which he was elected superintendent, are not included among those upon his certificate.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, May 30, 1893.

D. J. WALLER, *Superintendent of Public Instruction:*

Dear Sir: I am in receipt of your communication of May 27, inquiring whether you can legally withhold the commission from the duly

elected superintendent of schools in Shenandoah borough, who holds a professional certificate, because certain branches taught in the schools of that borough are not included among those upon his certificate; and whether the law requires of any superintendent of schools qualifications beyond those expressed in a valid professional certificate.

Section 13 of the act of April 9, 1867, provides that "no person shall hereafter be eligible to the office of county, city or borough superintendent in any county of this Commonwealth who does not possess a diploma from a college legally empowered to grant literary degrees, a diploma or State certificate issued according to law by the authorities of a State normal school, or a professional certificate from a county, city or borough superintendent of good standing." * * * "Nor shall such person be eligible unless he has a sound moral character, and has successful experience in teaching within three years of the time of his election." Your communication states that, in the case to which it relates, the election was due and legal; that the person elected holds a professional certificate which, I assume, has been duly issued, and it is to be presumed that he has a sound moral character and has had successful experience in teaching within three years of the time of his election. These fill the full measure of the legal requirements. There is no provision of law requiring of any superintendent of schools qualifications beyond those expressed in a valid professional certificate, nor is there any specification that such certificate must include all the branches taught in the schools of the borough, city or county to which he has been elected superintendent.

I advise and instruct you, therefore, that, upon the case stated by you, you have no right legally to withhold this commission.

Very truly yours,

W. U. HENSEL,
Attorney General.

CHRONIC INSANE—RULES OF THE COMMITTEE ON LUNACY—Act of June 22, 1891, P. L. 380.

Temporary quarters provided for the chronic insane under the act of June, 1891, need not be licensed, neither is a resident physician required therefor.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 13, 1893.

ALICE BENNETT, M. D., *Chairman "Asylum Committee" of the Chronic Asylum Commission:*

Madam: Your letter of June 9, 1893, requesting an opinion from the Attorney General upon the legal questions submitted by you in a letter dated June 6, 1893, to Cadwallader Biddle, secretary of the Board of Public Charities, has been received. In this letter you ask instruction upon the following points:

In section eighteen of the "Rules of the Committee on Lunacy," we find it stated: "In any house or place licensed for the reception of fifty patients or more, there shall be a resident physician."

"This suggests two questions to the committee: First, Is the chronic asylum to be a 'licensed place?' Second, In any case, is it the duty of our committee to provide a 'resident physician' for the able-bodied, harmless, chronic insane, which we are preparing to receive?"

Your letter does not clearly state the subject of your inquiries. I infer therefrom, however, that your inquiry relates to the temporary quarters to be provided for the able-bodied, harmless, chronic insane "transferred to the premises and farm to engage in farm work, etc.," as provided in section seven of the act of Assembly approved June 22, 1891 (P. L. page 380). If this is the object of the inquiry, I would state that the temporary quarters so provided for these chronic insane, need not be a licensed place, neither is a resident physician required therefor, and I agree with you that "the safety and well-being of such patients would be assured by an arrangement by which one of the local physicians would make inspections at stated times and hold himself in readiness to respond promptly to any call." Such reasonable regulations as made by your Commission, touching the safety, security and good health of these people, would be all that is required. I do not understand that the technical rules of the Committee on Lunacy would necessarily apply to these persons so transferred to these temporary quarters for work under the act of 1891. Of course every attention should be paid to these chronic insane for their welfare while engaged in such work.

Very truly yours,

W. U. HENSEL,
Attorney General.

COUNTY OFFICERS—FEES OF OFFICE—Acts of March 10, 1810, P. L. 80; March 31, 1876, P. L. 13.

The act of March 31, 1876, does not modify or repeal the act of March 10, 1810, relating to the fees of office.

STATE ENTITLED TO ONE-HALF OF FEES—In all counties including those containing over 150,000 inhabitants, in which county officers are paid by salaries, the State is entitled to receive one-half of all the fees of the county officers after the deduction of their salaries and the expenses of their offices as provided by law.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 26, 1893.

D. McM. GREGG, *Auditor General, Harrisburg, Pa.:*

Dear Sir: I beg to acknowledge your favor of June 19, inquiring, inter alia, whether in counties of over 150,000 the State is entitled to receive one-half of the remainder of all fees after deducting the salary

and expenses of the county officers; and calling my attention to the fact that heretofore it has been the practice in counties of over 150,000 population to pay no portion of the fees collected to the Commonwealth.

In reply I have to say, that in my opinion the act of March 31, 1876 (P. L. page 13), does not modify or repeal the act of March 10, 1810 (P. L. page 80), so as to deprive the State of its right to one-half of the surplus of the county officers' fees in counties of over 150,000 population. On the other hand, I am of the opinion, and I advise and instruct you, that in all counties, including those containing over 150,000 inhabitants, in which county officers are paid by salaries, the State is entitled to receive one-half of all the fees of the county officers after the deduction of their salaries and the expenses of their offices, as provided by law.

Yours truly,

W. U. HENSEL,
Attorney General.

SERGEANTS-AT-ARMS OF SENATE AND HOUSE—EXPENSES OF WHEN TRAVELING ON PUBLIC BUSINESS—Act of June 7, 1885, P. L. 264.

When the General Assembly imposes upon its officers extraordinary duties or requires them to make journeys between Harrisburg and other points in the discharge of the duties of their office, such officers should be allowed out of any appropriation properly made for this purpose, their actual and necessary expenses and no more.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 28, 1893.

D. MCM. GREGG, *Auditor General*:

Dear Sir: I beg to acknowledge your communication of June 27th, inquiring as to what mileage, if any, should be paid to the sergeant-at-arms of either house of the General Assembly when such officer is required to make journeys between Harrisburg and other points, in the discharge of the duties of his office, for the purpose of subpoenaing witnesses or performing other duties in connection with legislative committees, and especially whether he should be allowed a certain rate of mileage or only his actual and necessary expenses.

Answering your inquiry I have to say, that the salaries, compensation and emoluments of the members, officers and employes of the General Assembly are fixed by the act of June 7, 1885 (P. L. 264). In approving that bill the, then, Executive expressed the opinion that, as to a number of the employes of the Legislature, he regarded the compensation fixed by the act as extravagant. He approved the bill, however, because the general purpose of the measure, in fixing a definite salary, commended itself so strongly that he waived objections to some features of the act in the confidence that subsequent legislation

might correct the extravagance of the excessive salaries given to some of the subordinates. No change, however, has been made in this law.

Under its provisions the sergeant-at-arms and assistants shall each receive \$7 per diem for each regular biennial, special or extraordinary session, and the uniform construction of this act has been that this pay shall be allowed these officers for every day of the session, whether the General Assembly is or is not in session, and counting week days, Sundays and holidays. It is further provided that each of these officers and employes shall be entitled to mileage at the rate of ten cents per mile to and from their homes, to be computed by the ordinary mail route between their homes and the State Capital. It is further provided that each of the officers and employes "shall in person perform the work and duties pertaining to their respective positions, except in case of sickness and upon leave of absence being granted by the Senate or House of Representatives." It has been the uniform and proper construction of this act that the mileage herein provided is to be paid but once during the session, at the rate of ten cents per mile for coming to the State Capital and at the rate of ten cents per mile for the return to their homes at the close of the session.

The intention of this act obviously is that the compensation which it provides shall be for continuous service, and that the officers and employes, whose time is thus fixed, are on duty and in such service of the General Assembly to which it may assign them during the entire term. The act of May 11, 1874 (P. L. 129), to which the act of 1885 is a supplement, declares, in the fifth section, that "no greater or other compensation or allowance than that provided by this act shall be voted by either house to any officer thereof for services performed at any session, except fireman and engineer, who shall each receive three dollars per day for every day necessarily employed under direction of the Chief Clerk during the session." This section has not been altered nor modified by the act of 1885, nor by any subsequent legislation. It is therefore in full force and effect, and the inhibition upon your allowance of, or upon the officers of the House receiving any greater or other compensation is not only implied but express.

There is no warrant nor authority of law for the sergeant-at-arms or other officers of either house of the General Assembly charging any rate of mileage for traveling between Harrisburg and other points in the discharge of the duties of their office. I am of the opinion that it is entirely proper and lawful for the General Assembly, when it imposes upon its officers extraordinary duties, or requires of them to make journeys between Harrisburg and other points in the discharge of the duties of their office, to make provision for the payment of their actual expenses, and for you to allow, out of any appropriations made for this purpose, such expenses as have been actually incurred, upon satisfactory proof of them. But the allowance of an arbitrary rate of

mileage, in excess of moneys actually paid for transportation, is, in my judgment, wholly without authority and no precedent can justify it.

I advise and instruct you, therefore, that, under the circumstances stated in your letter, the sergeant-at-arms or officers of either house of the General Assembly should be allowed, out of any appropriation properly made for this purpose, their actual and necessary expenses, and no more.

Very truly yours,

W. U. HENSEL,
Attorney General.

STATE TAX—SHERIFFS' DEEDS—Acts of April 6, 1830, and May 24, 1893.
Sheriffs' deeds are subject to the State tax only when recorded in the office of the recorder of deeds, and not when entered in the prothonotary's office.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, June 30, 1893.

D. McM. GREGG, *Auditor General*:

Sir: I beg to enclose and refer to you a letter from the prothonotary of Beaver county, which relates to a matter in the first instance, within the control and direction of your department.

I venture to say, however, for your official information, and, as if in answer to an inquiry upon the same subject from you, that, in my opinion, sheriffs' deeds recorded in the prothonotary's office under the act approved May 24, 1893, are not subject to the State tax of fifty cents. The act of April 6, 1830, provides that "the several recorders of deeds shall demand and receive for every deed, and for every mortgage or other instrument in writing, offered to be recorded, fifty cents." It does not provide that sheriffs' deeds, recorded in the prothonotary's office, shall be subject to this tax. While the act of May 24, 1893, requires sheriffs' deeds to be recorded at greater length than heretofore, they may still be offered for record, as before, in the office of the recorder of deeds, and when so offered and recorded, they are subject to the State tax of fifty cents; but the recording of them in the prothonotary's office only does not subject them to the State tax, and I advise you to so instruct the prothonotaries and recorders of the several counties of the State.

Respectfully,

W. U. HENSEL,
Attorney General.

BENEFICIAL SOCIETIES—ACT of 6th of APRIL, 1893—REGISTRATION OF.

The Insurance Commissioner may in his discretion permit beneficial societies to register, as provided by the act of April 6, 1893, after the expiration of the sixty days required by the act.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, July 13, 1893.

GEORGE B. LUPER, *Insurance Commissioner*:

Dear Sir: Your letter, dated July 5, 1893, asking whether you have the right to register societies making application after the sixty days have expired, under the provisions of the act of 6th April, 1893, entitled "An act defining fraternal, beneficial and relief societies," etc., has been received.

There seems to have been among this class of companies a misunderstanding in regard to this act, or a lack of knowledge of it, as the act has not been published. I understand that it affects only about half a dozen of such societies in the State of Pennsylvania, and that, if the prohibition from doing business in the State were strictly enforced, it would occasion a great deal of disturbance among these several societies. The registering of these societies would not violate any public interest in the State; neither would it violate any of the special provisions of this act. I would therefore advise you, under the facts and circumstances in regard to these several societies, and their failure to register within the prescribed time, as required by this act, to permit them to register in your office on compliance with the terms of the act in that regard.

Very truly yours,

JAS. A. STRANAHAN,
Deputy Attorney General.

THEATRE LICENSES IN PHILADELPHIA—Act of May 15, 1850.

The payment of one license fee covers the place for which it is granted for the period of one year, without regard to the number of successive lessees.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 11, 1893.

D. McM. GREGG, *Auditor General*:

Dear Sir: I have your communication of September 5th, inquiring into the propriety of permitting a theatre license in Philadelphia to be transferred, and whether the act of May 15, 1850, contemplates that a new license fee shall be paid whenever there may happen to be a new lessee of the place for theatrical representations in the city of Philadelphia.

In reply I beg to say that, in section 5 of the act to which you refer, it is enacted "that the price of a theatre or circus license or museum, or any other place for theatrical representations shall be, in the city

and county of Philadelphia, five hundred dollars." I am of the opinion that the payment of one fee during the year covers the place for which it is granted, without regard to the number of successive lessees. Of course it is not contemplated that there shall be various theatrical representations at the same time under different managements at this one place, but the mere change of management or lessees does not, in my opinion, require the payment of an additional license fee. In this sense, and to this extent, the license pertains to the place and is transferrable.

An analogy to this is furnished by the practice in different parts of the State in transferring liquor licenses during the year from one person to another without requiring the payment of an additional fee. In such cases the grant is more personal than in the matter of theatrical licenses, but the uniform practice of the courts, long acquiesced in by the Commonwealth, has been that the payment of the license is for the place and need not be repeated upon successive changes of the licensee within the year for which the fee has once been paid.

Very truly yours,

W. U. HENSEL,
Attorney General.

FACTORY INSPECTOR—AUTHORITY OF UNDER ACT OF JUNE 3, 1893.

The authority of the Factory Inspector, under the act of June 3, 1893, extends to any shop or factory employing more than five persons who are women or children, but seems to be limited to such establishments and to the enforcement of earlier acts relating to women and children.

"CHILDREN" MEANS MINORS.

Children in this act means minors of either sex, and no distinction can be made between minors under and minors over sixteen years of age.

MERCANTILE BUILDINGS NEED NOT HAVE FIRE ESCAPES.

The act does not require fire escapes to be erected on buildings used wholly for mercantile purposes, which are not shops or factories.

SUFFICIENCY, DANGER, &c., FOR JURY IN PROSECUTION.

Questions of sufficiency, danger and proper diligence, in the event of difference between owners and officials, must be decided by a jury in a prosecution for violation of the law.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, September 27, 1893.

ROBERT WATCHORN, *Factory Inspector*:

Dear Sir: I am in receipt of your favor of September 26, enclosing communications from, or relating to, the cases of Thomas C. Atherholt & Co., The Pencoyd Iron Works, The Spangler Manufacturing Co., Wm. V. Lippincott's Estate, Young, Smyth, Field & Co. Referring to these, and to the several oral inquiries propounded to me, I have to say:

1. As to the scope and application of the act of June 3, 1893, P. L.

276. By the title of that act it is limited in its operation to manufacturing establishments, mercantile industries, laundry or renovating establishments, employing women and children, and to the means of egress, appliances and mechanical apparatus of any shop or factory contemplated in section 12 of said act. It was no doubt the purpose of the draughtsman to make this act a supplement to the act of May 20, 1889 (P. L. 243), but such purpose is not expressed in its title. Its title, however, does provide for the appointment of inspectors to "enforce other acts" providing for the safety or regulating the employment of women and children; and, in view of this, I am of the opinion that your authority under this act extends to any shop or factory employing more than five persons who are women or children. By "children," I construe the act to mean minors of either sex. Certain sections of the acts, it is true, speak of children under thirteen years of age, and other sections of children under sixteen years of age, but, in section eight, a distinction is made between minors under and minors over sixteen years of age. The act must be construed as a whole, and I can discover no evidence of an intention to limit your authority to establishments employing women or children under sixteen years of age.

Referring especially, therefore, to the case of Thomas C. Atherholt & Co., I advise and instruct you, if, by their statement that they employ neither women nor children, they mean neither women nor minors, they are not within the general provisions of this act. If, however, they employ more than five minors between sixteen and twenty-one years of age, they come within its operation.

This same ruling will apply to the case of the Pencoyd Iron Works, which seems to admit that it has minors in its employ over the age of sixteen years. If the Spangler Manufacturing Co. employs no women, nor any children under twenty-one years of age, the same ruling will apply to it. In the case of Searle, Vanneman & Co., under lease from the estate of William V. Lippincott & Co., who admit that they employ one woman and eleven minors in a mercantile establishment, they are, in my judgment, subject to the general provisions of the act. But this act of 1893 does not require fire escapes to be erected on buildings used for mercantile purposes unless they fall within the prior legislation on the subject of fire escapes; and if the building of Lippincott's estate is used wholly for mercantile purposes, and is not a shop or factory, I am of the opinion that there is no authority in the act of 1893 for you to require of them the erection of a fire escape. If Young, Smyth, Field & Co. employ boys between the ages of sixteen and twenty-one, in addition to the three boys under sixteen, I am of the opinion that you have a right to inspect and determine whether or not their hoistshafts and well-holes are protected in accordance with section seven of the act of 1893.

2. What is or is not "sufficient" means of egress in case of fire, "dangerous" to employes, "sufficient" guards and protection, and "proper diligence," under section twelve, must, in the first instance, be determined by you or your deputy, and should differences exist between you and those to whom you give notice, and from whom you make requirements of observance of these statutes, I am of the opinion that the questions of sufficiency, etc., would eventually have to be decided by a jury in the prosecution of the parties for a misdemeanor.

3. In all cases where you find inadequacy or insufficiency of safeguards and protection, and give the sixty days' notice required by section twelve, I am of the opinion, and advise and instruct you, that these notices should be explicit in stating wherein the alleged insufficiency or inadequacy consists, what particular provision of the law has been neglected or violated, and exactly what the owner or proprietors of the establishments to be regulated are expected to do.

4. Under the authority of section twelve I am of the opinion that you and your deputy have a right to examine and inquire whether the means of egress, in case of fire, from any establishment employing women and minors in excess of the number of five, are sufficient, and in all cases of "shops or factories," so employing women and minors, and required under the previously enacted laws of 1889 and 1885, and the laws to which they were supplements, to provide for fire escapes, you have the right to inquire and ascertain whether the means of egress, in case of fire, are sufficient and in accordance with all the requirements of law.

5. Whether or not you and your inspectors have a right to inquire into the adequacy and proper safeguards of belting, shafting, gearing, elevators, drums and machinery, in shops and factories not employing women or minors, is a question not raised in any of the communications which you send to me. When any such question actually arises in the administration of the duties of your office, and is submitted to me, I will give you my opinion thereupon, but I am free to say that, in view of the restricted title of the act of 1893, your authority under that act seems to me to be limited to establishments employing women and minors, and to the enforcement of acts prior to 1893, providing for the safety or regulating the employment of "said persons."

Very respectfully,

W. U. HENSEL,
Attorney General.

ASSOCIATE JUDGES NOT LEARNED IN THE LAW—CONSTITUTION,
SECTION 5, ARTICLE 5—LEBANON COUNTY—Act of 1893.

The office of associate judge not learned in the law is abolished in the county of Lebanon by the act of 1893, and does not continue after the time fixed for this act to go into effect, viz., from and after the first Monday of January, 1894. Until this time a vacancy should be filled by appointment.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, October 10, 1893.

ROBERT E. PATTISON, *Governor*:

Sir: In the matter of the vacancy in the office of associate judge in Lebanon county, caused by the death of Hon. Adolphus Reinoehl, late of the associate judges there, and to your inquiry as to whether or not there is legal authority to fill the vacancy and for what term, in view of the act of May 4, 1893, I beg to say:

The schedule to the Constitution of 1873 directed that associate judges not learned in the law, elected after the adoption of the Constitution, should be commissioned to hold their offices for the term of five years from the first day of January next after their election. In section 5, article V, of the same constitution it is provided that the office of associate judge, not learned in the law, is abolished in counties forming separate districts, but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms. No provision is made expressly, either in the body of the Constitution or in the schedule, for such a case as has occurred in Lebanon county, but the obvious purpose of the framers of that instrument, as gathered from all their debates on this subject, as interpreted by learned commentators, and as elucidated by the Supreme Court in various decisions, was to abolish the office of associate judge not learned in the law in counties forming separate districts. In the case of the Commonwealth v. Dumbald and Roberts, 97 Penna., 293, it was expressly decided that counties having forty thousand inhabitants have the right to be a separate judicial district, and when such a district is created, even if other counties are attached to it, the county having forty thousand inhabitants has the right not to have associate judges. In that case associate judges were elected for the county of Fayette at the general election late in November, 1876, and were commissioned to hold the office for a period of five years from the first Monday of January, 1877, but the act of April 9, 1874, had made Fayette county a separate judicial district, with the county of Greene attached. The Supreme Court held that Fayette county had the right not to have associate judges and they were ousted from office. The act of 1893 erects the county of Lebanon into a separate judicial district, and this act is expressly based upon the condition that the population of that county exceeds forty thousand—the constitutional requirement.

I am of the opinion that the office of associate judge not learned in

the law in that county is abolished by this act and does not continue after the time fixed for this act to go into effect, viz: from and after the first Monday of January, 1894. Until then the county is entitled to have associate judges not learned in the law, and the vacancy that has occurred by the death of one of the associate judges should, in my opinion, be filled by your appointment until January 1, 1894, and the appointee should be commissioned until that date.

Whether the abolition of the office carries with it the termination of the commission of the other associate judge, whose term may not have expired on January 1, 1893, is a question that has not yet arisen and which in no wise affects the matter before you and submitted to me. In view of the fact that the office itself ceases to exist at that time by the operation of the Constitution, upon conditions which have been created by the Legislature, and in view of the decision of the Supreme Court in *Commonwealth v. Gamble*, 62 Penna., 343, that a legislative act which impinges on the tenure of judges is invalid, the right of the associate law judge, now in commission, to hold beyond that period may give rise to a debatable question, which, as I have said, it will be time enough to consider and determine when it shall have arisen in the manner duly provided by law for the settlement of such questions.

Very respectfully,

W. U. HENSEL,
Attorney General.

BOARDS OF HEALTH—RULES AND REGULATIONS—POWER OF CHIEF BURGESS TO VETO—Act of May 11, 1893.

The act of May 11, 1893, which gives to the rules and regulations of boards of health the force of ordinances, when approved by the borough council and chief burgess, is intended only to give the chief burgess such power to veto these rules and regulations as he may have to veto the other ordinances of the borough.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, Nov. 3, 1893.

BENJAMIN LEE, M. D., *Sec'y State Board of Health, Philadelphia, Pa.:*

Sir: I am in receipt of your communication of Nov. 1, asking for a construction of that phrase of the law providing for boards of health in boroughs, approved May 11, 1893, which gives to the rules and regulations of such boards the force of ordinances "when approved by the borough council and chief burgess," etc., and inquiring whether this means that the chief burgess and councils must, in all cases, absolutely concur to give validity to such rules and regulations, or whether a prescribed majority in a borough council may pass an ordinance over the veto of the burgess.

In reply, I have to say, that I am of the opinion that it was not the intention of the Legislature to make the chief burgess a co-ordinate

expenses, and upon whom the board can impose the duty of executing its orders.

In reply, I beg to say that your powers and duties and authority being purely statutory, you cannot impose these duties or expenses upon any of the local authorities, without express warrant of law. The only general concerns of local government in such districts as you refer to, are schools and roads; and these are respectively in charge of the boards of school directors and the township supervisors; the accounts of the latter being made the subject of review by the township auditors. For nuisances existing in the public highways the supervisors are responsible, and for matters directly and immediately affecting the schools, the school directors may be held accountable. But until the Legislature makes further provision, and invests you with further authority, there are no officials in townships or unincorporated villages upon which you can impose the duty or the cost of executing quarantine and sanitary regulations. Ordinarily, the county commissioners and the directors of the poor might, in my judgment, with entire safety, take upon themselves the responsibility and expense of providing for the necessary measures to protect the public health, and, where it is threatened by infectious or contagious diseases, I am of the opinion that it would not be an undue stretch of their authority. I am also of the opinion that, in most cases, they, in consultation with the county solicitor and district attorney, and acting in consultation with the local courts, can provide for any emergencies that may arise.

In the matter of your second query, as to whether the State Quarantine Board should report to the State Board of Health, I beg to say that I think it unnecessary to anticipate difficulties or conflict of authority, which, as you admit, have not yet arisen; and, inasmuch as you seem to be the secretary of both boards, I suggest that you establish the precedent of reporting on behalf of the State Quarantine Board to the State Board of Health, so that a harmonious and complete system of sanitary reports may be adopted.

Very truly yours,

W. U. HENSEL,
Attorney General.

BANKING DEPARTMENT—IMPAIRMENT OF CAPITAL OF TRUST COMPANY.

Whether or not the capital stock of a trust company is impaired, and whether a prior impairment has been made good, are questions of fact to be determined by the Superintendent of Banking.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 2, 1894.

CHARLES H. KRUMBHAAR, *Superintendent of Banking*:

Dear Sir: I have your communication of the 29th ult., relating to the Citizens' Trust and Surety Company, of Philadelphia, and to the

scheme which it proposes of reducing its stock to meet the impairment which you have reported and complained of.

Whether or not the capital stock of the company is at present impaired and whether the impairment which you formerly discovered and reported has been made good, are questions of fact upon which you must pass and with regard to which we could give you no authoritative opinion. But as to their manner of reducing their capital stock, if you desire to have from this department an official opinion as to whether or not it is in accordance with law, I have to say that a reduction of the capital stock of the company cannot be made by such an attempted surrender of part of the stock. The act of 1891, section 6 (P. L. 220), provides "that nothing in this act shall prohibit such corporation from reducing its capital to meet such reduction or impairment," but the act of 1874 (P. L. 81, 82), sections 17-23, and the act of 1876 (P. L. 33), section 5, point out the manner in which such reductions are to be made, and this plan must be followed and should be insisted upon by you.

Very truly yours,

W. U. HENSEL,
Attorney General.

FOREIGN CORPORATION—CERTIFICATE OF OFFICE AND AGENT—Act of April 22, 1874.

A foreign corporation is prohibited by the act of April 22, 1874, from doing business in this State until it has filed with the Secretary of the Commonwealth a certificate setting forth the location of an office in this Commonwealth and the name of an authorized agent upon whom process may be served.

SALES BY TRAVELING SOLICITORS.

That such a corporation does its business, or sells its goods, in this State, through traveling solicitors, instead of at a particular place, or by agents having known places of business, does not relieve it from the provisions of the act of 1874.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 11, 1894.

W. F. HARRITY, *Secretary of Commonwealth:*

Sir: I have received your communication of January 5, inquiring whether the Goulds Manufacturing Company, of New York, a foreign corporation, selling its manufactured goods in this State through traveling solicitors, is amenable to file in your office the statement required by the act of April 22, 1874.

The act to which you refer (P. L. 108) is unquestionably "in execution of section 5 of article XVI of the State Constitution," Buckalew on the Constitution, 251. That constitutional provision prohibits any foreign corporation from doing any business "in this State without having one or more known places of business" and an authorized

legislative branch of the city government with the councils, but that it was only intended that he should have such power to veto these rules and regulations as he may have, in certain cases, to veto other ordinances of the borough. It has recently been held by the Supreme Court, that the chief burgess of a borough is only a member of the borough council, and has the power of veto only when this is provided for in the charter of the borough, and in many boroughs of the State the chief burgess has, at present, no power of veto, and will have no such power until the new act of May 23, 1893, shall become effective after the February elections of 1894. Under that act, the chief burgess shall serve for the term of three years, and shall have the power of veto over ordinances and resolutions, subject to be overruled by two-thirds of all the members elected to council. In such cases, and in all cases, wherein, at present, the chief burgess has the power of veto, I am of the opinion that his veto, for the purposes of the act to which you refer, may be overruled by the necessary vote of councils. In cases, in which at present, the chief burgess has no veto power, and is not a member of councils, I am of the opinion that his concurrence in the health rules and regulations is not essential to their validity.

Very truly yours,

W. U. HENSEL,
Attorney General.

BANKS—ADVERTISEMENT—RENEWAL OF CHARTER—WAIVER OF NOTICE—Constitution, section II, article XVI.

The matter of renewing or extending the corporate franchises of a banking institution is one in which the public have a concern and about which they have a right to public notice.

PUBLICATION OF NOTICE.

The provision of the banking law for notice of publication of the stockholders' meeting should be strictly construed and cannot be waived as against the public right of notice by the action of the stockholders.

OFFICE OF THE ATTORNEY GENERAL,

HARRISBURG, November 14, 1893.

C. H. KRUMBHAAR, *Superintendent of Banking*:

Sir: I am in receipt of your communication of November 13, inquiring as to the right of the stockholders of banks to waive the notice of advertisement required by the act of May 10, 1889, in proceedings for renewal of charters of banks, and enclosing a communication from Mr. J. McF. Carpenter on the same subject, with special reference to the application of the City Deposit Bank, of Pittsburgh.

In reply I beg to say that the Constitution, section 2, article XVI, directs that "No corporate body to possess banking and discounting privileges shall be created or organized in pursuance of any law with-

out three months previous public notice, at the place of the intended location, of the intention to apply for such privileges, in such manner as shall be prescribed by law."

The act of May 10, 1889 (P. L. 186), provides that when such institutions deem it expedient to have their charters, corporate rights and franchises renewed and extended, "they shall give notice by publication for three months in two newspapers, published in the city or town where said institution" is located, of the time and place of the meeting for this purpose. While it is true that this meeting is called for the private purposes of the stockholders and a majority of them in interest have the power to decide for or against such renewal and extension, the act further provides that the determination of whether such extension and renewal shall be approved by the officers of the Commonwealth depends upon whether "such renewal is not inconsistent with the public interests." It seems, therefore, that the matter of renewing or extending the corporate franchises of a banking institution is one in which the public have a concern and about which they have a right to public notice. The provision of the Constitution and the law, that public notice shall be given of intention to apply for the grant of corporate franchises, seems for good public reasons to apply to applications for the renewal or extension of such as have determined by lapse of the constitutional period for which they were granted.

I am, therefore, of the opinion that the provision of the banking law for notice of publication of the stockholders' meeting should be strictly construed; that it cannot be waived, as against the public right of notice by the action of the stockholders; and that you should insist upon this newspaper advertisement of intention to apply for the renewal of a charter.

Very truly yours,

W. U. HENSEL,
Attorney General.

STATE BOARD OF HEALTH—POWER OF, IN TOWNSHIPS.

The State Board of Health cannot impose the cost of executing quarantine and sanitary regulations upon townships or unincorporated villages.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, November 28, 1893.

BENJ. LEE, M. D., *Secretary State Board of Health:*

Sir: I have received your communication of the 24th inst., in which you inquire as to your authority to enforced quarantine in places having no health authority of their own, and refer especially to unincorporated villages and townships, and ask who are the constituted authorities in such districts, who may be called upon to estimate such

agent or agents in the same upon whom process may be served. It was the intention of the members of the constitutional convention, as clearly appears from its reports, that foreign corporations, which seek in any way to exercise their franchises and to do any kind of business "in this State," should have a known place of business and a known agent in the State, in order that our citizens might have the same opportunity to have service of process upon them as they have to bring suits and have process upon a resident of this State with whom they may desire to litigate. The discussion upon this section plainly shows that it was meant to apply to corporations who send their agents or solicitors around doing business, as well as those which may have established offices or fixed interest at particular points to give them a definite location.

Pursuing this purpose, the Legislature of 1874, which was largely charged with the duty of enforcing the Constitution and of making its provisions effective, enacted the law of April 22, 1874. It not only prohibited foreign corporations from doing any business that until they shall have established an office or offices, and appointed an agent, but required them to file, for the information of the public, in the office of the Secretary of the Commonwealth, a certificate, setting forth, *inter alia*, the location of its office and the name of its authorized agent, and further imposed penalties upon agents of such corporations who might transact business for them without complying with the provisions of the act.

It has long been recognized that the right of a foreign corporation to do business in a state other than that in which it is incorporated, rests wholly in the comity of the states. A corporation of one state cannot do business in another state without the latter's consent, express or implied; and that consent may be accompanied with such conditions as the latter may think proper to impose. A foreign corporation, so far as it exercises its franchises in another state, is subject to its control. In *Retterly v. Howe Sewing Machine Co.*, 4 W. N. 525, it was decided by the court of Luzerne county that constitutional section under discussion designed "that all foreign corporations, not foreign insurance corporations only, should be brought, measurably at least, within power and control of this State, and also within convenient and certain reach of the process of the courts of this State;" and that, in enacting the law of April 22, 1874, the Legislature had in view a similar purpose.

In *Hagerman et al. v. Empire Slate Co.*, 97 Pa., 534, the court held that "undoubtedly it is illegal for a foreign corporation to transact business in this State without having complied with the requirements of the Constitution and the act of assembly," and that the Commonwealth could object to its want of capacity.

The fact that the Goulds Manufacturing Company, or any other

company of the same character, does its business and sells its goods in this State through traveling solicitors, instead of at a particular place, or by one or more agents having known places of business, in no wise helps its case nor relieves it from the provisions of the law of 1874. Indeed, a foreign corporation which has no definitely located agent and no known place of business, should, for the proper protection of our citizens, and to conform with the Constitution and law, all the more file the certificate referred to and register in your department the name of its agents, upon whom process may be served.

Respectfully,

W. U. HENSEL,
Attorney General.

PERSONAL PROPERTY TAX—Acts of May 7, 1889, and May 24, 1893.

Personal property tax should not be deposited by the treasurer of Philadelphia in the same manner as the ordinary money of the city.

PAYMENTS.

It is the duty of the city treasurer to make monthly returns and payments to the State Treasurer and he is responsible for any default so to do.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 26, 1894.

D. McM. GREGG, *Auditor General*:

Sir: I have received your communication of January 23, enclosing one from Hon. George D. McCreary, treasurer of Philadelphia city and county, and accompanied with a request that the questions he asks as to the disposition to be made of the personal property tax may receive my consideration and advice.

In reply, I beg to say to you, and to authorize you to say to him, that the decision in the case of the Commonwealth v. Philadelphia County (reported in 157 Penn. State Repts., page 531), does not, in my opinion, determine that the personal property tax money "is to be regarded as the city's until such time as it is called for by the officers of the Commonwealth." That case decides simply what had been held long before—that the county treasurer is the agent of the county "until the tax is paid by him to the State Treasurer." It is and remains the duty of the county treasurer "to make a prompt return of the State personal property tax." The county is responsible for his failure to do so, but this does not relieve the treasurer from his responsibility and from his obligation to promptly return this money to the State Treasury. The act of May 7, 1889, provides for the quarterly return and payment by county and city officers of all moneys received by them for the use of the Commonwealth and prescribes penalties and forfeitures for refusal or failure to do so. The act of May 24, 1893 (P. L., 125), provides for monthly returns and payments by

county and city officers, and also imposes penalties for refusal or neglect to make such returns and payments.

I am, therefore, of the opinion that the personal property tax should not be deposited by the treasurer of Philadelphia in the same manner as the ordinary moneys of the city; that the city treasurer should not so deposit them as to render him powerless under the law to draw them out unless by warrant countersigned by the comptroller, by ordinance or by mandamus; but that it is his duty, under the act of 1893, to make monthly returns and payments of those moneys to the State Treasurer, and that he will be responsible for any default so to do; that it is not within the power of councils to direct the treasurer to deposit these moneys and to pay them over in such manner as they may direct; and that if he deposits these moneys in the general city fund account, he will be responsible under the law I have quoted for his refusal, failure or neglect to make return and payment of them to the State Treasurer.

Very respectfully yours,

W. U. HENSEL,
Attorney General.

WORDS AND PHRASES—DUTIES—THEATRICAL PERFORMANCES.

Any story represented by action performed in a theatre with stage, scenery, box, orchestra, pit or parquet, or with scenic representations, and with stage machinery and decorations, is a theatrical exhibition within the purposes of the act of April 16, 1845.

MINSTREL TROUPES—Minstrel troupes should be classified according to the character of the exhibition which they give. If it includes farce, burlesque, farce-comedy, it is a theatrical exhibition within the contemplation of the act.

CONCERT—A strictly musical concert, without the introduction of the dramatic, operatic or theatric element, is not a theatrical exhibition within the statute.

THEATRICAL LICENSES—A theatrical license, under the act of April 16, 1845, covers a theatrical exhibition or exhibitions, circus performances or menagerie, for one year within the county for which the license is issued.

COUNTY TREASURERS—DUTY OF AUDITOR GENERAL.

The duty of the county treasurers, in their relation to the State in and about the granting of theatre licenses, is comprehended in the direction that they shall, upon the payment of the defined amount, issue licenses for theatrical exhibitions for one year within their respective counties. No active duties in the way of ferreting out attempted or actual violation of these laws are imposed upon the county treasurer. This duty belongs with the district attorney and the court of quarter sessions. The Auditor General and State Treasurer having no financial interest in these proceedings, the local authorities must attend to the same.

STATE TAXES.

The moneys collected for the theatrical licenses are for the use of the State.

FINES AND PENALTIES.

Fines and penalties recovered by indictment, conviction or sentence, for the violation of the laws with reference to theatrical licenses, are payable into the county treasury.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, January 26, 1894.

D. McM. GREGG, *Auditor General*:

Sir: I am in receipt of your communication of January 23, submitting certain questions arising from the inquiries addressed to your department by county treasurers, bearing on the subject of theatrical licenses in counties other than Philadelphia and Allegheny, and raised, in most cases, by the reference of the county treasurers to the recent decision of Judge Doty, in Westmoreland county: *Com. v. Keeler*, 3 Dist. Reprs. 158.

Referring to the inquiries propounded to you, I have to say:

1. The act of April 16, 1845, section 2 (P. L., 533), provides that "No theatrical exhibition or exhibitions shall hereafter be allowed in this Commonwealth without license from the State, and the county treasurer of any county shall have authority to grant licenses under his hand and the seal of the proper county for such exhibition, on the payment of the following sums, to wit," etc. The same section provides that "If any person or persons shall attempt to exhibit or perform, as aforesaid, in any of the counties of this Commonwealth, without having first obtained a license, according to the provisions of this section, he or they, so offending, shall be liable to indictment, and on conviction thereof shall forfeit and pay for every such offense, a sum not less than one hundred dollars, nor greater than one thousand dollars, in the discretion of the court, to be paid into the treasury of the county wherein such conviction shall take place."

It is further provided, in section 5, act of May 15, 1850 (P. L., 773), that "If any person or persons shall attempt to show, hold or exhibit any such theatre, circus or menagerie within any city or county of this Commonwealth, without such license as aforesaid, he or they so offending shall be liable to indictment, and on conviction thereof, shall pay for every such offense a fine not less than two hundred dollars nor greater than one thousand dollars, at the discretion of the court trying said offense."

This same act of 1850, in its fifth section, limits the operation of the license, thus granted, to the county for which the same shall be granted.

Under this section, the duty of the county treasurers, in their relation to the State, in and about the granting of licenses, is comprehended in the direction that they may and shall, upon the payment of the defined amount, issue licenses for theatrical exhibitions for one year within their respective counties. They are the agents of the State for the purpose of granting the licenses, if applied for, and of

remitting the license fees, which may be paid into the county treasury "for the use of the State," under these acts. The purpose of the acts, in which these sections are embodied, being to increase the revenue of the Commonwealth, and to create a sinking fund for the extinguishment of its debts, there can be no doubt that the license moneys collected are for the use of the State.

But no active duties in the way of ferreting out attempted, presumable or actual violations of these laws are imposed upon the county treasurer. His authority, as well as his duty, is defined by statute. A failure, neglect or refusal to obtain the license prescribed by these acts makes the person giving the theatrical exhibition or exhibitions, or circus performances, or menageries, liable to indictment, and, upon conviction thereof, to forfeiture, fine and penalty. These fines and penalties, however, are "to be paid into the treasury of the county where such conviction shall take place." A violation of the act is a misdemeanor, which brings the offender within, and makes him amenable to, a criminal jurisdiction. Here the duty of the district attorney and of the quarter sessions court begins. Fines imposed by courts of criminal jurisdiction and decreed to be paid to the Commonwealth, are collected and received for the use of the respective counties. Whether or not, in the interest of public morals, complaints shall be made, offenders indicted and punishment imposed, is a matter for the district attorney to determine. Whether or not persons who refuse or neglect to take out this license shall be prosecuted, with a view of securing, for the benefit of the county treasury, the fines to be imposed, becomes a matter of concern to the commissioners of the respective counties, their county solicitors and county treasurer, and they must be guided by their own judgment.

In this view of the law, whether or not "it is the duty of the county treasurer to keep himself informed of the intention of any person or persons to hold, show or exhibit a theatre, circus or menagerie, within the limits of his county, and, having such knowledge, whether it is his duty to demand payment of the license required," are matters which are wholly related to the administration of the county affairs, or to the jurisdiction of the district attorney and the courts in enforcing of the criminal laws. No share of the fines to be recovered by indictment, conviction and sentence are, in my judgment, payable into the State treasury.

2. What I have already said answers your inquiry as to whose duty it is to proceed to have the person or persons so offending indicted. The Auditor General and Treasurer of the Commonwealth, having no financial interest in this proceeding, the local authorities must be governed by other than their official direction.

3. As to what character of entertainments are to be considered theatres, circuses and menageries, it has been, as you suggest, already

decided by the Supreme Court, in *Bell v. Mahn*, 121 Pa., 225, that the performance of an opera is a theatrical entertainment within the meaning of these acts. "Minstrel troupes" should be classified according to the character of the exhibition which they give. If it includes a farce, burlesque or farce comedy, such as you describe, it is, in my opinion, a theatrical exhibition within the comprehension of the act. A strictly musical concert, without the introduction of the dramatic, operatic or theatrical element, is not, in my opinion, a theatrical exhibition. It would be difficult to furnish a definition which would meet every case, and the statute, being penal, would have to be considered by the courts strictly upon the circumstances of each case. But "any story represented by action," performed in a theatre, with "stage, proscenium boxes, orchestra, pit or parquet and the galleries," or with scenic representation, and with stage machinery and decoration, is a theatrical exhibition for the purposes of this act.

As to the limitation of a license granted to a theatrical exhibition, circus or menagerie, by a county treasurer, I am of the opinion that such license covers the theatrical exhibition or exhibitions, circus performance or menagerie for one year within the county.

Very respectfully,

W. U. HENSEL,
Attorney General.

INSURANCE TAX—ALLOWANCE FOR THE COST OF RE-INSURANCE
AND FOR RETURN PREMIUMS—Act of June 1, 1889.

In collecting the tax upon gross premiums of foreign insurance companies under the act of June 1, 1889, P. L. 433, an allowance should be made for return premiums, but no reduction for the cost of re-insurance.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, March 13, 1894.

GEO. B. LUPER, *Insurance Commissioner*:

Sir: Your letter of March 2, 1894, asking to be advised whether, by the second proviso of section 24 of the act of June 1, 1889, an allowance or reduction can be made for re-insurance and return premiums, has been received.

The language of the second proviso of section 24 of the act approved June 1, 1889 (P. L., 433), is as follows:

"And provided further, That hereafter the annual tax upon the premiums of insurance companies of other states or foreign governments, shall be at the rate of two per centum upon the gross premiums of every character and description received from business done within this Commonwealth within the entire calendar year preceding."

Re-insurance is defined as follows:

"A contract of re-insurance is where the insurer in order to lessen

his own liability on the contract of insurance, re-insures or transfers the insurance he has agreed to carry in whole or in part to a new insurer, who thereupon occupies the same position to the original insurer as the original insurer does to the original insured, which latter is not a privy, however, to this new contract." *Biddle on Insurance*, p. 9, par. 7.

In the case of re-insurance the insured is not a party to it. The insurance company making the contract of insurance receives the entire premium. Subsequent to this, either as a matter of convenience or necessity, it re-insures the same property, and receives from the re-insurer another premium. The insured party in the original policy has no interest in this re-insurance. According to the spirit, as well as to the letter of the second proviso, the premium arising from this contract of re-insurance surely cannot be deducted from the gross premium received by the insurance company. The language of this proviso would seem to have been framed almost specially to cover a case of this kind. The company might, with almost equal propriety, claim the right to deduct the expenses and cost of obtaining the re-insurance, or of conducting the business in the first instance.

A return premium is different entirely from re-insurance. The return premium arises out of the contract between the insurer and the insured, and whatever portion of the premium is returned by the insurance company to the insured, in accordance with the terms of the contract of insurance, could legitimately be deducted under the plain language of this proviso.

I therefore advise you that in collecting the tax from insurance companies under this proviso referred to in your letter, an allowance should be made for return premiums, but no allowance or reduction for re-insurance.

Respectfully,
 JAS. A. STRANAHAN,
 Deputy Attorney General.

FOREIGN CORPORATIONS—Statement under act of April 22, 1874.

A foreign corporation which consigns its goods to a commission merchant in this State, who sells the same, not for himself, but for them, is doing business in this State within the meaning of the act of April 22, 1874, and should file with the Secretary of the Commonwealth the statement required by that act.

OFFICE OF THE ATTORNEY GENERAL,
 HARRISBURG, April 16, 1894.

W. F. HARRITY, *Secretary of the Commonwealth*:

Sir: I have received your communication of April 12, inquiring whether the Nonantum Worsted Company and the Merrick Thread Company, foreign corporations, are doing business in this Common-

wealth under the facts stated in your letter, and should file in your office the statement required by the act of April 22, 1874.

It seems, from the facts as you state them, that these companies consign their goods to a commission merchant in Pennsylvania; that he does not buy them; that they do not sell them to him; that they do not part with the possession of them, and that he sells them for these corporations and not for himself.

Under these circumstances, I am of the opinion that they are doing a business in this State through him as their agent. As I understand the case, they maintain the property in the goods, and could maintain, in their own names and right, an action against their agent's vendees for the value of them. The title to the property remains in the consignors, not only until delivery to the agent, or, as he calls himself, "commission merchant," but until it passes to his vendees. I am of the opinion, therefore, and instruct and advise you, that these corporations are doing business in this Commonwealth, and should file the statement required by the act of 1874.

Respectfully,

W. U. HENSEL,
Attorney General.

SPECIAL POLICEMEN—Acts of February 27, 1865, and April 11, 1866.

A corporation engaged in the manufacture of vitrified paving brick, fire proof building brick, enameled brick, fire brick, and cupola and furnace linings, is not entitled to the appointment of special policemen.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, August 21, 1894.

R. E. PATTISON, *Governor*:

Sir: Replying to the communication of Mr. Tate, requesting advice to the Executive upon the subject of the within letter from the Somerset and Johnsonburg Manufacturing Company, I have to say:

The body of the communication does not set forth the character of the works owned and operated by this company which applies for special policemen under the act of April 11, 1866, but I assume from the letter heads, as your communication of inquiry also assumes, that this corporation is engaged in the manufacture of vitrified paving brick, fire proof building brick, enameled brick and fire brick, cupola and furnace linings.

The act of February 27, 1865, provides for the appointment of "railroad" police upon the application of any corporation owning or using a railroad in this State. The act of April 11, 1866, under which this present application is made, extends this act to all corporations, firms or individuals owning, leasing or being in possession of any colliery, furnace or rolling mill within this Commonwealth. Keeping

in view the ordinary and usual meaning of these terms, I am of the opinion, and advise you, that they apply only to collieries and iron works. The "furnace" contemplated by this act is, in my judgment, an iron furnace and not a furnace—if by any proper use of terms a brick kiln could be called a furnace—in which bricks are made. The fact that the officers thus appointed are to be known and designated as "coal and iron police," strengthens this view. I hold, therefore, that the Somerset and Johnsonburg Manufacturing Company is not qualified to make this application and I advise that it be refused.

Very truly yours,

W. U. HENSEL,
Attorney General.

INSURANCE—FOREIGN—LLOYDS' ASSOCIATION—RULE OF COMMONWEALTH v. VROOMAN.

Commonwealth v. Vrooman, 164 Pa. 306, expressly decided that the act of February 4, 1870, P. L. 14, which makes it unlawful for any person, partnership or association to execute policies of fire insurance in this State, is constitutional and valid.

PRACTICE—EXECUTIVE DEPARTMENT—FOREIGN LLOYDS'—STATE LICENSE.

In the present state of the law and the decisions in this State, the Insurance Commissioner cannot grant a license to a Lloyds' Association, organized under the laws of the State of New York, to transact business in Pennsylvania.

CRIMINAL LAW—UNAUTHORIZED FIRE INSURANCE—PENALTIES.

Any business transacted by or for a Lloyds' Association is unlawful, and any person making, executing or issuing a policy of fire insurance for them in this Commonwealth is subject to the penalties of the act of 1870.

OFFICE OF THE ATTORNEY GENERAL,
HARRISBURG, December 10, 1894.

GEO. B. LUPER, *Insurance Commissioner*:

Sir: Referring to your communication of December 3, asking whether, in view of the Supreme Court's decision in *Com. v. Reinoehl*, 163 Pa., 287, you have authority to grant a license to a New York "Lloyd's Association" to transact business in Pennsylvania, I have to say: The case of *Com. v. Reinoehl* simply decided that the act of May 1, 1876, making it a misdemeanor for any person to transact business within this Commonwealth as the agent of an insurance company of another state or government, without a certificate of authority, applied only to incorporated companies, known as corporations, and did not apply to individuals associated in the manner of the Lloyds. In the case of *Com. v. Vrooman*, 164 Pa., 306, however, it has been expressly decided that the law of 1870, which makes it unlawful for any person, partnership or association to execute policies of fire insurance in this State, is constitutional and valid. It is, therefore, unlawful for the

Lloyds' Company, or for anyone in their behalf, to make, execute or issue any fire insurance policy in this Commonwealth, and any person so offending shall be deemed guilty of a misdemeanor, under the terms of the act of February 4, 1870 (P. L., 14). I advise and instruct you, therefore, that, in the present state of the law and the decisions in this State, you should not grant a license to a Lloyds' Association, organized under the laws of the State of New York, to transact business in Pennsylvania; that any business so transacted by them is unlawful and that any person making, executing or issuing any policy of fire insurance for them in this Commonwealth is subject to the penalties of the act of 1870.

Respectfully,

W. U. HENSEL,
Attorney General.

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